

T H E A T H E N I A N B O U L E

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by

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VOLUME I

ABSTRACT, PRELIMINARY MATTER, TEXT

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THE ATHENIAN BOULEABSTRACT OF THESISChapter I: Membership and Organisation.

The first section of the chapter is concerned with the membership of the boule - the conditions of appointment and service, the men who served in the boule, and the rewards and risks to which they were exposed. In particular the evidence is surveyed for the allocation to individual demes of specified numbers of seats in the boule, a system which seems in fact to have broken down in the second century B.C., though it continued to influence the layout of lists of bouleutae. The subdivision of the boule into tribal prytanies is next examined, and it is suggested that this may be the work of Ephialtes rather than a part of Cleisthenes' original organisation. In connection with the further subdivision of the prytanies so that some men should always be on duty, attention is given to a recently advanced theory that the prytanies split according to a regular scheme resembling but not identical with Cleisthenes' division of the tribes into trittyes: the evidence supports the adoption of such a convention by some tribes, but not a universally enforced rule. Little can be added to older discussions of the proedri, who took over the presidential duties of the prytanes in the fourth century, but their institution seems to be at any rate a little later than the democratic restoration of 403/2. The chapter ends with a study of the boule's meetings and meeting-places: the buildings occupied by the boule in the Agora are discussed, with special reference to the internal arrangements of the bouleuterium and the conditions in which members of the public were admitted during meetings; other places where the boule met are listed; procedure at meetings is examined; and the evidence for the position of the generals vis-à-vis the boule is reconsidered, with the suggestion that except at the time of the Peloponnesian War the generals did not in the classical period possess extra-

ordinary privileges.

Chapter II: Legislation.

The attempt to distinguish between laws and decrees is noted as a phenomenon first found in Athens after 403, and the boule's slight involvement in the procedures for enacting laws is briefly treated. The main part of the chapter deals with the boule's contribution to making decrees of the ecclesia. The rule of *προβουλευσις* required the boule to give advance consideration to every matter which the ecclesia was to discuss, and this seems to have been interpreted so that matters could in some circumstances be given their first airing in the ecclesia, but would then (if they were not rejected out of hand) be referred to the boule before the ecclesia reached a final decision. Accounts of Athenian debates show that when the boule submitted an item to the ecclesia it could either place the matter on the agenda with no recommendation or sponsor a positive proposal. Literary sources heavily emphasise the part played by the ecclesia in reaching decisions, but the debates of which we have detailed accounts were not typical. An attempt is made to distinguish on a basis of formulaic expressions in published texts between those decrees in which a recommendation of the boule was adopted and those in which the final text was not sponsored by the boule. Surviving texts from the fourth century seem fairly evenly divided between those which were sponsored by the boule and those which were not, and in both the fifth and the fourth centuries the cases in which the boule's proposal was adopted include alliances with other states, and other matters of great substance, but on many other occasions decrees of importance were at least redrafted in the ecclesia; early in the third century, however, signs of an active ecclesia disappear, and thereafter it was normal practice for the boule's recommendation to be adopted. Decrees of the boule alone were subsidiary to those of the ecclesia: it could be authorised to fill gaps which appeared in a basic measure approved by the

people, and it could order the publication or republication of a decree of the ecclesia; its honours could be added to those voted by the ecclesia, or awarded to officials connected with a body honoured by the ecclesia; only after Sulla's revision of the constitution do we have an appreciable period in which the people's rights to enact decrees passed altogether to the boule.

Chapter III: Administration.

In the second half of the fifth century and the first half of the fourth the boule was held responsible for Athens' financial well-being. It was involved in the assessment and collection of the tribute paid by members of the Delian League, and it took a close interest in the various sacred treasuries. In state affairs, it supervised the officials who made contracts and those who collected revenue; in the fifth century the officials who made all state payments from one central fund worked under its direction, in the fourth it watched over the allocation of revenue to the different spending authorities. But from the middle of the fourth century the direction of finance seems to have passed from the boule to certain powerful treasurers, and it is suggested that power depended on knowledge, and that these treasurers became powerful because, like the boule, they were given access to the working of the various boards charged with particular duties. In the Hellenistic period treasurers of this kind continued to exist, and the old boards are not heard of. Analogous to resources in coin was equipment needed for war, and the boule was made responsible for the cavalry and (more important) for the ships and equipment of the navy, supervising the dockyard officials very much as it supervised the financial officers, and attending also to the building of ships and the dispatch of expeditions. Public works again concerned the boule, though a move can be detected from direct intervention by the ecclesia, even on matters of detail, towards reliance on professionals; and in the field of religion the boule provided many of the hieropoei

who together with the priests were responsible for festival administration, and itself had a number of religious observances to maintain. The staff attached to the boule was small: until the 360's the principal state secretary was a member of the boule serving for one prytany only; subsequently he was appointed for a year from outside the boule, and other secretaries began to make their appearance, presenting us with many problems of identification. At a low level, for such matters as guarding records, public slaves were used.

Chapter IV: Jurisdiction.

The boule had disciplinary powers over its own members, and could after a double vote expel a man. Its executive powers were reinforced with jurisdiction over the officials whose activities it supervised and private citizens concerned in those activities: it was kept well occupied with financial and naval cases; jurisdiction in cases arising from public works is plausibly claimed but not securely attested; and some religious charges too were heard by the boule. Many cases came to the boule by the procedure of εἰσαγγελία, designed to deal with major offences against the state and "crimes" not specifically covered by any law. It is argued that from the time of Ephialtes the intended procedure was that εἰσαγγελία should be heard by the legislative bodies, the boule and ecclesia; but there was an increasing tendency for a law-court to take the place of the ecclesia if a higher penalty was called for than the boule alone could inflict, and this confusion with other procedures encouraged the use of εἰσαγγελία in more trivial cases. The boule was also involved in certain δοκιμασῆαι, vetting the archons and boule of the following year, checking the demes' examination of newly enrolled citizens, and again itself examining the cavalry and invalids applying for a maintenance grant.

It is commonly believed that the boule's punitive powers

were originally unlimited, but that as the democracy was brought to completion the severest penalties were reserved for the ecclesia and the law-courts. In an appendix to this chapter the question is reexamined, and it is argued that the boule received punitive powers which were limited from the start when Ephialtes deprived the Areopagus of most of its jurisdiction.

Chapter V: Conclusion.

The final chapter outlines the history of the Athenian boule, starting with its creation by Solon as a probouleutic body, Cleisthenes' reform - in organisation only - and its acquisition of further functions through Ephialtes. The boule became the instrument through which the demos ruled, and so the growth of the ecclesia's power was accompanied by a strengthening, not a weakening, of the boule. After experiments with oligarchy at the end of the Peloponnesian War the old democracy was restored, and changes in administration do not seem to have affected the relative powers of boule and ecclesia; but from the middle of the fourth century the rise of powerful financial officials must have affected both bodies. The Hellenistic period is marked by the continued predominance of the major treasurers in finance, and by the ecclesia's increased reliance on the boule in decree-making. Sulla strengthened the boule at the expense of the ecclesia; under the Roman Empire the Areopagus, boule and ecclesia were all active, but their activities were of no great consequence.

Five matters meriting separate discussion are treated in Additional Notes. There are tables showing deme-representation in the boule, the arrangement of demes in lists of bouleutae, and the use of certain formulae in laws and decrees, and there are plans of the buildings occupied by the boule in the Agora.

PREFACE

I began these investigations in Michaelmas Term 1963. Dr. D. M. Lewis suggested the subject and has supervised ^{my} ~~by~~ work for most of the time, and with his extensive knowledge of the material and keen eye for detail has been able to draw my attention to much that I should otherwise have missed, and to save me from more inadequacies than I care to think of; Mr. G. E. M. de Ste Croix provided valuable encouragement and guidance in 1964-5, when Dr. Lewis was in America. Many others have helped me, and I have tried to acknowledge specific debts in their place, but here I must thank at any rate Mr. G. L. Cawkwell, Mr. W. G. G. Forrest, Mr. A. R. W. Harrison and Mr. R. Meiggs, who have read and helped me to improve substantial parts of this thesis, and Miss J. Martin and Mrs. I. Williams, who have done most of the typing.

From 1963 to 1965 I held a Craven Fellowship in Oxford University, and a Hildebrand Harmsworth Senior Scholarship at Merton College. As Craven Fellow I was able to visit Greece as a Student of the British School in Athens (and also to work in the libraries of the American School and the German Institute, and in the Epigraphical Museum), and to visit Germany as a Gasthörer and member of the Historisches Seminar of the Eberhard-Karls-Universität, Tübingen. Since 1965 I have been a lecturer in Classics and Ancient History at the University of Durham, and this thesis has been completed with the assistance of the University in the time that could be spared from my other responsibilities; the Joint Library of the Hellenic and Roman Societies and the Institute of Classical Studies in London has sent me books with admirable speed during term, and has provided pleasant working conditions in vacation.

Theses have to be completed while the spate of new publications continues. I cannot pretend to have read everything written on my subject, but I hope I have missed nothing of

importance published before the end of 1967. The list of bouleutae and officials for the year 303/2, which I cite as Ag.I 4720, has now been published by J. S. Traill (Hesp.XXXVII 1968, 1-24): the most important addition to the information which I give is that IG ii² 1746, formerly dated c.350 (Table A, tribe VI) has now been recognised as a part of this list; it should therefore be deleted from my Table B, which surveys the arrangement of demes within tribal lists in the ten-tribe period only. In connection with chapter III, section v, it may be noted that as well as officials already known the list includes a κῆρυξ ἐπὶ το[—], and that a second hand has added to it the names of eight [ὄπηρέται τῆ]ς βουλῆς. An article by C. W. J. Eliot in the first fascicle of Phoen. XXII 1968 gives at p.7 a new set of figures, derived from J. S. Traill, for the representatives in the fourth-century boule of the individual Cleisthenic trittyes. This comes nearer to agreement with the table on p.23 of this thesis than his earlier table, cited in n.166 to chapter I.

Most of the works which I have found helpful are cited in the notes: the foundation for enquiries of this kind was laid by the great German students of Staatsaltertümer; of more recent scholars I owe most to Professor U. Kahrstedt, Professor A. H. M. Jones, and the epigraphists who have worked on inscriptions from the Athenian Agora. Thanks to these last the volume of material bearing on Athenian institutions has been greatly increased in the last forty years, and it has become worthwhile to reopen old questions. I have enjoyed working on these questions; I am deeply grateful to all those who have made it possible for me to do so; and I hope the results may be judged useful.

Durham, July 1968

P. J. R.

REFERENCES1. Literary Texts

Standard editions, mostly Oxford or Teubner, have been used, and textual problems are discussed where necessary. The following abbreviations should be noticed:-

- A. Aeschines
 Ar. Aristophanes.
 Arist. Aristotle.
A.P. [Aristotle], Athenaion Politeia.^{*}
 D. Demosthenes.
 H. Herodotus.
 Isae. Isaeus.
 Is. Isocrates.
L.S. Lexica Segueriana in vol. I of Bekker, Anecdota Graeca (see Bibliography).
 O.O. "Old Oligarch": [Xenophon], Athenaion Politeia.
 Plat. Plato.
 Pl. Plutarch.
 T. Thucydides.
 X. Xenophon.

Other abbreviations will, I hope, cause no difficulty. References in the form, 328 F 64, are to texts in Jacoby, Die Fragmente der griechischen Historiker. Books of Aristotle's Politics are numbered in manuscript order (as in the Oxford Text); speeches of Hyperides are numbered in the order of the Oxford and Loeb Texts; chapters of Plutarch's Lives are divided into sections as in the Teubner Text.

* Whether the Athenaion Politeia was written by Aristotle himself or by his pupils does not matter for the purposes of this thesis. It is enough that the work was completed between 328 and 322 (e.g. Gilbert, p.xxii), and I would rather err on the side of caution than buttress a weak point by claiming Aristotle's authority for it.

2. Epigraphic Texts

I have done my best to find the most up-to-date texts of the inscriptions which I cite, but my references are to the volumes most accessible to me whether the text which they print is a new edition or simply derivative: thus I cite SEG rather than Hesp., HMA rather than ATL. THE READER IS WARNED THAT I ADHERE TO THE SPELLING ON THE STONE EVEN WHEN CITING TOD'S GHI. In addition to the standard abbreviations I use the following (see Bibliography for full details: in each case the abbreviation is followed by the serial number of the inscription unless a page number is specified):-

Maier, GMbi Griechische Mauerbauinschriften (texts are in vol. I).

HMA Hill, rev. Meiggs & Andrewes, Sources for Greek History between the Persian and Peloponnesian Wars (epigraphic texts are in section B).

P Dow, Prytaneis: Hesp.Supp.I 1937.

Svt Bengtson, Die Staatsverträge des Altertums.

IN REFERENCES TO HESPERIA, WHEN I GIVE THE NUMBER AND YEAR OF THE VOLUME THE ARABIC NUMBER WHICH FOLLOWS INDICATES THE PAGE; WHEN I GIVE THE NUMBER ONLY OF THE VOLUME THE ARABIC NUMBER WHICH FOLLOWS IS THE SERIAL NUMBER OF AN INSCRIPTION (FROM THE AGORA UNLESS PRECEDED BY SUPERIOR LETTERS). Thus

Hesp.X 1941, 320-6 = Hesp..X 1941, pp. 320-6

Hesp. XXI 3 = Hesp. XXI 1952, inscription no. 3

Hesp. VI ^{EM}4 = Hesp. VI 1937, no. 4 in a series of inscriptions in the Epigraphical Museum.

3. Periodicals

In general I use the abbreviations of L'Année philologique, with the usual English divergences; but the publications of the German academies are abbreviated as Abh. Berlin, Sb. Wien, &c. and the Mitteilungen des Deutschen Archäologischen Instituts,

Athenische Abteilung, as AM. Superior numerals indicate the second and subsequent series of a periodical (e.g. CQ² XIII 1963).

4. Other Modern Works

Full details of works cited will be found in the Bibliography.

The following are cited by author's name(s) only:-

Bonner & Smith	<u>The Administration of Justice from Homer to Aristotle.</u>
Busolt & Swoboda	<u>Griechische Staatskunde.</u>
Gilbert	<u>The Constitutional Antiquities of Sparta and Athens.</u>
Hignett	<u>A History of the Athenian Constitution</u>
Jones	<u>Athenian Democracy.</u>
Lipsius	<u>Das attische Recht und Rechtsverfahren.</u>

Notice also:-

<u>ATL</u>	Meritt, Wade-Gery & McGregor, <u>The Athenian Tribute Lists.</u>
<u>GG</u>	<u>Griechische Geschichte.</u>
<u>HG</u>	<u>Histoire grecque.</u>
Kahrstedt, <u>S.S.A.</u>	<u>Staatsgebiet und Staatsangehörige in Athen.</u>
Kahrstedt, <u>U.M.A.</u>	<u>Untersuchungen zur Magistratur in Athen.</u>
Wade-Gery, <u>E.G.H.</u>	<u>Essays in Greek History.</u>

CHAPTER I : MEMBERSHIP AND ORGANISATION

(i) Qualifications and Appointment

The βουλή , or Council, which is the subject of this thesis was established by Cleisthenes in his reforms of 508/7 B.C., though there was very probably an earlier boule created by Solon.¹ The Cleisthenic boule may first have met in 501/0, the year when the bouleutic oath was first sworn.² Membership was based on the ten new tribes created by Cleisthenes: each tribe was to provide 50 of the boule's 500 members.³ Tribal representation of 50 was retained during the various tribal changes, so that there were 600 members after the creation of the two Macedonian tribes, 650 in the last quarter of the third century, and 600 again from 201/0;⁴ but in A.D. 127, when a thirteenth tribe was again instituted, membership was reduced nominally to the original figure of 500 and in fact to about 520.⁵ In the later years of the Roman Empire various changes were made, and totals are attested of 600, 750 and 300.⁶

As with other Athenian public offices appointment was made annually, from citizens who had reached the age of thirty:⁷ though Aristotle writes of a "retired" status for elderly citizens,⁸ I know no evidence that an upper age limit for holding public office was ever enforced in Athens. Evidence that men were invited to volunteer as candidates is slight and less than cogent,⁹ but the lexicographers' statement that the Athenians κληροῦσι τὰς ἀρχάς from the ληξιαρχικὰ γραμματεῖα¹⁰ is not enough to prove that all eligible citizens were automatically regarded as candidates.

Not all citizens above the age-limit were eligible: those who had stayed in Athens in 411 to perform military service under the Four Hundred were debarred,¹¹ while prostitution disqualified a man for every aspect of public life, including

μηδὲ γνώμην εἰπάτω μηδέποτε μήτε ἐν τῇ βουλῇ μήτε ἐν

In the first case membership of the boule is linked with speaking in the assembly, and in the second public offices in general are linked with speaking in the boule and assembly, so we may probably add to our list the other offences quoted by Aeschines from the δοκιμασία ῥητόρων :¹³ maltreatment of parents; desertion from the army or throwing away one's shield; squandering one's inheritance. According to Dinarchus ῥητόρες and στρατηγός were expected to have legitimate children and to own land within the boundaries of Attica,¹⁴ and this too may have been required of bouleutae. It is assumed, though not I think stated in our ancient authorities, that membership was open to the first three property-classes - but

νῦν ἐπειδὴν ἔρηται τὸν μέλλοντα κληροῦσθαι τιν' ἀρχήν, ποῦον τέλος τελεῖ, οὐδ' ἂν εἷς εἴποι θητικόν.¹⁵

(We may wonder also how far the other requirements were normally enforced: the career of Timarchus suggests that a man without alert enemies might be able to ignore his disqualifications.) Prospective bouleutae will have been interrogated on these points in their δοκιμασία, conducted by their predecessors in office.¹⁶

Most Athenian offices a man could hold only once in his life, but we are told that a man might serve twice in the boule:¹⁷ up to seventeen men are thought to have served twice in the fourth century;¹⁸ I have not systematically checked the later lists but I am not aware that any one served more often before the second century A.D., when (for example) the name of Vibullius Theophilus appears in three different lists.¹⁹ Permission to serve twice was probably a concession granted because of the difficulty of finding 500 fresh bouleutae each year, and suggests that competition for places in the boule cannot have been very great.²⁰ For the fifth century we have no evidence, but it is likely that before the Peloponnesian War the citizen population of Athens was larger than at any time during the fourth century,²¹ so it will certainly have been possible to enforce the fourth century's

rule, and before 431 an absolute ban on repetition may have been feasible.^{21a} Several prominent politicians are known to have served as bouleutae, sometimes at least in such crucial years that they must surely have chosen to stand at that particular time, and must unless the processes of fate were tampered with have been lucky either in the lot or in the absence of competition. Cleon was bouleutes in a year before 424:²² it is an attractive possibility that the year was 427/6,²³ when after the production of the Babylonians Cleon denounced Aristophanes in the bouleuterium,²⁴ the year to whose beginning may probably be ascribed the debates on the fate of Mytilene.²⁵ Hyperbolus was already a well-known figure when he became a bouleutes,²⁶ for it is suggested in the comedian Plato's Hyperbolus that his ἐπιλαχών is bound to be appointed to the seat in his place,²⁷ but Cleon's death may have made an office which would keep Hyperbolus in the public eye particularly desirable at this time. In the fourth century Androtion served twice;²⁸ Demosthenes was a member in 347/6, when the Peace of Philocrates was made with Philip²⁹ (Philocrates himself seems not to have been a member that year); Demades, who played so important a part in easing Athens' relations with Macedon in the years after Chaeronea, is found in a bouleutic list for which 336/5 has been suggested as the most likely date;³⁰ and Lycurgus, vital to Athenian administration during the reign of Alexander, was a member in or before 329/8.³¹ But, inevitably in a council whose membership changed every year, many bouleutae were men who made no mark: of the 248 members listed in SEG XIX 149, no less than 13 bear names which had not previously been found in Attica.

This prompts us to ask in more general terms how far the boule was representative of the Athenian people. We shall see later in this chapter that appointment was by lot, at any rate from the middle of the fifth century, and that seats were allocated to the demes in proportion to their size. The boule

could thus have contained a fair cross-section of the citizen body, and it was indeed described by one scholiast as μικρὰ πόλις .³² Nevertheless scholars have claimed to detect in it an undue bias towards the rich: the Finnish scholar Professor Sundwall, applying somewhat haphazard tests to the known bouleutae of the fourth century, thought that the very rich occupied almost twice as many places as their numbers entitled them to, and that the very rich and the "propertied" together filled up to 425 places in a boule of 500.³³ More recently, Professor Larsen has written:-

It is still possible to argue...that the poorer members of the community did not serve on the council. The evidence is difficult to interpret, and all will not agree, but there seems some reason to believe that a disproportionately large number of men of property served in the council....Yet the number of those available for service was not such that the tendency can have been excessively great.³⁴

A certain amount of bias towards the rich must have been inevitable. As we shall see, pay for bouleutae can hardly have been introduced before the 450's; we do not know how generous the fifth-century rate was, but in the 320's the daily fee of 5 obols was less than the 1 or 1½ drachmas paid for attendance at the assembly,³⁵ and less than even an unskilled man could earn in a day's work.³⁶ Active membership of the boule must have involved some financial sacrifice for most men, and it is likely enough that many poorer citizens will have been reluctant to abandon their normal occupation for a year. Clearly we cannot place much reliance on arguments from the retention in theory of a law that was not observed in practice, but the fact that in the full, self-conscious democracy thetes remained legally debarred from holding public offices suggests that there were not large numbers of poorer citizens who wanted to participate this

actively in the running of the state. For the fifth century we have no usable evidence,³⁷ but a number of bouleutae are known from the fourth century, and in particular we have in SEG XIX 149 a list naming 248 of the members for one year (probably 336/5). The institution of trierarchy enables us to apply a simple test. Periander's symmory law of 357³⁸ made the richest 1,200 citizens liable for trierarchic service; Demosthenes in 354 contemplated extending the list to 2,000,³⁹ but in fact in 340 reduced it to 300:⁴⁰ before 340 trierarchs were roughly the richest 4% of the citizens; after 340, the richest 1%. If this list of half a boule is representative of the demos, we should expect it to contain about ten men who were liable for trierarchic service under Periander's law, and two or three of these still to be liable under Demosthenes' law. Our knowledge of Athenian trierarchs is of course very far from complete, but even so five of the men in this list are perhaps to be identified with known trierarchs,⁴¹ and four to six others belong to families known to have supplied one or more trierarchs between 360 and 320.⁴² Fortunes fluctuate, and are not evenly distributed in all branches of a family, but it seems likely that if we were more fully informed we should find men with trierarchic fortunes represented in more than their due proportion. At the other extreme, thirteen of the 248 bear names not otherwise found in Attica:⁴³ obscurity need not mean poverty,⁴⁴ but at least we are shown that the boule contained men who were inactive enough to leave no other trace of their existence.

We must turn now from the members of the boule to the mechanism by which they were appointed. Immediately before the revolution of 411 appointment was by lot, and this seems to have been regarded as an essential characteristic of a democratic boule, since both Thucydides and the Athenaion Politeia stress that the council expelled by the Four Hundred was εἰληχυῖσαν τῷ κυδμῷ.⁴⁵ The successor to this council is said to have been appointed in a

three-stage cooptation,⁴⁶ though the oligarchs may perhaps have intended that if their regime lasted the boule should in future be chosen or allotted from πρόκριτοι elected by tribesmen, with forty members from each Cleisthenic tribe.⁴⁷ Alcibiades on Samos was prepared to accept the restriction of the franchise to 5,000, but

ἔκελευεν αὐτοὺς . . . καθιστάναι τὴν βουλὴν ὅσων καὶ πρό-
τερον, τοὺς πεντακοσίου⁴⁸

We may assume that a boule of 500 was appointed after the fall of the Four Hundred, but this may have been elective.⁴⁹ If this is correct, sortition will have been restored with the full democracy in 410,⁵⁰ and after the rule of the Thirty^{50a} it continued during the fourth century;⁵¹ election probably returned during the later oligarchic interludes, but sortition is mentioned again in 256/5.⁵² There is no direct evidence for the method of appointment before 412, or for any change of method, but since the archonship was elective in the time of Cleisthenes and sortition was introduced or reintroduced in 487/6⁵³ the possibility that Cleisthenes' bouleutae were elected ought not to be ruled out. But the introduction of the lot can hardly be later than the 450's.⁵⁴

There is evidence from the late fifth and fourth centuries that at the same time as the bouleutae were appointed ἐπιλαχόντες or deputies, were appointed also, so that a man would be available to take the place of a member who died or was rejected in the δοκιμασία.⁵⁵ The comedian Plato's remark that the man who is ἐπιλαχών to Hyperbolus is bound to gain admission to the boule suggests that each ἐπιλαχών was made understudy to a particular member. A year as ἐπιλαχών should not have counted against the two years' actual membership which a man was allowed (unless he was called on to fill a vacancy), but all ἐπιλαχόντες must presumably have been eligible for actual membership, and if each member had his own understudy the Athenians will have needed to find a thousand eligible men each year. Yet it is probably because

of the difficulty in finding bouleutae that men were allowed to serve twice in their lives, and we shall see shortly that even under this rule some small demes may occasionally have been unable to return a member.⁵⁶ We are entitled, I think, to wonder how regularly ἐπιλαχόντες were appointed and how numerous they were: perhaps they were appointed whenever there happened to be more candidates than seats, and one man may have been regarded as deputy to all members from his deme, or from a group of demes.

There is one aspect of appointment to the boule on which the American excavations in the Agora have greatly added to our store of information. We have a large number of inscribed lists of πρυτάνεις (one tribe's contingent of bouleutae), and also some lists of bouleutae from more than one tribe. In these lists the members are not merely given their demotics but are grouped by demes,⁵⁷ and in the early part of the boule's existence the numbers of bouleutae from the different demes show a considerable degree of consistency. Apart from a late fifth-century dedication by the prytanes of Erechtheis, our evidence begins with lists set up by the prytany which had won the annual prize offered by the demos, early in the fourth century. These monuments gradually give way to decrees honouring a prytany and its officials (more than one prytany may now be honoured in the year), to which a list of members is appended: documents of this kind are found from the third to the first century. From about the time of Sulla these give way to lists of prytanes and officials inscribed on a statue base.⁵⁸

For the tribe Erechtheis,⁵⁹ in addition to the fifth-century dedication that I have mentioned, we have four fourth-century lists of the ten-tribe period, two of them more or less complete. No changes in representation are apparent from these four lists, except that the small demes Παμβωτιάδαι and Ζυρροῖδαι may have taken it in turns not to be represented.^{59a} From the end of the fourth century various changes will have been needed as the boule

was enlarged or reduced to admit or exclude new tribes: Erechtheis lost three half-demes to Antigonis in 307/6 (and recovered two in 201/0), one deme to Ptolemais in 224/3, and one to Hadrians in A.D. 126/7 (when the size of prytanies was reduced from 50 to about 40). A coherent pattern can still be made out in the third century B.C.; after that our evidence is slight, but the system seems to be breaking down.

For Aegeis there are five relevant documents from the ten-tribe period, and each of the two complete lists seems to have contained only 49 members. In this tribe there are some changes in representation to note: about 350 there were two Βατσεις, four or more Φηγαίεις, two Ἴωνίδαι, and one Κυδαντίδης; in our later lists representation of the first three was reduced to one, three and one, but the number of Κυδαντίδαι was increased to two. In 341/0 there were six Ἐρχίεις, but in 336/5 we find six names and space for a seventh. We have one substantial list and two more fragmentary from the period of the Macedonian tribes, differing inevitably from the earlier lists but not to a greater extent than the loss of some demes will justify; but fragments from the second century A.D. reveal no system at all.

Pandionis provides no less than eight documents earlier than 307/6, four of them complete lists. In them we see Κυδαθηναίεις move down from twelve representatives to eleven and then up again to twelve; Ἀγγελῆθεν from three to two, and perhaps later up to three again; Πυρρινούσιοι from seven down to six, and even to five; Κυθήριοι rise from no representatives, or perhaps one, to two; and possibly Προβαλίσιοι from four to five. For our next complete list we have to wait until the middle of the second century, where we have a list not very different from those of the fourth century; but a list published early in the reign of Augustus is markedly different from the earlier ones, and thereafter there is no real system, though the lists of A.D. 166/7 and 169/70 are very similar.

For Leontis we have five documents of the ten-tribe period,

and of the two complete lists one again has only 49 names: the blank space in this list for the ninth $\Phi\rho\epsilon\delta\alpha\phi\tau\omicron\varsigma$ is the only anomaly. In the next century, for which we have two complete lists and three smaller fragments, reasonable consistency seems to have been maintained, and a list of about 160 suggests that the principle of deme-representation had not yet broken down entirely.

Acamantis has left us a number of small fragments, but not much substantial information. Of its two full lists from the fourth century, one (P 1) seems to have contained no representative of a number of small demes, and a correspondingly large number from some of the others. The lack of system in the second century A.D. is shown by two full lists of consecutive years, 167/8 and 168/9, which are very different in composition.

Little apart from fragments has survived from Oeneis, and we have only one complete list, in which the large deme $\delta\epsilon\lambda\omicron\alpha\rho\nu\epsilon\iota\varsigma$ accounts for 22 of the 50 members. The representation of various demes seems to have changed about the middle of the fourth century.

Records for Cecropis are again numerous but fragmentary, and again there is only one complete list, this time of the second century A.D. Nothing can fairly be noted apart from fluctuations in the number of $\Sigma\upsilon\kappa\alpha\lambda\eta\tau\tau\iota\omicron\iota$.

For Hippothontis we are no better served in the fourth century, though it is clear even from the small fragments which survive that there were changes during the century. Fragments from the period of the Macedonian tribes show reasonable consistency, but in the second century three complete lists and a substantial fragment show considerable discrepancies.

Aiantis began with only six well-attested demes, and lost one each to Ptolemais, Attalis and Hadrianis. Epigraphic remains are poor, but though there was little scope for variation it is surprising to find two apparently identical lists as late as the

first century B.C.

In Antiochis, there were six *Ἑλληγεῖς* and two *Ἐπειοῖ* in 335/4, seven *Ἑλληγεῖς* and one *Ἐπειός* a year later. As in other tribes there is reasonable consistency in the third century, a breakdown in the second century, and no system at all under the Roman Empire.

Little survives from the five post-Cleisthenic tribes, but what information we have fits the pattern that has already emerged. In the fourth and third centuries, the figures are consistent enough to suggest that representation in the boule was organised on the basis not simply of tribes but of demes, and that the demes were given seats in proportion to their size - measured most easily by the numbers of citizens on their registers. If there were general redistributions of seats based on up-to-date population figures, some tribes must have survived some redistributions without change (which is of course by no means unlikely); but some of the variations may represent more or less private arrangements made if a small deme was unable to fill all its seats:⁶⁰ in particular the non-representation of various demes of Acamantis in p 1 may have to be explained in this way.⁶¹ Recently discovered inscriptions have made it clear that a tribe might on occasion have fewer than fifty members, though DAA 167 (Erechtheis, 408/7)⁶² and p 36 with Hesp. IX 1940, p.78 (Leontis, 212/1)⁶³ are our only instances of a list with more than one vacancy. The difficulty experienced by small demes is reflected also in the practice of making some share a seat (*Παμβροτιάδαι* and *Ἐυβροτιάδαι* in Erechtheis; perhaps *Τυρμεῖδαι* and *Ἰσποτομιάδαι* in Oeneis).⁶⁴ Such difficulties will have increased in the Hellenistic period, when more bouleutae had to be found (though the bouleuterium, which could with difficulty hold 500 members, was never enlarged)⁶⁵ and Athens' reduced political significance must have made membership less attractive: this no doubt is largely responsible for the breakdown of the representational system which is apparent in

the second century, and for the lifting of the restriction on repeated terms of office by the second century A.D.; it may also have been one reason for the reduction of the boule to not far above its Cleisthenic total of 500. Yet in all but a very few late lists members continue to be grouped by demes,⁶⁶ and in most of the exceptions they are still given their demotics:⁶⁷ while this could be merely a matter of habit or fiction, it is possible that the demes were always involved in some way in appointments to the boule.

For the fifth century we have no evidence except DAA 167, which for all its difficulties does at least show that bouleutae could be grouped by demes before the regime of the Thirty. It is natural to suppose that Cleisthenes, who created the demes as political entities no less than the ten tribes, was responsible for this principle of deme-representation; and though it is dangerous to suppose that anything which fits our idea of Cleisthenes' policy must be the work of Cleisthenes there is no reason in this case to deny Cleisthenic authorship. As I have already remarked, though sortition had become established as an important principle before the end of the fifth century it is possible that the demes originally elected their representatives.

Having secured appointment, the prospective bouleutae had to undergo a δοκιμασία, conducted certainly when the Athenaion Politeia was written and probably at all other times by their predecessors in office.⁶⁸ Presumably they were required to satisfy their examiners that they were citizens over 30 years old, and were not disqualified from membership on any of the grounds which I mention on pages 1 - 2 above: in effect they will have had to demonstrate fairly generally that they were satisfactory citizens, and intangible considerations of loyalty and thinking the right thoughts may have counted for more than the legal requirements.⁶⁹ When their appointment had been confirmed the

new members took an oath of loyalty to the state,⁷⁰ and the bouleutic year began with inaugural sacrifices, εἰσθητήρια, of which we know scarcely more than that they were performed as usual by the Four Hundred when they entered office late in 412/1.⁷¹

Bouleutae, like other ἄρχοντες, wore a myrtle crown as a badge of office,⁷² and were entitled to seats of honour in the theatre.⁷³ Though they were not required to remain in Athens during their year of office,⁷⁴ they were exempted from military service.⁷⁵ By 412/1 members were paid for their service in the boule: in that year the democratic boule, which still had nearly a month to serve, was given its salary up to the end of the bouleutic year, so that the Four Hundred could take over the running of the state.⁷⁶ When the Athenaion Politeia was written bouleutae were paid 5 obols a day,⁷⁷ with an extra obol as subsistence allowance for members of the tribe in prytany⁷⁸ and conceivably a larger allowance for the ἐπιστάτης of the day.⁷⁹ At this time the payment for attendance at the assembly was 1 or 1½ drachmae (lower rates having been introduced in the 390's⁸⁰), and jurors were still receiving the 3 obols paid a hundred years earlier.⁸¹ It is at any rate possible that the original rate of payment to bouleutae was lower than that of the 320's. Bouleutic pay was presumably instituted in the time of Pericles' supremacy:⁸² his introduction of jury pay seems to have been the first instance of δημοσία τροφή,⁸³ and it should not have been necessary to introduce a salary in war time for an office which conferred exemption from military service on the holder.

In the Hellenistic and Roman periods rich officials were expected to contribute to the expenses of their office, and the bouleutae no doubt counted on having rich colleagues who were prepared to bear the cost of the corporate sacrifices,⁸⁴ but against this we may set some special endowments from which the

bouleutae benefited. About A.D. 120 Claudius Atticus and his wife established a special fund for bouleutae of their own tribe, presumably to subsidise the activities of the prytany,⁸⁵ and later they made similar endowments for other tribes;⁸⁶ on their death however these endowments were recovered by their son Herodes,⁸⁷ and from A.D. 138 we find individual tribes appointing a rich member to be their ἐπινομιος, or patron.⁸⁸ In some later documents Athena Polias is linked with the human patron,⁸⁹ and it is assumed that a grant was made to the prytany from the Treasury of Athena. Another fund was endowed about A.D. 135 - 40 by a Cretan, Flavius Zenophilus, to provide gifts for bouleutae at some major festival, perhaps the Eleusinian Mysteries; we possess a decree of the Areopagus, about 165, providing for the reinvestment of the accrued surplus and for additions to the list of recipients, among them Flavius' son Xenon.⁹⁰ Somewhat earlier, we have four decrees from the middle of the second century B.C. which reveal that the boule was given a καθέσιμον, or attendance fee, by the ἀγωνοθέτης of the Thesea:⁹¹ presumably this payment was needed to secure the members' attendance at the festival.

Individual members who distinguished themselves in office were sometimes rewarded;^{91a} and at the end of the year the whole boule like any individual ἄρχων was subjected to a process of εὔθυναί,⁹² and if it was found to have discharged its duties satisfactorily it was entitled to a δωρεά,⁹³ which seems to have taken the form of a gold crown.⁹⁴ Professor Kahrstedt rejected this view and tried to distinguish between a legally prescribed δωρεά, in the form of a cash donation for a sacrifice or dinner, and a merely customary crown.⁹⁵ However his argument that crowns were not legally provided for runs into difficulties with ὁ νόμος κελεύει in IG ii² 415, 28; and since the word δωρεά certainly could be used of a crown⁹⁶ as well as of various other honorific awards⁹⁷ it seems perverse to force a distinction between crown and δωρεά here

When Androtion proposed that the boule in which he had served his second term⁹⁸ should receive the usual *δωρεά*, it was customary for the retiring boule to ask for its reward by putting the question on the assembly's agenda late in its own year of office.⁹⁹ The prosecution of Androtion by Euctemon and Diodorus seems to have had little immediate effect on this practice: the boule of 343/2 was certainly crowned in its year of office for successful management of the Dionysia,¹⁰⁰ and it may also have received the general award for satisfactory conduct before the end of the year.¹⁰¹ But in the 330's there was further trouble over the award of a crown to an official who was still *ὄψεσθνος*, when Aeschines prosecuted Ctesiphon for his proposal to crown Demosthenes. For individuals, Aeschines claims, there used at one time to be no restriction on *ἔπαινοι* and *κηρύγματα*, but when it was found that such votes of thanks were prejudicing the *εὐθυναί* a law was passed *διαρρήδην ἀπαγορεύοντα τοὺς ὄψεσθνοὺς μὴ στεφανοῦν*. A way round this provision was soon discovered: the proposer of an award had only to add the clause

ἐπειδὴν λόγον καὶ εὐθύνας τῆς ἀρχῆς οἶ

- but Ctesiphon had been careless enough to omit the saving clause and thus openly to break the law.¹⁰² Inscriptions provide us with a cluster of these saving clauses from the late 340's to the early 320's, all for awards to individuals,¹⁰³ and the clause then disappears apart from two instances in the third century.¹⁰⁴

The prosecution of Ctesiphon, unsuccessful as it was, may well have resulted in a tightening of the law governing *δωρεαί* to individuals, but it is not clear how far we can argue from these awards to the *δωρεά* of the boule. When the Athenaion Politeia was written, the boule's crown had to be voted after its year of office was over,¹⁰⁵ so by the 320's the practice of the 350's had been abolished. In 343/2 the boule's crown for the Dionysia was voted immediately and without reference to *euthynae*, but we are not given the text of the decree conferring the boule's regular

crown. It is tempting though perhaps fanciful to suppose that the honours with the saving clause resulted from an enactment after Androtion's proposal to crown the boule (it must be admitted that it is hard to find adequate grounds for exempting the boule's crown for the Dionysia from the general rule) and that more stringent precautions were introduced about 327.

(ii) Subdivisions of the Boule

A council of 500 was large enough to be unwieldy, and a standing committee was therefore instituted, comprising for one-tenth of the year at a time (later, one-twelfth, etc.) the fifty members from a single tribe. These were the *πρυτάνεις*, or "presidents."¹⁰⁶ During their prytany they lived and ate with the state secretaries in the *θόλος* or *σκάας*, a circular building adjacent to the bouleuterium on the west side of the agora.¹⁰⁷ In addition to their bouletic stipend of 5 obols a day (in the time of the Athenaion Politeia) they drew a 1-obol subsistence allowance.¹⁰⁸

This division of the boule into prytanies would help to ensure that Cleisthenes' ten new tribes played an important part in public life, and it is normally assumed that the division was his work. But we have very little evidence for the activities of the boule in the half-century after Cleisthenes' reforms, and I hope to suggest that until further changes were made in the constitution by Ephialtes its duties were limited to *προβούλευσις*, the preparation of business for the ecclesia. If this is so, Cleisthenes' boule will not by later standards have been busy, and a division into prytanies may not yet have been found necessary. Certainly there is no undisputed evidence that prytanies existed before Ephialtes.^{108a} Plutarch reports that the decree under which Miltiades led out the Athenians to Marathon was enacted in the prytany of Aiantis;¹⁰⁹ but Dr. Habicht believes that the text which Plutarch saw or read about was a fourth-century forgery,¹¹⁰ and he may well be right. In the Hecatompedon Inscription of 485/4 there is an official called *ὁ πρύτανις* who is empowered to impose fines,¹¹¹ but he does not look like a member of a tribal prytany. Of the Attic decrees whose prescript includes a ^{mention} ~~member~~ of the tribe in prytany none is certainly earlier than the 450's, though Professor Wade-Gery has tried to locate the Phaselis Decree in the early 460's.¹¹² Closer study of the Hecatompedon

Inscription provides further reasons for doubt: the decrees are dated simply to an archon-year,¹¹³ whereas later it was normal to date by the bouleutic calendar;¹¹⁴ and they order the Treasurers of Athena, whose duties were normally regulated by the bouleutic calendar, to check the contents of the Hecatompedon three times a month.¹¹⁵ The special meeting of the demos in the Agora to hold an ostracism was presided over not by the prytanes but by the nine archons and the whole boule,¹¹⁶ and Professor Kahrstedt used this fact as the chief peg on which to hang his argument that the prytany system was created in 462/1.¹¹⁷ This point, however, is irrelevant. The ostracism-assembly was not a normal ecclesia, though a normal ecclesia had first to be held to decide whether there should be an ostracism-assembly.¹¹⁸ It was, we may imagine, especially likely to get out of hand, and it may well have been given a larger presiding body simply for that reason.

Nevertheless the inscriptions that I have cited make the possibility that prytanies were a product of the Ephialtic reform worth considering, and I believe the case can be strengthened by a study of the building which was erected for the prytanes. The Tholos is dated by the excavators of the agora c.465,¹¹⁹ and the Old Bouleuterium, to the north of it, they assign (with Cleisthenes in mind) to the last decade of the sixth century.^{119a} The Tholos and Old Bouleuterium replaced earlier buildings on the same site:^{119b} the complex CDE on the site of the bouleuterium is thought to have been begun (building C) about the time of Solon, enlarged (D) under Pisistratus, and altered (D abandoned and E built) in the last quarter of the sixth century; FGHI, on the site of the Tholos, were erected about 525, and at the end of the sixth century about the time when the Old Bouleuterium was built part of F was demolished and J was erected. These buildings, it is suggested, served more or less the same purpose as their successors, except that as there is no building suitable for the purpose the

actual meetings of the Solonian boule must have been held in the open.¹²⁰ However, there is no evidence for any kind of prytany system in the Solonian boule: I should have expected the archons to preside, but in any case the use of tribal contingents of 100 seems unlikely. FGHI presents a far more complicated unit than the later Tholos, and though these were no doubt public buildings it seems unsafe to insist that they must have stood in the same relationship to the buildings to the north of them as did the Tholos to the Old Bouleuterium. The smallest of changes in the excavators' date would be needed to make the Tholos a post-Ephialtic building, newly erected to serve the needs of the new standing committee made necessary by the extra duties acquired by the boule after Ephialtes' attack on the Areopagus.¹²¹ The arguments I have used here cannot be decisive, but if I succeed in showing that there may have been no need for prytanies before Ephialtes, then we ought not to persist in ascribing the prytany system to Cleisthenes merely because it accords with our idea of what he was trying to do.¹²²

When this subdivision of the boule was made the order of the prytanies during the year was determined by lot¹²³ in such a way that except in the penultimate prytany of the year it was not known in advance which would be the next tribe in prytany:¹²⁴ in other words, in the course of the year there must have been nine (more after the creation of the new tribes) separate sortitions to determine the order of prytanies. This is the earliest method of arranging the prytanies for which we have any evidence,¹²⁵ and its use continued under democratic régimes at any rate until the third century.¹²⁶ One year in which it seems likely that a different system was tried is 408/7: for this year four prytanies are known, the fifth and the seventh to the ninth, and the tribes which occupied them are Oeneis (VI), Leontis (IV), Pandionis (III) and Aegeis (II). While this could have resulted from the normal sortitions the coincidence is impressive, and it may be that in this one year the prytanies were filled in reverse tribal order.¹²⁷

The primary duty of the prytanes was to convene the boule and ecclesia. They fixed the agenda for the boule, as the whole boule did for the ecclesia, and were ultimately responsible for ensuring that the boule placed on the ecclesia's agenda matters which by law had to come before the demos.¹²⁸ It is possible (though our evidence is limited to two entries in the lexica) that they were required to give five days' notice of an ordinary meeting of the ecclesia,¹²⁹ specifying the time and place, and perhaps also the agenda.¹³⁰ They inevitably became the first recipients of envoys, messengers and applicants for a hearing in the boule and assembly, and when the right of *κρίσιδος πρὸς τὴν βουλὴν καὶ τὸν δῆμον* was conferred on a foreigner the prytanes naturally figured among those who were to see that he was able to enjoy this right.¹³¹ Demosthenes gives us an account of their arrangements to summon an extraordinary assembly in 339/8, when the news reached Athens that Philip II had occupied Elatea:

ἑσπέρα μὲν γὰρ ἦν, ἦκε δ' ἀγγέλλων τις ὡς τοὺς πρυτάνεις ὡς
*Ἐλάτεια κατελήπται. καὶ μετὰ ταῦθ' οἱ μὲν εὐθὺς ἐξανα-
στάντες μεταξὺ δεικνοῦντες τοὺς τ' ἐκ τῶν σκηνῶν τῶν κατὰ τὴν
ἀγορῶν ἐξεῖργον καὶ τὰ γέρον' ἀνεπετάνυσαν, οἱ δὲ τοὺς
στρατηγούς μετεπέμποντο καὶ τὸν σαλπικτὴν ἐπέβουον· καὶ
θορυβῶν πλήρης ἦν ἡ πόλις. τῷ δ' ὕστεραίη, ἅμα τῇ ἡμέρᾳ, οἱ
μὲν πρυτάνεις τὴν βουλὴν ἐκάλουν εἰς τὸ βουλευτήριον, ὅμοις
δ' εἰς τὴν ἐκακλησίαν ἐπορεύεσθε, καὶ πρὶν ἐκεῖνην χρηματίσαι
καὶ προβουλεύσαι πᾶς ὁ δῆμος ἄνω καθῆτο. καὶ μετὰ ταῦτα ὡς
ἦλθεν ἡ βουλὴ καὶ ἐκήγγειλαν οἱ πρυτάνεις τὰ προσηγγελημέν'
ἑαυτοῖς καὶ τὸν ἦκοντα παρήγαγον κάκεῖνος εἶπεν, ἡρώτα μὲν
ὁ κῆρυξ 'τίς ἀγορεύειν βούλεται;' ¹³²

In the fourth century it is to be assumed that a part of their duty in convening meetings was delegated to a board of three *bouleutae* from each tribe known as *συλλογεῖς τοῦ δήμου*, though the only attested duties of the *συλλογεῖς* are religious;¹³³ from the late third to the early first century the activities for

which prytanes are honoured include taking care of the συλλογὴ τῆς βουλῆς καὶ τοῦ δήμου.¹³⁴

Until the institution of the proedri early in the fourth century¹³⁵ the prytanes also presided at the meetings of the boule and ecclesia.¹³⁶ In the bouleuterium they had seats facing the other members,¹³⁷ and similar arrangements must have been made when the boule met elsewhere, and also at the various meeting-places of the ecclesia.¹³⁸ With the presidency went responsibility for good order at meetings, and therefore control of the Scythian τοξόται ;¹³⁹ it also involved the right to declare a meeting closed, and in Aristophanes' Acharnians we find Dicaeopolis taking advantage of the grounds on which an assembly might be dissolved:

ΔΙ. ἄλλ' ἀπαγορεύω μὴ ποεῖν ἐκκλησίαν
τοῖς Θραξί περὶ μισθοῦ· λέγω δ' ὑμῖν ὅτι
διοσημία 'στι καὶ ῥανίς βέβληκέ με.

ΚΗ. τοῦς ἑρῆκας ἀπιέναι, παρεῖναι δ' εἰς ἔνην·
οἱ γὰρ πρυτάνεις λυσοῦσι τὴν ἐκκλησίαν.¹⁴⁰

In judicial matters as in legislative the cooperation of the prytanes was needed if an item was to come before the boule or ecclesia. in Clinias' tribute decree the prytanes are threatened with heavy penalties if they fail to bring charges before the boule,¹⁴¹ and Aristophanes shows us a charge made the subject of a φάσις to the prytanes.¹⁴² The decree of Dracontides, probably to be dated to 438/7, required Pericles to submit οἱ λόγοι τῶν χρημάτων to the prytanes, though both under this decree and under Haqnon's he was ultimately to be tried by δικασταί.¹⁴³ A rider to Thudippus' assessment decree of 425 is restored to provide that assessments which have been the subject of a διοδικασία are to be reported by the prytanes and the secretary of the boule to the appropriate court for confirmation.¹⁴⁴ Here the prytanes are being used not for their primary purpose but as

an executive committee, and there are of course many instances of this outside the judicial sphere. In 434/3 when the city settled its debt to the Other Gods the boule was to convene the thirty loqistae to reckon up the sums due, and payment was to be made by "the prytanes with the boule."¹⁴⁵ In a largely restored decree of about 420 a payment is to be made by the colacretae serving under the prytany of Aegeis; if they fail in this they are to be punished and compelled to pay by the tribe next in prytany, or else the prytanes of that tribe will themselves be punished.¹⁴⁶ It is at first sight surprising that the prytanes should be blamed by Amphitheus in the Acharnians for not giving him ἐφοδία for his journey to make peace with Sparta¹⁴⁷ - the prytanes could not on their own authorise payment from the public treasuries - but their fault is presumably that they have failed to put the question to the assembly.

In addition to their general responsibility as bouleutae, members were liable to praise or blame for their conduct as prytanes. Nicias in 415 assured "the prytanis" that he need not be afraid of breaking the law in giving the demos a second chance to decide whether it was to undertake the Sicilian campaign;¹⁴⁸ and we read that at the Arginusae trial the prytanes were afraid of breaking the laws by putting Callixenus' proposal to the vote.¹⁴⁹ In the previous paragraph I have mentioned some instances of the prytanes' being threatened with penalties if they failed to perform some specific act, and more could be given.¹⁵⁰ IG i² 95 has been restored tentatively by Mr. A. G. Woodhead to yield provisions for the boule and ecclesia to call a past prytany to account before the end of 418/7, but I find some of the details of his restoration unconvincing.¹⁵¹

By way of encouragement, early in the fourth century the boule held a contest for the best prytany of the year; a fragment reads:

ἐπα[ινέσαι καὶ] ἀναγράψαι [δικαιο]σύνης ἔνεκα ὅτι ἔκρινον
αὐτὸς ἡ βολὴ νικᾶν τὰς ἄλλας φυλάς ὡς ἔριστα πρυτανεύσαντας
τῆι πόλει.¹⁵²

Later, but still before the middle of the century, this contest seems to have been taken over by the demos: we have a dedication by the members of Leontis, νικήσαντες δ(ό)ξαν τῷ δήμῳ,¹⁵³ and another inscription has a similar format though the words after νικήσαντες are lost.¹⁵⁴ In the Hellenistic period honours were multiplied, and we know of years when two or even three prytanies might be favoured;¹⁵⁵ already by the 340's references to the contest have disappeared from the headings of prytany-lists.¹⁵⁶ The standard decrees in honour of prytanes published with the Hellenistic lists show that the various prytanies reported to the ecclesia on the discharge of their own duties,¹⁵⁷ and to the boule on the conduct of the officials of the boule and the prytany.¹⁵⁸ though this practice is not mentioned in the briefer documents of the fourth century there is no reason to believe that it was a late innovation.

For some purposes a single head of state was needed, and to meet this requirement one of the prytanes was picked by lot to serve for 24 hours as ἐπιστάτης, a position which a man might occupy only once in his life.¹⁵⁹ In his day of supremacy he was continuously on duty, and picked one τριτύς to remain in the Tholos with him.¹⁶⁰ He had charge of the keys to the temples used as state depositories, and of the public seal: we see him using the latter when alternative proposals for the use of the ἱερὰ ὄργα are placed in separate, sealed vessels, and Delphi is to be asked which proposal should be adopted.¹⁶¹ He may have received extra remuneration for this one day, but Foucart's proposal of a 10-obol supplement would be uncharacteristically high.¹⁶² While the prytanes presided in the boule and ecclesia he will have been chairman of the bench,¹⁶³ but Xenophon's account

of the Arqinusae trial shows that when any problem arose the opinion of his colleagues had to be taken into account.¹⁶⁴

Neither 50 nor 49 is a product of 3, so the τριπτύς τῶν πρυτανέων which remained on duty with the epistates for the full 24 hours cannot have been a mathematical third. Professor Kahrstedt therefore suggested that the word should be understood in its Cleisthenic sense, of the bouleutae from one τριπτύς of the prytanising tribe¹⁶⁵ - and these τριπτύδες were very far from mathematical thirds, as the following table shows:-¹⁶⁶

TRIBE	A	II	M
Erechtheis	16	23	11
Aegeis	10	16	24
Pandionis	12 (one deme)	19	19
Leontis	16 ? 21	20 ? 15	14
Acamantis	17	16	17
Oeneis	6 ? 10	22 ? 18	22 (one deme)
Cecropis)		
Hippothontis) (too little information available)		
Aiantis)		
Antiochis	10 (one deme)	27+	13-

A refinement of Kahrstedt's view has recently been suggested by Dr. W. E. Thompson, who has noticed that the arrangement of many surviving prytany lists does not follow the Cleisthenic trittyes but does nevertheless seem to incorporate a threefold division which bears some relationship to those trittyes but comes nearer to a mathematically equal division. These groups, he suspects, are the τριπτύδες τῶν πρυτανέων to which the Athenaion Politeia refers.¹⁶⁷ His article, based on a small number of inscriptions only, applies the principle successfully in Aegeis, Pandionis and Leontis; he notes that it does not work for Erechtheis but could work for Acamantis. I offer here the results of a more

complete investigation.¹⁶⁸

Erechtheis provides four lists from the ten-tribe period which are substantial enough to be useful here, but no regular principle of division can be detected. In Aegeis the two lists discussed by Thompson seem to have been divided on a common principle, but there are two other lists which fail to conform to this pattern. In Pandionis^{168a} Thompson discusses three lists: a fourth list fits the pattern which he extracts from his three, and a fifth probably comes fairly close to it, but of two smaller fragments one is compatible with the theory and one is not. In Leontis there are again two small fragments to be considered in addition to the two complete lists and again one fits the pattern but the other does not. In Acamantis Thompson discussed only the one full list: there is a small fragment which may fit, but two others do not. From Oeneis we again have only one complete list: one fragment with several demes in it fits the pattern of this list, but another, smaller one does not. Cecropis, Hippothontis and Aiantis offer too little evidence for an analysis, but what little we have from Cecropis would fit a division by Cleisthenic trittyes. Antiochis provides a full list and two small fragments: the fragments do not fit it, but the full list is not far from division by Cleisthenic trittyes.

Much of the disagreement that I have reported is due to IG ii² 1700, a partly-preserved list of the whole boule which does not fit Thompson's patterns in any tribe and may have to be explained away as an exception.¹⁶⁹ Apart from this, though there is no trace of a system in Erechtheis, the amount of confirmation elsewhere is fairly impressive. There is not enough regularity to indicate a thorough, official system, but there is far too much to be attributed to coincidence, and it does appear that most tribes had a convention for dividing their prytanies into trittyes, which usually had its effect on the arrangement of membership lists.

By the time of the Athenaion Politeia the prytanes' duty of presiding in the boule and assembly had passed to a board of nine πρόεδροι . Each day the new epistates of the prytanes picked one member by lot from each tribe except his own and designated one of these as their epistates: a man might be πρόεδρος once in each prytany, and epistates once in the year.¹⁷⁰ Inscriptions (and the later writers I have cited) provide ample confirmation of the Athenaion Politeia's account: in and after the fourth century the ἐπιστάτης named in the prescripts of decrees represents a deme that does not belong to the tribe in prytany; as an alternative to ὁ δεῖνα ἐπιστάται. We find the formula τῶν προέδρων ἐπεψήφισεν ὁ δεῖνα , which after a period of coexistence with the older formula becomes standard from the late 340's onwards;¹⁷¹ 22 decrees from 333/2 to the 220's follow this formula with a list of συμπρόεδροι - one from each tribe except that in prytany and that of the epistates, given in tribal order.¹⁷² Nevertheless strange views of the proedri are found in scholia: more than once they are said to be ten members of the tribe in prytany, given full presidency of the state for seven days;¹⁷³ less far from the truth, a scholiast on Demosthenes remarks that there was a board of ten proedri, one from each tribe, among whom the presidency rotated.¹⁷⁴

The exact date of their institution is uncertain. The epigraphic evidence has been analysed by Glotz¹⁷⁵ and Dr. D. M. Lewis,¹⁷⁶ and I have nothing to add to the latter discussion. 403/2 is the last year in which the epistates named in decree prescripts is certainly a member of the tribe in prytany;¹⁷⁷ 378/7 gives us our first certain epistates of the proedri¹⁷⁸ and also our first instance of the alternative formula τῶν προέδρων ἐπεψήφισεν .¹⁷⁹ Literary evidence may however enable us to continue the presidency of the prytanes some way into this uncertain period. Lysias, describing in 399 the procedure by which the Thirty tried the traitors whom Agoratus denounced, says:

οἱ μὲν γὰρ τριάκοντα ἐκίθηντο ἐπὶ τῶν βάθρων,
οἷ νῦν οἱ πρυτάνεις καθέζονται (in the boule);¹⁸⁰

and later in the 390's Aristophanes uses language which ought to imply that the prytanes still preside:

δεῖ σε καταλαβεῖν ἔδρας
ὑπὸ τῷ λίθῳ, τῶν πρυτάνεων καταντικρύ.¹⁸¹

(ΥΠΟ ΤΩΙ ΛΙΘΩΙ· ὑπὸ τῷ βήματι.¹⁸²)

Scholars have argued fiercely as to whether this reorganisation represents an attempt to reduce the power of the prytanes, which was felt to be excessive, or simply an attempt to lessen the burden of the office and share out work more fairly among the bouleutae.¹⁸³ If the latter explanation is the more likely, the most obvious occasion for the change is provided by the creation of the Second Athenian League, in whose foundation-documents the proedri make their first undoubted appearance. The establishment of an allied συνέδριον in permanent session in Athens was bound to lead to extra work for the boule and ecclesia and provides a sufficient motive for the transfer of one of the prytanes' duties to a new board.

The duty of the proedri was simply to preside, and with the presidency went the necessary powers of discipline in the boule and ecclesia.¹⁸⁴ Like the prytanes before them they could be punished for putting an illegal motion to the vote;¹⁸⁵ and in the Athenaion Politeia we find listed among the cases which came before the courts of the thesmothetae a γραφή προεδρική and a γραφή ἐπιστατική,¹⁸⁶ but we know nothing of these apart from their titles, and cannot even be sure that the epistates against whom the latter charge was directed was the epistates of the proedri. Aeschines includes the proedri in the general charge of corruption with which he begins the speech against Ctesiphon,¹⁸⁷ and about 337 Hyperides attacked the proposal of one Philippides

to honour a board of proedri who had put to the vote an illegal pro-Macedonian motion.¹⁸⁸

The epistates of the proedri and the epistates of the prytanes were both involved in the consultation of the Delphic Oracle on the use of the ἱερὰ ὄργα at Eleusis. The epistates of the proedri was to roll up the pieces of tin on which the alternative proposals were engraved, shake them in a bronze hydria, and draw one to be placed in a gold hydria leaving the other to be placed in one of silver; his colleague would then seal them with the public seal, to await the verdict of Apollo.¹⁸⁹ The proedri appear later in the decree, where editors have given us the following text:-

π-

[αρασχεῖν δὲ ὄρους λιθίνους,] ὄψων ἂν προσδέηι, τοὺς πωλη-
[τὰς ποιήσαντας μετὰ τῆς] βουλῆ[ς μ]ίσθωμα, τοὺς τε προέδρος
[τῆς βουλῆς μετὰ τῶν πωλητῶν] συγγράψαι καθότι ἐξεργασθήσ-
[ονται, ἐπιμελεῖσθαι δ' ὅπως ἐπι]σταθήσονται τῆς ἱερᾶς ὄργ-
[ίδος οἱ ὄροι, καθὰ δεῖξουσιν οἱ αἰρεθέντες.¹⁹⁰

This makes strange reading. The normal duty of proedri was to put other men's proposals to the vote, not to help in drawing up proposals themselves, and to ἐπιμελεῖσθαι that the provisions of a decree were carried out would be even farther from their normal line of duty. Moreover, proedri served only for one day, and this makes it very unlikely that οἱ πρόεδροι τῆς βουλῆς, without further specification, should be given either of these tasks.¹⁹¹ We should perhaps come nearer to the required sense by restoring

τοὺς τε προέδρος

[χρηματίσαι τῶι βουλομένωι] συγγράψαι,

but a new subject would then be needed for [ἐπιμελεῖσθαι] in the following line, and more work will be needed to produce an acceptable text.

We should perhaps note here that proedri are found also in connection with the enactments of the fourth-century nomothetae: IG ii² 140 has a decree-like prescript, including the formula τῶν προέδρων ἐπέψηφίζεν but ending with δεδόχθαι τοῖς νομοθέταις ;¹⁹² decrees calling for the enactment of a νόμος require the proedri to raise the question with the nomothetae;¹⁹³ and the involvement of proedri with the nomothetae is confirmed by our literary sources.¹⁹⁴ Common sense suggests that here we have the nomothetae organised after the manner of the boule and ecclesia with their own proedri and epistates, and one inscription makes it fairly clear that this is correct:

εἴαν δὲ μ[ὴ ἐπιψηφ]ίσωσιν οἱ [πρ]όεδροι καὶ [ὁ ἐπιστά]της
τῶν νομοθετῶν, ὀφειλέ[τω ἕκαστος αὐτῶν X δραχμὰς ἑρὰς
[τῆι 'Αθην]ᾶι.¹⁹⁵

The nomothetic system was probably in continuous existence from the restoration of 403/2, but we have no means of telling how the proedri of the nomothetae were appointed, nor whether they ante-date or post-date the creation of the nomothetae of the boule.

I conclude this section with a note on the organisation of the boule under the oligarchic constitutions of 411 and 404. Thucydides' choice of words is not an infallible guide in these matters, but for what it is worth he tells us that the five men who formed the nucleus of the Four Hundred in 411 were πρόεδροι,¹⁹⁶ and that after entering office the Four Hundred κρυτάνεις ἑαυτῶν ἀπεκλήρωσαν.¹⁹⁷ We possess part of what is thought to be a decree of the Four Hundred, revealing a single epistates with whom other men were associated, and this is normally restored with reference to Thucydides' five proedri:

[βολῆ]ς ἐπεστάτε [—17—]

[-3-] καὶ μετ' αὐτῶ π[ρῶ]δρενον —]

[room for 4 names and demotics before
proposer of motion].¹⁹⁸

I am loth to rely on Thucydides' terminology, but if we are to be

guided by his choice of words we should note that the proedri were preeminent oligarchs around whom the boule was built, and that when he came to write of a subdivision the word he chose was *πρυτάνειε*¹⁹⁹ the fact that we are again dealing with five men does not commit us to the existence of proedri of the fourth-century type. A presiding board of five, with a chairman, appears also in the "future constitution" put out by the Four Hundred to appease their opponents, but these presidents are given no title.²⁰⁰ If this provision does reflect the actual practice under the Four Hundred, I believe that is purely coincidental.²⁰¹

The Five Thousand reverted to a boule of 500,²⁰² and a decree of this boule is quoted from Caecilius in the Lives of the Ten Orators:-

ἔδοξε τῇ βουλῇ, μία καὶ εἰκοστῇ τῆς πρυτανείας· δημόνικος
'Αλωπεκῆθεν ἔγραμμάτευε, Φιλόστρατος Παλληνεὺς ἐπεστάτει·
"Ἀνδρῶν εἶπε."²⁰³

There was, then, a prytany system in which prytanies lasted at least twenty-one days, and a single man was designated ἐπιστάτης, but beyond this we cannot go.²⁰⁴

The Thirty, appointed in 404

οἱ τοὺς πατρίους νόμους συγγράψουσι,²⁰⁵ . . . τούτους μὲν
ἀεὶ ἔμελλον συγγράφειν τε καὶ ἀποδεικνύναι, βουλὴν δὲ καὶ
τὰς ἄλλας ἀρχὰς κατεστήσαν ὡς ἔδοκει αὐτοῖς.²⁰⁶

The Thirty seem to have been more interested in demolishing old stelae than in setting up new, and we have no epigraphic evidence for the organisation of their boule, but it appears that in judicial sessions of the boule at any rate the Thirty themselves presided,²⁰⁷ and this should have eliminated the need for any kind of prytany system.

(iii) Meetings and Meeting-Places

The boule met daily except on holidays and days of ill omen.²⁰⁸ In all it is said to have had sixty holidays a year:²⁰⁹ days mentioned are the Plynteria,²¹⁰ the μέση of the Thesmophoria,²¹¹ and the Cronia;²¹² Athenaeus records a fourth-century decree in which the boule gives itself five days' holiday for the Apaturia,²¹³ and we have already noticed that in the second century the Agonothetes of the Thesea might give the bouleutae a καθέσιμον for the festival.²¹⁴

The basic meeting-place of the boule was the βουλευτήριον, on the west side of the Agora.²¹⁵ The building identified by the excavators as the Old Bouleuterium was built about the last decade of the sixth century to house Cleisthenes' new boule, damaged during the Persian Wars, and restored soon afterwards:^{215a} for the buildings which it replaced, which were probably used by the Solonian boule, see above, pp.17-18. About the end of the fifth century work began on a New Bouleuterium immediately to the west of the Old: this was finished after a change in plan, early in the fourth century. The actual chamber was very slightly smaller in the new building than in the old,²¹⁶ and though the excavators claim that seating accommodation could be provided for 500 members it seems highly unlikely that seats were available for every member of the enlarged boulae of the Hellenistic period.

The boule seems from an early date to have been linked with the cult of the Mother of the Gods, and a temple erected to the north of the Old Bouleuterium at the same time as that building is thought to have been the temple of the Mother.²¹⁷ This was not rebuilt after the Persian sack, but the cult persisted, and the statue of the Mother by Phidias²¹⁸ or his pupil Agoracritus²¹⁹ was perhaps housed in the Old Bouleuterium. When the New Bouleuterium was built the Old was left standing until after 150, apparently used as a cult centre and record office,²²⁰ and our

evidence suggests that by about the middle of the fourth century the Old Bouleuterium was becoming known as the *μήτρον*.²²¹ In the third quarter of the second century B.C. a larger Metroum was built on the site of the Old Bouleuterium and the pre-480 temple of the Mother and this no doubt continued to serve the dual purpose of temple and record office, perhaps until the Herulian sack in A.D. 267. Professor Thompson's argument from the anti-tyranny law of 337/6²²² that when that law was carried the Areopagus used to meet in the Old Bouleuterium is not convincing.²²³

To the south of the bouleuteria lay the Tholos, whose erection I have discussed on pp. 17-18. Since the prytanes and state secretaries ate there a kitchen was needed, and four different structures were added to the north side of the building for this purpose, the earliest being contemporary with the main building. A porch was added to the main (east) entrance to the Tholos about the time of Augustus, and an annexe was built on the west side in the third century A.D. Other changes in the buildings occupied by the boule may be noticed more briefly: the Tholos was damaged and repaired on several occasions, the first being not long after the building's completion, and the whole area was damaged in the Sullan sack and the sack of the Herulians; at some time marble benches on the theatre pattern were installed in the New Bouleuterium (previously the seats were probably of wood);²²⁴ and various ornamental additions were made to the open space between the New Bouleuterium and Metroum and the Tholos.²²⁵ After the Herulians' sack the Bouleuterium was abandoned,²²⁶ and for a time the Metroum also was neglected; but the Tholos was repaired and when that was abandoned at the beginning of the fifth century A.D. the Metroum was brought into use again. By the seventh or eighth century the whole region was desolate.

Some details can be pieced together of the internal arrangement of the bouleuterium.²²⁷ (We do not know the exact date of the New

Bouleuterium's completion, and cannot be sure which of the two buildings is referred to in some of our texts; but since the two council chambers were almost identical in dimensions it is unlikely that there were any differences of real significance for the scanty information available to us.²²⁸) There was a βῆμα from which men spoke, in full view of the rest of the chamber, and large enough for two men to stand on together.²²⁹ At the end of the fifth century there were special benches for the prytanes, presumably facing the rest of the chamber, with room in front of them for the two tables on which the Thirty required members to place their votes.²³⁰ Whereas there were fifty prytanes there can never have been more than twelve proedri, so after the change in presidency the space that had to be set aside for presiding officers will have been smaller. I imagine that in so small a chamber the prytanes will then have sat with the other members, though a part of the members' seating may have been set aside as the πρυτανικὸν μέρος.²³¹

At the entrance to the chamber was a κιγκλῖς, which could be used to separate members from non-members: if Aristophanes' sausage-seller is to be trusted, it was possible to listen to the proceedings from outside the κιγκλῖς,²³² but a man who wished to speak to the boule would have to pass inside.²³³ The κιγκλῖς is probably to be distinguished from the δρύφακτοι, which appear to have been barriers separating the members' seats from the front part of the chamber. When the sausage-seller gave his good news about the price of pilchards,

ἔκεκράγεσάν τε τοὺς πρυτάνεις ἀφιέναι •

εἶθ' ὄκερεκῆδων τοὺς δρυφάκτους πανταχῶν.²³⁴

There are interesting details in Xenophon's account of the "trial" of Theramenes. Critias, not trusting the boule to condemn his opponent, talked to his colleagues in the Thirty and then went out and

ἐπιστῆναι ἐκέλευσε τοὺς τὰ ἐγχειρίδια ἔχοντας φανερῶς
τῇ βουλῇ ἐπὶ τοῖς δρυφάκτοις.²³⁵

When Critias had announced the exclusion of Theramenes from the three thousand who were entitled to a trial by the boule, and his condemnation by the Thirty, Theramenes sought refuge at the ἐστία,²³⁶ but Satyrus came in with the Eleven and dragged him away.

ἡ δὲ βουλή ἡσυχίαν εἶχεν, ὁρῶσα καὶ τοὺς ἐπὶ τοῖς δρυφάκτοις ὁμοίους Σατύρῳ καὶ τὸ ἔμπροσθεν τοῦ βουλευτηρίου πλήρες τῶν φρουρῶν.²³⁷

Pollux seems to have regarded the κίγκλις and δρυφάκτοι as distinct, since he remarks that the courts had both,²³⁸ and McDonald's arrangement of the barriers seems the most reasonable.²³⁹ (Mention of the φρουροί employed by the Thirty reminds us that even under the fifth-century democracy the Scythian archers were used to keep order in the boule.²⁴⁰ Where were these stationed? Even the φρουροί of the Thirty were apparently out of the members' sight until they were called in, so it is likely that when meetings were in progress there was a contingent of archers in the outer vestibule of the Old Bouleuterium,²⁴¹ which could be summoned into the chamber if the prytanes thought it necessary.)

There are several other references to the ἐστία βουλαία, where men could seek sanctuary. Mantitheus and Apsephion, bouleutae accused of mutilating the Hermae in 415, went to sit at the ἐστία ;²⁴² Andocides, when he attempted to return to Athens under the régime of the Four Hundred, was brought before the boule and on being denounced by Pisander leaped to the ἐστία and took hold of the sacred emblems.²⁴³ Men might also swear by the ἐστία βουλαία. McDonald locates this ἐστία , with the ῥῆμα, in the "orchestra" of the bouleuterium.²⁴⁵

ἐν αὐτῇ τῷ βουλευτηρίῳ Διὸς βουλαίου καὶ Ἀθηναίων Βουλαίας ἱερόν ἐστι καὶ εἰσόντες οἱ βουλευταὶ προσεύχονται.²⁴⁶

Pausanias in his visit to Athens saw in the bouleuterium statues of Zeus βουλαῖος, Apollo and Demos, and paintings of the thesmothetae (late fourth century) and Callippus (third century.²⁴⁷) In the first century A.D. Zeus, Athena and Hestia shared a priest,²⁴⁸ who was given a front seat in the Theatre of Dionysus,²⁴⁹ and Zeus βουλαῖος might receive dedications either with Hestia βουλαῖα²⁵⁰ or alone.²⁵¹ McDonald locates the statues near the entrance to the chamber, no doubt correctly, and identifies them with the ἱερόν,²⁵² but the members' religious act on entering the chamber does not rule out the more attractive possibility that the ἱερόν was in fact the altar in the "orchestra."²⁵³

Though the bouleuterium was the headquarters of the boule, meetings could be and frequently were held elsewhere.²⁵⁴ Government had to continue and decisions had to be made while Athens was abandoned during the Persian Wars, and there is nothing unlikely in the statement (in the story of the rejected Persian peace terms) that the boule met on Salamis.²⁵⁵ In the emergency which followed the mutilation of the Hermae the boule spent the night on the acropolis - with the exception of the prytanes, who went to the Tholos.²⁵⁶ In 434/3 the newly created Treasurers of the Other Gods were to take over the treasures of the various sanctuaries in the presence of the boule on the acropolis;²⁵⁷ in 371 the boule was in session on the acropolis when news of the battle of Leuctra arrived.²⁵⁸ On other occasions the boule's business took it to the Piraeus: the second decree for Methone, in 426/5, refers to τὰς ἐν τῷ νεοπόλει ἑλιδρας, presumably of the boule,²⁵⁹ and in 325/4 the boule was ordered to meet συνέλευσις on the quay to deal with the dispatch of a colony to the Adriatic.²⁶⁰ In the confused circumstances of 319 there was a meeting of the boule in the Piraeus which is not known to have been concerned with naval business,²⁶¹ and other meetings in the Piraeus have decreed honours for the officials of a prytany,²⁶² and for a priest.²⁶³ During the period of the Mysteries the boule met at Eleusis,²⁶⁴ and on the

first day after the Mysteries, in accordance with a "Solonian" law, it met in the city Eleusinium.²⁶⁵ References are found in late inscriptions to meetings in the Theseum (to honour ephebi),²⁶⁶ and in the Panathenaic Stadium (to honour prytanes' officials)²⁶⁷ or adjourned from there to the Theatre of Dionysus (to honour ephebi again,²⁶⁸ and to make a grant of citizenship²⁶⁹), and Pollux writes of the boule's meeting in the Stoa Basileos for the δοκιμασία of the archons.²⁷⁰ Plutarch twice tells the story of Cimon's attempt to return from ostracism and fight with his tribe at Tanagra in 457: in the life of Pericles it is Pericles' friends who refuse to admit him to the ranks,²⁷¹ but in the Cimon the boule is said to have ordered the generals not to admit him.²⁷² If there is any truth at all in the story the version which blames Pericles' friends must surely be the correct one: the other story seems to envisage a meeting of the boule at Tanagra, but any formal meeting to consider such a question is unlikely, and in any case the bouleutae, being exempt from military service,²⁷³ ought not to have been at Tanagra.

Meetings of the boule were proclaimed by the herald, and it may be that a further signal was given by the lowering of a flag:

ἐπειθὴ τὴν βουλὴν εἰς τὸ βουλευτήριον ὁ κῆρυξ ἀνεῖποι λέναι καὶ τὸ σημεῖον καθέλοι, τῷ αὐτῷ σημεῖω ἢ μὲν βουλὴ εἰς τὸ βουλευτήριον ἦει, οἱ δ' ἐκ τῆς ἀγορᾶς ἔφευγον, δεδιότες εἰς ἕκαστος μὴ συλλειφθεῖη.²⁷⁴

But references in Aristophanes to a σημεῖον for the δικαστήρια and for the assembly²⁷⁶ do not help us to decide what the σημεῖον was or how it was used.

Before a meeting began a purificatory sacrifice was offered, of small pigs, whose blood was used for the ritual cleansing of the meeting-place.²⁷⁷ (This is attested only for the assembly, but where evidence is available the parallel between procedure in

the boule and in the assembly is so close that in matters of formality it seems safe to apply to the boule texts in which only the assembly is mentioned.^{277a)} The herald then recited a curse²⁷⁸ and prayer²⁷⁹ at the dictation of the secretary: the curse, we are told,²⁸⁰ and the rest of the prayer, we may assume, were the same for boule and assembly. Liable to the curse were those who took bribes to speak against the interests of the city,²⁸¹ who betrayed the city,²⁸² who deceived the boule and demos,²⁸³ or who (as late as 380!) negotiated with the Mede.²⁸⁴ But our best evidence for the prayer and curse is a parody in Aristophanes' Thesmophoriazusae, and from this we can reconstruct the general sense of the original:-

Let us pray to (various deities) that this meeting in the boule/ecclesia may go as well as possible, to the benefit of the city of Athens and individually of ourselves, and that whoever acts and speaks in the best interests of Athens may prevail.²⁸⁵

Let us pray to the Olympian Gods, the Pythian, the Delian, and all the other gods, that if any one devises evil against the demos of Athens, or negotiates with the Mede with a view to harming Athens, or plans to set up a tyranny, or to bring the tyrant back,²⁸⁶ or deceives the boule and demos of Athens, or betrays the city, or takes bribes to speak against the interests of Athens,²⁸⁷ or debases the coinage, he and his house may come to a miserable end.

But on the rest of us may the gods pour many blessings.²⁸⁸

References to bringing back the tyrant and to negotiating with the Mede guarantee the antiquity of part of the prayer; but although we know of no clause which must be later than the Persian Wars it is not unlikely that other specific imprecations will have been incorporated.

The detailed πρόγραμμα for meetings of the boule was produced by the prytanes,²⁸⁹ just as the πρόγραμμα for the ecclesia was produced by the boule as a whole, but there were general principles governing the order of business. Aeschines (writing of the ecclesia) tells us:

προχειροτονεῖν κελεύει (sc. ὁ νομοθέτης) τοὺς ἀρχέδρους περὶ ἱερῶν τῶν πατρῶν καὶ κήρυξι καὶ πρεσβεύαις καὶ ὁσίων,²⁹⁰ καὶ μετὰ ταῦτα ἐπερωτᾷ ὁ κήρυξ· ‘‘τίς ἀγορεύειν βούλεται τῶν ὑπὲρ πεντήκοντα ἔτη γεγονότων;’’ ἐπειδὴν δὲ οὗτοι πάντες εἶπωσι, τότε ἤδη κελεύει λέγειν τῶν ἄλλων Ἀθηναίων τὸν βουλόμενον, οἷς ἕξεσιν.²⁹¹

The distinction between those over fifty and the younger citizens is found also in Plutarch,²⁹² and elsewhere Aeschines ascribes to Solon a law no longer observed, requiring men to speak in descending order of age in both boule and ecclesia.²⁹³ The age distinction is not observed in mock assemblies: Aristophanes' heralds open the debate with a simple τίς ἀγορεύειν βούλεται;²⁹⁴ while Lucian adds the warning that the invitation does not of course apply to the ἄτιμοι:

τίς ἀγορεύειν βούλεται τῶν τελείων θεῶν οἷς ἕξεσιν;²⁹⁵

In one of Lucian's divine assemblies the gods are to be graded according to quality, with those whose statues were by Phidias and the like ranking very low and not being permitted to speak; but this turns out to be a matter of Solonian property-classes: Hermes says

Μανθάνω ὅτι πλουτίνδην κελεύεις ἀλλὰ μὴ ἄριστίνδην καθίζειν, καὶ ἀπὸ τιμημάτων,²⁹⁶

and various Greek deities object to being placed among the ζευγῆται.²⁹⁷

Priority of religious matters in the order of business is confirmed by inscriptions.²⁹⁸ Foreigners who were given the right of access to the boule and demos were commonly given a guarantee that they were to be brought forward πρῶτον μετὰ τὸ ἱερά;²⁹⁹ while in a decree concerning the public doctors' sacrifices to

Asclepius the probouleuma reads χρηματίσαι περὶ τούτων ἐν ἱεροῖς,³⁰⁰
and in a decree of Athenian cleruchs on Lemnos five envoys who
are being sent to Athens on ceremonial business are to

ποιήσονται τὴν πρόσσodon ἐ[ν ἱεροῖς κρῶς τε τὴν βουλὴν] καὶ
τὸν δῆμον.³⁰¹

On questions concerning the δοκιμασία or the punishment of
a named individual the boule voted by ballot: we see this method
employed to decide whether an invalid passed or failed the
δοκιμασία for his subsistence grant,³⁰² to reach a verdict on
an εἰσαγγελία,³⁰³ and in the trial of members on matters of
internal discipline,³⁰⁴ when the question of whether to expel a
member was raised the boule voted first with olive leaves and
afterwards by ballot.³⁰⁵ The normal democratic practice, which
the Thirty failed to uphold, was that each voter had two ψῆφοι,
one black and one white, and to guarantee the secrecy of the ballot
placed one into each of two καδοσκοῖ.³⁰⁶ The word ψήφισμα
suggests that the voting on all substantial motions should have
been by ballot, but this was too cumbersome a procedure to be
employed except when ψηφίσματα were few, and it is highly unlikely
that it was employed for this purpose even then.³⁰⁷ Most decisions
were made by show of hands, with a count probably not taken unless
the will of the meeting was not clear, but in Athenian practice
ψηφίζειν and χειροτονεῖν were used to distinguish not voting
procedures but types of decision. χειροτονεῖν is the regular
word used in literary and epigraphic texts for all kinds of
appointment, and in inscribed decrees the verb διαχειροτονεῖν
was used in open clauses, within otherwise specific motions, on
which a fairly straightforward decision was needed.³⁰⁸

Though the Old and New Bouleuteria could both accommodate
five hundred members, one may wonder how well the meetings of the
boule were attended. We have already seen that membership of the
boule did not oblige a man to spend the whole year in Athens,³⁰⁹
and even the most conscientious members may have found that other
public duties, perhaps duties due to their membership of the boule,

sometimes prevented them from attending meetings. And of course not every member was conscientious. Demosthenes in his attack on Androtion distinguishes between the inactive members who keep quiet and make no proposals, and for the most part do not even go to the bouleuterium, and οἱ λέγοντες or πολιτευόμενοι, who are the men responsible for the unsatisfactory conduct of the whole boule;³¹⁰ and Plato in the Laws expects his bouleutae to be busy only when they are members of the reigning prytany.³¹¹ A further indication of low attendance is that although from 307/6 until the reign of Hadrian the number of members was never less than 600, and rose to 650 in the last quarter of the third century B.C., it was never felt necessary to enlarge the New Bouleuterium.³¹²

Except when secrecy was specified, meetings of the boule were open to the public. Demosthenes in his speech On the Chersonese refers to what he has recently heard a man saying in the boule;³¹³ and in the speech On the Embassy he mentions the report which he made to the boule on returning from the second embassy to Philip of Macedon, and says:-

καὶ ταυτὶ πολλοὶ συνίσασιν ἃ μέλιω λέγειν· τὸ γὰρ βουλευ-
τήριον μεστὸν ἦν ἰδιωτῶν.³¹⁴

Aeschines, complaining of sharp practice by Demosthenes, tells us that he

εἰσελθὼν εἰς τὸ βουλευτήριον καὶ μεταστησάμενος τοὺς ἰδιώτας
ἐκφέρεται προβούλευμα εἰς τὴν ἐκκλησίαν, προσλαβὼν τὴν τοῦ
γράψαντος ἀπειρίαν.³¹⁵

Menexenus went to listen to the debate when he heard that the boule was to choose the orator who would deliver the funeral oration, but he was thwarted, for the matter was postponed until the next day.³¹⁶ Our only problem here is to find room for ἰδιῶται in an already crowded bouleuterium. The passage which I have quoted from Demosthenes' speech On the Embassy ought to mean that the public was admitted into the Chamber; but in the Knights the sausage-seller follows Cleon to the bouleuterium, hears

Cleon's speech, and only when he has decided to address the boule himself bursts in through the κίγκλις.³¹⁷ There was probably space in which some members of the public could stand in the aisle on the south side of the chamber in the Old Bouleuterium and on the east side in the New;³¹⁸ if the ἰδιῶται were kept beyond the κίγκλις they will have been outside the chamber altogether, able to hear the proceedings only with difficulty, and if the βῆμα is correctly located in the "orchestra" perhaps unable to see the speakers. It is more likely that ἰδιῶται were allowed inside the chamber,³¹⁹ but the problem cannot finally be solved on the limited evidence available.

The boule was entitled when it chose to meet in secret, and we have a number of references, of varying reliability, to these secret meetings.³²⁰ According to Diodorus, Themistocles outlined his plans for rebuilding the walls of Athens after the Persian Wars³²¹ and for fortifying the Piraeus³²² at secret meetings of the boule - but in each case the boule is entrusted with the kind of decision which we should expect the ecclesia to reserve for itself,³²³ and the stories thus have a suspicious ring.³²⁴ But although we have no trustworthy example this early, secret sessions had become enough of an institution by the 420's (no doubt they were found particularly useful in wartime) for Aristophanes to offer a parody: the sausage-seller in the Knights, after informing the boule that pilchards are at their lowest price since the outbreak of the war, suggests in secret that the members should lay hands on all available containers and go to buy up the whole stock.³²⁵ We hear of two secret meetings before the sailing of the Sicilian expedition in 415. When information was laid about the profanation of the Mysteries the prytanes held what might be called a "secret" assembly, comprising only those citizens who had themselves been initiated into the Mysteries, to hear the detailed accusation;³²⁶ and when Dioclidides offered to give the names of those who were involved in the mutilation of the Hermae

a secret discussion in the boule resulted in the decision to arrest Andocides and others. (Since they were summoned afterwards, the generals must have been excluded from this meeting.)³²⁷ Far less plausibly, Diodorus writes of a secret meeting attended by the generals, which discussed what should be done with Sicily after the island had been conquered.³²⁸

Andocides, after his failure to secure recall from exile under the Four Hundred, tried to win the favour of the restored democrats and to this end he made secret proposals to the boule of a plan to relieve Athens' corn shortage.³²⁹ Another secret session took place in 404 in the course of the complicated plot to eliminate troublesome democrats: Theocritus claimed at a secret meeting of the boule that a plot was being formed but that he himself did not dare name the conspirators; this was to be done by Agoratus.³³⁰ By 396 some of the Athenians were growing increasingly dissatisfied with their post-war dependence on Sparta, and one Demaenetus, who was alleged to have obtained the backing of the boule at a secret meeting, sailed from the Piraeus to join Conon (who was commanding Pharnabazus' fleet). When he was discovered there was a panic in Athens, and the boule convened an assembly, οὐδὲν προσποιούμενοι μετεσχηκέναι τοῦ πράγματος.³³¹ After Philip's capture of Amphipolis in 357 there was some talk of secret negotiations or secret promises which he had violated,³³² but Mr. de Ste Croix has shown that the nature of ancient democracy excludes the possibility of Athens' being party to a secret agreement.³³³ In 340/39 to divert the Amphictyonic Council's attention from the misdeeds of Athens Aeschines had urged a sacred war against Amphissa. He reported to the boule and ecclesia, and was thanked as Athenian representatives commonly were, but Demosthenes prevailed on one of the bouleutae to sponsor a motion at a secret meeting, which after its ratification by the ecclesia dissociated Athens from Aeschines' policy and the war against Amphissa.³³⁴ Finally, before the outbreak of the Lamian War, Leosthenes was elected στρατηγός and τῆ βουλῆ διαλεχθεὶς ἐν ἀπορήτοις obtained money and a supply of arms.³³⁵ His supplies must in the

last resort have been voted by the assembly, but it is perfectly credible that he outlined his plans at a secret meeting of the boule.³³⁶

A few general references may be added. In the first speech Against Aristogeiton we are told that thanks to the *κυριαρχία* the boule is master of its secrets and *ἰδιῶται* are excluded; likewise the Areopagus and other *ἀρχαί* can keep intruders away.³³⁷ Lysias, attacking a prospective bouleutes at his *δοκιμασία*, suggests that he is not a man who will be able to keep secrets.³³⁸ And there is a disturbing passage in Aristophanes' Ecclesiazusae:-

γυναῖκα δ' εἶναι πράγμα' ἔφη νουβυστικὸν
καὶ χρηματοποιὸν· κοῦτε τὰ πόρρητ' ἔφη
ἐκ θεσμοφόροιν ἕκαστοτ' αὐτὰς ἐκφέρειν,
σὲ δὲ κἀμὲ βουλευόντε τοῦτο δρᾶν ἀεὶ.³³⁹

This is comedy, it is true, but we may well wonder how safe a secret was when it had been entrusted to several hundred Athenians. Certainly it is unlikely to have remained a secret for very long, but this probably did not matter. The more reliable accounts of secret meetings all deal with matters that were bound in any case to be made public before very long, and where the advantage to be derived from secrecy was surprise action, usually against offending citizens or a foreign state: once the action had taken place, the object of the exercise was achieved.

We see in some of the texts cited above that non-members could be given permission to address the boule, either at a public or at a secret meeting. Any Athenian citizen could write to the prytanes to request an audience,³⁴⁰ and foreigners who were honoured by the Athenians were frequently given the right of *πρόσοδος πρὸς τὴν βουλήν καὶ τὸν δῆμον*.³⁴¹ Heralds and envoys from other states were brought before the boule,³⁴² and Athenian envoys were expected to report to the boule on their return to Athens.³⁴³ Aristodemus, sent to negotiate with Philip

in 348, failed to do this, and

ένταυθ' ἠγανάκτουν πολλοὶ ὅτι τὴν πρεσβείαν οὐκ ἀπέγγειλαν
ὁ Ἀριστόδημος. . . . τελευταῖον δ' εἰς τὴν βουλὴν εἰσ-
ελθὼν Δημοκράτης ὁ Ἀφιφναῖος ἔπεισε τὴν βουλὴν ἀνακαλέσασθαι
τὸν Ἀριστόδημον.³⁴⁴

Large numbers of Attic decrees have their origin in reports made by men who have come before the demos in this way, and who have their requests granted or are honoured for doing their duty.³⁴⁵

Generals on duty away from Athens sometimes sent written reports from which decrees resulted,³⁴⁶ and foreign rulers also were apt to send letters to the boule and demos.³⁴⁷

More needs to be said about the relations between the boule and the generals. It has often been said that the generals occupied a specially privileged position with regard to the boule,³⁴⁸ but the evidence must be examined carefully in the light of what has been said above. Plutarch tells us that Nicias

ἄρχων μὲν ἐν τῷ στρατηγίῳ διετέλει μέχρι νυκτός, ἐκ δὲ βουλῆς
ὑστατος ἀφίκει πρῶτος ἀφικνούμενος,³⁴⁹

and writes of Pericles

ὄδον τε γὰρ ἐν ἄστει μίαν ἑωρᾶτο τὴν ἐπ' ἀγορὰν καὶ τὸ
βουλευτήριον πορευόμενος,³⁵⁰

but Nicias may well have served a year in the boule, and what is said of Pericles could be said of any πολιτευόμενος who habitually went to listen to debates. In the fifth and fourth centuries the generals were often coupled with the boule and/or prytanes as the authorities who were to protect honorands from injustice.³⁵¹ As supreme military officials they often figure among those who took the oath to a treaty: our earliest oath of this kind, to the Chalcidian alliance of 446/5, was taken by the boule and the δικασταί,³⁵² but the oath in a proxeny decree of about 430,³⁵³ and the oath to the alliance with Halieis in 424/3,³⁵⁴ were sworn to by the generals and the boule. The truce with Sparta in 423

was sworn to by three generals,³⁵⁵ and the Peace of Nicias in 421 by seventeen Athenians including some of the generals;³⁵⁶ the Bottiaean Alliance of 422 by the boule, the generals and other ἀρχαί, ³⁵⁷ and the Argive alliance of 420 by the boule and ἔνδημοι ἀρχαί under the supervision of the prytanes.³⁵⁸ In 394 we find the beginning of what was to be the fourth-century pattern: the oath to Eretria was taken by the boule, the generals and the ἱππεῖς .³⁵⁹ Thereafter the oath was usually taken by the boule, the generals and the ἱππεῖς or various military officials; occasionally the boule was omitted.³⁶⁰

Nothing that I have yet mentioned proves that the generals ever enjoyed a privileged status vis-à-vis the boule, though it does show that the boule and generals were often required to co-operate. There is, however, some evidence that the generals enjoyed special privileges in the latter half of the fifth century. In the alliance with Perdiceas of Macedon, possibly to be dated about 436, the words [— τὸς στρατ]εγὸς χρεματίσαντα[ς —] are plausibly restored;³⁶¹ in the second decree for Methone we read

ἄλλο δὲ προχρεμα[τίσαι το]ῦ[το]ν μεδέν, ἐὰν μὲ τι οἱ
στρατε[γ]οὶ δέοντα[ι];³⁶²

and, most important, the truce of 423 with Sparta orders the generals and the prytanes to convene an ecclesia for the Athenians to deliberate about peace.³⁶³ In 431, when the Athenians' patience

ἐκκλησίαν . . . οὐκ ἐποίει αὐτῶν οὐδὲ ξύλλογον οὐδένα, τοῦ
μὴ ὀργῆ τι μᾶλλον ἢ γνώμη ξυνελθόντας ἐξαμαρτεῖν,³⁶⁴

but a year later, when morale was sapped by the plague, we read of him ξύλλογον ποιήσας (ἔτι δ' ἐστρατήγει).³⁶⁵

On the first passage, Gomme remarks:-

There is no evidence that the strategoi had the power...to disallow the regular ekklesiai; what Perikles refused to do

was to summon a special meeting, which in a crisis the strategoi could do and which they did next year (59.iii), and to address the people in any way.³⁶⁶

On the second, he doubts whether this was their legal right:-

As strategos, or rather as one of the ten strategoi,... he could request the prytaneis to call a special meeting of the ekklesia. It is not clear whether the prytaneis were bound to accede to the request, but little men were in any case not likely to oppose a popular politician.³⁶⁷

Hignett preferred to believe that Pericles' personal auctoritas influenced the decisions of the prytanes and boule,³⁶⁸ but I think Gomme's stronger view or a modification of it must be correct: convening the ecclesia and arranging its agenda at this time may have been the joint prerogative of the prytanes (on behalf of the boule) and the generals; the possibility of their disagreeing was perhaps not envisaged.³⁶⁹

Other passages are less cogent in themselves, but may be adduced in support of this view. A decree which Professor Meritt refers to the collection of tribute and dates about 430 is restored to read:-

[περὶ οὐδ']

[τούτων τὸν βολὴν ἔχουσενεγκῆ]ν ἐπάναγκες ἐς τὸ[ν οὐδμον κα]-
[ὶ χρηματῖσαι τοῖς στρατηγο]ῖς λότων δέονται.³⁷⁰

The proxeny decree for Potamodorus and Eurytion is restored to order the generals and prytanes to guarantee their πρόσσοδος to the boule and demos.³⁷¹ A decree of 415 orders an assembly to be convened for the generals and other officers of the Sicilian expedition³⁷² - but this reflects the importance of the expedition rather than the privileged status of its officials. I can think of no reason why the generals should not at any time have drafted

a motion to be put via the boule to the ecclesia on behalf of the whole college, even if they possessed no special privileges,³⁷³ but it remains a fact that the only two instances we possess of decrees enacted on a γνώμη στρατηγῶν are dated to the latter half of the fifth century - the alliance with Perdiccas, perhaps about 436,³⁷⁴ and a proxeny decree, to 416/5.³⁷⁵ Proposals emanating from the generals are clearly more likely at a time when they participated in the duties of the boule and prytanes. Numerous enactments are attributed to Pericles himself,³⁷⁶ but I am not convinced that to have carried each of them in his own name he must have been a general with privileged access to the boule and ecclesia: the alliance with Perdiccas is our only useful piece of evidence dated outside the Peloponnesian War, and its date is scarcely firm.^{376a}

For the fourth century there is not much evidence. A few motions arising from a general's report³⁷⁷ prove nothing, and we are left with a passage in Plutarch's life of Phocion:-

γράψαντος δὲ τοῦ Ἀλεξάνδρου περὶ τριήρων ὅπως ἀποστείλωσιν αὐτῷ, καὶ τῶν ῥητόρων ἐνισταμένων, τῆς δὲ βουλῆς τὸν Φωκίωνα λέγειν κελευούσης, ‘‘λέγω τοῖνυν ὑμῖν,’’ εἶπεν, ‘‘ἢ τοῖς ὅπλοις κρατεῖν ἢ τοῖς κρατοῦσι φίλους εἶναι.’’³⁷⁸

Obviously the point of the anecdote is the remark that Phocion made; if Plutarch happens to have described the circumstances correctly we need only suppose that Phocion along with other πολιτευόμενοι had gone to hear the debate in the boule, and was seen by the members and invited to speak.³⁷⁹ I am not prepared to argue from this passage that he possessed special privileges.

In later Athenian history the generals, and in particular the στρατηγὸς ὁ ἐπὶ τὰ / ^{ὅπλα,} acquired greater political power.^{379a} From the second century onwards prescript formulae show that they were able to convene meetings of the boule and ecclesia,³⁸⁰ and under Roman domination the importance of the στρατηγὸς ἐπὶ τὰ ὅπλα

seems to have increased still further. Under the Sullan régime this general was the author of decrees of the boule to honour the ephebi,³⁸¹ and the same practice is found in a decree of the boule and ecclesia carried early in the reign of Hadrian.³⁸² Hadrian's law on olive oil confirms "the general's" right to convene the boule or ecclesia:-

ἐὰν δὲ τῶν ἐκ τοῦ πλοίου τις
μηνύσῃ, ἐπάναγκες ὁ στρατηγὸς τῇ ἑξῆς
ἡμέρᾳ βουλὴν ἀθροισάτω, εἰ δ' ὑπὲρ τοὺς
πεντήκοντα ἀμφορεῖς εἴη τὸ μεμνη-
μένον, ἐκκλησίαν.³⁸³

From the beginning of the third century we have a decree proposed by the ἄρχων[τῶν Εὐμολπιῶν],³⁸⁴ from which it would be dangerous to make any inference about automatic rights of access, and a decree with a very striking prescript:-

βουλὴ συνήχθη ἐπὶ τοῖς
[εὐαγγ]ελίοις, ἀναδειχθέντος [Αὐτοκράτορος Καίσαρος Ποπλίτου]
[Ζεπτιμίου Γέτα Εὐσεβοῦς Σεβαστοῦ]· ἐν ἣ ἀνεγνώσθη
[γνώμη] [τ]ῶν συνεδρίων διὰ τῶν ἄρχόν[ι]των, ἀναγνον-
[τος τοῦ] στρατηγοῦ Ἀλκαμένους Λαμπτρέως γνώμην τὴν
ἀναγεγραμμένην].
[ἡ ἐξ Ἀρείου] πάγου βουλὴ καὶ ἡ βουλὴ τῶν Φ καὶ ὁ δήμος
ἰ. Ἀθηναί-
[ων μετὰ] τῶν ἄρχόντων, τοῦ τε ἐκωνύμου ἄρχοντος Φλ.
Διογενοῦς
[Μαραθων]ίου κα[ὶ τ]οῦ ἐπὶ τὰ ὄπλα στρατηγοῦ καὶ ἐπιμελη-
τοῦ γυ-
[μνασιαρχί]ας θε[οῦ] Ἀδρι[α]νοῦ καὶ ἀ[ντ]άρχοντος τοῦ
ἱερωτάτου ἀγ-
[ῶνος τοῦ Π]ανελληνίου [Πα]ρ. Εὐρ. Ἀλκαμένους Λαμπτρέως
καὶ τοῦ κήρ-
[υκος τῆς ἐξ] Ἀρείου π[ά]γου βουλῆς καὶ ἐγνωσθέντος τῶν
τῆς δεβα-
[στῆς οἰκίας (?) ἀ]γώνω[ν Τρυ]φῶνος τοῦ Θεοφίλου Ὑβάδου
γνώμην ἀπο-
[φαίνου]σιν κατὰ [τὰ] πατρία.³⁸⁵

No privileged access is revealed in the decrees honouring M. Ulpius Eubiotus.³⁸⁶ It has been suggested that by this time the right to propose decrees was limited to the στρατηγὸς ἐπὶ τὰ ὅπλα, the Areopagus (through its herald) and other senior officials of the state,³⁸⁷ but this is going beyond the evidence. It is not clear from the prescript which I quote above who attended which of the three meetings which must have taken place, but at any rate the στρατηγὸς ἐπὶ τὰ ὅπλα seems to have become an ex officio member of the boule, with the right to call meetings and propose motions. We cannot safely assert that ordinary bouleutae lost the right to make proposals and speak to them, though if they retained the right they doubtless exercised it less often than in the more enthusiastically democratic past.

* * * * *

In the next three chapters we shall examine first the boule's part in the making of laws and decrees, secondly the administrative powers which it exercised within the framework of the laws and decrees, and finally its judicial powers. In the fifth and last chapter I shall attempt an outline of the boule's history, and a more general assessment of its importance in the Athenian state.

CHAPTER II : LEGISLATION

(i) νόμοι

There are two words commonly used of enactments of the Athenian people, νόμος and ψήφισμα . The orators of the fourth century regularly claim that νόμοι have, or ought to have, greater authority than ψηφίσματα , and Hyperides attributes this rule to Solon:¹ νόμοι were somehow more than mere human enactments, and they ought therefore to be more basic, more general and more permanent than ψηφίσματα ; it was characteristic of an extreme democracy that it allowed ψηφίσματα to prevail over the νόμοι .² The application of this principle in Athenian practice presents a number of difficulties,³ but I believe that the attempt to distinguish between νόμοι and ψηφίσματα belongs to the restored democracy of 403/2, and that before then any part of the Athenian "statute book" might be called a νόμος, and any part which had been enacted by vote of the ecclesia (as opposed to a special legislative commission like that held by Solon) might also be called a ψήφισμα : νόμος referred to the law as a part of the Athenian code, while ψήφισμα referred to the mode of its enactment.^{3a}

In the last years of the Peloponnesian War a programme of revising and consolidating the law code was undertaken, and this was resumed on the fall of the Thirty.⁴ Documents quoted in Andocides' speech On the Mysteries show that a special procedure was created for making changes in the νόμοι, totally different from the ordinary voting of the ecclesia.⁵ Other documents, quoted by Aeschines and Demosthenes, show that about the middle of the fourth century there existed a procedure for the "correction" of the νόμοι , by adding new provisions and removing inconsistencies.⁶ νομοθεσία was presumably regarded as more solemn and binding than the enactment of ψηφίσματα , but the measures which have survived suggest that the Athenians failed to live up to this ideal. Finance seems the clearest example of a topic

which ought to have been dealt with by νόμος , but even here there are difficulties.⁷ In Demetrius of Phalerum Athens had another νομοθέτης of the Solonian type;⁸ on the fall of his régime we find another revision of the laws in progress;⁹ but thereafter no alternative to ψηφίσματα is found until the reign of Hadrian.¹⁰

The greater part of this chapter will be concerned with the part played by the boule in legislation by ψηφίσματα , but something must first be said about the fourth-century procedure for the enactment of νόμοι.¹¹ The decree of Tisamenus, quoted by Andocides, assigns definite duties to the boule in the revision of the law code in 403/2. The nomothetae appointed by the boule are to make and publish proposals for new laws, and any private citizen who wishes may submit proposals to the boule; these proposals are to be scrutinised (δοκιμάζειν) by the boule and a second board of nomothetae, 500 in number, elected by the demes; and any proposal which passes this scrutiny is presumably to be accepted as law without further formality.¹² This is a once for all procedure, a part of the reconstruction of the democracy, which led to the publication of a definitive law-code and so made the fourth-century attempt to distinguish between νόμοι and ψηφίσματα possible. Andocides' speech is our only source for this aspect of the legal revision, and we do not know how the cooperation of the boule with the two boards of nomothetae was organised.

In 403/2 the boule was involved but not the assembly; in the regular "correction" attested by Aeschines and Demosthenes the assembly has to decide each year whether nomothetae are needed, and if so to appoint them; it also appoints five συνήγοροι¹³ to defend the existing laws, and has read to it any new proposals. Procedural details are hard to disentangle. Our literary texts seem to envisage a quasi-judicial activity, occurring at the beginning of the year, to decide whether a particular proposal is

or is not in accordance with the idea of law;¹⁴ but the few inscribed νόμοι surviving from the fourth century show that νομοθεσία could occur at any time during the year, and far from bearing indications of judicial activity they have prescripts closely modelled on the prescripts of decrees, naming the proposer, and the ἐπιστάτης τῶν προέδρων who put the question.¹⁵ The most puzzling text for our present purposes is the decree of Epicrates, under which Timocrates was enabled to submit irregularly to the nomothetae the debt law to which Demosthenes objected:

τοὺς πρυτάνεις τοὺς Πανδιονίδος καθίσαι νομοθέτας εὖριον,
τοὺς δὲ νομοθέτας εἶναι ἕνα καὶ χιλίους ἐκ τῶν δαμοκότων,
συννομοθετεῖν δὲ καὶ τὴν βουλήν.¹⁶

The prytanes are mentioned in connection with the nomothetae by Aeschines also,¹⁷ but this is the only passage which orders the boule to participate in the work of the fourth-century nomothetae. The day in question was that of the Cronia, and Demosthenes tells us in the text that this was one of the boule's holidays,¹⁸ but he makes no more direct reference to the last clause of the decree. The boule is not linked with the nomothetae in our surviving prescripts, and in the absence of further evidence we must assume that this partnership was exceptional.¹⁹

Normally, despite Mrs. Atkinson's efforts to avoid this conclusion, νομοθεσία must have been a process in which the legislative organs of the state surrendered their right of final decision to a judicial body: the boule's part would be limited to the preparatory work for the original decree of the ecclesia, which appointed the nomothetae and ordered them to pass judgment on a certain part of the Athenian law code. It was a cumbersome procedure, not often used if we may trust the evidence of epigraphic survival, and it failed to eliminate that confusion which had led to the compilation of an organised code of νόμοι. Isocrates writes in his Panathenaic that the laws are full of confusion,²⁰ and in the trial of Ctesiphon in 330 Demosthenes and

Aeschines were able to cite different, conflicting laws on the proclamation of crowns.²¹ Whenever it was possible, the Athenians continued to express their will in ψηφίσματα, to which we must now turn.

(ii) Decrees of the Boule and Demos

It was a basic principle in Athens, that no decree might be enacted by the ecclesia without prior consideration by the boule:

οὐκ ἔξεστιν οὐδὲν ἀπροβουλευτον οὐδ' ὅ τι ἂν μὴ προ-
γράψωσιν οἱ πρυτάνεις ψηφίσασθαι τῷ δήμῳ.²²

This much is clear, but how the principle was interpreted is less certain. We need to know, first of all, to what extent this rule represents a limitation of the ecclesia's sovereignty, preventing the demos from decreeing whatever it wished; that is, how far the boule was able if it chose to control the course of Athenian voting. At one extreme, Hartel²³ claimed that since the ecclesia was sovereign it must specifically have authorised every "prior" discussion in the boule, so that each probouleuma will have been commissioned by the ecclesia (a procedure which is occasionally attested in inscriptions). Miller,²⁴ reacting against this, argued that the principle can have served no purpose unless it was strictly applied: hence he believed that the ecclesia could not even commission a probouleuma on a subject unless given the opportunity by the boule's placing on the agenda some topic to which this subject was relevant. Whether commissioned by the ecclesia or not, the boule's deliberations frequently resulted in a positive motion which could be put to the ecclesia for approval, and this leads to our second major problem: did the boule usually make up its own mind, and produce a definite recommendation, on any subject which it invited the ecclesia to debate,²⁵ or did it do this for matters of routine only, preferring to put controversial questions on the agenda without proposals of its own?²⁶

Hartel's extreme view of προβουλευσις depended on a perverse interpretation of the formula in decree prescripts, and was adequately refuted by Miller, but it is less easy to choose between Miller's position and the compromise view of Gilbert,²⁷ that any business could be initiated either in the boule or by

the ecclesia's commissioning a probouleuma.

There are a few passages which might be used to support Miller's view: in the parody of an assembly which opens the Acharnians, Dicaeopolis and Amphitheus are helpless ἢν μὴ περὶ εἰρήνης γε πρυτανεύσητέ μοι (but we must not lean too heavily on this, as the resulting situation is important for Aristophanes' dramatic purposes).²⁸ According to Demosthenes, a private citizen who wants to secure a law or decree²⁹ or an embassy with a report to make³⁰ must first go to the boule, which will make a probouleuma at the proper time. At some time between 345 and 331 one Hierocles was seen with sacred vestments, and was denounced to the prytanes as a temple robber; the prytanes brought him before the ecclesia, and there a motion was made by Aristogiton, that if Hierocles admitted his guilt he should be put to death without more ado; if not, he should stand trial. This motion is described as

πρῶτον μὲν ἀπροβούλευτον, ἔπειτα δεινότατον,

and we are told that it was successfully attached in a γραφή παρανόμων.³¹ No doubt the first objection was merely an excuse, and the attack concentrated on the δεινότης of the motion, but it is far from clear what was amiss with this motion that was not also amiss with many others, such as that made by Demosthenes after Philip's occupation of Elatea in 339.³² Perhaps the probouleuma was so worded that it could be said not to cover Aristogiton's motion, or perhaps other factors of which we know nothing made the legal case better than it appears to us.

In the literary texts we find that rights of access to the people are commonly exercised as Demosthenes thought they should be: Murychides in 479,³³ the Spartan ambassadors to Athens in 420/19,³⁴ the Theban herald bringing the news of Leuctra,³⁵ and the Spartan ambassadors in 369³⁶ all went first to the boule. Aristodemus was summoned before the boule in 347/6 when he did not come of his own accord to report on his mission to Philip;³⁷ the "first embassy" sent to Philip in 346 reported to the boule on

its return,³⁸ and so too did the "second embassy."³⁹ Even in the emergency resulting from the news that Philip had occupied Elatea in 339, normal probouleutic practice was followed: the messenger arrived with his news in the evening and reported to the prytanes; they immediately left their dinner, some to clear the agora, others to summon the generals and the trumpeter; the following morning the boule met, and only after that an assembly was held, at which the prytanes and the messenger explained the situation.⁴⁰

The assembly in Aristophanes' Acharnians is at first sight somewhat irregular. None too early, the prytanes jostle their way in;⁴¹ without specifying the subject for debate, the herald proclaims, τῆς ἀγορεύειν βούλεται ;⁴² Amphitheus is disposed of,⁴³ and the herald then calls on the ambassadors returned from the Great King.⁴⁴ The herald in this scene represents the prytanes,⁴⁵ and we may assume that the appearance of these ambassadors and of the King's Eye has been placed on the agenda by the boule: their audience ends with the herald's announcement:

τὸν βασιλέως ὀφθαλμὸν ἢ βουλὴ καλεῖ
ἐς τὸ πρυτανεῖον.⁴⁶

Theorus, an Athenian sent to the Thracian king Sitalces, is now called forward by the herald,⁴⁷ and when Dicaeopolis proclaims an unfavourable omen to the herald on behalf of the prytanes dissolves the assembly.⁴⁸

Our evidence is enough to show that it was normal to approach the ecclesia by way of the boule - it is not for nothing that the right frequently conferred upon foreigners was πρόσσδος πρὸς τὴν βουλὴν καὶ τὸν δῆμον - but we cannot yet exclude the possibility that there was some direct access to the assembly.

We must now consider the information given in A.P. 43. iv-vi on the matters discussed at different assemblies. The agenda of the κυρία ἐκκλησία (the principal of the four regular assemblies

in each prytany) included:

a vote of confidence in the public officials;

περὶ σίτου καὶ περὶ φυλακῆς τῆς χώρας χρηματίζειν;⁴⁹

an opportunity for those who wished to make εἰσαγγεῖλαι;

reading of inventories of confiscated property

and of lists of inheritance-suits;

and in the sixth prytany only:

a vote on whether an ostracism should be held;

συκοφαντῶν προβολαί up to a limit of three charges

against citizens and three against metics;

and (presumably προβολαί again) against those who had

failed to keep their promises to the people.

In the second assembly, any one who wished might make a ἵκετηρία;

and in the remaining two regular assemblies other business was transacted.⁵⁰

The most natural interpretation of this is, that the agenda drawn up by the boule would simply enjoin the hearing of εἰσαγγεῖλαι, προβολαί and ἵκετηρία, and that individual charges and requests did not have to be submitted in advance to the boule.⁵¹ προβολή was not a trial procedure, but a method of initiating a case: the word seems normally to be used of complaints made in the assembly, after which a normal trial might follow;⁵² but we have no further evidence on how a προβολή could be made. εἰσαγγελία, however, was fundamentally a trial procedure: though it might end with an ordinary hearing in a δικαστήριον, it was essentially a trial by boule and/or ecclesia, and I shall argue in chapter IV that while proceedings most commonly began in the boule they could be initiated in the ecclesia, which if it did not reject the charge out of hand would either delegate the trial to the boule or, to retain ultimate control, commission a probouleuma on the matter. For ἵκετηρία there is a little epigraphic evidence, which will have to be considered later in this chapter:⁵³ for the moment we should note that a decree of the

demos can be enacted either

περὶ ὧν ὁ δεῖνα ἔδοξεν ἐν τῇ βουλῇ ἔννομα ἱκετεύειν

or περὶ ὧν ὁ δεῖνα ἔδοξεν ἐν τῷ δήμῳ ἔννομα ἱκετεύειν;

there is one instance of the latter formula in an undoubted probouleuma,⁵⁴ which is most easily explained if the request was first made in the ecclesia and then referred to the boule for consideration.

Proof is impossible, but it seems likely that the provision for εἰσαγγεῖλαι, προβολαῖ and ἱκετηρίαι did provide some opportunities for direct access to the people, though the rule of προβούλευσις will have prevented action from being taken until the matter had been referred to the boule.

Further indications are hard to come by, and when inscriptions attest the ecclesia's commissioning of a probouleuma they do not reveal the circumstances in which this occurred. Where an inscription gives the text of a rider appended to an original motion, it appears that debates must have kept fairly well to the point, and that the opportunity of smuggling in fresh business was rarely taken: many riders involve more or less straightforward additions and corrections, and of those that are more substantial only two can be regarded as perhaps strictly irrelevant to the motions which they supplement: in GHI 44 it is likely but not certain that the audience with the boule which Phantocles secures for himself has any connection with the colony at Brea; in GHI 74 Dr. Tod argues for the relevance of Lampon's intercalation proposal,⁵⁵ but there is no apparent connection between his regulations for the Πελαργικόν and the main decree.⁵⁶ In the case of Lampon's rider, there is a further point to note. Lampon is to συγγράψαι and to bring his proposals before the boule, and the boule must bring these proposals before the assembly: the boule cannot be ignored altogether, or no place for Lampon's proposals will be provided in the agenda, but it is deprived of the

right not to proceed with the matter, whose importance we shall consider below.⁵⁷

With certain reservations, then, it seems that Miller's account of probouleusis is to be accepted: εἰσαγγεῖλαι, προβολαί and ἱκετηρίαι gave citizens some chance of direct access to the ecclesia, and a Lampon might strain considerations of relevance to ensure that his proposals had a hearing, but in general the ecclesia was prepared to let the boule decide what it should debate. The permanent standing orders of A.P. 43. iv-vi probably came into being as guarantees that certain topics should be debated at specified times rather than as precautions against their being debated at other times, but Demosthenes' insistence on doing things in good order and at the proper time shows that they could also be viewed as restrictions which the people were on the whole prepared to accept as a condition of living under the rule of law. If a citizen wanted some action to be taken, his best policy might well be to seek the cooperation of a member of the boule, as Demosthenes did in 340/39, when to reverse a decision of the ecclesia he

εἰσελθὼν εἰς τὸ βουλευτήριον καὶ μεταστησάμενος τοὺς ἰδιώτας ἐκφέρεται προβούλευμα εἰς τὴν ἐκκλησίαν, προσλαβὼν τὴν τοῦ γράψαντος ἀπειρίαν.⁵⁸

When we consider the practical working of this system, we have a good deal of material, but it is hard to interpret. Thucydides locates all debates in the ecclesia, mentioning the boule only for the device by which Alcibiades secured a change of alliance in 420/19,⁵⁹ and when it was paid off by the oligarchs in 411.⁶⁰ The boule plays a slightly greater part in Xenophon, but for most of our information we have to turn to the orators, often personally involved in the events which they describe, more concerned to show that what happened was right or wrong than to explain the full course of events. Decrees are sometimes mentioned by later writers, especially Plutarch, but details which are not essential to the point which he wished to illustrate

could all too easily become garbled.

We know of two occasions when a foreign envoy came before the boule and the boule refused to make a probouleuma. In 479 Mardonius sent Murychides to the boule on Salamis, and a bouleutes who proposed that he should be brought before the ecclesia was stoned to death;⁶¹ in 371 after the battle of Leuctra the Thebans sent a herald to Athens, and the boule refused him the customary invitation to the prytaneum and sent him away without a reply.⁶² Refusal to act is spectacular only when it involves a rebuff of this kind, but it must often have happened that the boule's discussion of a subject led to the conclusion that there was no need for a debate in the ecclesia.

On other occasions, the boule would place a subject on the agenda by means of an open probouleuma, which did not recommend any particular course of action. The clearest example of this is a proposal of 349/8:

ἔγραψε ψήφισμα ἐν τῇ βουλῇ Ἀπολλόδορος βουλευῶν, καὶ ἐξ-
ήνεγκε προβούλευμα εἰς τὸν δῆμον, εἴτε δόκει τὰ περίοντα
χρήματα τῆς διοικήσεως στρατιωτικὰ εἶναι εἴτε θεωρικὰ.⁶³

But this probouleuma is not genuinely open: surplus monies at this time did go to the theoric fund, so that Apollodorus' invitation to the demos to decide between two alternatives was equivalent to a straightforward proposal that surplus monies should henceforth be diverted to the stratiotic fund. If this oblique method was adopted in the hope that Apollodorus should evade personal responsibility for the proposal, it failed, for after the ecclesia had voted in favour of the stratiotic fund Apollodorus was successfully indicted in a γραφή παρανόμων.⁶⁴

A few years earlier, in 354/3, Ζητηταί had been appointed to help recover sums due to the state. Euctemon made a μήνυσις to these Ζητηταί, and was brought before the boule; a probouleuma was made, and in the ecclesia, after a προχειροτονία,⁶⁵ he spoke, and proposed a motion against the opposition of

Androtion and others; for this he was attacked in a γραφή παρανόμων, but was acquitted.⁶⁶ Certainty is impossible, but it seems likely that here we have a genuinely open probouleuma - that the demos should hear what Euctemon had to say and decide as it saw fit.⁶⁷ The probouleuma for the extraordinary assembly after Philip's occupation of Elatea in 339, when no one but Demosthenes had any advice to give, must also have been open.⁶⁸

On other occasions the boule did sponsor a definite proposal. The clearest example of the ecclesia's adopting a probouleuma is an incident to which I have already alluded: in 340/39 Aeschines, as a delegate to the Amphictyonic Council, had distracted attention from the sins of Athens by arousing indignation against Amphissa; an extraordinary meeting was to be convened, at which the punishment of Amphissa would be discussed. Aeschines and his colleagues reported to the boule and assembly, and their action was approved. But a bouleutes who was cooperating with Demosthenes secured a new probouleuma at a secret meeting of the boule (probably addressed by Demosthenes), to prevent Athens from taking part in the war against Amphissa, and perhaps at an extraordinary assembly, called in a hurry, Demosthenes

διεπράξατο ἐπιψηφισθῆναι καὶ γένεσθαι δήμου ψήφισμα.⁶⁹

The ecclesia might if it wished reject a probouleuma, either to take no action at all, or to adopt an alternative proposal made from the floor of the house.⁷⁰ In 369 Spartan ambassadors were sent to Athens to work out the details of the alliance made after Leuctra, and the boule proposed that Sparta should have the leadership on land and Athens at sea; but one Cephisodotus, who failed to realise how Leuctra had changed the balance of power in Greece and was afraid that this arrangement would give too much power to Sparta, persuaded the assembly to approve instead the alternation of the whole command between Athens and Sparta every five days.⁷¹ Twenty years later the rejection of a probouleuma led, so far as we can tell, to no action at all: Phocion had been

sent to Euboea to help Plutarch of Eretria against Callias of Chalcis; on the news that he was blockaded in Tamynae the boule proposed the sending of reinforcements, but

οὐκ ἔδόκει, προΐουσης τῆς ἐκκλησίας καὶ λόγων γιγνομένων, τῆς τῶν ἱππέων βοηθείας ἤδη δεῖν, ἀλλ' ἀνεπεπτώκει τὰ τῆς ἐξόδου.⁷²

An additional factor to be taken into account in the middle of the fourth century was the second Athenian League. For matters requiring action from Athens as well as her allies, the Athenian ecclesia seems to have been the sovereign body,⁷³ with the Athenian boule and the allied συνέδριον as parallel probouleutic bodies: in 368 the boule asked the συνέδριον to submit a δόγμα to the ecclesia;⁷⁴ in 362/1 the συνέδριον submitted a δόγμα to the boule, as a result of which a probouleuma was made.⁷⁵ The συνέδριον is involved in the most fully documented of all Athenian debates, that leading to the Peace of Philocrates in 346. The Macedonian ambassadors failed to reach Athens in time for an assembly before the Dionysia;⁷⁶ on their arrival, during the festival, Demosthenes was the author of a probouleuma for assemblies on 18 and 19.ix (Elaph.) to discuss the possibility of peace and alliance:⁷⁷ a δόγμα of the allies, that there should be a discussion of peace alone after the return of the Athenian envoys sent under the decree of Eubulus to secure Greek support against Philip,⁷⁸ was ignored. So far as we can recover the text of the probouleuma, it seems to have been formally open, though by specifying peace and alliance it indicated the kind of decision wanted:⁷⁹

τοὺς πρυτάνεις μετὰ τὰ Διονύσια τὰ ἐν ἄστει καὶ τὴν ἐν Διονύσου ἐκκλησίαν προγράψαι δύο ἐκκλησίας, τὴν μὲν τῆ ὀγδόῃ ἐπὶ δέκα, τὴν δὲ τῆ ἐνάτῃ. . . . καὶ τὸ μὲν τῶν συμμάχων δόγμα κελεύει . . . ὑπὲρ εἰρήνης μόνον ὑμᾶς βουλευσασθαι, Δημοσθένης δὲ καὶ περὶ συμμαχίας κελεύει.⁸⁰ . . . τῆ μὲν προτέρα τῶν ἐκκλησιῶν συμβουλευεῖν τὸν βουλόμενον, τῆ δ' ὕστερα τοὺς προέδρους ἐπιψηφίζεῖν τὰς γνώμας.⁸¹

Philocrates, who seems not to have been a member of the boule, proposed a peace and alliance with Philip, from which Phocis and Halus were to be excluded;⁸² the allies submitted a *δῶγμα* recommending peace only, which any of the Greeks might join within three months.⁸³ When Philip's envoys were interrogated on 19.ix (Elaph.) it was made clear that peace on the allies' terms would not be acceptable to him;⁸⁴ in spite of the *probouleuma*, further debate ensued, and Philocrates' proposal was finally adopted in an amended form.⁸⁵

The vote of the assembly was not the only risk which a motion had to run. A motion might be ruled out of order by the *prytanes* or *proedri*, though in both of the cases known to us public opinion prevailed over the objection. There is a good deal to puzzle us in the trial of the generals after Arginusae, and it is perhaps a mistake to look for complete regularity in such exceptional circumstances, but it seems certain that Socrates and perhaps some of his colleagues were reluctant to put to the vote Callixenus' *probouleuma* for a single decision on the fate of all the generals accused; nevertheless this was put to the vote, and was carried against Euryptolemus' alternative proposal for a fairer trial.⁸⁶ On 25.ix (Elaph). 347/6 Demosthenes was one of the *proedri*, and tried to rule out of order a motion (proposed from the floor of the house) which would admit Cersobleptes of the Odrysians to the Second Athenian League in time for him to participate in the Peace of Philocrates: the motion was in the end put to the vote, but was presumably defeated.⁸⁷ Despite the powers of the *prytanes* and *proedri*, an *ἀπροβούλευτον ψήφισμα* might on occasion be put to the vote. I have noted already that it is hard to find anything procedurally wrong with Aristogiton's decree against Hierocles,⁸⁸ but we have a clearer case in Androtion's proposal that the boule in which he served his second term of office should be crowned.⁸⁹ The proposals to reward loyal democrats in 403 present a number of problems,⁹⁰ but

we are told that Thrasybulus' proposal to make Lysias an Athenian citizen was successfully attached in a γραφή παρανόμων, διὰ τὸ ἀπροβουλευτον εἰσαχθῆναι :⁹¹ scholars assume rather too readily that the proposal was ἀπροβουλευτον because there was no boule to approve it.

The γραφή παρανόμων is first met in 415,⁹² and may have been instituted by Ephialtes.⁹³ One instance of its use gives us a further piece of information about probouleumata. Cersobleptes' mercenary leader Charidemus had been made an Athenian citizen, and in 353 Aristocrates sponsored a probouleuma conferring further benefits on him; before the ecclesia could vote on this, Euthycles announced his intention of prosecuting Aristocrates, and Demosthenes wrote a speech for Euthycles to deliver at the trial. This took place after the new year, and one of the arguments which he anticipated was:

οἴμαι τοίνυν αὐτὸν κάκεῖνον ἐρεῖν τὸν λόγον, . . . ὡς ἄκυρόν ἐστι τὸ ψήφισμα· προβουλευμα γάρ ἐστίν, ὁ νόμος δ' ἐπέτεια κελεύει τὰ τῆς βουλῆς εἶναι ψηφίσματα, ὥστε κἂν αὐτοῦ νῦν ἀποψηφίσθητε, ἢ γε πολὺς φλαῦρον οὐδὲν πείσεται κατὰ τὸ ψήφισμα⁹⁴.
τὸῦτο.⁹⁵

With the aid of a slightly confused scholium⁹⁵ we may conclude that a decree of the boule requiring some action to be taken will lapse unless the action is taken by the end of the bouleutic year, though the result achieved by such action will remain valid indefinitely: as a special case of this, any probouleuma not voted on by the ecclesia will automatically lapse at the end of the year. If the boule wished to recommend a number of decrees to the people, it had to provide enough assembly time for them in its own year of office.

Thus we learn from our literary sources that the boule could normally prevent action by refusing to make a probouleuma; or, if it wished the ecclesia to debate a subject, it could raise the question either with an open probouleuma or with a specific recommendation of its own: alternative motions could be proposed in

the ecclesia, and a motion might finally be carried in an amended form. A specific proposal recommended by the boule must presumably always have stood in the name of a member (though he might be acting on behalf of a non-member⁹⁶); if a citizen with a specific proposal to make obtained permission to address the boule, the result might instead be an open probouleuma, that the demos should hear what this man had to say, and decide as it saw fit,⁹⁷ but normally a proposal in the name of a non-member will have received its first airing in the ecclesia.

But we cannot tell from literary texts alone whether open probouleumata were the rule or the exception, whether the ecclesia played an active part in the conduct of public affairs or was content as a rule to adopt the boule's suggestions. These texts, where they give us enough detail, show a heavy bias towards genuine debates in the assembly and towards decrees proposed by non-bouleutae, but this is inevitable: the evidence is mostly for controversial issues in the fourth century, where the boule's suggestions are least likely to have been adopted without change by the ecclesia, and since our most voluble informant is Demosthenes we ought not to be surprised at the prominent appearance of his own decrees in many years when he was not a bouleutes. For a fairer estimate of the part played by boule and ecclesia we must turn to the preserved texts of inscribed decrees, selected not for their importance to the orators but by the chance of discovery.

Athenian decrees contain a number of formulaic expressions, evolved to record standard procedures.⁹⁸ Those which may be informative for our purpose are (I underline the abbreviations which I shall use in referring to these formulae):-

1. Minute-headings: βουλῆς ψηφίσμα(τα) or δήμου ψηφίσμα(τα) ⁹⁹ (BΨ/ΔΨ)
 2. Records of meeting: βουλή, ἐκκλησία or ἐκκλησία κυρία, with or without the place of meeting specified, are the most common.¹⁰⁰ (B/E)
- ΔΨ and E are of course proper to any enactment of the demos, whatever its origins; BΨ and B are proper to enactments of the

boule.^{100a}

3. Enactment-formulae:

- i. ἔδοχσεν τῶι δέμοι (ετδ) is found in the very earliest Attic decrees (at beginning or end).¹⁰¹
- ii. ἔδοχσεν τῷ βολῆι καὶ τῶι δέμοι (ετβκτδ) replaces it, and appears as the standard formula for all decrees of the demos from c.469-458(462/1?) to 405/4.¹⁰²
- iii. From 403/2 onwards both ετδ¹⁰³ and ετβκτδ¹⁰⁴ are found, and it is widely believed that the difference in formula represents a difference in procedure (see below).
- iv. ἔδοξεν τῆι βουλῆι (ετβ) is the proper formula for a decree of the boule alone.

4. Motion-formulae:

- i. δεδῶχθαι / ἐψηφίσθαι τῶι δήμῳ (δ/ψτδ)
is the phrase used to record a motion in the ecclesia;
as such it can appear in a rider to a motion which in effect is a separate motion, separately voted on.¹⁰⁵
- ii. δεδῶχθαι / ἐψηφίσθαι τῆι βουλῆι (δ/ψτβ)
is the phrase used to record a motion in the boule.¹⁰⁶
- iii. A special case of ii is the probouleumatic formula (PF).
The basic pattern, on which many variations are possible,
is δεδῶχθαι / ἐψηφίσθαι τῆι βουλῆι τοὺς προέδρους οἱ ἂν
τυγχάνωσι προεδρεύοντες ἐν τῶι δήμῳ χρηματίσαι περὶ
τοῦ δεῖνος, γνάμην δὲ ξυμβάλλεσθαι τῆς βουλῆς εἰς τὸν
δῆμον ὅτι δοκεῖ τῆι βουλῆι. . . .¹⁰⁷

There is sometimes an indication that the probouleuma has been commissioned by the ecclesia (CPF): ἐπειδὴ ὁ δῆμος προσέταξεν τῆι βουλῆι προβουλεύσασθαι ἐξενεγκεῖν εἰς τὸν δῆμον περὶ τοῦ δεῖνος, δ/ψτβ τοὺς προέδρους. . . .

δεδῶχθαι and ἐψηφίσθαι appear to be interchangeable, δεδῶχθαι being by far the commoner. These formulae are grammatically presented as part of the speaker's motion, dependent on the εἶπε which they follow either immediately or after a clause giving the reasons for the enactment: they thus seem to report that the speaker asked the demos/boule to resolve/vote that....

iv. δεδοχθαι / ἐψηφίσθαι τῆι βουλῆι καὶ τῶι δήμωι (δ/ψτβκτδ)
 is, if my interpretation of the formulae is correct,
 a somewhat improper phrase. Though common elsewhere,
 it is very rare in Athenian decrees before the time
 of the Roman Empire.¹⁰⁸

5. Commissioning of probouleuma: περὶ τοῦ δεῖνος, τὴν βουλήν προ-
 βουλεύσασαν ἐξενεγκεῖν εἰς τὸν δῆμον εἰς τὴν πρώτην ἐκκλησίαν. ...
 (CP).

6. Mention of probouleuma: περὶ ὧν ἡ βουλή προεβούλευσεν. ... (LP)

7. Rider-formulae:

- i. τὰ μὲν ἄλλα καθάπερ τῆι βουλῆι
 introduces the rider to a probouleuma. (RP)
- ii. τὰ μὲν ἄλλα καθάπερ ὁ δεῖνα
 introduces the rider to an individual's motion. (RI)
- iii. τὰ μὲν ἄλλα καθάπερ αἱ χουγγραφαί in a decree where
 for ὁ δεῖνα εἶπε we have τὰδε οἱ χουγγραφεῖς χουνέγραψαν.

(iv. One enactment of the nomothetae was regarded as an
 amendment of the existing law on the subject with which
 it dealt: τὰ μὲν ἄλλα καθάπερ τὸν Χαιρημονίδο νόμον
 περὶ τῆς ἀπαρχῆς.)

Down to 404/3 there is a single form of enactment-formula
 in use, and motion formulae are not found at all. But after 403/2
 there are two enactment-formulae available for decrees of the demos
 and the motion-formulae also begin to appear. Many decrees were
 not inscribed with both an enactment- and a motion-formula, and
 many more are so mutilated that we cannot safely restore both
 formulae, but for the decrees where both are preserved or
 restorable the correlations are:¹⁰⁹

ENACTMENT	MOTION	PF	δ/ψτδ
ετβκτδ		80	10
ετδ		14	92

It is clear that we have here two main patterns: ετβκτδ + PF and ετδ + δ/ψτδ . In the first case the procedure followed seems obvious - it is hard to imagine that decrees following this pattern are anything but probouleumata ratified verbatim in the ecclesia. It has commonly been believed that decrees following the second pattern are not ratified probouleumata, and in the next few pages I shall do what I can to test this theory.

I begin with an examination of two documents where the procedure followed is fairly clear. IG ii² 360 contains five decrees in honour of Heraclides of Salamis, whose logical sequence is as follows:-

- (a) (decree iii) between 330/29 and 328/7 Telemachus carried a motion in the ecclesia, calling on the boule to make a probouleuma so that Heraclides might obtain what benefit he could from the Athenian demos.
- (b) (decree iv) in the boule Cephisodotus referred to decree iii and to Heraclides' having supplied corn promptly and at a fair price, and sponsored a probouleuma recommending that he be praised and given a gold crown worth 500 drachmae; εἶναι δ' αὐτῶι καὶ εὐρεσθαι παρὰ τοῦ δήμου ὅτι ἂν δύναται ἀγαθόν (62-3).¹¹⁰
- (c) (decree ii) in the ecclesia Telemachus briefly referred to Heraclides' service to Athens and recommended praise and a gold crown; he then proposed the sending of an envoy to Heraclea to protest against the theft of Heraclides' sails.
- (d) (decree v) in or after 328/7 Phyleus in the boule referred to Heraclides' old service to Athens and to the fact that it prompted the ecclesia to commission a probouleuma; he then remarked on Heraclides' contribution εἰς σιτηνίαν , and he recommended that he be praised and given a gold crown worth 500 drachmae; εἶναι δ' αὐτῶι καὶ εὐρεσθαι ἀγαθόν παρὰ τοῦ δήμου ὅτου ἂν δοκεῖ ἀξιός εἶναι (75).

(e) (decree i) has a normal prescript dating it to 325/4.

In the ecclesia Demosthenes referred to Heraclides' general goodwill and his two specific services to Athens, and recommended that he be praised and given a gold crown; also that he be made πρόξενος and εὐεργέτης and granted the privileges commonly associated with this status, and that this decree καὶ τοὺς ἄλλους ἐκείνους be published.

Decree iv declares its dependence on iii, and it is economical to assume that ii is dependent on iv and i on v: they briefly repeat the provisions of the probouleuma (but not in full - each time we must go back to the probouleuma to find out how much money is to be spent on the crown) and then grant further benefits as authorised in lines 62-3 and 75. The inscription ends with ὁ δῆμος in two crowns and ἡ βουλή in two crowns, which supports the view that we have two probouleumata plus two decrees arising from them, not two probouleumata ratified by the ecclesia plus two wholly independent decrees of the ecclesia.¹¹¹

From the procedural point of view, instead of decrees ii and i we might have had two riders, τὰ μὲν ἄλλα καθάπερ τῆς βουλῆς, adding the clauses that are found only in ii and i. What we have here is a second way of amending a proposal, by producing a new motion which briefly reaffirms the old and adds further items, and which does not contain any indication of its history:¹¹² if the stone stopped short at line 45 and we had only the two final decrees of the demos, there would be no means of telling that these had been expanded from probouleumata. There is no enactment-formula, but the final decrees and the initial motion calling for a probouleuma all have the motion-formula which I would expect to be non-probouleumatic, ὁ/ψτδ - and here, with all the relevant decrees preserved, we can see that in a sense they are non-probouleumatic, as they are not simple repetitions of a probouleuma.

Another way in which an "independent" decree of the demos

can arise from a probouleuma is illustrated by GHI 189. The stone carries two decrees:-

- (i) an open probouleuma, with ετβ and PF, providing for the demos to listen to the Citians' request for a temple and make up its own mind;
- (ii) the resulting decree of the demos, with a new prescript, ετδ and δτδ, granting the request.

Again there is no clue in the second decree to the circumstances in which it was enacted. Thus the only distinction which we can attempt to base on the formulae is between those which ratify probouleumata verbatim with or without riders, and all others (whether revised from a probouleuma like IG ii² 360.i and ii or framed in response to an open probouleuma like GHI 189.ii or carried in opposition to the wishes of the boule): I shall use the words "probouleumatic" and "non-probouleumatic" in accordance with this distinction.

Several tests must be applied before we can confidently use the formulae to make even this distinction. First, it is very likely that wherever we find the ecclesia commissioning a probouleuma on some subject the decree in which it does this will be non-probouleumatic: there would be no point in the boule's recommending that the ecclesia order the boule to make a recommendation.¹¹³ This happens four times after 403/2: in three of the decrees the formulae in which we are interested are preserved, and they are all of the non-probouleumatic kind.¹¹⁴ Likewise, we should not expect a decree to be probouleumatic as I have defined the word when its preamble mentions a probouleuma in such words as περι ὧν ἡ βουλή προεβούλευσεν : a probouleuma relevant to the subject of the decree has been made, but if the preamble is to make sense the text of the decree as we have it must have come from the floor of the house (though it may be either a mere amplification of a probouleuma, as in IG ii² 360, or an

outright contradiction of a probouleuma). Of the six instances of this, four have straightforward non-probouleumatic formulae.¹¹⁵ GHI 144 combines ετβκτδ with δ[τδ]; the proposer's name is followed by orders to the herald to vow sacrifices to the principal deities if what the Athenians decide turns out well;¹¹⁶ and then

[ἐπειδὴ δ]ὲ οἱ σύμμαχοι δόγμα εἰσήνειγκαν εἰς τ[ὴν βουλὴν
δ]έχεσθαι τὴν συμμαχίαν καθὰ εἰσαγγέλλονται οἱ Ἄρκάδες καὶ
Ἄχαιοι καὶ Ἥλεῖοι καὶ Φλε[ιάσιοι, καὶ ἡ βουλή προῦβούλευσεν
κατὰ ταῦτά, δεδόχθαι τῷ δήμῳ εἶναι συμμάχους κτλ.

The allies' δόγμα, we are told, recommended the acceptance of the alliance; the probouleuma may have incorporated the substance of the δόγμα or it may simply have commended the δόγμα to the demos; and the demos accepted the recommendation - but with a preamble which, whether or not what follows it was taken over verbatim from the δόγμα or the probouleuma, cannot itself have formed part of the text until the assembly-stage. But the probouleuma was at least permissive and probably favourable to the alliance, so that here we have a decree which is in accordance with a probouleuma, yet is technically non-probouleumatic.

There remains IG ii² 660. ii, which is restored to read:-

[ἔ]δοξεν τῷ βουλῆι καὶ τῷ δήμῳ, [—25— εἶ]-
[π]εν. περὶ ὧν, ὥσπερ ὁ πρεσβευτῆς τ[ῶν Θηνίων αἰτεῖ,
προβεβούλευτ]-
[α]ι τῷ βουλῆι, τοὺς προέδρους οἷ ἂν λάβουσι κτλ.] .

An external reference to the probouleuma seems to turn into the probouleuma referred to. Something seems to have dropped out, and a restoration to give perfect sense is impossible, but the difficulties are reduced if we read:-

ὁ πρεσβευτῆς τ[ῶν Θηνίων ἐπαγγέλλει, ἐ[φηρέσθαι]ι τῷ βουλῆι κτλ
The inscription will then cease to be relevant here.¹¹⁷

A further test can be based on the fact that a man could not be a member of the boule, and ought not to have been able to sponsor a probouleumatic decree, for more than two years of his life.¹¹⁸ The fourth century has left records of some prolific authors of decrees, and it may help us to examine the formulae used in these men's decrees.

Aristophon is the author of five measures with significant formulae between 363/2 and 336/5: none of them incorporates the probouleumatic formula, but some have εἰς τὸ rather than εἰς.¹¹⁹ The orator Lycurgus is the author of a probouleumatic decree in 336/5, and of a decree of the boule in or perhaps before 329/8: he is responsible in other years for a νόμος, and for four decrees with non-probouleumatic formulae (the formulae in a fifth are lost).¹²⁰ We have no less than eleven prescripts of decrees in the name of Demades, who is attested as a member of the boule in a list perhaps to be dated 336/5 (none of his surviving decrees belongs to this year). Of the three decrees dated in the oligarchic year 320/19, one has εἰς and οὐδ, a second εἰς τὸ and no motion-formula, and the restoration of the third is uncertain; the other decrees all have formulae of the non-probouleumatic kind. Even under the democratic constitution Demades was entitled to serve twice in the boule, and there will of course have been fewer eligible citizens to man the boule under the oligarchic constitution which followed the Lamian War.¹²¹ For Demosthenes Δημοσθένους Παπανιστοῦ there is only one decree preserved on stone, with the enactment-formula restored as εἰς.¹²² We have the prescripts of at least sixteen decrees proposed by Stratocles Εὐθυδήμου Διομεσεύς, and in all except one where the restoration of Stratocles' name is doubtful the prescript formulae are non-probouleumatic.¹²³ Finally, we may note that Pandius is the author of a probouleumatic decree for Dionysius of Syracuse in 369/8; in the following year the same man is author of a decree with non-probouleumatic formulae by which Athens makes an alliance

with Dionysius.¹²⁴

This test provides a fair amount of confirmatory evidence, and except in the case of Aristophon nothing that need conflict with the theory that ετδ and δ/ψτδ are formulae proper to non-probouleumatic decrees. Aristophon is the only one of the orators from whom we have several decrees who was active before 350, and here I must anticipate my conclusion, that the distinction between the two main patterns of formula was not firmly established in the first half of the fourth century, but that at that time there was still a tendency to use ετβκτδ with any enactment of the demos (as in the fifth century).

Just as there are two ways of introducing a decree, there are two ways of introducing a rider to a decree: the mover of the rider may use either τὰ μὲν ἄλλα καθάπερ τῆι βουλῆι (RP) or τὰ μὲν ἄλλα καθάπερ ὁ δεῖνα (RI). RP is as unmistakable as the probouleumatic formula, and we should expect to find this used with probouleumatic decrees; RI, it has been suggested, ought to be the proper formula for riders to non-probouleumatic decrees.¹²⁵ In the fifth century we have very little to go on: of the 17 instances of RP, four follow a decree containing what looks like bouletic language, and of the seven inscribed instances of RI three are found in the second rider to a decree, taking the form of a rider to the first rider (which has the RP formula).¹²⁶

From 403/2 there are 26 examples of RP:-

- to a decree with PF or other bouletic language 14;¹²⁷
- to a decree with ετβκτδ ONLY 3;
- to a decree with no other indication of origin 8;¹²⁸
- to a decree which should be non-probouleumatic 1
(IG ii² 276 - see below)

RI occurs only twice after 403/2 - in GHI 139, with no other indication of origin, and in GHI 167, which contains bouletic language yet ought not to be probouleumatic (see below).

In the first of our two problem decrees, IG ii² 276, the relevant formulae are

[περὶ ὧν ἔδοξε Ἀσκληκίδ]ωρος [Πο]λυ[—14— ἐν τῷ βου]υλῆι
ἔννομα ἰ[κετεύειν, ψ]τδ (3-6);
τὰ μὲν ἄλλα καθάπερ τῷ βου[υλῆι] (24-5).

The ἰκετεύειν-clause does not prove that the decree is probouleumatic: a probouleuma could apparently contain either ἔδοξεν ... ἐν τῇ βουλῇ or ἔδοξεν.... ἐν τῷ δήμῳ (in the latter case the probouleuma was probably commissioned by the ecclesia); when the boule is mentioned the boule ought in some way to have been involved, but the resulting decree might bear the same relationship to the probouleuma as in IG ii² 360 (discussed above, pp. 67-8) - that is, it could be in general accord with the probouleuma but not be a verbatim ratification of it. ἔδοξεν ἐν τῇ βουλῇ would then have the same procedural implications as περὶ ὧν ἡ βουλή προεβούλευσεν (pp. 65-70 above).¹²⁹ We are left, therefore with a straight clash between ψτδ and RP, and I am inclined to pin my faith on the enactment-formula: the reference to the boule suggests a decree which is at any rate in substantial agreement with the intention of the probouleuma; in such cases attention could easily be concentrated on the boule, where the business had originated, rather than on the author of the final motion, and so RP could easily be misapplied.¹³⁰

In GHI 167 we have the reverse phenomenon, RI with a decree which looks as if it should be probouleumatic. The prescript contains no formulae which can help us, but the clause beginning in line 53 ought to be part of a probouleuma:

χρηματίσαι τοὺς προέδ[ρους οἱ] ἂν λάχουσι προεδρεύειν ἐν τῷ
δήμῳ [τῇ δγ]δόμῃ ἐπὶ δέκα πρώτον μετὰ τὰ ἑσπ[έρ]α (53-7)
is bouletic language, not ecclesiastic language.¹³¹ But the original motion stands in the name of Androtion, and the rider is introduced with τὰ μὲν ἄλλα καθάπερ Ἀνδροτίων . Androtion appears as ἐπιστάτης in a decree dated before 378/7,¹³² and was bouleutes again in or before 356/5:¹³³ he ought not, therefore,

to have been a member of the boule yet again and capable of sponsoring a probouleumatic decree in 347/6. This decree figures prominently in Laqueur's discussion of "concealed riders":¹³⁴ though Athenian documents seem to have been so carelessly drafted that arguments from lack of logical cohesion can have little force, we have seen that decrees could be amended and expanded by reformulation, and it may be that Androtion from the floor of the assembly has taken over and partially reformulated the probouleuma. A prominent politician could easily concentrate the amender's attention on his part in the making of the decree, and RI was therefore used - but correctly, I would submit, as Androtion's decree was technically non-probouleumatic.

We must also consider here Pythodorus' decree of 412/1 in A.P. 29.i-iii. In §i we read τὴν δὲ γνώμην γράψαντος Πυθοδώρου; ^{τοιόνδε;} in §ii the text is preceded by ἦν δὲ τὸ ψήφισμα τοῦ Πυθοδώρου / and in §iii Κλειτοφῶν δὲ τὰ μὲν ἄλλα καθάπερ Πυθόδωρος εἶπεν. But the principal advocate of the decree was Melobius (εἰπόντος τὸν μὲν πρὸ τοῦ ψηφίσματος λόγον Μηλοβίου, §i), and the most likely explanation is that the motion stood in Pythodorus' name because he was a bouleutes and the more prominent oligarch Melobius was not - but if Pythodorus was a bouleutes we should expect to find RP rather than RI. There has certainly been some editorial work to fit the decree into the accompanying text,¹³⁵ and it is conceivable that an original RP has been changed to RI, but Pythodorus' decree remains a greater obstacle to the theory under discussion than any inscribed text.

We must admit, then, that in certain contexts the two rider formulae might fairly easily be misapplied. Nevertheless, the evidence that RP means what it says, and should be found in riders to probouleumatic decrees, is good: there are several clear examples, and the only instances of its use with a non-probouleumatic decree is easily explained. The case for linking RI with non-probouleumatic decrees is weaker: the formula is found

only ten times in all, and though its epigraphical instances are compatible with the theory the decree in A.P. 29 is more disturbing. The very fact that RI is the rarer formula may be significant: a proposal made and perhaps published in advance by the boule will have been easier to amend than one produced from the floor of the assembly without any advance notice.¹³⁶

Professor Jones has tried to use as an indication of a decree's origin another common piece of decree-language. He believes that the phrase $\alpha\upsilon\tau\acute{\iota}\kappa\alpha \mu\acute{\alpha}\lambda\alpha$ can only have been inserted in a motion when it was under discussion in a body competent to order immediate action, and that any decree of the demos which contains this phrase must be non-probouleumatic.¹³⁷ This seems to be extracting too much from the language. It is frequently necessary to specify that action of some kind be taken as soon as possible after the motion ordering it has been carried, for example if men have to be appointed for some particular task, or if instructions are being given to men in some official position. Immediate action on the part of the assembly itself is necessary if an otherwise specific motion has an open clause in it - the boule or a lay citizen may equally well propose that the demos should decide at once whether it wishes to do one thing or another. Such clauses could be included in Athenian decrees either with $\alpha\upsilon\tau\acute{\iota}\kappa\alpha$ or $\alpha\upsilon\tau\acute{\iota}\kappa\alpha \mu\acute{\alpha}\lambda\alpha$ or with $\eta\delta\eta$ (not before the early third century), or with no expression of immediacy: there is in fact no surviving use of $\alpha\upsilon\tau\acute{\iota}\kappa\alpha$ in an undisputed probouleuma,^{137a} but clauses with $\eta\delta\eta$ or no temporal adverb, but in other respects indistinguishable from the clauses with $\alpha\upsilon\tau\acute{\iota}\kappa\alpha$, are found in probouleumata.

There is one use of $\alpha\upsilon\tau\acute{\iota}\kappa\alpha$ which may perhaps bear Jones' interpretation. Three decrees of the early fourth century begin with orders to the herald to vow $\alpha\upsilon\tau\acute{\iota}\kappa\alpha \mu\acute{\alpha}\lambda\alpha$ that special sacrifices will be performed if what the demos does turns out well. All three decrees have the non-probouleumatic kind of enactment-

formula, $\delta/\psi\tau\delta$, though in the two where a motion-formula survives it is $\epsilon\tau\beta\kappa\tau\delta$.¹³⁸ The vow was presumably to be made at the assembly enacting the decree, and if the proposal had come from the boule we should perhaps expect a specific reference to the assembly, e.g.

$\epsilon\tilde{\upsilon}\xi\alpha\sigma\theta\alpha\iota \mu\acute{\epsilon}\nu \tau\acute{\omicron}\nu \kappa\acute{\eta}\rho\upsilon\kappa\alpha \acute{\epsilon}\nu \tau\tilde{\omega}\iota \delta\acute{\eta}\mu\omega\iota \alpha\tilde{\upsilon}\tau\acute{\iota}\kappa\alpha \mu\acute{\alpha}\lambda\alpha \kappa\tau\lambda.$

But even if this interpretation is correct, it affects only three decrees which may be considered non-probouleumatic on other grounds, and in general I am not satisfied that clauses containing $\alpha\tilde{\upsilon}\tau\acute{\iota}\kappa\alpha \mu\acute{\alpha}\lambda\alpha$ provide any indication of the origins of a decree.

There remains the major obstacle to a distinction between probouleumatic and non-probouleumatic decrees, the fact that in a certain number of inscriptions an enactment-formula of one kind is combined with a motion-formula of the other kind. I consider first those in which the enactment-formula is $\epsilon\tau\beta\kappa\tau\delta$ and the motion-formula $\delta/\psi\tau\delta$:—¹³⁹

<u>GHI</u> 100	404/3?	Citizenship <u>or</u> lesser rewards for metics of Phyle	$\acute{\epsilon}\psi\eta\phi\acute{\iota}\sigma\theta\alpha\iota$ 'Αθηναίους
<u>IG</u> ii ² 70	bef. 378/7	To inscribe Phocian decree requesting citizenship for Antiochus, etc.	*
<u>GHI</u> 123	378/7	Prospectus of 2nd Athenian League	
142	363/2	Regulations for Iulis	*
144	362/1	Alliance with Arcadians etc.	
146	362/1	Cleruchy at Potidaea	*
147	361/0	Alliance with Thessalians	*
<u>IGii</u> ² 134	354/3	Honorific decree	
138	353/2	Honorific decree	[$\delta\tau\delta$] not certain
<u>GHI</u> 168	347/6	Renewal of Mytilenaeen alliance	*
<u>IGii</u> ² 672	280/79	Honorific decree	Second copy, <u>Hesp.</u> X.1941, 338-9, has [$\epsilon\tau\delta$]
790 + <u>Hesp.</u> XI 47	235/4	Honours for prytanes	

The last two examples can be dismissed as the products of carelessness: in the first case we have [ετ]βκτδ in one copy but [ετδ] in a second; and it seems to have been a matter of legislative etiquette, very rarely broken, that decrees in honour of a *proprytany* were not recommended to the ecclesia by the *boule*,¹⁴⁰ and the use of ετβκτδ in IGii² 790 is probably due to a simple error. The remaining ten decrees all belong to the period 403-345: for this same period we have 13 decrees with ετδ and no motion-formula,¹⁴¹ ten with δ/ψτδ and no enactment-formula, and only five with ετδ and δ/ψτδ. The evolution of the two main formulaic patterns took some time - we have no dated example of the probouleumatic formula before 378/7¹⁴² - and these ten "crossbred" decrees are products of the evolutionary process.

My own inclination is to rely on the motion-formula and class these decrees as non-probouleumatic.¹⁴³ The motion-formula, as a part of the basic text of the document, ought to be more reliable than the enactment-formula added by the secretary when preparing the text for publication; and in the development of Attic documentary language the new formula, not included in the published texts of the fifth century, ought to be more reliable than the form of enactment-formula which in the fifth century had been universal but after about 345 was to be used with a certain kind of decree only. Some of these decrees are documents of great importance, but there are important decrees which according to all surviving indications ought to be non-probouleumatic, and in view of the possibility of amendment by reformulation we ought not to be surprised at this.¹⁴⁴

Fifteen decrees combine ετδ with the probouleumatic formula:-¹⁴⁵

<u>SEG</u> XVI 52	339/8	?		*
<u>SIG</u> ³ 287	332/1		Honours Phanodemus for Oropus νομοθεσία	
<u>IGii</u> ² 772	270/69		Public doctors to make customary sacrifice	
	661	269/8	Honours for epimeletae of mysteries	*
	735	bef.mid C3	Honorific decree	*
	798	250/49	Honours for [agonothete?]	
<u>Hesp.</u> XI.56	247/6		Appeal for contri- butions to stratiotic fund	
<u>Hesp.</u> XXXVI 6	c.170		Honorific decree	
<u>Hesp.</u> II.16	161/0		Honours for cosmetes [ετδ] not certain of ephebi	
<u>SEG</u> XV 104.i,ii	127/6		Ephebic decrees	*
<u>IGii</u> ² i, ii	1011	107/6	Ephebic decrees	*
	1028	100/99	Ephebic decrees	*
	i, ii			

Here I have no hesitation in relying on the motion-formula.¹⁴⁶
The probouleumatic formula is our one unmistakable guide, and
with these documents not concentrated in any one period it seems
unnecessary to look beyond secretarial carelessness for an
explanation.

The distinction between probouleumatic and non-probouleumatic
decrees comes fairly well out of these tests. Sometimes we have
to postulate carelessness, occasionally we have to resort to an
explanation which it is to be feared may be tidier than the facts
of the case; but it seems in general to be true that the differ-
ence between the two formulaic patterns corresponds to a
difference between two types of enactment, that from the fourth
century the Athenians chose to differentiate verbatim ratifications
of a probouleuma from other enactments of the demos. The
distinction appeared gradually during the first half of the fourth

century, and is likely to have been a matter of secretarial tradition rather than specific regulation. The rules were somewhat slackly applied - which will surprise no one who is familiar with Athenian decrees - but the distinction was made.¹⁴⁷

We can return at last to the question which gave rise to these investigations. Did the ecclesia play an active part in legislation, or was it content to adopt proposals made by the boule? I have listed in Table C those inscribed decrees which I believe to be probouleumatic, and in Table D those which I believe to be non-probouleumatic. The distribution of the two classes in different periods is remarkable:-¹⁴⁸

DATE	PROBOULEUMATIC			NON-PROBOULEUMATIC			TOTALS		
	substantial	all	substantial	all except prytany-decrees	all	substantial	all	substantial	all
	9	20	5	*	6	14	26)		
(to 404/3									
403/2 - 322/1	11	107	15	*	104	26	211		
321/0 - 263/2	2	79	3	85	93	5	172		
262/1 - 201/0	1	64	0	14	28	1	92		
200/199 - 101/0	1	91	0	13	46	1	137		
from 100/99	0	16	0	3	4	0	20		
TOTALS (from 403/2)	15	357	18		275	33	632		
(FINAL TOTALS	24	377	23		281	47	658)		
		+1							+1
		undated							

*No prytany-decrees with relevant formulae are known before 285/4.

In the fourth and early third centuries the total of all decrees and the substantial decrees (see below) alone are fairly evenly divided between probouleumatic and non-probouleumatic (the slightly greater emphasis on non-probouleumatic decrees between the Lamian and the Chremonidean War perhaps suggests that until Athens learned to live with her humiliation the demos tried to make frantic activity a substitute for effective action). At this time (and probably in the fifth century also, when a good many decrees stood in the name of prominent citizens) there must have been a reasonable nucleus of politically-minded Athenians, and the ecclesia took a fairly active interest in legislation, even though in proportion to the whole citizen body attendance was low except in times of crisis.¹⁴⁹ But once the Athenians became aware of their insignificance political life lost its attractions, and it appears that from early in the third century the ratification of honorific probouleumata took up more and more of the assembly's time. After 322/1 documents of real substance are very rare, and other indications of an active ecclesia are wanting: we have two pseudo-riders, but no more true riders to decrees, and only one instance of the assembly's commissioning a probouleuma.¹⁵⁰

An active assembly did not make the boule merely a cog in the machine, or deprive the boule of initiative except in routine and uncontroversial matters.¹⁵¹ Policy could not very easily be made by an assembly of some thousands, and we may assume that most citizens went to hear and to vote (and to draw their attendance-money) rather than to make speeches and offer proposals. The boule did discuss policy,¹⁵² and the principal politicians did think it worth their while to attend its non-secret sessions.¹⁵³ Yet a council of a few hundred must still have been too large a body for the corporate discussion of policy, and even a prytany of fifty would be somewhat unwieldy. In the Roman Senate a subject was named and members were invited to offer sententiae, from which the presiding magistrate chose a motion to put to the vote;

the same procedure was followed in Athens when an open probouleuma was submitted to the ecclesia,¹⁵⁴ and was presumably followed in the boule and prytany. The boule was entitled to make recommendations on any subject, and whether it did on important and perhaps controversial matters may well have depended on who were bouleutae at the time. Men with political ambitions did serve in the boule, but some selections of five hundred citizens may have included no one who was prepared to offer bold suggestions.

But many bold suggestions were made in the boule. If the RP formula is a reliable indicator the fifth-century decrees drafted in the boule include an alliance with Egesta,¹⁵⁵ the second Methone decree,¹⁵⁶ Thudippus' assessment decree of 425¹⁵⁷ and the decrees for Samos at the end of the Peloponnesian War;¹⁵⁸ in the fourth century the probouleumatic formula guarantees the bouleutic origin of a number of important decrees - alliances with Chalcis in 378/7,¹⁵⁹ with Corcyra in 375/4,¹⁶⁰ with Thracian kings¹⁶¹ and with Neapolis¹⁶² in 357/6. In 369/8 the boule asked the Second Athenian League to report to the assembly its views on the possibility of an alliance with Dionysius I of Syracuse; but the report seems to have been unfavourable, since in the following year the author of the boule's decree, now no longer a member of the boule, drafted a decree by which Dionysius became an ally of Athens alone.¹⁶³ Other decrees for which responsibility can probably but less certainly be assigned to the boule include one concerning judicial relations with Siphnos¹⁶⁴ and one containing regulations for the Panathenaea.¹⁶⁵ Other important measures reached their published form in the assembly, such as the final alliance with Dionysius which I have mentioned above, the regulations imposed on Clazomenae in 387/6,¹⁶⁶ or on Eretria thirty years later.¹⁶⁷ They may result from the initiative of a man who does not belong to the boule, and has been allowed in the probouleuma to put his suggestion to the people; or they may have been produced in response to a purely open probouleuma.

But sometimes they represent a probouleuma which has been revised in the assembly: in the Peloponnesian alliance of 362/1, for instance, the preamble cannot have been written until the matter came before the assembly, but the δόγμα of the allies and the probouleuma of the boule to which it alludes must surely have favoured the alliance.¹⁶⁸ A non-probouleumatic decree is not necessarily a sign that the boule has refused to commit itself. We have noticed occasions when the boule committed Athens to inaction, though in circumstances which must have made its decision generally welcome;¹⁶⁹ more controversially, it committed Athens to another bout of aggressive nationalism when Philip of Macedon was assassinated, by ordering sacrifices in thanksgiving.¹⁷⁰ It seems wise to conclude that the boule always could give a lead, and that in the fifth and fourth centuries it often but by no means always did so, but as Athens declined into the Hellenistic period there were fewer important decisions to be taken, and the political apathy of the city as a whole left such decisions as there were to the boule. This system, or lack of it, will not have made for coherent policy, but an annual change in bouleutic membership would in any case have prevented this. Policies were on the whole the policies of individual men, and their carrying out depended on the continuing popularity of these men and of what they stood for with the boule and demos.

(iii) Decrees of the Boule

We shall be studying in the next two chapters the various kinds of decision which could be made by the boule, but there are some matters which, since they concern published decrees, can usefully be considered here.

A few Athenian decrees incorporate a provision for filling gaps, if it should later be found that there are some matters which the decree has left unsettled. In the fifth century there were at any rate some occasions when the demos reserved for itself the right to make any necessary additions and corrections: we find this in a decree of 415 for the dispatch of the Sicilian expedition, and in a rider to the decree of 409 honouring Thrasybulus.¹⁷¹ But it seems likely that in the decree of 424/3 for Potamodorus and Eurytion the right to make supplementary decisions of this kind was delegated to the boule,¹⁷² and in the fourth century this became standard practice.¹⁷³ In one of our fourth-century examples, Cephisophon's decree for a colony to the Adriatic, the proviso is added that the boule's supplementary decrees may not run counter to the original enactment:

ἐὰν δέ του προσδέει τόδε τὸ ψήφισμα τῶν περὶ τὸν ἀπόστολον,
τὴν βουλὴν κυρίαν εἶναι ψηφίζεσθαι, μὴ λύουσαν μηθὲν τῶν
ἐψηφισμένων τῶι δήμῳι.¹⁷⁴

Such a delegation of power to the boule may be regarded as a special case of the instructions to the prytanes and boule (inter alios) to see that the provisions of a decree are carried out.¹⁷⁵

More surprisingly, we have a number of documents of the early fourth century which have been inscribed as decrees of the boule alone yet record decisions which would not normally be delegated by the ecclesia. Most of them are proxeny decrees,¹⁷⁶ and for these two ways of removing the anomaly have been suggested: it may be that the boule was simply ordering the publication or republication of an award already made by the ecclesia,¹⁷⁷ or these decrees may be probouleumata ratified by

the ecclesia, but published with the wrong formulae by secretaries who took the text from the records of the boule.¹⁷⁸ Either of these explanations is possible. We know that under the régime of the Thirty various honorific stelae were demolished, and that after the democratic restoration such honours were confirmed and new stelae were erected.¹⁷⁹ One of the proxeny decrees with the formula ετβ specifically orders the replacement of an old stele at the expense of one of the beneficiaries,¹⁸⁰ and some of the others ought perhaps to be explained in this way.¹⁸¹ We have seen already that the early fourth century was a time of uncertainty in the use of formulae, and it is not impossible that some of the documents published as decrees of the boule are in fact probouleumata ratified by the ecclesia: we shall notice shortly an alliance with Eretria, which can hardly be explained in any other way.¹⁸² There is one proxeny decree in which it seems that both explanations are applicable. In IG ii² 32 the enactment formula is ετβ, but ratification by the ecclesia is proved by the subsequent appearance of a rider to the probouleuma (RP); and though the prescript dates the document to 385/4 there are provisions for the possibility that the honorand may be unjustly treated ἐν τῶν πόλειων ὄσων Ἀθηναίων κρατῶσιν, which is scarcely meaningful in the years following the Peace of Antalcidas. We cannot for every decree say which explanation is the right one,¹⁸³ but at any rate there is no need to suppose that the boule acquired the right to confer proxenies for a short time after the democratic restoration.

Three other documents need to be considered. I have already mentioned the Athenian alliance of 394/3 with Eretria:¹⁸⁴ its enactment formula is ετβ, but very good evidence indeed would be needed to satisfy us that at this time the demos could delegate or surrender its right to conclude treaties.¹⁸⁵ In the same year the Athenians honoured Dionysius of Syracuse, in another decree

whose enactment formula is ετβ :¹⁸⁶ nothing more concrete than ἐπαινέσαι has survived, and there is no reason why the boule should not have praised Dionysius and his family, but a head of state would normally be praised by the demos or not at all, and lesser honours would not be published if those of the demos were not.¹⁸⁷ It seems safest to assume that the surviving fragment is either a ratified probouleuma or an independent decree of the boule below which a decree of the demos was also inscribed. Finally, we must look at the appointment of heralds. About 398-390 Eucles was made herald of the boule and demos, and some thirty years afterwards his son Philocles was appointed to the post. The two relevant decrees have been inscribed on the same stele: the second embodies the probouleumatic formula, but in the first [ἔδοξεν τῷ βουλῆι] used to be restored to fit the στοιχηδόν arrangement:¹⁸⁸ Dr. D. M. Lewis, noticing that this formula contained one letter too many, merely changed the spelling to [ἔδοξεν τῆι βολῆι].¹⁸⁹ It is not, I think, impossible that an appointment of this kind should have been delegated to the boule, but it would be surprising if the boule had been able to make the original appointment on its own authority but had been obliged to gain the demos' approval for the transfer of the office to Eucles' son, and I feel sure that the correct restoration is [ἔδοξεν τῷ δήμῳ].¹⁹⁰

The prescripts of decrees do not, then, force upon us the conclusion that for a short time at the beginning of the fourth century the boule enjoyed legislative powers normally reserved for the ecclesia. It must be admitted that Cloché believed the boule's judicial powers were temporarily enhanced at this time,¹⁹¹ and some have seen in the institution of the proedri and the reform of the secretarial system in the first third of the century an attack on the boule which could be more easily explained if the boule had for a time been enjoying greater powers than in the fifth century.¹⁹² I remain unconvinced. The cumulative effect

of these arguments does not seem to me to outweigh the strong presumption that after two unhappy experiments with oligarchy the demos would have insisted on the full restoration of its sovereignty,¹⁹³ or that if this full restoration were delayed we should have clearer traces of its eventual achievement.

In the later history of Athens, however, when formulae had become more stereotyped, inscriptions provide almost all the information we have on the government of the city, and decrees of the boule on matters normally decided by the demos may if they show a consistent pattern be used as pointers to a more oligarchic régime. The publication in 155/4 of a decree in honour of a prytany as a decree of the boule is probably due to clerical carelessness rather than to a departure from normal procedure, as this is an isolated exception.¹⁹⁴ The two decrees concerned with the shrine of the Hero Doctor (or Hero the Doctor) present an interesting contrast. Both arose from a *πρόσοδος* of the priest to the boule: in 221/0 he asked for a new *ὀνοχόη* to be made from the old dedications in the shrine, and his request was granted in a probouleumatic decree;¹⁹⁵ towards the end of the second century the shrine's plate was again in poor condition, and this time a decree of the boule was enough to authorise the work for which the priest asked.¹⁹⁶ The second inscription cannot be precisely dated: it could conveniently be located in the mildly oligarchic régime which Ferguson believed to have been set up in 103/2,¹⁹⁷ but whatever change was made in Athens at that time the demos clearly did not lose the power to vote decrees.¹⁹⁸ Perhaps the boule had acquired or usurped the right to grant this permission, but we may here be dealing with another misapplied formula. We are on firmer ground in dealing with the régime established by Sulla. It is generally believed that the oligarchy which he established lasted from 83 to 48, and for this period there are no dated decrees of the demos, while the boule was responsible for some matters which at other times were referred to the assembly: an ephebic inscription emanating from the boule alone, *IG ii*²1039, seems to belong to the early years of this period,¹⁹⁹ and in 52/1

the boule gave permission to the priest of Asclepius to rebuild the shrine at his own expense.²⁰⁰ Democratic government was restored by Caesar;²⁰¹ another ephebic document marks a return to oligarchy in 39/8;²⁰² and decrees of the demos reappear under the Roman Empire.²⁰³ Another tendency in late decrees we noticed at the end of chapter I: though ordinary members of the boule and ecclesia may never have lost the right to sponsor proposals, under the Roman Empire decrees were apt to stand in the name of such senior officials as the στρατηγὸς ἐπὶ τὰ ὄπλα.²⁰⁴ But published decrees of all kinds are rare after Sulla's settlement, and they became rarer still under the Roman Empire as the affairs of the city became steadily less important.²⁰⁵

In times of democratic government the decrees of the boule remained subsidiary to those of the ecclesia. Its honours were conferred on lesser functionaries or were added to those voted by the ecclesia; in more serious matters policy and many details were decided by the ecclesia, though often on the recommendation of the boule, but the boule had a large part to play in ensuring that these decisions were carried out, as we shall see in the next two chapters.

CHAPTER III: ADMINISTRATION

(i) Finance

Finance was a matter of great concern to the Athenians. Objects of public expenditure were by modern standards few, but so too were sources of public income, and if the state lacked the money to pay for its immediate needs those needs could not be met. Demosthenes threatened that a temporary shortage of money, which might occur under Timocrates' new debt law,¹ would bring the boule, ecclesia and law-courts to a standstill:

τὰς δ' ὀκτῶ (sc. πρυτανείας) τί ποιήσομεν; εἶπε, Τιμόκρατες· οὐδὲ συνίμεν καὶ βουλευσόμεθ' ἐάν τι δέη; εἶτ' ἔτι δημοκρατησόμεθα; οὐδὲ δικάσει τὰ δικαστήρια τὰ τ' ἴδια καὶ τὰ δημόσια; καὶ τίς ὑπάρξει τοῖς ἀδικουμένοις ἀσφάλεια; οὐκ εἴσεισιν ἡ βουλὴ καὶ διοικήσει τὰ ἐκ τῶν νόμων; καὶ τί λοιπὸν ἔσθ' ὑμῖν ἄλλ' ἢ καταλελυθῆναι;²

This was in 353 B.C.: five years later we hear of a crisis in which lack of money to pay the jurors did prevent the courts from meeting.³ Athenian financial business had to be transacted with very great care, and although all major decisions were taken by the demos and often governed by special regulations⁴ a good deal of work was delegated to the boule. *περὶ πόρου χρημάτων* is second only to *περὶ τοῦ πολέμου* in the Old Oligarch's list of matters which were the concern of the boule,⁵ and Lysias wrote of the boule's being tempted to miscarriages of justice when it was short of money for the needs of the state:

ἡ βουλὴ ἡ <ἀεὶ> βουλευούσα, ὅταν μὲν ἔχη ἱκανὰ χρήματα εἰς διοίκησιν, οὐδὲν ἐξαμαρτάνει, ὅταν δὲ εἰς ἀπορίαν καταστῆ, ἀναγκάζεται εἰσαγγελλίας δέχεσθαι καὶ δημεύειν τὰ τῶν πολιτῶν καὶ τῶν ῥητόρων τοῖς <τὰ> πονηρότατα λέγουσι περθεσθαι.⁶

Aristophanes represents Cleon as bringing the city an ample supply of money when he was a bouleutes:

καὶ πῶς ἂν ἐμοῦ μᾶλλον σε φίλων ὧ Δῆλιε γένοιτο πολίτης;
ὅς πρῶτα μὲν ἦν γὰρ ἐβούλευδόν σοι χρήματα πλεῖστον ὠκέθειξα
ἐν τῇ κοινῇ, τοὺς μὲν στρεβλῶν τοὺς δ' ἄγχων τοὺς δὲ μεταίων,
οὐ φροντίζων τῶν ἰδιωτῶν οὐδενός, εἰ σοὶ χαριόμην.⁷

It seems fair to conclude from these passages that the boule was regarded as generally responsible for the financial well-being of Athens.

The boule's earliest appearance in financial matters concerns the tribute from the Delian League, which accounted for much of the money flowing into Athens in the second half of the fifth century. Clinias' decree, probably to be dated to 447 B.C.,⁸ begins:

[— τὲ]μ β-
ολὲν καὶ τὸς ἀρχ[οντας ἐν] τῆσ-
ι πόλεσι καὶ τὸς [ἐπισκό]πος ἐ-
πιμέλεσθαι ἡσπ[ος ἂν χσ]υλλέ-
γεται ἡ φόρος κ[ατὰ τὸ ἔ]τος ἡ-
ἐκαστον καὶ ἀπά[γεται] Ἀθῆνα-
ζε.⁹

The boule was thus the principal authority in Athens concerned with the collection of tribute.¹⁰ Clinias ordered that the allied cities were to send to Athens with their tribute a sealed tablet stating the sum which they were sending, and the tribute was to be brought to the boule and the tablet read there.¹¹ If any one obstructed the payment of tribute or the sending of a cow and panoply to the Panathenaea the boule was to act as a court of first instance (since it was not competent to inflict a penalty appropriate to so serious an offence), and through the prytanes to recommend a suitable penalty to a δικαστήριον.¹² The boule is mentioned several times in the less certain passages at the end of the inscription. In Cleonymus' decree of 426/5 the boule is less prominent,¹³ but if the ecclesia is to be given an annual

report on which states have paid their tribute and which have defaulted,¹⁴ it is likely enough that individual payments continue to be made in the presence of the boule, as under the earlier decree of Clinias. That the boule was still involved is confirmed by a passage in the second decree, entrusting the boule with the appointment of heralds to convey to the allied cities the order to appoint ἔκλογεῖς who will be responsible for their city's tribute.¹⁵

Thudippus' assessment decree of the following year again reveals the importance of the boule in the finances of the Delian League:-¹⁶

The boule is to appoint eight heralds to summon representatives from the cities,¹⁷ and ten τάκται to list and assess the cities liable to tribute.¹⁸ Appeals are to be addressed to a board of εἰσαγωγεῖς and the polemarch,¹⁹ who will bring them before a court of 1,000 jurors established by the thesmothetae²⁰ to make new assessments [χρ]ὸν τεῖ [βο]λαῖ . . . [καθά- περ ἐπὶ τεῖς τελευτῆσας ἀρχῆς, and the τάκται must abide by the verdict in these cases. The boule is to meet daily to check and ratify the assessments thus arrived at, and the decree and assessment are to be published on the acropolis and in the bouleuterium.²¹

The heralds work under the orders of the τάκται (for their route) and the ecclesia (for what they are to say), and under the jurisdiction of the boule.²²

ὥστ[αν χουντάχσει ἡ βολὴ τῶν τάκταιν τῶ] φό[ρ]οιο
the generals are to see that it is paid: each year they shall make an estimate of their expenses, and apply directly to the boule (unless the demos votes that they should first apply to a court) if they need an extra lev²³

The principle, that no assessment should be reduced unless a city was genuinely unable to pay, and the procedure to be followed in making the assessment, were laid down by the demos, but it was left to the boule to see that the assessment was made as the demos had laid down. Assessment by the boule and a special court is mentioned also in special rubrics in the quota lists dated to 430/29 and 429/8.²⁴ The exact significance of these and other rubrics has been much disputed, but it is probable that something like Thudippus' procedure already existed, with figures proposed in the first instance by the τάκται and disputes adjudicated by the special court and the boule. In addition to the assessments by court and boule we have a block of assessments made by the τάκται of a previous year (probably 434/3), apparently for states paying on a volunteer basis and not as regular members of the League.²⁵ It is to be noticed that both in the rubrics and in Thudippus' decree the boule is specifically mentioned with the special court in connection with the problematic or disputed cases, a fact to which the authors of ATL have not paid sufficient attention in their account of the procedure followed.²⁶ Possibly in each disputed case the boule was required to confirm the court's decision, but at any rate the boule must at some stage have been involved in the dispute as well as being responsible for ratifying the final assessment which the τάκται produced after all disputes had been settled.

The work supervised by the boule was a more or less straightforward assessment of the tribute which the allied cities might be expected to pay, with some special consideration shown to the "volunteer" states, but the decision that a state was to be given special privileges and concessions had to be made by the demos. The first decree for Methone, carried in 430/29, records an invitation to the demos to decide whether a special assessment should be made at once or Methone should be made to pay simply the ἀπαρχή on her current assessment of tribute: the latter alternative was in fact chosen.²⁷ Two years later another cautious

proposal may have resulted in the decision that Aphytis too should pay only the ἀπαρχή on her tribute.²⁸ The pattern that emerges is that the demos laid down policy and authorised special departures from it, but the boule was in general responsible for carrying out this policy and for making the lesser, "ministerial" decisions necessary for this purpose.

In the fifth century any surplus money was likely to find its way into the sacred treasuries, especially that of Athena, and the boule's concern with these was therefore a matter of more than purely religious importance. The Athenaion Politeia tells us that the treasurers of Athena

παραλαμβάνουσι δὲ τὸ τε ἄγαλμα τῆς Ἀθηνᾶς καὶ τοὺς Νίκας
καὶ τὸν ἄλλον κόσμον καὶ τὰ χρήματα ἐναντίον τῆς βουλῆς,²⁹

and this is no doubt true of the latter half of the fifth century as well as of the fourth, since in creating the unified board of treasurers of the Other Gods in 434/3 Callias enacted

παρὰ δὲ τῶν νῦν ταμιῶν καὶ τῶν ἐπισ-
τατῶν καὶ τῶν ἱεροποιῶν τῶν ἐν τοῖς ἱεροῖς, ἡοὶ νῦν
διαχειρίζο[σι]-
ν, ἀπαριθμεσάσθων καὶ ἀποστεσάσθων τὰ χρήματα ἐναντίον
τῆς βουλῆς]-
ς ἐμ πόλει, καὶ παραδεχσάσθων ἡοὶ ταμίαι ἡοὶ λαχόντες
παρὰ τῶν νῦν]-
ἀρχόντων.³⁰

As well as simplifying the administration of the sacred treasures, Callias provided for the payment of money due to the Other Gods, now that the 3,000 talents due to Athena had been paid:³¹ the thirty logistae³² were to be convened at the discretion of the boule to work out accurately how much was due, and the prytanes with the boule were to pay the debts and cancel the record.³³

An inscription of 353/2 again attests the boule's interest in the treasurers of Athena.³⁴ An inventory was to be made of the treasures in the Chalcothece, in the presence of all those who had served as treasurers of Athena since 362/1, and of various high officials of state (and perhaps the whole boule³⁵): the prytanes were to name the day, and the actual list was to be

written down by a δημόσιος , copied by the public secretaries, and published in front of the Chalcothece.³⁶ The inscription continues:

ἔπειθ' ἂν δὲ ταῦτα παρασκευασ-
σθεῖ, τοὺς πρυτάνε[ι]ς προγράψαι περὶ τούτων [ἐ]ν [βουλε]-
[υ]τηρίῳ, ὅτ[α]ν οἶόν τε ᾖ, ἀκούσασαν [δὲ τὴν] βου[λή]ν
[ἀ]ντα-
[ν]αγιγνωσκομένων τ[ῶν] ἀναγεγραμμένων ἐν τῇ[ι] χαλκο[θ]-
[ῆ]κ[ει] πρὸς τὰ ἀναγεγρ[αμμένα] ἐν ταῖς στήλαις ἐ]άν τ[ι]νο]-
[ι]ς δέηι προβουλεύσασ[αν] ἐξενεγκῆν εἰς τὸν δῆμον, ὅ[πως]
[ἀ]ν ἀκούσας ὁ δῆμος βου[λευσῆται] πῶς πληρ[ωθῆσεται] τὰ
[ἐ]λλείποντα, ὅ[πως] ἀ[ν] ἔχ[η] κἀλλιστα καὶ εὐσεβέστ[ατα]
τ]-

[ἀ] πρὸς τὴν θεόν.³⁷

Here we have a case, which must be one of many, where the boule was expected to initiate any necessary legislation in a matter of which its administrative duties gave it special knowledge. During the Four Years' War at the end of the fourth century we see a further development. At this time the city made deposits in and withdrawals from the treasury of Athena, though the fifth-century formality of treating withdrawals as borrowings, on which interest had to be computed, was not repeated. In the eleventh prytany of 306/5 forty talents were allocated to Polyclitus and others under a decree of the boule, and in the following prytany a part of this was repaid under the terms of the same decree;³⁸ a transfer to the stratiotic fund in the same year was authorised by a decree of the demos,³⁹ and another decree of the demos in 305/4 covered the depositing of money by individual Areopagites and the ταμίας τῶν στρατιωτικῶν .⁴⁰ Ferguson assumed that when the treasurers of Athena were used as bankers in the fourth century "payments from such funds were made on vote of the Council or the demos and certified by the Chairman of the prytany for the time being:"⁴¹ unfortunately it is not at all clear when orders could be issued by the boule and when they remained the prerogative of the ecclesia. These payments belong to a period traditionally

regarded as "democratic," but Ferguson pointed out that this was "much less radical and consistent" than the democracy of before 322.⁴³ It is most unlikely that the boule would have been allowed to release money from the treasury of Athena in the Demosthenic era.

The boule was involved also in the finances of the Eleusinian cult: a rider to a decree of the second half of the fifth century calls for the appointment of five epistatae to take charge of the χρήματα of the Two Goddesses;

[τὸς δὲ] χειρεμένο-
[ς] προσιόντας πρὸς τὸν βολέν, εἴαν τι ὄφελ-
ό[μ]ενον ἔ[ι] τοῖν θεοῖν, φρά[ζ]εν καὶ ἀ[ν]απρά-
[τ]τεν. . . .

ἀναλίσκεν οὐδ' ὅτι ἂν [μά]-
λιστα δέει μετὰ τῶν hieréon καὶ τῆς β[ιολ]-
ῆς βουλευομένος τὸ λοιπόν.⁴³

Assistance in the recovery of sums due depends on the general rule that all public debts whether sacred or secular were to be discharged in the presence of the boule;⁴⁴ consultation of the boule before the treasurers could spend money from their own funds is at first sight a little startling, but it should surprise us no more than the power of initiative granted to the boule in connection with the Chalcothece inventory: the sacred treasuries were very much a matter of public concern. The actual offering of first-fruits at Eleusis also lay within the scope of the boule. In a decree perhaps to be dated to 416/5⁴⁵ the boule was commissioned to send heralds to the allied cities to warn them that contributions were required of them,

τὸ μὲν γὰρ εἶναι hos τάχιστα, τὸ δὲ [λ]οιπὸν ἦσαν δοκεῖ
and to the other Greek cities αὐτέι, ⁴⁶

ἥσοι ἂν δοκεῖ αὐτέι δυνατὸν εἶναι,
inviting them to contribute too.⁴⁷ The offerings were to be

given to the Eleusinian hieropoei, and when the prescribed sacrifices had been made the remainder was to be sold and dedications made with the proceeds by the hieropoei in conjunction with the boule,⁴⁸ while a record of the offerings was to be kept both at Eleusis and in the bouleuterium.⁴⁹ In or after 403/2 the Eleusinian cult was reorganised by a law of Chaeremonides,⁵⁰ and this law in turn was modified in 353/2.⁵¹ The law of 353/2 leaves the demos to decide by decree how the ἀπαρχή is to be collected, but appears to give the boule general oversight over the subsequent proceedings.

A decree carried during the Archidamian War reveals yet other sacred treasuries which were penetrated by the boule.⁵² After providing for contributions to the cult of Apollo to be exacted from the ἰππεῖς, [hoplites] and τοξόται, it lays down that the boule should choose two of its members to act as treasurers of Apollo at the same time as the treasurers of the Mother were chosen (again, presumably, from the boule);⁵³ these treasurers, together with the priest, were to be responsible for the τέμενος.⁵⁴ A little while later, the boule may have been involved in the melting down of golden νόμισμα for emergency coinage.⁵⁵

A Hellenistic postscript is provided by two decrees concerned with the shrine of the Hero Doctor (Hero the doctor?) Both began with a πρόσοδοσ of the priest to the boule. In 221/0 he asked for a new οἶνοχόη to be made from the old dedications in the shrine, and his request was granted in a probouleumatic decree:⁵⁶ the work was to be entrusted to a committee of two Areopagites, three other citizens, the priest, the general ἐπι τὴν παρασκευὴν and the architect ἐπι τὰ ἱερά,⁵⁷ and the finished vessel was to bear the inscription,

ἡ βουλὴ ἢ ἐπι Θρασυφῶ[ντι]ος ἄρχοντος ἀπὸ τῶν ἀναθημάτων
ἤρωι ἰατρῶι ⁵⁸ —

surprisingly, in view of the absence of bouleutae from the

committee. Under a more oligarchic regime at the end of the second century, when the shrine's plate was found to be in poor condition, the priest asked for it to be attended to by a committee whose lay members should be three bouleutae and a δημόσιος, and this was granted in a decree of the boule.⁵⁹ Temple treasuries thus remained matters of public interest, and the ecclesia's approval of a dedicatory inscription giving the credit for work done to the boule, though apparently unjustified in the context where we find it, fairly reflects the importance of the boule at an earlier period.

Rents and taxes were another financial concern of the boule. The appropriate contracts were made by the πωληταί under the boule's supervision:

ἔπειθ' οἱ πωληταί ἰ' μὲν εἰσι, κληροῦνται δ' εἷς ἐκ τῆς φυλῆς. μισθοῦσι δὲ τὰ μισθώματα πάντα, καὶ τὰ μέταλλα πωλοῦσι καὶ τὰ τέλη μετὰ τοῦ ταμίου τῶν στρατιωτικῶν καὶ τῶν ἐπὶ τὸ θεωρικὸν ἡρημένων ἐναντίον τῆς [βουλῆς]. καὶ κυροῦσιν, ὅτω ἂν ἡ βουλή χειροτονήσῃ, καὶ τὰ πραθέντα μέταλλα τὰ τ' ἐργάσιμα τὰ εἰς τρία ἔτη καὶ τὰ συγκεχωρημένα τὰ εἰς [ἰ']* ἔτη πεπραμένα. καὶ τὰς οὐσίας τῶν ἐξ Ἄρειου πάγου φευγόντων καὶ τῶν ἄλλων ἐναντίον τῆς βουλῆς πωλοῦσιν, κατακυροῦσι δ' οἱ θ' ἄρχοντες. καὶ τὰ τέλη τὰ εἰς ἐνιαυτὸν πεπραμένα ἀναγράψαντες εἰς λελευκωμένα γραμματεῖα τὸν τε πρισμένον καὶ [ῥοῦ] ἂν πρίηται τῇ βουλῇ παραδιδόσασιν. . . . ἀναγράψουσι δὲ καὶ τὰ χωρία καὶ τὰς οἰκίας τὰπογραφήντα καὶ πραθέντα ἐν τῷ δικαστηρίῳ. καὶ γὰρ ταῦθ' οὕτοι πωλοῦσιν].⁶⁰

The details of the Athenaion Politeia's account belong to the author's own time: it is likely that the theoric fund was not set up until the late 350's,⁶¹ and possible that it was controlled by a single commissioner until the 330's;⁶² it is likely also that the appearance in this context of the treasurer of the stratiotic fund was an innovation of the Lycurgan period.⁶³ The poletae,

however, were officials of respectable antiquity: they are alleged to have existed at the time of Solon,⁶⁴ and are epigraphically attested from the middle of the fifth century, making contracts for the erection of stelae⁶⁵ and for various public works.⁶⁶ In its essentials the procedure outlined by the Athenaion Politeia was in existence by the end of the fifth century, and I see no reason to doubt that the boule's supervision of the poletae goes back to the Ephialtic reforms. Presumably what we are told of the mines is true of state contracts in general, and the decision to place the contract with one man or partnership rather than another rested with the boule (Andocides παρελθὼν . . . εἰς τὴν βουλήν rather than πρὸς τοὺς πωλητάς outbid Agyrrhius for the collection of the πεντηκοστή,⁶⁷ and Aeschines remarks that the boule πωλεῖ τὸ πορνικὸν τέλος⁶⁸), while the poletae probably drew up a detailed contract for the boule's approval. Another example of the poletae's activity is provided by a decree possibly to be dated to 432/1, in which the state assumes responsibility for the collection of the drachma contributed to Apollo Δῆλιος by each of the ναύκληροὶ mooring at Phalerum.⁶⁹ We are told that the sale of confiscated property had to be ratified by the nine archons: why this was so, and what were the distinct responsibilities of the boule and the archons, is far from clear, but the fact is now confirmed by an inscription of 370/69.⁷⁰

The leasing of sacred lands was a duty of the basileus, and he too worked under the supervision of the boule.⁷¹ Any fundamentally new decision, however, had to be made by the demos, as we see from a decree of 418/7:-⁷²

Adusius proposes that the ἱερόν of Codrus, Neleus and Basile shall be fenced and the τέμενος leased according to the (appended) συγγραφαί; boundary officers shall be sent to mark the boundaries of these ἱερά; and (the revenue from) the τέμενος shall defray the cost of the fencing. All

this shall be done in the current bouletic year, and anyone who fails in this may be fined 1,000 drachmae.⁷³

A rider, also in the name of Adusius, adds that the basileus and poletae shall lease the τέμενος for twenty years, and the lessee shall fence the ἔρονον at his own expense; each year the rent for the τέμενος shall be paid to the apodectae in the ninth prytany, and they shall pass the money to the treasurers of the Other Gods in accordance with the law;⁷⁴ if the basileus or any one else fails to do his duty in the Aegeid prytany⁷⁵ the offender shall be fined 10,000 drachmae. Further clauses concern the removal of the mud from the ditch (in the current bouletic year), the recording of the lessee's name, and the publication of the decree.⁷⁶

The inscription ends with the συγγραφαί, in accordance with which the lessee is to fence the ἔρονον in the current bouletic year, to plant at least two hundred olive shoots in the τέμενος, and to control the ditch and rainwater within a specified area; the lease is to be for twenty years.⁷⁷

In the fourth century the leasing of a special tract of land and the setting aside of its rent to finance the lesser Panathenaea required the complicated procedure of νομοθεσία: ⁷⁸ the law laid down that the prytanes were to convene a meeting of the boule specifically for the making of the relevant contracts.⁷⁹

In some times of crisis the state resorted not to extra taxes but to appeals for voluntary contributions, and the boule was involved in these no less than in more formal arrangements. In the middle of the fourth century we hear of three such appeals, apparently for men to serve extra trierarchies: the last of the three was for the Olynthian war of 349-8, and Demosthenes claims that Midias made his offer not at the proper time -

ἐν τῇ βουλῇ γιγνομένων ἐπιδόσεων παρῶν οὐκ ἐπεδίδου τότε —

but later, at a meeting of the ecclesia when there seemed a risk of his being sent on a cavalry expedition to Euboea.⁸⁰ About a hundred years later a decree invited contributions of between 50 and 200 drachmae to the stratiotic fund,

[ὅπως ἂν χρημάτων]

[π]ορισθέντων ἔχει ὁ ταμίαις μερίζειν τὰ [δεόμενα, ἕνα κατὰ τὸ]-
[ν κ]ατάλοιπον χρόνον τοῦ ἐνιαυτοῦ συνκ[ομισθῶσιν οἱ ἐκ γῆς]
[κ]αρποὶ μετ' ἀσφαλείας.⁸¹

Contributions were to be offered to the boule or the generals within the month of Munychion.⁸²

When the time for actual payment came different officials were involved. Records of contracts were kept by a δημόσιος on behalf of the boule, and it was his duty to give the lists of sums currently due to the ἀποδεκταί, the official receivers of public revenue, one appointed by lot from each tribe.⁸³ As after 454 the tribute from the Delian League was paid to the Hellenotamiae in the presence of the boule,⁸⁴ so the apodectae received domestic dues in the boule's presence, and noted any cases of failure to pay. They then surrendered the records, and it became the responsibility of the boule to take action against defaulters.⁸⁵ The apodectae were receiving officers only, and they were required immediately to μερίζειν the sums which they received to the various ἀρχαί entitled to spend public money: having recorded their allocations, on the day after they had transacted their business for the prytany they read out the list in the boule, which discussed any allegations of offences in connection with the μερισμός.⁸⁶ Androtion thought, or was believed by Harpocration to have thought, that the apodectae were created by Cleisthenes to take the place of ^{the} colacretae, but the decree of 418/7 concerning the τέμενος of Codrus, Neleus and Basile is our earliest evidence for the existence of the apodectae,⁸⁷

and though it is the last dated document in which the colacretae appear they probably continued in existence until the revolution of 411;⁸⁸ moreover, while the apodectae were receivers the colacretae were spenders of public money.⁸⁹ When the apodectae were instituted, and how control was exercised over the revenue before then, we cannot say; but the *μερισμός* of the Athenaion Politeia seems to be a substitute, probably introduced in the law code of 403/2, for the fifth-century practice whereby all duly authorised public expenditure was made from a central treasury.⁹⁰ The changes made in Athens' financial organisation in the third quarter of the fourth century, to which we shall come shortly, left the apodectae in existence, but they are not attested after 323/2.⁹¹ The third-century decree appealing for contributions to the stratiotic fund suggests at first sight that the *μερισμός* to different spending authorities continued, but that revenue was under the control of the single *ταμίαις τῶν στρατιωτικῶν*; ⁹² however, in payment orders in Hellenistic decrees *μερίσαι* seems to be synonymous with *δοῦναι*,⁹³ and *μερίζειν* in this decree need not imply an allocation of revenue in the fourth-century manner.

On a few occasions the apodectae were made directly responsible for an item in the state's expenditure, and it is assumed that Athens' financial position had become so critical that there were no funds immediately available, and money had to be obtained from the apodectae as soon as they were able to collect it. Our earliest example of this is a decree, largely restored, dating from 407/6: in it the generals are ordered to borrow money from the apodectae and transmit it directly to the *ναυπηγοί*; the sum is to be repaid by the trieropoei in due course.⁹⁴ Meritt suggests that at this time the correct procedure would have been for the Hellenotamiae to disburse the necessary sums from the combined state and imperial treasury to the trieropoei, and for these to pass on the money to the

ναυπηγοῖ .⁹⁵ In two decrees of c.386 the apodectae are made directly responsible for the cost of publication:-

μερίσαι δὲ τ-
δ ἀργύριον τὸ εἰρημένον τὸς ἀποδέ-
κτας ἐκ τῶν καταβαλλομένων χρημᾶ-
[τ]ων, ἐπειδὴν τὰ ἐκ τῶν νόμων μερ[ί]σω]-
σι.⁹⁶

[ἐς δ]ὲ τὴν ἀναγραφ[ὴν τῆς]
[σ]τή[λης μερίσαι] τὸς [ἀπ]οδέκτα[ς τριάκ]-
[ο]ν[τα] δ[ραχμᾶς] πῶι γραμματεῖ τ[ῆς βολῆ]-
[ς].⁹⁷

There seems to have been a similar shortage of money a few years' later, in 378/7.⁹⁸ After a period in which the sacred treasurers defrayed publication costs these costs were normally met from a fund created perhaps c.376 to cover the running expenses of the ecclesia, τὰ κατὰ ψήφισματα ἀναλισκόμενα πῶι δήμῳ,⁹⁹ but the μερισμός was so nicely calculated that a small additional burden imposed on the ecclesia's expense-account necessitated an adjustment to the μερισμός, which like the earmarking of revenue from a new lease for the lesser Panathenaea had apparently to be made not by ψήφισμα but by νόμος. Thus in 344/3 the ecclesia voted Pisithides of Delos a maintenance grant of a drachma a day, to be paid for from this fund, and ordered the nomothetae to provide for an appropriate addition to the fund's annual allowance.¹⁰⁰ In 347/6, however, a decree had sufficed not only to order that Spartocus and his brothers should be given gold crowns each Great Panathenaea from the assembly's expense-account but also to state that for the present the apodectae were to advance the money from (I imagine, what they would normally allocate to) the stratiotic fund.¹⁰¹ Presumably this was merely a temporary adjustment, and the assembly's expense-account ultimately bore the cost of the crowns given in 346.

The second speech against Boeotus gives us a final reminder

of the boule's concern with all matters of revenue. Boeotus has claimed that when his grandfather, Pamphilus, had died his father Mantias, collected from the bouleuterium the surplus that remained from Pamphilus' confiscated property after his debt to the state had been paid.¹⁰² Mantitheus in reply to this states that Pamphilus' property was not enough to clear the debt, so there cannot have been any surplus.¹⁰³ Yet again, we find the boule mentioned in the special field of naval debts: in 342/1 a man who had been ταμίης τῶν τριηροποιικῶν in 363/2 made a payment to the boule,¹⁰⁴ while the debts collected by the ἐπιμεληταί in 323/2 were paid to the ταμίης τοῦ νεωρίου in the presence of the boule, as prescribed by a law of Diphilus.¹⁰⁵

We turn now from public revenue to public expenditure. From the beginnings of our evidence about the middle of the fifth century until 411 or perhaps shortly before then all payments for Athenian as opposed to imperial purposes appear to have been made by the colacretae.¹⁰⁶ Payment for imperial purposes was made by the Hellenotamiae,¹⁰⁷ and it is clear that in Athenian bookkeeping the city and imperial funds were distinct, though the two collections of money may have been kept in the same place.¹⁰⁸ Ultimate control rested with the ecclesia, which could order regular or once-for-all payments, but in the time of the Peloponnesian War the colacretae's term of office was one prytany and the prytanes for whose term they served could be ordered to see that they made a payment.¹⁰⁹ In 411, or possibly in the period of financial crisis between the Sicilian disaster and the revolution, the empire's funds were merged with those of the city, and in the last years of the Peloponnesian War an enlarged board of twenty Hellenotamiae¹¹⁰ provided the money for such domestic purposes as the erection of stelae¹¹¹ and the award of gold crowns.¹¹²

In the fourth century, with its μερισμός, we reach a more advanced level of financial organisation. Whereas previously, so far as we can tell, every payment from the public treasury was

earmarked for a particular purpose, various ἀρχαί were now given an annual allowance for their ordinary expenses, which presumably was theirs to spend without further interference, so long as they could satisfy the boards of logistae in the check made every prytany, and in the final examination after their year of office.¹¹³ A few of the allocations are known: in 357/6 Midias as treasurer of the Paralus had 12 talents to spend;¹¹⁴ in the 320's the ἱερῶν ἐπισκευασταί received ½ talent a year¹¹⁵ and the epimeletae of the Great Dionysia 1²/₃ talents;¹¹⁶ and an order to the ἀγοράνομοι in a decree of 320/19 shows that the delegation of spending power was continued by the régime set up after the Lamian War.¹¹⁷ I have already had cause to mention the ecclesia's expense-account, and the fact that the sum allocated to it left very little room for manoeuvre.¹¹⁸ How large that sum was we do not know, but perhaps for a short time before this account was created stelae were paid for from a fund of ten talents in the hands of the treasurers of Athena.¹¹⁹

The boule also had an expense-account which received an allowance in the μερισμός, τὰ κατὰ ψηφίσματα ἀναλισκόμενα τῆι βουλῆι. The uses of this fund about which we can be most certain are to finance the publication of the boule's decrees¹²⁰ and the making of crowns awarded by the boule.¹²¹ Professor Kahstedt has tried to identify various other expenses which were paid from this account:¹²² it is certainly likely that the boule's corporate religious observances were paid for in this way,¹²³ but I am less happy about his other identifications. The cost of meals in the Tholos may have been defrayed from this account rather than by direct grant,¹²⁴ but there is no real evidence either way;¹²⁵ it is not inherently likely that the herald's salary was a charge on the boule;¹²⁶ and the fact that the boule held the δοκιμασία of the ἄδύνατοι¹²⁷ tells us nothing about the payment of their maintenance grant. We do not know how or by whom the bouleutae's own stipends were paid. But if

assembly pay was given to the first 6,000 to arrive¹²⁸ and was successful in attracting citizens to the assembly, then at Agyrrhius' final rate of 3 obols the forty guaranteed assemblies in the year will have cost 20 talents. If the special fund of 10 talents is a reliable guide to the size of the ecclesia's expense-account the money cannot have come from that source, and we may therefore assume that stipends for bouleutae were not paid through the boule's expense-account.

It will be seen from this survey that the boule's control of finance depended on its supervision of a large number of financial boards. It watched over the activities of the sacred treasurers, of the poletae and of the apodectae; in the fifth century it controlled the colacretae, and in the fourth it appointed a board of logistae (as we shall see at the end of this section¹²⁹) to examine every prytany the accounts of those who received an allocation of public money for their expenses. Each of these officials or boards was involved only at one point in the state's finances: the boule was involved at every point, and it alone could see the whole picture. Only the boule had access to the information which would show whether extra taxation was needed, or whether the city could afford some new charge on its resources, and this must be the reason for the boule's financial predominance.

From about the middle of the fourth century, however, we find major state treasurers at work, who were able to challenge the supremacy of the boule in this field.^{129a} The first clear allusion to a stratiotic fund, τὰ στρατιωτικά, concerns the year 373:¹³⁰ it is likely that before the creation of the theoric fund about twenty years later any surplus revenue after other charges had been met was made over to the stratiotic fund if Athens was at war;¹³¹ a stratiotic allowance may also have been included in the regular μισθομῶς, but there is no evidence of this.¹³² In the years immediately after the Social War the theoric fund, τὰ θεωρικά, was created or at any rate reorganised,¹³³ and this received all surplus revenue¹³⁴ until Demosthenes redirected

surpluses to the stratiotic fund in 339/8.¹³⁵ Estimates of the sums distributed from the theoric fund to enable citizens to attend the festivals have varied between 15 talents or less and not much under 100 talents,¹³⁶ but the fund was not used only for this purpose, and it is clear that the sums passing through it were considerable.¹³⁷ Aeschines, in a context where some exaggeration is to be expected, claims:

διὰ δὲ τὴν πρὸς Εὐβουλον γενομένην πίστιν οἱ ἐπὶ τὸ θεωρικὸν κεχειροτονημένοι ἤρχον μὲν, πρὶν ἢ τὸν Ἰγνίμωνος νόμον γένεσθαι, τὴν τοῦ ἀντιγραφέως ἀρχήν, ἤρχον δὲ τὴν τῶν ἀποδοκτῶν, καὶ <ἤρχον τὴν>* νεωρῶν ἀρχήν, καὶ σκευοθήκην φροδόμου, ἦσαν δὲ καὶ ὁδοποιοί, καὶ σχεδὸν τὴν ὅλην διοίκησιν εἶχον τῆς πόλεως.¹³⁸

Other texts confirm the use of the theoric fund for public works.¹³⁹ The fund must have become as important to Athens as the sacred treasuries had been in the second half of the fifth century, and in this sense it could fittingly be called κόλλαν . . . τῆς δημοκρατίας ,¹⁴⁰ but unfortunately it is not clear how its development affected the balance of control in public finance. There is no evidence of a departure from the principle that any expenditure of public money had ultimately to be authorised by the people, and I imagine that the theoric officials became important in two main ways. First, as the custodians of the fund on which any new commitment to spend public money was likely to depend, they would doubtless advise whether the city could afford a suggested venture; and this could affect many aspects of public life, as when Eubulus insisted in 346 that Athens could not afford not to make peace with Philip of Macedon. Secondly, they may have been associated with the work of some other departments, such as that of the apodectae, though there must still have been other men (retaining old titles or bearing new ones) to do much of the routine work.¹⁴¹ This may be illustrated by A.P.47.ii,¹⁴² where we read that (in the 320's) the theoric board and the treasurer

of the stratiotic fund combined with the poletae to make mine leases and tax contracts in the presence of the boule. Bouleutae and poletae were appointed by lot, and changed from year to year; theoric officials were elected, even after their position had been weakened by the law of Hegemon,¹⁴³ and at any rate before that law was passed there is no reason to doubt the likelihood that the same man could be elected again and again. Whether the fund was administered by a board from the beginning or, as I imagine, there was a single official, ὁ ἐπὶ τὸ θεωρικόν, until the law of Hegemon was passed, the men who were elected to these posts will if they combined with other financial boards as they combined with the poletae have gained that general knowledge of the state's finances, and therefore that right to advise on all matters in which finance was involved, which had previously been the preserve of the boule - with the added possibility of reappointment. Formally, the boule will have lost power by losing its monopoly of information, and there will inevitably have been a tendency for the new officials to replace the boule as the ultimate source of financial wisdom.

Demosthenes was ἐπὶ τὸ θεωρικόν in 337/6,¹⁴⁴ and very shortly afterwards the office was in some way weakened by Hegemon, but another rival for the boule's financial supremacy appeared in Lycurgus. What constitutional position he held must remain a mystery, but for τρεῖς πενταετηρίδας,¹⁴⁵ or twelve years,¹⁴⁶ he was concerned with πρόσοδοι¹⁴⁷ and ἡ διοίκησις,¹⁴⁸ and could be described as a ταμίης.¹⁴⁹ Hegemon's law, or another, had prevented the holding of some post or posts ἐπὶ τὸ σπυρίονα χρήματα for more than four years, and so Lycurgus is said after his first quadrennium to have directed affairs through one of his friends.¹⁵⁰ One is tempted to think of the treasurer of the stratiotic fund, who by the 320's had acquired with the theoric board the right to share in the making of mine leases and tax contracts, but Demades' tenure of this office may well have fallen within Lycurgus' first quadrennium.¹⁵¹ No other office mentioned

in the Athenaion Politeia could fit Lycurgus' position, and it has been suggested that he was styled ὁ ἐπὶ τῆ διοικήσει, which is perhaps used as a formal title by Hyperides in referring to Lycurgus, and is found in one inscription that seems to be earlier than 307/6.¹⁵² Probably a post was created specially for Lycurgus, and was described in various ways on different occasions; but we then have to resolve the difficulty of his being unable to hold such a post for more than four years.¹⁵³ Lycurgus increased the revenues of the state, and was responsible for expenditure on the navy and on public works;¹⁵⁴ like the theoretic officials he was probably given access to the financial activities supervised by the boule,¹⁵⁵ but whatever his constitutional power he seems to have played much the same part in the state's finances as Aeschines ascribed to them, and the result will have been the same: real financial control was passing from a changing, democratic council to men of experience and proved ability. The tributes to Lycurgus show that the change was justified by results.

We are far from adequately informed about financial control after the death of Alexander, and most of our knowledge comes from publication orders in decrees. The ecclesia's expense-account continued in existence until 302/1, and throughout this period payments were made from it by the ταμίαι τοῦ δήμου.¹⁵⁶ Before 302/1, however, other financial officials also made payments from this fund for the erection of stelae: several times payments are made by ὁ ἐπὶ τῆ διοικήσει, first found as a regular title in 307/6,¹⁵⁷ and there are four decrees of about 302 in which this fund is drawn on by the treasurer of the stratiotic fund.¹⁵⁸ To add to our confusion there is one other reference to the ταμίαι τοῦ δήμου:—

εἰς δὲ τὴν ἀναγραφὴν τῆς στήλης
δοῦναι τὸν ταμίαν τοῦ δήμου ΔΔΔ δ-
ραμμάς ἐκ τῶν κοινῶν χρημάτων. 159

Thereafter the ecclesia's expense-account disappears from the record, apart from two occasions (285/4 and 280/79) when payment for stelae is made from it by οἱ ἐπὶ τῆς διοικήσεως .¹⁶⁰ Otherwise the officials are named, but the funds from which they pay are not: in 299/8 payment is made by ὁ ἐξεταστής καὶ οἱ τριττάρχοι ;¹⁶¹ from 295 to 288, by ὁ ἐπὶ τῆς διοικήσεως ; from 288 to 263 by οἱ ἐπὶ τῆς διοικήσεως ; and from 263 to 229 by the single official again. From 229 to 169 payment could be made either by οἱ ἐπὶ τῆς διοικήσεως or by the treasurer of the stratiotic fund, except in the case of prytany documents, where ὁ ἐπὶ τῆς διοικήσεως persisted (probably as one tribe's representative on the board¹⁶²). Thereafter we find only the treasurer of the stratiotic fund mentioned.¹⁶³ The treasurer of the boule is not mentioned as paying for stelae after 323,¹⁶⁴ but the office continued to exist and to qualify its holder for mention in prytany documents until the first century B.C. (the ταμίης τῆς βουλῆς does not normally figure among the ἀεσίτοι of the Christian era).¹⁶⁵ There is however one document, a prytany decree of 275/4, which suggests that the boule's expense-account was not the independent fund which it had been in the fourth century:

ὅπως ἂν δὲ καὶ τὰ Καλλεῖα θύσωσιν τῆ(ι) Ἀθηναίων τε
 Ἄρχη. γετέδει τι]-
 ἥς πόλεως καὶ ἔχει καλῶς καὶ εὐσεβῶς τῆι βουλῆι καὶ τῶι
 δήμῳ τὰ π[ρὸς τοὺς]
 [θεοὺς,] διαχειροτονῆσαι τὸν ὄψημον, ὅσσον δεῖ αὐτοῖς μερίσαι
 εἰς τῆ.ν διοίκησιν]-
 [εν τῆς θυσίας.] ὅ τι δ' ἂν διαχειροτονοῦντι τῶι δήμῳ δόξει,
 μερίσαι τὸ[ν ταμίαν τ]-
 [ῶν στρατιωτικῶν] καὶ τοὺς ἐπὶ τῆι διοικήσεως. πόρον δὲ ἕκ-
 ἀρχεῖν ἐκ τῶν εἰς τὰ
 [ψηφίσματα ἀναλισκ]ομένων ὑπὸ τῆς βουλῆς.¹⁶⁶

This is a "first" prytany decree, in which the demos honours the members of the prytany, and in it the demos is invited to consider the sum which the treasurers shall provide for one of the prytanes' sacrifices, and lays down that this sum shall be provided from the boule's expense-account. μερίζειν, as I have already remarked,¹⁶⁷ seems to have been divorced from the principle of an allocation to independent spending authorities, and this text

seems to suggest that the payments were made by the state's financial officers¹⁶⁸ from a central fund, very much as in the fifth century, but that within that fund individual payments might be debited to particular accounts. This would make the work of such officers as the ταμίαι τῆς βουλῆς and the ταμίαι τῶν κρυτάνων simply one of routine, in so far as public money was concerned, but in the Hellenistic period it was doubtless a large part of their duty to add to the official allowance from their own pockets, and to encourage other bouleutae to do likewise.¹⁶⁹

Since the ecclesia's expense-account continued in existence until 301 it is likely that other independent funds survived with it.¹⁷⁰ A major reorganisation seems to have been begun after 307, from which Athens emerged with the treasurer of the stratiotic fund and a board or a single officer (according to the complexion of the current régime) ἐπὶ τῇ διοικήσει as the principal state treasurers. Orders governing payment for stelae suggest that at first some distinction was drawn between the two accounts, but from 229 the distinction seems to have disappeared, and in later documents the ταμίαι τῶν στρατιωτικῶν is the only paying officer mentioned. Financial control seems to have been concentrated in fewer hands than before 350, though traces of the old independent funds may have survived as separate accounts with the central treasury. We have no evidence on the formal relationship between these Hellenistic treasurers and the boule, but a few men, active in a wide field, will inevitably have been in a stronger position than the various limited boards of the classical democracy, and we need have no doubt that ultimate financial direction now lay not with the boule but with the treasurers.

Returning to the classical period, we read in the Athenaion Politeia that the boule

συνδιοικεῖ ταῖς ἀρχαῖς¹⁷¹

and

κρίνει . . . τὰς ἀρχαῖς . . . τὸς πλείστας, καὶ μάλιστα ὄσαι χρήματα διαχειρίζουσιν.¹⁷²

συνδοιακεῖ will be further illustrated in the remaining sections of this chapter, and κρίνει in chapter IV, but this is perhaps the best place to mention the various boards of λογισταί found in Athens. In the first three quota lists of the Delian League we have a reference to a board of thirty logistae, who checked the sums paid from the tribute to Athena.¹⁷³ The thirty appear again in the first financial decree of Callias, where they are to reckon up the sums due to the Other Gods and the boule is to be responsible for convening them;¹⁷⁴ and logistae, this time with no number stated, recorded the sums which the state borrowed from the sacred treasuries in and after 433, and computed the interest due.¹⁷⁵ The author of the Athenaion Politeia knew two boards of logistae: ten were appointed by lot from the boule to examine officials' accounts every prytany,¹⁷⁶ while on retiring from office at the end of the year officials had to present their accounts to ten logistae and their ten συνήγοροι, appointed by lot from the whole citizen body.¹⁷⁷ Logistae of this kind are not attested in the fifth century, nor logistae like the thirty, available for general accounting duties, in the fourth; but the insistence in some texts on the number of the thirty suggests that other logistae may have existed simultaneously with them, and Lysias' reference to an examination of accounts every prytany, immediately after the democratic restoration of 403/2, at any rate gives no grounds for thinking that this was an innovation. . Logistae are not mentioned after the Athenaion Politeia, and may well have seemed unnecessary in the financial framework of Hellenistic Athens.

In the heyday of the democracy, however, there were elaborate precautions against the misappropriation of public money. For important duties boards rather than single officials were commonly appointed, each board was strictly limited in its scope, and every holder of a public appointment was required to present his accounts for examination - if only to prove that he had neither received nor spent any public money.¹⁷⁸ Charges of

embezzlement in high places were made:¹⁷⁹ Phidias was accused after completing the chryselephantine statue of Athena,¹⁸⁰ and Pericles as one of the epistatae may have been accused in the same connection;¹⁸¹ Antiphon's choregus laid an εἰσαγγελία against three private citizens and the secretary to the Thesmothetae for embezzlement,¹⁸² and after he had been appointed to the boule uncovered malpractices on the part of the poristae, the poletae, the practores and their secretaries.¹⁸³ The boule's concern with finance was largely supervisory, in its direct oversight of certain operations and its appointment of the logistae who conducted the interim examination each prytany, and its members will have been tempted more to connivance at the misdeeds of others than to embezzlement of public money passing through their own hands. Timarchus, for instance, when serving on the boule in 361/0, was accused of misappropriating 1,000 drachmae in conjunction with one of the treasurers of Athena.¹⁸⁴ Perhaps he had been bribed to overlook or to help conceal a fraud practised by the treasurer - and other suggestions that bouleutae were open to bribery can easily be found: the Old Oligarch agrees unhesitatingly with a suggestion that the boule and demos are so overburdened with work that a man has to offer a bribe to be sure that an item of business will be placed on the agenda;¹⁸⁵ and Mnesilochus in the Thesmophoriazusae, when told that he is to be fastened to the plank, pleads:

ὦ πρύτανι κρῶς τῆς δεξίας, ἦνπερ φιλεῖς
κόλην προτείνειν, ἀργύριον ἦν τις δίδῃ,
χαρίσαι βραχὺ τί μοι κάππερ ἀποθανομένῳ.¹⁸⁶

Such remarks from a critic of the democracy and a comedian do not of course tell us a great deal - neither does Aeschines' allegation (in 330) that Demosthenes had employed bribery to obtain his place in the boule in 347/6¹⁸⁷ - but it is unlikely that a society in which a man's enemies could regularly be charged with corruption was entirely blameless, and the possibility that

politicians would take bribes to work against the interests of Athens was taken seriously enough for the offence to be listed in the νόμος εἰσαγγελτικός.¹⁸⁸

We cannot tell from a few passages how successful the precautions against embezzlement were, but I imagine that the division of Athens' financial business into a large number of separate operations performed by separate officials, while reducing the opportunities for any one man to make away with a large sum, will have meant that if a man could conceal a fraud in his own accounts he was unlikely to be found out later. We shall notice in chapter IV, in connection with the charges levelled against Androtion, a tendency to think that what mattered was to pin the responsibility for the embezzlement to some one, who if he were innocent could be left to seek restitution from the guilty;¹⁸⁹ and in the speech against Androtion we find Demosthenes arguing that embezzlement by the ταμίᾳ τῶν τριηροποιϊκῶν cannot be used by the boule as a defence against the charge of failing to build the required number of triremes.¹⁹⁰ The appearance of such attitudes suggests that the Athenian system was not particularly successful either in preventing dishonesty or in exposing it when it occurred; bouleutae, as I have remarked, will have had better opportunities to turn a blind eye to the peculation of others than to take public money directly.

(ii) Army & Navy

Whether to fight or to make peace is one of the most obvious decisions to be reserved for a popular assembly, as no state can fight a war without a reasonable amount of popular support;¹⁹⁸ and in Athens a constitutional document inscribed at the end of the fifth century but incorporating earlier measures included the making of war (and no doubt the concluding of peace) among actions which might not be taken ἄνευ τῶ δέμο τῶ 'Αθηναίων πλεθύνοντος.¹⁹² Professor Larsen, connecting the whole document with the original imposition of an oath on the boule, believes that in the few years between Cleisthenes' reform and the imposition of the oath the boule was able on its own authority to make peace and war, and to do the other things which it was later forbidden to do,¹⁹³ but I believe that what may have been stated in writing for the first time about the beginning of the fifth century must long before then have been customary. Under the rule of προβούλευσις, as interpreted at Athens, the boule could in theory deny the people the chance to make peace or war, but I do not believe that it would have occurred to the bouleutae to prevent a debate for which there was a genuine desire.¹⁹⁴ It was the demos again which decided major questions of strategy: the Sicilian expedition of 415¹⁹⁵ and the Euboean war of 349/8¹⁹⁶ will suffice as examples. Specific questions of tactics, naturally, had to be decided by the generals on the spot, though they were accountable like any other officers of state for their decisions. It seems to have been the particular responsibility of the boule to ensure that all the necessary equipment, both human and inanimate, was available for fighting a war.

For the army the boule's responsibility was slight. Hoplites were expected to provide their own armour (in the Lycurgan period they were each presented with a shield and a spear at the end of their first year of service as ephebi¹⁹⁷), and were called up by the generals, without a special δοκιμασία.¹⁹⁸ But the registers on which the call-up was based were the ληξιαρχικὰ γράμματα,

and the boule checked the enrolment of citizens in these when they came of age.¹⁹⁹ The boule was also involved to some extent in the young citizens' period of national service as ephebi. Though the institution is likely to be older, the ephebia is first directly attested in 334/3, and it was no doubt extensively reorganised after Chaeronea:²⁰⁰ as described in the Athenaion Politeia it constituted a serious programme of military training, apparently for all young citizens of hoplite census,²⁰¹ and on the completion of their first year's training the ephebi gave a display of their prowess to the ecclesia before going out to guard the frontiers of Attica during their second year.²⁰² Our only clue to the involvement of the boule at this time is the inscription of 334/3 for the ephebi of the tribe Cecropis, from which it appears that honours were decreed by their tribe, the boule and two demes.²⁰³ In the Hellenistic period ephebic service ceased to be compulsory, and became little more than a hobby of the aristocratic, providing physical education and a lengthy programme of religious observances,²⁰⁴ and the parade before the assembly now gave way to an ἀπόδειξις before the boule.²⁰⁵ For the cavalry the boule checked the lists drawn up by the καταλογεῖς, and held a δοκιμασία also of the πρόδρομοι and ἄμιπποι (special classes of foot-soldiers who fought with the cavalry); it also checked the fitness of the horses themselves for use in battle.²⁰⁶

The boule's main duty in enabling the city to fight its wars was the provision of ships and equipment for the navy:

ἐπιμελεῖται δὲ καὶ τῶν πεποιημένων τριήρων καὶ τῶν σκευῶν καὶ τῶν νεωσοίκων, καὶ ποιεῖται καινὰς [[δὲ]]* τριήρεις ἢ τετρήρεις, ὁποτέρας ἂν ὁ δῆμος χειροτονήσῃ, καὶ σκευὴ ταύταις καὶ νεωσοίκους· χειροτονεῖ δ' ἀρχιτέκτονας ὁ δῆμος ἐπὶ τὰς ναῦς. ἂν δὲ μὴ παραδώσιν ἐξειργασμένα ταῦτα τῇ νέα βουλῇ, τὴν ὠρεᾶν οὐκ ἔστιν αὐτοῖς λαβεῖν· ἐπὶ γὰρ τῆς ὕστερον βουλῆς λαμβάνουσιν. ποιεῖται δὲ τὰς τριήρεις, δέκα ἄνδρας ἐξ ἀδ[ιτῆς] ἐλομένη τριηροποιούς.²⁰⁷

The corrupt δε which I asterisk in this passage has been emended by some editors to yield a numeral (4 or 10), in which case our author will be specifying a fixed annual quota of new ships.²⁰⁸ There are two other texts which seem to point to a fixed annual quota: Diodorus credits Themistocles with a target of twenty ships a year after the Persian Wars,²⁰⁹ and the Anonymus Argentinensis is restored in lines 9-11 with a decision of the boule²¹⁰ or order to the boule²¹¹ to build ten ships a year (at what date is not clear, but the text is part of a commentary on Demosthenes, XXII, against Androtion). Diodorus' note comes at the end of a series of stories, involving many improbabilities, about Themistocles' successes after the Persian Wars, and although it cannot be dismissed as obviously false it would be dangerous to rely at all heavily on it. The Anonymus Argentinensis has been much discussed in recent years for its remarks on Athenian finance and building in the time of Pericles, and the controversy has emphasised that the length of line and the reliability of the author are alike uncertain. The version produced in 1957 runs as follows:

[— θαλάσσης δ' ὅπως ἂν κρατ]ῶσι, τὴν βουλὴν τῶν
· καλαίων τριή-

[ρων ἐπιμελεῖσθαι ὥστε ὑγιεῖς παραδιδόναι, καινὰς δ' ἐπι-
ναυπηγεῖν ἑκάσ-

[τοῦ ἐνιαυτοῦ πρὸς ταῖς ὑκαρχούσαις δ]έκα.

(This is followed by a fresh lemma.) δ]έκα has been read by all editors,²¹² but their confidence does not seem justified by the photograph which Professors Wade-Gery and Meritt published in 1957,²¹³ and examination of this and of a new photograph which has been taken for me suggests that while the κ and α cannot seriously doubted the first surviving letter is not likely to be ε (and ought perhaps to be ο), and between this and the κ there is an appreciable space, which could have contained a narrow letter (there are marks in the space which could but need not be part of αντ). I would therefore read]ο[.]κα.²¹⁴ But even if δ]έκα is correct it is not inevitable that this should denote the number of triremes to be built in a year: in 1901 Kolbe

restored the text with a reference to the ten trieropoῖι.²¹⁵ Moreover IG ii² 1611 does not provide reliable information on the numbers of ships built in different years before the Social War, for we do not know the names, classification and building-dates of all the 283 ships²¹⁶ which ought to have been mentioned in the complete text, and we do know that lines 106 sqq. do not exhaust the list of ἑξαίρετοι. ²¹⁷ It may be significant that neither hypothesis to Demosthenes' speech against Androtion attempts to give a figure for the boule's shipbuilding requirements.²¹⁸ Two doubtful texts and a story in Diodorus are a poor basis for a general theory. There may well have been times when a programme was adopted that would cover several years but I think it more likely that the normal practice was for the demos to be asked to approve a figure each year.

Our only other references to the men and procedures involved in shipbuilding are found in fifth-century inscriptions. A decree dated c.435 mentions officials called νεοροί, who are involved in some way with men who have lost equipment, and contains two references to [hoι ναυπ]εγοί hoι ἐκ τῶ νεοροί. ²¹⁹ Another document, slightly later, has a reference to [τρι]εροποιοί;²²⁰ the next part of the inscription is concerned with the numbers of men required for certain tasks; we then meet [ho τρι]εραρχος καὶ ho κυ[βερνήτης]; ²²¹ and the inscription ends with penalties for offenders, to be imposed by [hoι ἐπιμε]λόμενοι τῶ νεοροί, and orders for publication. Neither inscription mentions the boule. More sense can be extracted from a decree of c.409/8:-

τ[ὸ]ς κοπέας ἠὸς ἔγαγον ο[ὐ]κ[ο]θεν δ[ι]-
[όντον τοῖς τριε]ροποιοῖς, κ[α]ὶ hoι τριεροποιοί ε[ὐ]θ[ύ]ς παρ[ι]-
[αλαβόντες τιθ]έντον ἐς τὸ να[υ]πέγιον· καὶ ἐὰν δέ[ι]ονται ἄλλ[ι]-
[ο τινὸς hoι στ]ρατηγοί, χρ[ὸ]σθο[ν φρ]άζοντες τ[ε] β[ι]ολεῖ καὶ ἡ[π]-
[άμα ἀποδιδόν]τες τὴν τεταγμέ[νεν] τιμέ[ν]. καὶ ho[ι ναυπεγοί]
[λογιζέσθον το]ῖς τριεροποιο[ῖς τὰ τε]ταγμέν[α].²²²

I have mentioned already for its financial significance the decree of 407/6 which seems to have ordered the generals to borrow money from the apodectae and give it to the ναυπηγός for shipbuilding, and the trieropoēi to repay this in due course.²²³ The decree continues by ordering [the generals] to see that those responsible go to Macedon to [man the ships],²²⁴ and [the boule] to see that the newly built ships are to be brought to Athens and [dispatched with an expedition to Ionia].²²⁵ Where so much depends on restoration we must be extremely cautious, but mention of the trieropoēi and the boule provides a link with the Athenaion Politeia, and there are no indications that this aspect of Athenian naval organisation underwent any substantial change between the late fifth century and the late fourth. The number of ships to be built, and the choice of the ἀρχιτέκτονες whose expert knowledge would be required, were left to the demos, but the work done by the ναυπηγός was supervised by the boule through ten of its members appointed as trieropoēi, who inter alia administered the funds made available for shipbuilding.²²⁶ I am not eager to extend outside the period of the Peloponnesian War the involvement of the generals in work of this kind.²²⁷

The ἐπιμεληταὶ τῶν νεωρῶν had duties somewhat analogous to those of the sacred treasurers:²²⁸ it is now established that they existed at the end of the fifth century,²²⁹ but they are best known from the records which they published in the second and third quarters of the fourth century, which show them to be custodians of ships, equipment and all that the dockyards contained. These things they received from their predecessors and handed on to their successors; they supplied them to trierarchs and attempted to recover them from trierarchs. They did not maintain a large treasury, but any money which they exacted went either directly²³⁰ or indirectly²³¹ to the apodectae, to be used in the general μερισμός. Actual decisions as to what should be done with the equipment in the dockyards seem normally to have emanated

from the boule. In 357/6 when various trierarchs were having difficulty in obtaining ships' equipment from their predecessors they complained to the ἀποστολεῖς and the boule, and the boule decreed that they were to recover the equipment in any way possible; when one of the previous year's trierarchs, Theophemus, still refused to surrender his equipment he was prosecuted by εἰσαγγεῖλα before the boule for impeding the dispatch of the fleet.²³² From the navy lists we see that a decree of the boule authorised trierarchs to take over hanging tackle for their ships;²³³ another decree of the boule authorised a ship which had been returned after repair to be taken over by another trierarch;²³⁴ and a quadrireme was provided, very probably for Miltiades' voyage to the Adriatic, in a decree of the boule apparently passed under a clause allowing it to fill any gaps which appeared in the original decree of the demos.²³⁵ The boule of 335/4 provided 256 ὑποζώματα for the ships,²³⁶ while the boule of 326/5 sold 214 ὑποβλήματα in accordance with a law of Hegemon;²³⁷ other sales were made on the orders of the boule,²³⁸ and we may suspect either a standing or a particular order from the boule when the epimeletae sold rotten equipment and bought new.²³⁹ Unsound equipment did not always have to be sold: we have four references to the boule's authorising the ταμίαι τῶν τριηροποιικῶν to take 56 masts for the slaves clearing the cliff, the wood for 37 yardarms and 16 masts for the slaves assigned to the stadium, and 406 worm-eaten and useless oars for slaves.²⁴⁰ The second decree for Methone refers to τὰς ἐν τῷ νεορῶι εἰ[δρας], presumably of the boule,²⁴¹ and it is likely that the boule watched the epimeletae as closely as it watched the state's financial officers.

No clear distinction can be drawn between the rights of the boule and those of the demos in this aspect of naval administration. In the 320's various items of military equipment in "the large building by the gates" were for some reason the responsibility of

the epimeletae;²⁴² in 323/2 they were transferred to the general for the Piraeus κατὰ ψήφισμα βουλῆς καὶ δήμου. ²⁴³ The various trierarchs in Miltiades' Adriatic fleet were authorised by a decree of the demos to take two extra ὑποζώματα τῶν ἐγλυθέντων.²⁴⁴ We may have another example of intervention by the assembly in the rubric,

τάδε ἀπελείβομεν σκευή παρα τριηράρχων κατὰ ψήφισμα δήμου,
ὁ εἶπεν Δημόφιλος Ἀχαρνεύς,²⁴⁵

but the circumstances are not disclosed, and Demophilus' decree may have been of fairly general application.²⁴⁶

On one occasion the boule made a special appointment for naval matters. One of our naval documents, very unlike the usual records of the epimeletae, contains a list of exactions from officials who had defaulted over a period of thirty years:-

τάδε παρα τῶν ἀρξάντων ἐν τοῖς νεωροῖς εἰσπέπρακται ἐπὶ
Εὐβούλου ἄρχοντος καὶ Λυκίσκου καὶ Πυθοδότου καὶ Σωσι-
γένους (345/4 - 342/1). ²⁴⁷

Most of the ἄρξαντες were epimeletae or ταμίαι τῶν τριηροποιῶν, but in the middle of the list we find

Μνησικλῆς Κολλυ, αἰρεθείς ἐκ τῆς βουλῆς : ἐπὶ Ἀρκίῳ (²⁴⁸346/5).

Another man mentioned is

Εὐθύμαχος Ε[—], ταμίαις γενόμενος ἐς τὰ νεώρια [ἐπὶ
Θε]μιστοκλέου[ς ἄρχο] (347/6) : ²⁴⁹

this man seems to have done work which would normally have been done by the epimeletae, and since the epimeletae are not attested between 348/7 and 334/3 or later Dr. D. M. Lewis has suggested that in the heyday of the theoric officials, the epimeletae may for a time have been replaced by other officials.²⁵⁰

A decree of the assembly, preserved in one of the navy lists, illustrates the responsibility of the boule when a fleet was sent out:-²⁵¹

The epimeletae were to give the trierarchs their ships and

equipment, and the trierarchs were to be ready to sail by a specified date: gold crowns were offered to the first three. A court was to meet on two specified days under the general for the symmories, to hear pleas from the trierarchs.

(After a statement of the aim of the colony, there is a lacuna in the text.)²⁵²

Any one who failed to do his duty would be fined 10,000 drachmae. The boule was to ἐπιμελεῖσθαι τοῦ ἀποστόλου, punishing disorderly trierarchs according to the laws, and for this purpose was to meet on the jetty every day until the fleet sailed. The demos was to elect ten ἀποστολεῖς to take charge of the dispatch καθάπερ τῆι βουλῆι προστέονται.²⁵³ For the efficient discharge of their duty the boule and prytanes might be awarded a gold crown. The boule might fill any deficiencies which appeared in the decree, so long as it did not annul the original provisions, and the decree was placed in the category, εἰς φυλακὴν τῆς χώρας.

ἀποστολεῖς seem to have been an extraordinary appointment, and are attested only in the fourth century. At the time of Theophemus' defiance of authority, in 357/6, they and the epimeletae were the εἰσάγουσα ἀρχή for trierarchs' disputes over equipment,²⁵⁴ and when Theophemus lost his διαδικασία but made no attempt to return the equipment he was reported to the ἀποστολεῖς and the boule²⁵⁵ - whereupon the boule tried to enforce the law and the ἀποστολεῖς dropped out of the picture. Aeschines²⁵⁶ and the lexicographers²⁵⁷ add nothing to our knowledge of this office. Crowns for efficient trierarchs were awarded by the boule-and-demos,²⁵⁸ but it was the boule which decided who should receive them, and which inefficient trierarchs should be prosecuted in a δικαστήριον (for a heavier penalty than the boule itself could impose).²⁵⁹ The summoning of the trierarchs from the list of those liable seems throughout the history of this liturgy to have been the duty of the generals (later, of the general for the symmories).²⁶⁰ For a fifth-century dispatch we have

fragments of decrees relating to the Sicilian expedition of 415: it appears that the allied cities were to tell the boule how many sailors they could provide,²⁶¹ and the boule was to make a probouleuma(?) on whether the ships should be fitted out at the expense of the trierarchs, ἀπὸ τοῦ τιμέματος, or of the state.²⁶²

The burdens of trierarchy were heavy, and attempts to avoid or mitigate them gave rise to a large number of lawsuits. I discuss this side of the boule's naval activity in chapter IV,²⁶³ and here I will simply anticipate my main conclusions. Usually but not invariably cases involving failure to return equipment were decided by a δικαστήριον, but when the ship itself came in question the case was heard by the boule. When Theophemus was charged by his successor with failing to surrender equipment an appeal was made to the boule after the court's judgment had proved ineffectual; but there was no higher authority than the boule, and when its decree was ignored the trierarch could only go back with further complaints. Naval matters were among those issues of public importance which could be made the subject of an εἰσαγγελία to the boule, and we shall see that restrictions on the boule's power of punishment did not prevent it from decreeing a penalty in excess of its own powers for certain offences.

I end this section with a puzzle. In § 17 of the speech against Androtion Demosthenes begins to consider an argument which may be put forward by Androtion, that the failure to build the required number of ships should be blamed not on the boule but on the ταμίης τῶν τριηροποιϊκῶν, who absconded with 2½ talents. He points out that the boule is given its δῶρεδ not for good intentions but for results, and if the ships have not been built the reason for this is irrelevant; but in any case,

ὅτι τοίνυν οὐδ' αἴτιος ἄλλος οὐδεὶς ἀνθρώπων ἐστὶν τοῦ μὴ πεποιῆσθαι τὰς ναῦς, τοῦτο σαφῶς ὑμῖν ἐπιδειξω· ἀνελοῦσα γὰρ ἡ βουλὴ τὸν νόμον, τοῦτον ἐχειροτόνησεν αὐτῇ.²⁶⁴

The scholiast's explanation of the passage seems to be the only one possible:-

ΑΝΕΛΟΥΣΑ ΚΤΛ; εἰν δὲ στίξωμεν ἄχρι τοῦ "τὸν νόμον", τοιοῦτόν ἐστι, καταφρονήσασα ἡ βουλὴ τοῦ νόμου κελεύοντος γνώμη τοῦ δήμου χειροτονεῖσθαι τὸν ταμίαν, αὐτὴ ἐαυτῆ τοῦτον ἐχειροτόνησε καθ' ἐαυτὴν φησι.²⁶⁵

The ταμίαις τῶν τριηροποιῶν does not figure in the Athenaion Politeia's list of elected financial officers,²⁶⁶ or indeed anywhere in that treatise, but there were other elected treasurers in Athens, such as the treasurers of the Paralus and the "Ἀμμωνος,²⁶⁷ and so long as his office was not deemed to be περὶ τὴν ἐγκύκλιον διοίκησιν there is no reason why the scholiast should not be right about this treasurer. The boule can hardly have made the appointment without reference to the demos (given so excellent a reason for not crowning the boule, Demosthenes would surely devote more than one sentence to it): perhaps it was normal for a free election to be held under an open probouleuma, but this boule had recommended a candidate for the approval of the ecclesia.²⁶⁸

(iii) Public Works

ἔκρινεν δὲ ποτε καὶ τὰ παραδείγματα καὶ τὸν κέκλον ἢ βουλή, νῦν δὲ τὸ δικαστήριον τὸ λαχόν· ἐδόκουν γὰρ οὗτοι κατα-
χαρίζεσθαι τὴν κρίσιν. καὶ τῆς ποιήσεως τῶν Νικῶν καὶ τῶν
ἄθλων τῶν εἰς τὰ Παναθηναῖα συνεπιμελεῖται μετὰ τοῦ ταμίου
τῶν στρατιωτικῶν.²⁶⁹

It appears from the inscriptions relating to public works that the change to which the author alludes must have been made not long before the Athenaion Politeia was written, and that there may have been an earlier change which he does not mention. In the fifth century many matters of detail were decided by the ecclesia, with the boule playing simply its normal probouleutic part. The first decree for Athena Νίκη enacted that the ἱερὸν of the goddess should be given a door to be designed by Callicrates and that a temple and stone altar should be built to his design;²⁷⁰ the rider of Hestiaeus orders the boule to elect three of its members to cooperate with Callicrates in drawing up the ἔγγραφαί and submitting them to the boule,²⁷¹ and may well have ended by requiring the boule to submit them to the demos.²⁷² Another decree of the mid fifth century gave Callicrates the commission for protective work on the Acropolis, and specified that the work was to be completed in sixty days.²⁷³ The demos is more clearly concerned with details in two slightly later decrees. The proposer of a decree dated about 435 left it to the assembly to decide whether the [doorway] to the temple (of Athena Νίκη ?) should be of [bronze] or ivory [and gold],²⁷⁴ and a decree of 422/1 gave detailed instructions for the building of a bridge.²⁷⁵ About 432/1, when the state agreed to make a contribution of up to 500 drachmas towards the building of a shrine to Apollo Δῆλιος, the architect was to be summoned before the boule and ecclesia.²⁷⁶ In 421/0, however, the boule may have been made fully responsible for having an altar set up to Hephaestus.²⁷⁷

In the fourth century, when the ὄροι of the ἱερὰ ὄργα at Eleusis needed to be replaced, a committee of five bouleutae

and ten other citizens was appointed to decide where the ὄροι should be sited,²⁷⁸ and according to the restorations in the Corpus the proedri and the poletae were to make συγγραφαί for the work, and to see that the ὄροι were placed correctly.²⁷⁹ συγγράφειν and ἐπιμελεῖσθαι, however, were duties which did not normally fall either to the proedri or to the poletae, and we must reject this restoration and admit that it is not clear who did have these duties on this occasion.²⁸⁰ Only in the wall-building νόμος usually dated to 337/6²⁸¹ do we find the "previous" procedure of the Athenaion Politeia: both for the repair of the walls²⁸² and for work in the harbour²⁸³ συγγραφαί were to be drawn up by the regular salaried architects (met here for the first time), and by any one else who wished, and the boule was to decide which συγγραφαί should be adopted. When further work on the walls was undertaken in 307/6 an architect was to be elected by the demos,²⁸⁴ but there are also three references to architects (plural),²⁸⁵ and the text is not sufficiently complete to show any difference in function between the one architect and the architects, nor even to make it certain that the boule was no longer required to approve the συγγραφαί. At one point in the decree editors have given us the restoration,

ὄ[ρῳ]κι πι]σ[τῶ]σαι ἐν τῆι [β]ουλ[ῆ]ι κατὰ [τὸν ν]όμ[ον],²⁸⁶

but since the previous line mentions contractors and the two following lines seem to be concerned with the punishment of offenders I imagine that some kind of report or the checking of accounts is more likely than the pledging of oaths.

Until the end of the fourth century (after which we have no further evidence) contracts for public works were made by the poletae, one of the many boards working under the supervision of the boule.²⁸⁷ The poletae placed the contract for making the door to the ἱερόν of Athena Νέκη,²⁸⁸ and also the contract for Callicrates' work on the Acropolis - in the latter case ἡσπός ἄριστα καὶ εὐτελέστατα σκευάσαι.²⁸⁹ Cheapness was always important for a state whose finances were as precarious as Athens',

and we find a further reference to economy in the second decree of Callias²⁹⁰ and a clear desire to spend [ὀλιγίστον χρημάτων in the surviving part of the "spring-house decree."²⁹¹ The poletae again worked with the boule to make the contract²⁹² (but probably not to supervise the work) when the ὄροι were renewed at Eleusis, but by the end of the fourth century a change seems to have taken place. In two documents dated after the middle of the century, one (very fragmentary) relating to the temple of Zeus Σωτήρ in the Piraeus,²⁹³ the other a contract for work on Delos,²⁹⁴ there are references to the placing of a contract in a δικαστήριον, and it may be that it is to the placing of contracts rather than to the approval of the architects' plans that we should refer the Athenaion Politeia's all too brief note on the boule and παραδείγματα. In 307/6 the boule may not have been involved, but the poletae were, in conjunction with the new financial officer:

[— καθ' ἃς ἐξέδοσαν τὰ ἔργα] οἱ πωληταὶ καὶ ὁ ἐκὶ τῆς διοικήσεως Ἄβρω[ν Λυκ]οῦργου Βουτ[ά]δος.²⁹⁵

The Athenaion Politeia seems also to have credited the boule with the supervision of public buildings:-

ἐξετάζει δὲ (sc. ἡ βουλή) καὶ τὰ οἰκοδομήματα τὰ δημόσια πάντα, κἄν τις ἀδικεῖν αὐτῇ δόξῃ, τῷ τε δήμῳ τοῦτον ἀποφαίνει καὶ καταγνοῦσα παραδίδωσι δικαστηρίῳ.²⁹⁶

If the reference is to buildings already standing we have no evidence which can be used to check the statement, but it is at any rate possible that the author's allusion is to work in progress. In the fifth century the immediate supervision of any major public work was entrusted to an annually changing board of epistatae: these were presumably elected by the demos, though I know no direct evidence for this period.²⁹⁷ The records which the various boards have left on stone show that financial control played an important part in their work.²⁹⁸ This makes it very likely that the boule watched over their activities: at any rate the logistae appointed from the boule will have examined their

accounts every prytany.²⁹⁹ The second decree of Callias is restored by the authors of ATL to make οἱ ἐπιστάται cooperate with the treasurers of Athena and with the architect in finishing the work on the Acropolis³⁰⁰ (the text as restored by Wilhelm would have the same general effect³⁰¹); and, given a narrow fragment of a contemporary decree which mentions the making of a doorway, the boule, and one or more architects, Meritt restores on the basis of ten letters a 62-letter line, requiring the epistatae to supervise the work as the boule shall direct, and the epimeletae and the architect to cooperate with them!³⁰²

In the fourth century we have clearer evidence for the popular election of epistatae and for supervision by the boule. The wall-building νόμος to be associated with Eubulus or Demosthenes contains the provision,

[χειροτονῆσαι οὐ τὸν δῆμον αὐτίκα μάλα ἐπιστάτας δυο] [ἄνδ]ρας ἕξ Ἀθηναίων ἀπάντων, οἵτινες ἐπιμελήσονται τῶν ἔργων.³⁰³ [When the work was complete,] the boule was to be given 500 drachmae for a dedication and the [teichopoei and architects 300] from the teichopoeic fund.³⁰⁴ Meanwhile the boule was required to meet for one day on the λογισμός before payments were made, and to discuss some aspect of the work one day in each prytany.³⁰⁵ The boule was again involved in 307/6, possibly to check accounts,³⁰⁶ and the decree of this year may also confirm the Athenaion Politeia's claim that the boule had punitive powers in connection with public buildings.³⁰⁷

There already existed in the time of Demosthenes permanent, salaried city architects:³⁰⁸ in the Hellenistic period the office seems to have been divided into departments. As early as 346 one ἀρχιτέκτων was responsible for the allocation of theatre seats,³⁰⁹ but I know no instance of the title ἀρχιτέκτων ὁ ἐπὶ τὸ θέατρον vel simile quid. In inscriptions from the late third century onward^s we find an ἀρχιτέκτων ὁ ἐπὶ τὰ ἱερά, who was responsible for religious buildings and properties, and the partitioning of the

generals' duties, begun in the fourth century,³¹⁰ had by then produced a στρατηγός ὁ ἐπὶ τὴν παρασκευὴν, who had the unmilitary duty of cooperating with this architect.³¹¹ Twice in the third century this general was assisted by a committee on which the Areopagus and the demos as a whole were represented in checking the treasures of Asclepius,³¹² and four decrees concerned with the repairing and recasting of temple plate entrusted the work to similar committees. When the priest of the Hero Doctor asked for a new οἶνοχόη to be made from the old dedications in the shrine the priest, the στρατηγός ἐπὶ τὴν παρασκευὴν and the ἀρχιτέκτων ἐπὶ τὰ ἱερά, as specialists, were to be joined by five laymen, two from the Areopagus and three from the whole citizen body, and (surprisingly) the finished vessel was to be dedicated in the name of the boule.³¹³ The same pattern is suggested by two more fragmentary decrees,³¹⁴ and at the end of the second century this same shrine's plate was attended to by the three specialists and three bouleutae.³¹⁵ Another decree, of 161/0, calls on the ecclesia to appoint five citizens to work with the priest, the general and the architect in order to repair a sanctuary, and this if it is correctly restored contains the latest example of the old kind of bouleutic control:-

[—] ἐναντίον τῆ[ς βουλῆς παρα]λαβεῖν δὲ αὐτοῦς καὶ τα[—].³¹⁶
As we might expect, the boule was responsible for its own buildings and equipment: in a decree of 181/0 the boule honoured three of its members whom it had appointed to attend to bedding and other items in the Tholos.³¹⁷ In general, however, the boule now appears only in oligarchic periods, providing the lay members of the superintending committee, or giving permission which at other times would have been given by the demos. In 52/1 the boule allowed the priest of Asclepius to do some necessary rebuilding at his own expense,³¹⁸ while the two "oligarchic" inscriptions for ephebi contain decrees of the boule allowing the ephebi to set up a statue of their cosmetes³¹⁹ and after the time of Sulla a number of prytanies were permitted by the boule to set up a statue of their treasurer.³²⁰

Evidence in this section is very scanty, but we have seen the boule involved in the fifth and fourth centuries in the adoption of *συγγραφαί*, the making of contracts, and at any rate enjoying some financial oversight in conjunction with separate boards of *epistatae*. Lay representation of some kind continued at any rate to the end of the second century, but there seems to have been a gradual development from the fifth-century practice whereby the work required might be specified in some detail by a decree of the *ecclesia* towards the establishment of a Public Works department, headed by a general and salaried architects, which settled the details with the lay committee. Inscriptions do not attest the boule's close involvement after the fourth century, but in the Hellenistic period important buildings commonly owed their existence to private munificence rather than public expenditure, and there was therefore less need for detailed supervision of the work by the people's representatives.³²¹

(iv) Religion

Much has been said already, in the sections on finance and public works, which illustrates the importance of the boule in religious affairs. It took a close interest in the coined and non-monetary treasures of the various temples, to the extent of assisting the sacred treasuries to recover sums due to them and (at least in one case) being consulted on expenditure. When temples were built or repaired the boule could be involved in the adoption of plans, and would play some part in making the contracts and supervising the work.

In the administration of festivals we commonly find priests cooperating with boards of ἱεροποιοί, usually ten in number, and these hieropoei were often provided by the boule. Hieropoei are attested at Eleusis from early in the fifth century, making sacrifices³²² and exacting dues from initiates;³²³ in the law perhaps to be dated to 416/5³²⁴ they were to receive first-fruits,³²⁵ to combine with the architect in choosing the site for the granaries,³²⁶ and after the sacrifices had been made to sell the remaining offerings and make a dedication in conjunction with the boule.³²⁷ These men were styled ἱεροποιοί Ἐλευσινύθων³²⁸ or ἱεροποιοί Ἐλευσῖνι³²⁹ : there is no fifth-century evidence on how they were appointed. Between 422 and 418 there were also epistatae, who were in charge of the χαρίματα of the goddesses and received the proceeds from the sale of what was not needed for sacrifices;^{329a} but a century later the offerings were apparently received in the first instance by the epistatae, who provided the hieropoei (now designated ἱεροποιοί ἐκ βουλῆς) with what was needed for the sacrifices.³³⁰ In the meantime the cult had been reorganised by a law of Chaeremonides, which had been modified in 353/2, and the modified law seems to have given the boule general responsibility for the offering of first-fruits and the performance of various rites.³³¹ Elter restored in the law of 353/2 a

provision for the boule to appoint ten of its members as hieropoei,³³² and though this has not been retained in Sokolowski's recent text³³³ Eleusinian hieropoei were certainly appointed by the boule in 341/O.³³⁴

The Eleusinian hieropoei were not the only ones provided by the boule. A decree of 421/O regulating the Hephaestia provides for ten hieropoei to be appointed by lot from the δικασταί³³⁵ and another ten by lot from the boule.³³⁶ The hieropoei (presumably of both kinds) were to make the distributions of meat, and to take charge of the πομπή with power to impose fines of up to 50 drachmae or to prosecute the disorderly in a δικαστήριον. Hieropoei κατ' ἐνιαυτόν received money from the treasurers of Athena for a hecatomb at the Great Panathenaea in 410/O9,³³⁷ and about 335 a decree provided for the administration of the Lesser Panathenaea by τοὺς ἱεροποιούς τοὺς διοικοῦντας τὰ Παναθηναία τὰ κατ' ἐνιαυτόν³³⁸ (who like the hieropoei for the Hephaestia had punitive powers³³⁹). In neither of these cases do we know how the appointment was made. A decree of about 330 honoured the priest of Dionysus, certain other priests, and ten ἱεροποιοὶ αἰρεθέντες ὑπὸ τῆς βουλῆς for their sacrifices to Dionysus and the other gods, for the health and safety of the boule and demos of the Athenians and their children, their wives and their other possessions.³⁴⁰ The author of the Athenaion Politeia knew two boards each of ten sortitive hieropoei:-

τοὺς ἐπὶ τὰ ἔκθυσματα καλουμένους οἳ τὰ τε μαντευτὰ ἱερὰ θύουσιν, κἄν τι καλλιερῆσαι δέη, καλλιεροῦσι μετὰ τῶν μάντεων.³⁴¹

τοὺς κατ' ἐνιαυτόν καλουμένους, οἳ θυσίας τέ τινας θύουσι καὶ τὰς πεντετηρίδας ἀπάσας διοικοῦσιν πλὴν Παναθηναίων.³⁴²

He goes on to list the quadrennial festivals involved - the Delian, the Brauronia, the Heraclea and the Eleusinia (for none of which hieropoei are epigraphically attested);

[νῦν] δὲ πρόσκειται [καὶ Ἡ]φαίσ[τια] ἐπὶ Κηφισοῦ ἄντος ἄρχοντος (329/8).

Blass's restoration has been generally accepted, and has the advantage of mentioning a festival for which hieropoei are known to have existed, but there is no apparent reason why an old-established festival should have been brought into the cycle at this date. A more obvious candidate for admissions is the Amphiarrea at Oropus, attested in 329/8,³⁴³ but it seems impossible that Ἀμφιάρρεια is what the scribe wrote.³⁴⁴

Hieropoeic duties seem also to have been performed by the συλλογεῖς τοῦ δήμου, a board probably of three men from each tribe, attested in the fourth century.³⁴⁵ We possess a dedication by the συλλογεῖς of 324/3, who have accorded special honours to one of their number who [ἱ]εροποίησεν τῆι Ἀθ[ηναίῃ] ³⁴⁶ and to another who [ἱεροποίησεν τῶι Διὶ] τῶι Ὀλυμπίῳ,³⁴⁷ and the συλλογεῖς' connection with the Olympiea is confirmed by an inscription recording receipts from the sale of sacrificial victims' hides in the quadrennium 334/3 - 331/0: most of the money is provided by epimeletae and hieropoei, but that from the Olympiea is paid by the συλλογεῖς τοῦ δήμου. ³⁴⁸ Three decrees enacted in 335, two of the ecclesia and one of the boule, honour Phyleus, elected to an office of the boule and demos, and two συνάρχοντες. ³⁴⁹ Köhler, with what has been described as felici acumine,³⁵⁰ made extensive restorations on the assumption that these three men were a tribal contingent of the thirty συλλογεῖς, being honoured for their hieropoeic duties, but how even Athenian laxity could describe the tribal contingent of a bouleutic sub-committee as χειροποιήσαντες ἱεροποιεῖν τῆι τε] βουλῆι καὶ τῶι δήμῳ ³⁵¹ I do not understand. The office was elective, and almost certainly triumviral, but that seems to be all that we can say about it.

Demosthenes performed hieropoeic duties when he was a member of the boule in 347/6:-

εΐασε μὲν μ' (sc. ὁ Μειδίας) εἰσιτητήρι' ὑπὲρ τῆς βουλῆς
ἱεροποιῆσαι καὶ θύσαι καὶ κατάρξασθαι τῶν ἱερῶν ὑπὲρ ὕμων
καὶ ὄλης τῆς πόλεως, . . . περιεΐδε δὲ ταῖς σεμναῖς θεαῖς
ἱεροποιὸν αἰρεθέντ' ἐξ Ἀθηναίων ἀπάντων τρίτον σὺτὸν καὶ
καταρξάμενον τῶν ἱερῶν.³⁵²

The boule certainly had its own religious observances, which we shall consider below,³⁵³ and it may well be that particular bouleutae were made responsible for these and designated hieropoei. The ἱεροποιοὶ ταῖς σεμναῖς θεαῖς are mentioned in the lexica also: according to Photius³⁵⁴ they were τὸν ἄριθμον ἄδριστοι, while the Etymologicum Magnum³⁵⁵ gives their number as ten.

Clearly there were large numbers of hieropoei in Athens, and we probably ought not to look for any definite policy behind their different modes of appointment. In general their duties seem to have covered those aspects of festival administration which were not the responsibility of the priests themselves, and at any rate for some festivals the hieropoei were bouleutae.³⁵⁶ On some occasions the boule as a whole was involved in a festival: it met in Eleusis during the celebration of the Mysteries and (in accordance with a "Solonian" law) in the city Eleusinium on the day after their completion;³⁵⁷ and in 343/2 the administration of the Dionysia was a task for which the whole boule could be honoured.³⁵⁸

The boule appointed θεωροὶ to attend the Pythian festival at Delphi,^{358a} and it was represented also on other, less regular religious commissions: when peace was made with Chalcis in 446/5 it was ordered to appoint three of its members to join Hierocles in sacrificing for Euboea;³⁵⁹ it contributed five of the fifteen men who in 352/1 determined the boundaries of the ἱερὸν ὄργας,³⁶⁰ and one of the three sent to consult the Delphic oracle in conditions of elaborately secured arbitrariness on the future use of the ὄργας.³⁶¹ (This latter decree gives us a fascinating

glimpse of the naïveté of Athenian public life even in the fourth century. The alternative uses of the land were written out on identical pieces of tin, which were wrapped in the same way and placed in a hydria; this was shaken, after which the first piece to be drawn out was placed in a gold hydria and the other in one of silver; the epistates of the prytanes sealed these with the public seal, and any other Athenian citizen might come forward and add his seal! Apollo was asked simply whether the instructions in the gold hydria or those in the silver should be followed.³⁶² A similar lack of modern organisation is found in the provisions for the future care of the sacred places:-

[— ἐπι]μελεῖσθαι [δ]ὲ τῆς ἱερῆς ὀργάνδος καὶ τῶν ἄλλων
[ν ἱερῶν ἀπάντ]ων τῶν Ἀθήνησιν ἀπὸ τῆσδε τῆς ἡμέρας εἰς τὸν
[ἀεὶ χρόνον οὗ]ς τε ὁ νόμος κελεύει περὶ ἐκάστου ἀγῶν καὶ τ-
[ῆν βουλὴν τὴν] ἐ[ξ] Ἀρείου πάγου καὶ τὸν στρατιῶν τὸν ἐκὶ
τῆ-
[ν φυλ]ακῆ[ν τῆς χ]ώρας κεχειροτονημένον καὶ τοὺς περικολά-
[ρχους καὶ τοὺς [δημάρχους καὶ τὴν βουλὴν τὴν ἀεὶ βουλευού-
[σαν] καὶ τῶν ἄλλων Ἀθηναίων τὸν βουλούμενον τρόπον ὅστω ἂν
[ἐκ]ίστω[ν]ται. 363)

Another concern of the boule was the appointment of judges for the musical and dramatic festivals. After it had drawn up a short list, perhaps in consultation with the choregi, the names of the candidates from the different tribes were placed in separate hydriae, which were sealed by the prytanes, counter-sealed by the choregi, and deposited on the Acropolis in the care of the Treasurers of Athena: one judge could thus be chosen by lot from each tribe.³⁶⁴

The boule itself had various religious duties to perform. The bouleuterium contained statues of Zeus βουλεύτης and Athena βουλαία, to whom the members prayed on entry, and a Hestia βουλαία, by which oaths were taken and where sanctuary might be sought.³⁶⁵ The year began with εἰσιτητήρια, inaugural rites,³⁶⁶ and meetings of the boule began with a purification ceremony and

with the herald's reciting the standard curse and prayer at the secretary's dictation.³⁶⁷ Probably in the boule no less than in the ecclesia sacred business was given priority at meetings.³⁶⁸ In addition to matters which we have already considered, this will have involved hearing reports from a large number of officials on the discharge of their religious duties.³⁶⁹ Such reports are attested from priests,³⁷⁰ from a priest and hieropoei,³⁷¹ from a priest and epimeletae,³⁷² from the epimeletae of the Mysteries,³⁷³ from a hierophant,³⁷⁴ from the men elected to supervise the repair of the statue of Athena Νίκη,³⁷⁵ from the ἀρχιερέως to the Nemean festival,³⁷⁶ and from an agonothete.³⁷⁷ Reports were delivered on their religious duties also by other officials, whose duties were not primarily religious: by an archon,³⁷⁸ by the cosmetes of the ephebi,³⁷⁹ by the demarch of Eleusis,³⁸⁰ and above all by the prytanes.³⁸¹ Due performance of their sacrifices was one of the grounds on which prytanes were honoured in the Hellenistic period, and these sacrifices are regularly mentioned in the honorific decrees. They were offered

*Απόλλωνι τῷ Προστατηρίῳ καὶ τῇ Ἀρτέμιδι τῇ Βουλαίῳ
(καὶ τῇ Φωσφόρῳ) καὶ τοῖς ἄλλοις θεοῖς οἷς κἀπριον ἦν,

ἐφ' ὑγιαίνει καὶ σωτηρεῖαι τῆς βουλῆς καὶ τοῦ δήμου (τῶν
'Αθηναίων)(καὶ παίδων καὶ γυναικῶν)(καὶ τῶν φίλων καὶ
συμμετέχον).³⁸²

In the period of subjection to Macedon, from 262 to 269, sacrifices to the Ζωτῆρες might be added, and the Macedonian royal house might be included among the beneficiaries - to be deleted later. The record becomes more elaborate as we proceed later into the Hellenistic period, but as Professor Dow observes sacrifices cost money, and it may be doubted if the expansion of the record reflects any increase in the actual programme of sacrifices.

A boule which had been crowned for a successful year of office might set up a dedication, such as that to the twelve gods by the boule of 357/6,³⁸³ the statue of δημοκρατία erected by the boule of 333/2³⁸⁴ or the dedication to [Hephaestus] by the

following year's boule;³⁸⁵ and we have a record of φιάλαι dedicated at Eleusis by the bouleutae of 336/5, 334/3 and 333/2.³⁸⁶ Prytanies also could make special dedications, apart from the record that they had been deemed worthy of honours.³⁸⁷ In the second century the agonothete of the Thesea gave the whole boule a καθέσιμον for the festival and the prytanes money for a sacrifice.³⁸⁸ A decree of 129/8, resulting from a πρόσοδος to the boule by its treasurer, regulated the cult of Apollo: among those who were to perform sacrifices were the treasurers of the sitonic fund and the treasurer of the boule, while the prytanes in office at the time were to offer the ἑξαμηνιαῖον, and were to receive the money for this from the treasurer of the stratiotic fund.³⁸⁹ Theophrastus' μικροφιλότιμος, the man who glories in petty distinctions,

ἀμέλει δὲ καὶ συνδιοικήσασθαι παρὰ τῶν πρυτάνεων, ὅπως ἀπαγγεῖλη τῷ δήμῳ τὰ ἱερά, καὶ παρεσκευασμένος λαμπρὸν ἱμάτιον καὶ ἐστεφανωμένος παρελθὼν εἰπεῖν, “ ὦ ἄνδρες Ἀθηναῖοι, ἐθύομεν οἱ πρυτάνεις [τὰ ἱερά] τῇ κίητρὶ τῶν θεῶν τὰ Γαλάξια, καὶ τὰ ἱερά καλά, καὶ ὑμεῖς δέχεσθε τὰ ἀγαθά.” καὶ ταῦτα ἀπαγγεῖλας αἰὲν διηγῆσασθαι οἴκαδε τῇ αὐτοῦ γυναικί, ὡς καθ' ὑπερβολὴν εὐημέρει.³⁹⁰

Earlier writers are less specific. Antiphon's choregus includes in the list of his activities before he was compelled to retire from the boule,

εἰς τᾶλλα ἱερά πάντα εἰσιὼν μετὰ τῆς βουλῆς, καὶ θύων καὶ εὐχόμενος ὑπὲρ τῆς πόλεως ταύτης, καὶ κρὸς τούτοις πρυτανεύσας τὴν πρώτην πρυτανείαν ἅπασαν πλὴν δυοῖν ἡμέραιν, καὶ ἱεροποιῶν καὶ θύων ὑπὲρ τῆς δημοκρατίας.³⁹¹

Demosthenes tells us that

πάντες οἱ πρυτάνεις θύουσιν ἕκαστότε κοινῇ καὶ συνδείπνουσιν καὶ συσπένδουσιν. . . . ἡ βουλή ταῦτά ταῦτα, εἰσιτητήρι' ἔθυσεν, συνεστιάθη.³⁹²

Though the original object of sacrifices was to feed the gods, they made available a considerable amount of meat on which human beings could feast. Thus a decree of about 430 is restored to provide for a distribution of sacrificial meat to all the citizens.³⁹³ But often particular persons had their share guaranteed before the general distribution was made: an early fourth century decree concerning the cult of Asclepius reserved the meat from the first ox for the prytanes, the nine archons, the hieropoei and the κομπεῖς ;³⁹⁴ and the decree of about 335 regulating the Lesser Panathenaea stipulated five portions for the [prytan]es, [three] for the nine archons, [one] for the hier[opoei], [three] for the generals and taxiarchs, and the customary allowance for the κομπεῖς and [canephor].³⁹⁵ In 215/4 the epimeletae of the Mysteries were honoured in a probouleumatic decree for the proper discharge of their duty, including the distribution of meat to the boule of 650;³⁹⁶ they had also had the ζεῦγος for the conveyance of the sacred objects made at their own expense, and had presented the boule with the sum allocated to them for this.³⁹⁷ About A.D. 135-40 a Cretan, Flavius Zenophilus, endowed a fund to provide gifts for bouleutae, perhaps at the Mysteries; some thirty years later the surplus was reinvested, and Flavius' son and various religious officials were added to the list of recipients.³⁹⁸

(v) Secretaries and Attendants.

Three public secretaries are mentioned in the Athenaion Politeia:-

κληροῦσι δὲ καὶ γραμματέα τὸν κατὰ πρυτανείαν καλούμενον,
ὃς τῶν γραμμᾶτων ἐστὶ κύριος καὶ τὰ ψηφίσματα τὰ γιγνόμενα
φυλάττει, καὶ τᾶλλα πάντα ἀντιγράφεται, καὶ παρακίθεται τῇ
βουλῇ. πρότερον μὲν οὗτος ἦν χειροτονητός, καὶ τοὺς ἐνδοξο-
τάτους καὶ πιστοτάτους ἐχειροτόνουν· καὶ γὰρ ἐν ταῖς στήλαις
πρὸς ταῖς συμμαχίαις καὶ προξενίαις καὶ πολιτείαις οὗτος
ἀναγράφεται· νῦν δὲ γέγονε κληρωτός.

κληροῦσι δὲ καὶ ἐπὶ τοὺς νόμους ἕτερον, ὃς παρακίθεται
τῇ βουλῇ, καὶ ἀντιγράφεται καὶ οὗτος πάντας.

χειροτονεῖ δὲ καὶ ὁ δῆμος γραμματέα τὸν ἀναγνωσόμενον
αὐτῷ καὶ τῇ βουλῇ, καὶ οὗτος οὐδενός ἐστι κύριος ἀλλὰ τοῦ
ἀναγνῶναι. ³⁹⁹

From just before the middle of the fifth century until 368/7
there is evidence for a secretary who served for one prytany only,
and seems to have been appointed in such a way that all tribes
were represented in the course of the year and the secretary was
never a member of the tribe in prytany.⁴⁰⁰ This secretary appears
to have been a member of the boule,⁴⁰¹ and there is no reason to
doubt his identification with the γραμματεὺς τῆς βουλῆς who was
commissioned to publish decrees,⁴⁰² and in conjunction with whom
the ἀναγραφεῖς τῶν νόμων were to republish the text of Draco's
homicide law in 409/8.⁴⁰³ This secretary is presumably the
γραμματεὺς κατὰ πρυτανείαν in his former state, though that
title is not attested for the prytany-ly secretary.⁴⁰⁴ The
Athenaion Politeia's observation that this post was filled by
leading citizens has been generally accepted, but the precise
significance of καὶ γὰρ ἐν ταῖς στήλαις . . . οὗτος ἀναγράφεται
is disputed.⁴⁰⁵ My own view is that the prescripts of decrees
are to be interpreted as a kind of running-headline from the
secretary's minute book, which was the source of texts inscribed
at public or private expense, and the headings in larger letters
which often precede a prescript, naming an eponymous officer or

a date or the subject-matter of a decree, were added primarily for purposes of identification; once the archonitic year had been made the boule's term of office the archon became the most convenient eponymous magistrate even in the proceedings of the boule and ecclesia, and was therefore preferred to the secretary in identificatory headings.⁴⁰⁶ What our author is saying, I suggest, is, "Look around and see what men held this office under the old system;" whether he also regarded the disappearance of the secretary from headings as a sign of his reduced importance, we cannot tell. The last year for which secretaries serving for one prytany only are attested is 368/7.⁴⁰⁷ By 363/2 the secretary named in prescripts of decrees is an annual officer;⁴⁰⁸ he bears the title γραμματεὺς κατὰ πρυτανείαν,⁴⁰⁹ and is not a member of the boule.⁴¹⁰ The change from election (from among the bouleutae) to sortition was presumably made at the same time.⁴¹¹

One other secretary is mentioned before the reorganisation of the 360's. The γραμματεὺς τῆς κόλλεως who παρελθὼν ἀνέγνω τοῖς Ἀθηναίοις the letter which Nicias sent from Syracuse in the winter of 414/3⁴¹² is clearly the elected Reader of the Athenaion Politeia. The title he is given by Thucydides is not found elsewhere, and it is economical to identify him with the γραμματεὺς τῆς βουλῆς καὶ τοῦ δήμου, for whom no duties are attested, but who appears among the ἐπίστυτοι listed in prytany documents of all periods.⁴¹³

After the reorganisation we meet a greater number of secretaries, and have one major problem in identification. Between 363/2 and 322/1 the publication of decrees might be entrusted either to the γραμματεὺς κατὰ πρυτανείαν (that is, to the eponymous secretary under the new system)⁴¹⁴ or to the γραμματεὺς τῆς βουλῆς (whose title was borne by the eponymous secretary under the old system).⁴¹⁵ Ferguson and Brillant regarded these as alternative titles for the same secretary,⁴¹⁶ while Schulthess argued that in this period the duties of publication were divided between two secretaries.⁴¹⁷ One text

in particular seemed to support Schulthess' view:-

καὶ ἐπειδὴν τὸ οἴκημα ἀ-
[νοι]χθῆναι ἐξετάζεν κατὰ ἔθνος ἕκαστα καὶ ἐπιγράφεν τ-
[ὸν] ἄριθμον, ἀντιγράφεσθαι δὲ τὸν γραμματεῖα τὸν κατὰ
[πρ]υτανείαν καὶ τοὺς ἄλλους γραμματ<τε>εῖας τοὺς ἐπὶ τοῦ-
[ς δ]ημοσίοις γράμμασιν· ἐπειδὴν δὲ ἐξετασθῆναι πάντα κ-
[αὶ] ἀναγραφῆναι, τὸν γραμματεῖα τῆς βουλῆς ἀναγράφαντα
[ἐν] στήλῃ λιθίνῃ στήσαι ἔμπροσθεν τῆς χαλκοθήκη[ς].⁴¹⁸

It was very hard to believe that the author of the decree ordering an inventory to be made of the treasures in the Chalcothece could have referred to the same secretary by two different titles in the space of four lines - yet we now know that this is what happened. A document published by the treasurers of Athena has been found on the Acropolis, which refers to the stele set up in 353/2 by Philocedes in front of the Chalcothece:⁴¹⁹ this must surely be the stele whose erection by the γραμματεὺς τῆς βουλῆς was ordered in the decree quoted above; but Philocedes is very probably to be restored as the eponymous secretary in two decrees of 353/2,⁴²⁰ and we have seen that the eponymous secretary was the γραμματεὺς κατὰ πρυτανείαν.⁴²¹ The γραμματεὺς τῆς βουλῆς and the γραμματεὺς κατὰ πρυτανείαν must therefore be identical.⁴²²

We are thus dealing with a single office, which had been held, probably by bouleutae, for a prytany at a time, and was now made annual and in its new form was not held by bouleutae. Some have supposed that it was the object, or at any rate one object, of the change to weaken the boule by taking a powerful office out of its hands.⁴²² However, a good deal of political writing survives from the fourth century, and I have not found any suggestion that the boule had to be watched because there was a danger of its becoming too powerful:⁴²⁴ the author of the Athenaion Politeia, indeed, discusses the change in the secretaryship without mentioning the boule, and seems to have thought that

it was the secretaryship which was weakened by the change. The extra detail which found its way into the prescripts of decrees during the fourth century suggests that the Athenians were beginning to treat their records more seriously, and the chief secretaryship was becoming too arduous for its duties to be performed by a member of the boule who after only one prytany would surrender them to another novice. Professional expertise was not yet thought necessary, or the office would not have been made sortitive, but dissociation from the boule and a longer period of tenure suggest an improvement in efficiency and perhaps a slightly fairer spreading of the state's burdens.^{424a}

A few of the fourth-century prytany documents discovered in the Agora include in their lists of officials the second of the three secretaries mentioned in the Athenaion Politeia, the ἐπὶ τοῦς νόμοις.⁴²⁵ Ferguson originally supposed that the ἐπὶ τοῦς νόμοις did for νόμοι what the γραμματεὺς κατὰ πρυτανείαν did for ψηφίσματα,⁴²⁶ but Brillant later persuaded him that this secretary was to be identified with the ἐπὶ τὰ ψηφίσματα found in fourth-century lists but not in the Athenaion Politeia.⁴²⁷ In 1941, however, Professor Meritt showed that ἐπὶ τοῦς νόμοις and ἐπὶ τὰ ψηφίσματα were distinct offices,⁴²⁸ which ought in view of their titles to have been more or less parallel, though one is mentioned in the Athenaion Politeia and the other is not.⁴²⁹ Other secretaries found in the fourth century lists are the ἀναγραφεὺς⁴³⁰ and the ἀντιγραφεὺς,⁴³¹ whose exact duties in connection with the public records are unknown, and there may have been yet others, not considered worthy of inclusion in these lists: we have seen that the inventory of treasures in the Chalcothece was to be compiled by

τὸν γραμματεῖα τὸν κατὰ πρυτανείαν καὶ τοῦς ἄλλους γραμματεῖας τοῦς ἐπὶ τοῖς δημοσίοις γραμμασιν.⁴³²

Various authorities had their γραμματεὺς or ὑπογραμματεὺς:⁴³³ the men were apparently drawn from a pool, and at the beginning of the fourth century were forbidden to serve twice in the same

office, in case they should become too influential.⁴³⁴ Aeschines held some secretarial office which brought him into contact with the boule and assembly, but it may be merely in order to denigrate him the better that Demosthenes styles him *ὀνογραφματοεὐς*.⁴³⁵

The secretaries *ἐπὶ τοῖς δημοσίοις γράμμασιν*, and especially the *γραμματεὺς κατὰ πρυτανείαν*, bore general responsibility for the public records. In addition to publishing current documents on stone stelae, this could involve bringing the bouleutic oath up to date,⁴³⁶ or correcting an unfortunate phrase in an already published decree;⁴³⁷ combining with the codifiers of the laws to republish a text from the *ἄξονες* (at the end of the fifth century),⁴³⁸ or giving a copy of an honorific decree to the person honoured.⁴³⁹ In 405, when the Athenian triremes at Samos were presented to the Samians, the names of the trierarchs responsible for them were to be registered with the secretary and the generals.⁴⁴⁰ Some duties may have given a strong secretary the opportunity to influence the course of events: in the Thesmophoriazusae a speaker in the assembly outlines her general plan for dealing with Euripides, and ends by offering to work out the details in conjunction with the secretary;⁴⁴¹ and if when the boule had made up its mind on a judicial matter a case had to be referred to a *δικαστήριον* the secretary was responsible for that. Those secretaries who were concerned with the work of the boule and ecclesia ate with the prytanes in the Tholos, at public expense,⁴⁴³ and as *ἀελοῖτοι* they joined with the prytanes in the Hellenistic period to honour the treasurer of the prytany (for his attention to the regular sacrifices) and were themselves honoured by the boule.⁴⁴⁴

Some of the constitutional changes at the end of the fourth century and the beginning of the third affected the secretaries. It is now known that there were two periods when the eponymous character and publicatory duties of the *γραμματεὺς*

κατὰ πρυτανείαν passed to a (probably elected) ἀναγραφεὺς - from 321/0 to 319/8 and from 294/3 to 292/1.⁴⁴⁵ In the first of these periods we also find a γραμματεὺς in decree prescripts, who served only for one prytany and was probably a member of the reigning prytany. At other times the γραμματεὺς κατὰ πρυτανείαν retained the position which he had occupied since the 360's. Surprisingly, he does not appear in the lists of ἀεῖσιτοι included in prytany documents from about 260: the highest honours are paid to the treasurer and secretary of the prytany, both elected by and from the prytanes,⁴⁴⁶ and the only other secretaries mentioned are the γραμματεὺς τῆς βουλῆς καὶ τοῦ δήμου (probably the Reader, and certainly not the eponymous secretary) and a ὑπογραμματεὺς .⁴⁴⁷ The list was normally completed by the treasurer of the boule, the herald, (from c.250) the ἱερεὺς τοῦ ἐπωνύμου and (from the 220's) the σόληγίς ;⁴⁴⁸ the ἀντιγραφεὺς was occasionally added at the end of the list.⁴⁴⁹ The ἀναγραφεὺς and the secretaries ἐπὶ τοῖς νόμοις and ἐπὶ τῶν ψηφίσματα disappear from the records until the late second century, when greatly expanded lists of officials include all these and more besides:⁴⁵⁰ the γραμματεὺς κατὰ πρυτανείαν is now admitted to the list, but is regularly placed towards the end and there is also a new secretary, ἐπὶ τὸ ἰσόρητον. Sulla's occupation of Athens marked the end of an era in prytany documents,⁴⁵¹ and it is not until the reign of Marcus Aurelius that we again find a regular pattern in the lists of ἀεῖσιτοι.⁴⁵² Religious functionaries now predominate, but some of the Hellenistic officials survive: we have the γραμματεὺς βουλῆς καὶ δήμου, the γραμματεὺς κατὰ πρυτανείαν (now more often called περὶ τὸ βῆμα ⁴⁵³), the ἀντιγραφεὺς and the ὑπογραμματεὺς. Sometimes a γραμματεὺς βουλευτῶν is found.⁴⁵⁴

The treasurers I have had occasion to mention in the first section of this chapter. The treasurer of the boule was responsible for the boule's expense-account, τὸ κατὰ ψηφίσματα

ἀναλισκόμενα τῆ βουλῆ, and when this had ceased to exist as a separate fund presumably continued to administer and to augment public money spent on the boule's account.⁴⁵⁵ (In the mid fourth century the office seems to have been shared between two men.⁴⁵⁶) In Hellenistic prytany documents the elected treasurer of the prytany, who has seen to the expenditure on sacrifices, is the most important single individual. Expenditure for the other activities of the prytany, notably for the meals provided in the Tholos, may have come within his scope, but we have no evidence on the matter.⁴⁵⁷ The growing prominence of religious observances in the duties of the prytanes makes the inclusion of priests among the ἀεῖσιτοι natural; the herald and the ἀθλητής were professionals, holding office for long periods, whose services were needed at meetings of the boule and ecclesia.⁴⁵⁸

Humbler officials also were attached to the boule. The records made by the poletae and cancelled after settlement by the apodectae were in the custody of a δημόσιος, or public slave, who worked for the boule,⁴⁵⁹ and we have other references to the δημόσιος in charge of records in the Metroum.⁴⁶⁰ In the fifth century a place in the theatre seems to have been allocated to βουλῆς ὑπηρέται, ⁴⁶¹ and in an inscription of about 350 a ὑπηρέτης is mentioned along with the γραμματεὺς τοῦ δήμου καὶ τῆ βουλῆ (sic).⁴⁶² In the first century B.C. our lists of ἀεῖσιτοι begin to include a λειτουργός,⁴⁶³ later styled λειτουργός ἐπὶ τὴν Σκιάνδα;⁴⁶⁴ from the 160's A.D. we commonly find an official entitled ἐπὶ Σκιάνδος,⁴⁶⁵ and one list ends with several οἰκέται τῆς Θόλου.⁴⁶⁶ The Tholos seems at all times to have been a depository of standard weights and measures,⁴⁶⁷ and we possess two copies of a decree of the late second century B.C. entrusting to a δημόσιος the set of weights and measures which was deposited in the Tholos:⁴⁶⁸ he was under the supervision of the prytanes and the στρατηγός ἐπὶ τὰ ὄπλα,

μαστιγοῦντες καὶ κολ[άζοντες] κατὰ τ[ὴν] ἄξιαν τοῦ
ἀδικήματος.⁴⁶⁹

There must have been other attendants also, of whom no trace is preserved. Since meals were eaten in the Tholos, for instance, it must have been some one's duty to cook them, but I have found no reference to an official cook. Nevertheless, by modern standards the boule's staff was small, and the bouleutae no doubt often had to do for themselves what modern Members of Parliament and senior civil servants would expect to have done for them. A good example of this is provided by the arrest of Agoratus in 405/4: when Theocritus had laid his information at a secret meeting of the boule, and it was decided to arrest and question Agoratus, οἱ αἰρεθέντες τῶν βουλευτῶν went to the Piraeus to look for him; he frustrated his pursuers by providing guarantors, and then took sanctuary; armed with a fresh resolution of the boule, οἱ ἐκ τῆς βουλῆς returned, and Agoratus agreed to go with them.⁴⁷⁰

In this chapter we have seen many committees of the boule at work, and other public committees on which the boule was represented: a man who volunteered for service in the boule could if he chose spend a very busy year and acquire considerable experience of public affairs. In the fourth century bouleutic committees were a common enough phenomenon to be thought worthy of caricature by Sophilus, who suggested that to improve the state of the fish market the boule should appoint two or three ὄψονόμοι .⁴⁷¹

CHAPTER IV : JURISDICTION

Evidence for the boule's judicial activity is largely confined to a period from about the middle of the fifth century to the death of Alexander the Great. In this chapter I discuss the scope of the boule's jurisdiction under four main heads:

- (i) internal discipline,
- (ii) "official" jurisdiction,
- (iii) εἰσαγγελία,
- (iv) δοκιμασία;

and in an appendix I re-examine the question of when and why limits were set to the punitive powers of the boule.

(i) Internal Discipline

Evidence for the discipline of bouleutae is very slight. The most important passage is to be found in Aeschines' speech against Timarchus, where it is alleged that while serving as a bouleutes Timarchus combined with one of the treasurers of Athena to embezzle 1,000 drachmae. The matter came before the ecclesia (we are not told why), and Pamphilus suggested that

ἐάν μὲν ἡ βουλὴ καταγνοῦσα τουτουὶ δοικεῖν καὶ
ἐκφυλλοφορήσασα δικαστηρίῳ παραοῖ

it should be entitled to the customary ὥρεσι, but if it failed to do this it should lose its reward.¹

μετὰ ταῦτα ὡς ἐπανῆλθεν ἡ βουλὴ εἰς τὸ βουλευτήριον,
ἐξεφυλλοφόρησε μὲν αὐτόν, ἐν δὲ τῷ ἦθρι κατεδέξατο.
ὅτι δ' οὐ παρέδωκε δικαστηρίῳ οὐδ' ἐξήλασεν ἐκ τοῦ
βουλευτηρίου, ἄχθομαι μὲν λέγων, ἄνεγκη δ' ἐστίν

εἶπεῖν ὅτι τῆς δωρεᾶς οὐκ ἔτυχε.²

The scholiasts and lexicographers have duly noticed the phenomenon of ἐκφυλλοφορῆα, but they tell us nothing that cannot be learned from the text of Aeschines:³ the boule, on finding one of its members guilty of an offence (which in any case lay within its jurisdiction - see below, pp. 152-6), could vote first by using leaves and afterwards by an orthodox ballot to expel him, and might then prosecute him in a δικοστήριον (as it was obliged to do if it wanted a heavier penalty than a 500 - drachmae fine in a case within its competence - see p. 151). We do not know what the fate of Timarchus would have been if the boule had not relented, but it is dangerous to assume from this passage that any bouleutes convicted of an offence would be expelled. We merely note that the charge lay within the boule's competence, and if found guilty Timarchus was liable to any penalty the boule was entitled to inflict, including expulsion.

The choregus whose defence was written by Antiphon was driven out of the bouleuterium when the basileus accepted a charge of φόνος against him,⁴ but this again is a special case. Once the charge had been accepted an alleged homicide was automatically deemed polluted until a court had cleared him, and it is not clear whether the boule would formally have expelled him or his membership would simply have fallen into abeyance, to be resumed if and when he was subsequently acquitted.

Dinarchus wrote a κατὰ Πολυεύκτου, ἐκφυλλοφορηθέντος ἐκ τῆς βουλῆς, ἔνδειξις,⁵ and this is cited (without reference to the boule) in a confused note of Harpocration and Suidas on the word

καλιναίρετος. . The charge against Polyeuctus apparently involved συκοφαντία, and we may perhaps combine Dionysius' title for the speech with the lexicographers' note to suggest that Dinarchus was attacking Polyeuctus for trying to exercise the rights of a bouleutes, which he had lost when prosecuted on a charge of συκοφαντία; presumably restoration of bouleutic membership was possible and presumably the point at issue was that Polyeuctus' rights had not yet been restored.

Callixenus, the author of the probouleuma under which the Arginusae generals were tried,⁶ was one of those who were later made to provide guarantors and were imprisoned by their guarantors to await trial:⁷ we are not told whether the Athenians' change of heart occurred in the same bouleutic year as the condemnation of the generals, but Callixenus was still under arrest when Cleophon was condemned after Aegospotami, so this incident is probably not evidence for the judicial status of current bouleutae. Nor can we rely on the two occasions in the fifth century when a bouleutes found himself in trouble for proposing the acceptance of peace terms. In 480/79 the man who was prepared to entertain Mardonius' offer was lynched;⁸ in 405/4 Archestratus was imprisoned for proposing the acceptance of the terms which Sparta offered after Aegospotami,⁹ but we do not know the outcome of this, and in any case various acts of dubious legality occurred in the months before Athens' capitulation.¹⁰

We are left with the meagre knowledge that the boule could expel a member against whom a criminal charge was laid, but except when the member was tainted with the pollution of a homicide charge there is nothing to suggest that this expulsion was automatic or obligatory. Indeed, the point most worthy of notice is that in the face of Pamphilus' threats the boule was capable of refusing to expel Timarchus and prosecute him in a δικαστήριον for a penalty beyond its own competence (it does not follow from this that Timarchus was not punished at all). We should always be alert for misleading truths in the orators, and it is possible

that the boule of 361/0 lost its crown for some totally different reason; but Aeschines could at any rate suggest that in this matter the boule had defied public opinion and so had forfeited its reward. Though the ecclesia might have the last word at the end of the year, it apparently could not order the expulsion of a bouleutes whose colleagues were not prepared to expel him.

Further evidence for the discipline of bouleutae comes from a set of νόμοι inserted in the same speech of Aeschines by an ancient editor who was careless enough not to realise what point Aeschines was trying to make.¹¹ This does not in itself prove that what he inserted are not Athenian laws at all, and they are not inherently implausible:

Speakers in the boule or ecclesia must keep to the subject, must treat each subject separately, must not speak twice on the same subject at the same meeting; must avoid invective, must not interrupt another speaker, must not speak except from the βήμα, must not assault the epistates. For each offence the proedri may impose a fine of up to 50 drachmae, or for a greater penalty they may refer the matter to the next meeting of the boule or ecclesia.

From 410/09 bouleutae were required to sit not where they chose at meetings but in the place allotted to them.¹² Keeping order in the boule and ecclesia seems to have been a serious problem, to judge from the various devices employed at different times. In the fifth century both bodies were policed by the Scythian archers under the control of the prytanes;¹³ three tantalising passages in speeches of the fourth century refer to the προεδρέουσα φυλή chosen by lot for a single assembly¹⁴ (whether this is to be regarded as one tribe of bouleutae or the whole of one tribe in the assembly is disputed,¹⁵ but the latter alternative is perhaps the more likely); and in the Hellenistic period the ephebi attended the assembly under arms.¹⁶ Such policing could

have its sinister side, as we learn from Xenophon's account of the
condemnation of Theramenes.¹⁷

(ii) "Official" Jurisdiction

κρίνει δὲ τὰς ἀρχὰς ἢ βουλὴ τὰς πλείστας, καὶ μάλιστα ὅσαι χρήματα διαχειρίζουσιν· οὐ κυρία ἢ κρίσις ἀλλ' ἐφέσιμος εἰς δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἣν ἂν βουλώνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις· ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον ἐὰν αὐτῶν ἢ βουλὴ καταγνῶ.¹⁸

This follows immediately after the paragraph in the Athenaion Politeia which tells the story of Eumelides and Lysimachus and claims that in consequence of that incident the boule lost all its rights of final jurisdiction and was reduced to the level of a court of first instance.¹⁹ Outside the Athenaion Politeia, however we have no evidence that the boule's right to impose penalties up to a fine of 500 drachmae was subject to appeal, though reference to a δικαστήριον was needed for a more severe penalty, and it seems best to assume that the Athenaion Politeia has distorted the facts.²⁰ It seems to have been standard Athenian practice that authorities other than the δικαστήρια should have punitive powers up to a certain limit.²¹

The Athenians did not share the English view that the judiciary should be independent of the legislative and executive authorities. The involvement of the boule in decree-making and administration made it seem natural that the boule should be given judicial powers with which to enforce its decisions, and we shall see that these powers covered the activities of public officials, and of any one else who had public duties to perform. Many offences would come to light through the boule's supervision of the state's administration, which we examined in chapter III, and we should notice particularly here the fourth-century board of ten λογισταί appointed from the boule every prytany to make an interim examination of officials' accounts.²²

That the boule could take action in an official case either on its own initiative or on receipt of a charge from any citizen is made clear by Antiphon's speech on the Choreutes: the choregus had first laid an εἰσαγγελία before the boule, charging the secretary to the thesmothetae and three private citizens with peculation;²³ while in the following year he uncovered further malpractices on the part of the πορισταί, πωληταί and πράκτορες, , and as a πρύτανις brought them before the boule:

ὅτι πρυτανεύων πυθόμενος αὐτοῦς δεινὰ καὶ σχέτλια ἐργάζεσθαι εἰσῆγον εἰς τὴν βουλήν, καὶ ἐδίδαξα ὡς χρῆζητοῦντας ἐκξελεθεῖν τῷ πράγματι.²⁴

The condemnation of the Arginusae generals provides another instance of the boule's starting proceedings on its own initiative: the demos which had elected the generals exercised its right to depose them,²⁵ but the machinery which resulted in their condemnation was set in motion when they reported on the battle to the boule, which decided on the proposal of Timocrates to ~~assert~~^{arrest} them and bring them before the ecclesia:²⁶ the ecclesia ordered the boule to make a probouleuma on how they should be tried; Callixenus on the boule's behalf recommended that a single vote be taken in the ecclesia on the fate of all the accused; objections were made and an alternative proposal put up, ~~but~~ they were ultimately condemned under this probouleuma.²⁷

Most official cases, as the Athenaion Politeia acknowledges, were financial. Lists were kept by a δημόσιος attached to the boule of sums due to the state, classified according to the date when payment was due, and a defaulter had to make double repayment or might be imprisoned:

καὶ ταῦτα εἰσπράττειν ἡ βουλή καὶ [εἶναι] δεῖναι κυρία κατὰ τοὺς νόμους ἐστίν.²⁸

The orators provide us with several laws or proposed laws about state debts. Andocides tells us that in the last years of the Peloponnesian War men who for any reason were in debt to the state became ἄτιμοι ; of these contractors and their guarantors had to pay in the ninth prytany of the year, and if they defaulted their debt was doubled and their property could be confiscated or sold to pay it.²⁹ Cephisius, one of Andocides' prosecutors in 400, had defaulted on a contract, and only the amnesty and recodification of the laws on the fall of the Thirty made it safe for him to appear in Athens:

ὁ γὰρ νόμος οὕτως εἶχε (sc., before 403)· κυρίαν εἶναι τὴν [τε] βουλήν, ὅς ἂν πριάμενος τέλος μὴ καταβάλλῃ, δεῖν εἰς τὸ ξύλον.³⁰

In 353, to save Androtion from the consequences of the embezzlement of which he was guilty at the time of his embassy to Mausolus of Caria, Timocrates introduced a νόμος which was milder than the existing law governing state debts:

εἴ τιτι τῶν ὀφειλόντων τῷ δημοσίῳ προστετίμηται κατὰ νόμον ἢ κατὰ ψήφισμα δεσμοῦ ἢ τὸ λοικὸν προστιμηθῆ, εἶναι αὐτῷ ἢ ἄλλῳ ὑπὲρ ἐκείνου ἐγγυητὰς καταστήσαι τοῦ ὀφλήματος, οὓς ἂν ὁ δῆμος χειροτονήσῃ, ἢ μὴν ἐκτελεῖεν τὸ ἀργύριον ὃ ᾔφλεν. τοὺς δὲ προέδρους ἐπιχειροτονεῖν ἐπιναγκες, ὅταν τις καθιστάναι βούληται. τῷ δὲ καταστήσαντι τοὺς ἐγγυητὰς, εἰάν ἀποδιδῷ τῇ πόλει τὸ ἀργύριον ἐφ' ᾧ κατέστησε τοὺς ἐγγυητὰς, ἀφεῖσθαι τοῦ νόμου. εἰάν δὲ μὴ καταβάλλῃ τὸ ἀργύριον ἢ αὐτὸς ἢ οἱ ἐγγυηταὶ ἐπὶ τῆς ἐνάτης

πρυτανείας, τὸν μὲν ἐξεγγυηθέντα δεδέσθαι, τῶν δὲ ἐγγυητῶν δημοσίαν εἶναι τὴν οὐσίαν. περὶ δὲ τῶν ὄνουμένων τὰ τέλη καὶ τῶν ἐγγυωμένων καὶ ἐκλεγόντων, καὶ τῶν τὰ μισθώσιμα μισθουμένων καὶ ἐγγυωμένων, τὰς πράξεις εἶναι τῇ πόλει κατὰ τοὺς νόμους τοὺς κειμένους. ἔὰν δ' ἐπὶ τῆς ἐνάτης ἢ δεκάτης πρυτανείας ὄφλη, τοῦ ὑστεροῦ ἐνιαύτου ἐπὶ τῆς ἐνάτης πρυτανείας ἐκτίνειν.³¹

Under this proposal the defaulting debtor had to provide guarantors for his repayment of τὸ ἀργύριον ὃ ὄφλην, whereas under the existing law, Demosthenes protests, defaulters on sacred debts had to repay tenfold, and some other public debts were doubled.³² It is not clear to the modern reader whether Demosthenes' substitution of τὸ τρίμημα τὸ γιγνόμενον would have been needed to ensure that in such cases the multiple and not the simple debt was due.

But a relaxation of some kind was being proposed for certain classes of public debtor. Hitherto all men in debt to the state had been treated as defaulting contractors:

τοὺς ἔχοντας τὰ θ' ἱερὰ καὶ τὰ ὄσια χρήματα καταβάλλειν εἰς τὸ βουλευτήριον, εἰ δὲ μή, τὴν βουλήν αὐτοὺς εἰσπράττειν χρωμένην τοῖς νόμοις τοῖς τελωνικοῖς.³³

A scholiast offers us this account of the νόμοι τελωνικοί:

ἴσταν δὲ ὅτι ἐγγυητὰς παρεῖχον οἱ τελῶνοι ἐξ ἀρχῆς, ἵνα ἕως τῆς ἐνάτης πρυτανείας εἰ μὴ καταβάλουεν, τὰ διπλᾶ ἀνάγκην ἔχοιεν ἢ οὔτοι ἢ ἐκεῖνοι καταβαλεῖν. καὶ γὰρ καὶ πάντες οἱ χρεωστοῦντες τοῦτο ἐποιοῦν· ὡς εὐθὺς ὅσοι ἐχρεώσθουν τῇ πόλει, ἀνάγκην εἶχον δοῦναι ἐγγυητὰς, ὅτι πρὸ τῆς ἐνάτης πρυτανείας καταβαλοῦσι, καὶ ἔμενον ἄτιμοι, ἕως οὐ κατέβαλον. εἰ δὲ παρεγένετο ἡ ἐνάτη πρυτανεία καὶ μὴ κατέβαλον, τότε καὶ ἐδεσμοῦντο καὶ τὰ διπλᾶ κατέβαλον, καὶ ἐγγυητὰς οὐκέτι ἐξῆν αὐτοῖς παρασχεῖν περὶ τῶν διπλῶν.³⁴

We know that for the mid fourth century, if not for the time of Andocides, this concentration on the ninth prytany is an oversimplification: the payment on some contracts had to be made in several instalments during the year.³⁵ Nor does it seem likely that contractors were liable to ἀτιμία unless their payments were overdue. The fourth century law governing public contracts should perhaps be reconstructed as follows:-

Those who became public debtors by undertaking to collect a tax, or by some other form of contract, had to provide guarantors when the contract was made.³⁶ If they fell behind with their payments, they incurred a multiple debt and lost their civic rights until that debt was discharged (this much was probably automatic); and to ensure that the debt was discharged the boule had the right to order their imprisonment until payment was made, and the confiscation of their guarantors' property.³⁷ The boule's agents in this work were the ten πρῶκτορες, with whom all offenders were registered.³⁸

(It is not clear how this law differed from that in force before 403. Mr MacDowell suggests that the change lay in accepting double repayment as an alternative to imprisonment;³⁹ perhaps in the fifth century penal

imprisonment was prescribed for all who defaulted on a state debt, while in the fourth it was left to the boule as a precautionary measure so that the offender's person could be held as security for his payment.⁴⁰⁾

Timocrates proposed to leave this law untouched for contractual debtors, but to grant a certain measure of relief to others, from whom immediate payment could be demanded: Demosthenes in his attack mentions fines, and restitution of stolen or misappropriated property,⁴¹ which perhaps are the προσκαταβλήματα said to be exacted because the revenue from τέλη was insufficient.⁴² ἄτιμια was automatic in these cases, as with contractual default; imprisonment depended on the charge: in some cases it followed automatically upon conviction, in others it was left to the discretion of the courts;⁴³ exaction as with contractual debts was the responsibility of the boule and πρόκτορες. Demosthenes is determined to upset Timocrates' proposal by fair means or by foul, and the incomplete state of our knowledge makes it hard to judge which of his arguments are fair,⁴⁴ but it appears that the main effect of Timocrates' law would have been to replace immediate payment by contractual obligation to pay by the ninth prytany in the case of fines and misappropriation of public property.

One financial matter in which the boule had jurisdiction was the collection of tribute from the Delian League. Clinias' decree gave the boule primary jurisdiction over any one in Athens or the allied states who committed an offence in connection with the tribute or with the allied states' duty to send a cow and panoply to the Panathenaea: trial before the boule was to be a primary hearing only; if the boule convicted the case was to be referred to the heliaea and the prytanes were to hold a debate on a suitable penalty.⁴⁵ The only judicial proceedings mentioned in the surviving part of Cleonymus' decrees were to be heard in the δικαστήρια, but a record of the ἐκλογεῖς in the different cities was to be kept in the bouleuterium, and it is not unlikely that the boule retained some jurisdiction.⁴⁶ Thudippus' decree of 425 is

concerned with the assessment of tribute, not with its collection, and the quasi-judicial part played by the boule in making assessments has been discussed above, in chapter III;⁴⁷ but we should notice here that the boule was given jurisdiction over the heralds sent out to announce the revision of the assessment.⁴⁸ Another League matter probably entrusted to the jurisdiction of the boule was the ban on local weights, measures and silver coinage: Clearchus added to the bouletic oath a clause in which the members swore to enforce his decree.⁴⁹

The boule does not seem to have enjoyed similar powers in connection with the Second Athenian League: in the early years of the League, when Athens was careful not to trespass on the rights of the members, we should expect the allies to be involved in the collection of *συντάξεις* and the punishment of offenders; later the exaction of overdue payments seems to have been regulated by decree of the assembly.⁵⁰

Most financial irregularities were probably uncovered by the boule in the course of its administrative work. The case of Androtion and his colleagues, however, began when a private citizen gave information to a board of *ζητηταί* set up to enquire into sums due to the state,⁵¹ and it was always possible for a private citizen to initiate a financial case by *φάσις*.⁵² Aristophanes mentions two such *φάσεις*, in the Acharnians, against the Megarian who tries to sell his children as pigs,⁵³ and in the Knights, where the Paphlagonian threatens to *φάσσειν* the sausage-seller to the prytanes for not paying the tithe on his tripe.⁵⁴ Early in the fourth century the boule was involved when a ship on which a man had lent money was denounced by *φάσις* as belonging to a Delian,⁵⁵ and when the *σιτοπῶλαι* were accused of buying more than the 50 *φορμοί* of corn allowed by the law.⁵⁶ In each case there was talk in the boule of putting the accused to death *ἀριτοι*, but the cases were ultimately referred to the *δικαστήρια*. Less reliable is the boule's verdict against Callimachus under the Ten in 403, though this case ought still to

have come before the boule under the democracy: Patrocles claimed that money in the possession of Callimachus belonged to the state; an argument developed, and when one of the Ten appeared Patrocles made a φάσις to him; when this man brought the disputants before his colleagues they referred the case to the boule, which gave its verdict against Callimachus.⁵⁷

In naval matters evidence is fairly plentiful, though the interaction of boule and δικαστήρια is complex. The navy lists give several instances of trierarchs who had failed to maintain their ships in good condition, and were ordered by a δικαστήριον, when they admitted their liability, to provide a new ship at their own expense, breaking up the old and depositing its ἔμβολος in the dockyard.⁵⁸ Again, it was a δικαστήριον which ruled that a ship had been damaged by storm (and so presumably released the trierarch from the obligation to provide a replacement).⁵⁹ In one instance only, in 334/3, a δικαστήριον doubled the trierarch's debt and ordered him to provide two new triremes;⁶⁰ but in 326/5⁶¹ and probably in the following year also⁶² men who failed to replace their ships had the debt doubled by the boule. Some decisions of the ecclesia seem no more fundamental than matters decided by the boule or δικαστήρια, and on one occasion it took a decree of the demos to establish that three horse transports were unfit for war service.⁶³ We have seen in chapter III that the boule had considerable responsibilities when an expedition was sent out; the boule decided the award of crowns to efficient trierarchs, and prosecuted in a δικαστήριον (for heavier penalties than it was competent to inflict) the inefficient.⁶⁴

The δικαστήρια appear from the lists to have been the regular authorities for dealing with ships' equipment, and there are many references to a trierarch's having his debt doubled by a δικαστήριον.⁶⁵ Further light is thrown on the situation by a decree of the boule, whose text is given in one of the lists.⁶⁶ In 325/4 one Sopolis had been con-

victed in a δικαστήριον of failing to surrender the equipment for ten triremes on behalf of his brother, who had been ταμίης, and had been ordered to pay "more than double."⁶⁷ There were in the dockyards some lengths of timber suitable for making into oars, which belonged to Sopolis, and these together with the rest of his property had been confiscated; Polyuctus, who had made the ἀπογραφή, is granting the legally permitted remission, and in this decree orders the ἐπιμεληταὶ τῶν νεωρῶν to allow 3 drachmae against Sopolis' debt for each of the lengths of timber which he has deposited: if the epimeletae or the secretary of the Eleven fail to comply with this decree, each of them will incur a fine of 3,000 drachmae,

εἶναι δὲ καὶ εἰσαγγεῖαν αὐτῶν καθάπερ ἔσιν τις ἄδικεῖ
περὶ τὰ ἐν τοῖς νεωροῖς.

The boule is thus revealed as the principal judicial authority in naval matters, which could enact an adjusting measure after a court had passed sentence; we shall see that the εἰσαγγελία referred to would naturally have been heard by the boule, with reference to a δικαστήριον for the penalty, and it is interesting to notice that the boule could specify in a decree a penalty more severe than it could on its own authority inflict.⁶⁸

The boule's powers and weaknesses are clearly illustrated by the case of Theophemus, which is described in detail in the speech against Evergus and Mnesibulus.⁶⁹ In 357/6 a naval expedition was sent out in some haste, presumably to take part in the Social War, and was threatened by a serious shortage of equipment. Chaeredemus therefore carried a decree (whether in the boule or ecclesia is uncertain) providing for the recovery of equipment in the possession of ex-trierarchs:⁷⁰ it is probably this decree which ordered the confiscation of the property not only of those who refused to surrender state-owned equipment but also of those

who possessed equipment of their own and would not sell it.⁷¹ Under Periander's symmory-law of the previous year trierarchs were authorised to collect equipment directly from their predecessors, and another decree laid down the principles on which defaulting trierarchs were to be allocated to their successors: in accordance with this decree ἡ ἀρχὴ παραλαβοῦσα παρὰ τῆς προτέρας ἀρχῆς (surely the epimeletae)⁷² allotted Demochares and Theophemus to the speaker.⁷³ The speaker demanded his equipment from them, without success. He then summoned them before the ἀποστολεῖς and epimeletae, who at that time brought διαδικασίαι over equipment into court:⁷⁴ Demochares and Theophemus were both convicted, but while the former discharged his debt the latter did nothing about it.⁷⁵

The speaker's next step was to complain to the ἀποστολεῖς and the boule, of whom the boule seems to have been the more important, as the ἀποστολεῖς do not play an active part in the affair. Other trierarchs in a similar plight complained to the boule at the same time, and after some debate the boule authorised them to recover the equipment due to them in any way possible:

εἰσπράττεσθαι τρόπῳ ᾧ ἂν δυνώμεθα.

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The speaker thinks it worth mentioning that the decree was not/challenged in a γραφὴ παρανόμων, which suggests that a measure of this kind was unusual,⁷⁷ and even after being given carte blanche he proceeded with great caution. Being unable to find Theophemus he went to the man's brother Evergus and asked him to tell Theophemus about the decree; a few days later he went with witnesses to be assured by Evergus that he and Theophemus held their property separately, not in common, and to discover (a little belatedly) where Theophemus lived.⁷⁸ He then took a δπηρέτης from the ἀρχὴ and went to Theophemus' house, sending the woman who opened the door to find Theophemus;⁷⁹ when he arrived the speaker produced the text of the boule's decree and asked for the

inventory of the equipment. When Theophemus replied with threats the boy (i.e. the ὑπηρέτης) was sent out into the street to fetch witnesses.⁸⁰ In the presence of these witnesses the speaker asked Theophemus either to accompany him to the ἀποστολεῖς and the boule (if he disputed the claim) or to hand over the equipment: if he refused, the speaker would have to take security for it. Theophemus remained uncooperative, so the speaker laid hands on "the person" standing by the door;⁸¹ Theophemus stopped him; he went inside to take something as security; Theophemus assaulted him.⁸²

The speaker gave an account of the incident to the boule, and displayed his bruises. The boule took a serious view of the matter, recognising that this was not simply a private injury but defiance of public authorities,⁸³ and told the speaker to proceed against Theophemus by εἰσαγγεῖλα,

ὡς ἀδικοῦντι καὶ διακωλύοντι τὸν ἀπόστολον.

Not surprisingly, Theophemus was found guilty;⁸⁴ but when the boule was voting on whether to fine him 500 drachmae (plus, we may assume, double the debt for the equipment) or to press for a heavier penalty in a

δικαστήριον , the speaker declared that he would be satisfied with a fine of 25 drachmae.⁸⁵ We may wonder if the speaker is telling less than the whole truth - perhaps Theophemus was fined 25 drachmae for assault and a larger sum for impeding the dispatch of the expedition, or perhaps the boule was less easily softened than the speaker - for the dispute was prosecuted with increasing violence when the speaker returned from the expedition.⁸⁶ They entered lawsuits against each other; Theophemus contrived to have his charge heard first, and secured a verdict against the speaker; and when his damages had not been paid he seized the speaker's property with considerable violence. The speaker replied by charging Theophemus' principal witnesses with perjury, and [Demosthenes], XLVII, was written in support of that charge.

A stone has been found in the agora bearing on one face part of a law or laws concerning trierarchs, naval equipment and ship-builders, inscribed in the old Attic alphabet, and on the reverse part of the Athenian sacrificial calendar, inscribed in the Ionic alphabet: it is therefore to be assumed that the naval law was published or republished in the revision of the laws begun in 410,⁸⁷ and this fragment probably belongs to a collection of all the naval laws then in force. Lines 3-8 have been restored by Professor Oliver to yield the following provisions:

If any [man in debt to the state does not surrender to the trierarch succeeding him the hanging or] wooden equipment, the trierarch may sum[mon such an offender before the ἀρχή of the epim]eletae in the presence of two κλητῆρες and make his claim [; ...] the epimeletae shall bring the case before the δικαστήριον on the following day; if [the defaulter does not enter a διαδικασία, he shall surrender the equipment] to the injured party, the execution being as from a [private debtor; if he does not give security when the trierarch asks for it, he shall pay] the δημόσιον such a sum as the δικαστήριον may assess.

That is, we are offered provision for a διαδικασία and procedure for dealing with a defaulting ex-trierarch which corresponds to that followed in 357/6 except in two respects: there is no mention of the ἀποστολεῖς, who in 357/6 but not for long afterwards played some part in bringing disputed cases to trial,⁸⁸ and jurisdiction remains with the δικαστήριον instead of passing to the boule if the original court order is ignored.

It is clear enough from the stone that we are dealing with trierarchs who bring disputes over equipment through the epimeletae to the δικαστήρια, but it is not clear that in the fifth century equipment passed directly from one trierarch to another without the intervention of the dockyard officials. It would at least be compatible with [Demosthenes] XLVII.21

if direct transfer was introduced for the first time by Periander's symmory-law of 358/7, and this might help to explain why several trierarchs were in the same plight as the speaker:⁸⁹ Oliver may be right to restore provision for defiance in line 8, since proposers of fifth-century decrees seem commonly to have been pessimistic in this respect, but defiance after a court had pronounced judgment ought not in practice to have been common.

Theophemus very probably gave way after the εἰσαγγελία, but one thing which stands out very clearly is the impotence of the boule (as of other courts) in the face of straightforward defiance: with trierarchic debts treated as private debts rather than as debts to the state, imprisonment was evidently impossible, and though the decrees of the boule indemnified the new trierarch for any acts which he committed in the attempt to recover the equipment (at any rate, they should have indemnified him, but Theophemus found a court which thought otherwise) it seems that in the last resort little or nothing could be done if a trierarch retained state-owned equipment with sufficient obstinacy.

The difficulty of enforcing verdicts is further illustrated by the case of Androtion and his fellow-ambassadors, who retained the proceeds from the sale of enemy goods. A decree moved, presumably in the ecclesia, by Aristophon provided for the appointment of ζητηταί before whom μηνύσεις might be laid against any one holding public monies, whether sacred or secular. Euctemon denounced the trierarchs Archebius and Lysithides; he came before the boule, which made a probouleuma; in the ecclesia after a προχειροτονία he repeated his charge. Androtion and his colleagues protested that they, not the trierarchs, had the money, but Euctemon ἔδωκε γνώμην that the state should hold the trierarchs responsible, and leave it to them to enter a διαδικασία against the ambassadors who had been sailing on their ship; this decree was attacked in a γραφή παρανόμων, but without success.⁹⁰ The main object of the proceedings - and Demosthenes describes Euctemon's

γνώμη as ὡς δύνατον δικαιοτάτην ⁹¹ - was not to lay the blame on the right man but to establish that some one was in debt to the state: if the men picked on were innocent, they nevertheless became responsible for repayment unless and until they could persuade a court to transfer the responsibility to those who had actually taken the money.

To sum up what we have seen of the boule's jurisdiction in naval matters - the principles on which court cases were distinguished from the boule's cases are not wholly clear, but though its powers of punishment were limited the boule seems to have been regarded as the senior authority, which could make an adjustment after a court had given its verdict, or would be consulted if a court's verdict had proved ineffective. Serious naval offences could be made the subject of an εἰσαγγελία, but the boule's involvement was not limited to cases brought to its attention in this way.

Of the boule's powers in connection with public works we read in the Athenaion Politeia:

ἔξετάζει δὲ καὶ τὰ οἰκοδομήματα τὰ δημόσια πάντα, καὶν τις ἄδικεῖν αὐτῇ δόξει, τῷ τε δήμῳ τοῦτον ἀποφαίνει καὶ καταγνοῦσα παραδίδωσι δικαστηρίῳ.⁹²

That the boule should have had powers in this field is extremely likely: we should expect it to have been able to impose fines up to 500 drachmae on its own authority, or to refer to a δικαστήριον for a heavier penalty, and we know that elsewhere this treatise regularly fails to mention the boule's limited final jurisdiction. The difficulty lies in τῷ τε δήμῳ ... ἀποφαίνει : since it is the boule which παραδίδωσι δικαστηρίῳ condemnation by the ecclesia can scarcely have been required before the case was transferred to a court,⁹³

yet we have no parallel for the boule's being required to inform the ecclesia of actions in which the ecclesia did not participate. Foucart suggested that in some cases special action may have been required (i.e. by decree of the ecclesia) to rectify the consequences of an offence.

We have very little other evidence on judicial activity in connection with public works. The Lexica Segueriana mention the possibility of φάσις to the archon⁹⁴ - on what authority, we do not know. In the wall-building activity of 337/6 ἐπιβολαί were imposed and courts presided over by the tribally elected τειχοποιοί;⁹⁵ and there remains only a tantalising line from the decree of 307/6 for wall-building:

[-] ξ [... συλλ]αβοῦσαν κολ [αζ]εῖν τ [δ]ν
μῆ πειθαρχοῦν[τα].⁹⁶

It is possible that the noun to be supplied is βουλήν,⁹⁷ but there is too much missing to permit a reliable reconstruction.

We are a little better informed in religious matters. An Eleusinian law of the fifth century fixed a fine of 500 drachmae for offences concerning the Πελάργικόν, and in such cases ordered the basileus to εἰσαγγελλεῖν to the boule.⁹⁸ When an uproar broke out in 415 over the profanation of the Eleusinian Mysteries and the mutilation of the Hermae the first public mention of the affair was made in the ecclesia: the boule was made ἀτοκράτωρ to enquire into the whole affair, but as far as we can tell all sentences were imposed by the δικαστήρια.⁹⁹ Shortly before Andocides' trial in the autumn of 400, a branch was placed in supplication on the altar in the Eleusinium during the celebration of the Mysteries. On the return of the Athenians from Eleusis, Cephisius made an ἔνδειξις of Andocides for taking part in the festival while ἄτιμος,¹⁰⁰ and when the basileus made his customary report to the prytanes they said they would bring him before the boule, and warned Andocides and Cephisius to attend. The boule met in the Eleusinium, and Callias drew attention to the branch on the altar; the herald asked who had put it there, and no one answered, though Andocides and Cephisius

were standing by and Callias could see them; there being no answer, the herald went in again to the boule. When the herald told the boule that there was no answer, Callias mentioned a νόμος πατριός, that any one who had committed this offence could be put to death ἄκριτος,¹⁰¹ and said he had heard that Andocides was guilty; Cephalus pointed out that Callias had no right to lay down the law - he was a κῆρυξ, and not an Ἐξηγητής - and that the stele in the Eleusinium prescribed not the death penalty but a fine of 1,000 drachmae: but since Andocides was accused, he should be summoned before the boule.

ἐπειδὴ δὲ ἀνεγνώσθη ἡ στήλη κάκεϊνος οὐκ εἶχεν εἰπεῖν
οὔτου ἤκουσεν, καταφανῆς ἦν τῇ βουλῇ αὐτὸς θεῖς τὴν
ἰκετηρίαν.¹⁰²

Both the ἔνδειξις of Andocides for attending the Mysteries while ἔπιμος, which was ultimately referred to a δικαστήριον in which all the δικασταί were initiates,¹⁰³ and the illegal supplication were matters with which the boule was prepared to concern itself, and since our fragmentary Eleusinian decrees involve the boule in various ways there is no need for Mr MacDowell's surprise at this fact.¹⁰⁴

Bouleutic interest in another religious offence is attested by a passage in the hypothesis to the first speech against Aristogeiton:

Πυθαγγελος καὶ Σκόφων ἰδόντες Ἱεροκλέα φέρονθ' ἱερὰ
ἱμάτια . . . ἀπάγουσι πρὸς τοὺς πρυτάνεις ὡς ἱεροσύλον,
οἱ δὲ τῇ ὑστεραίᾳ καθιστᾶσιν εἰς τὴν ἐκκλησίαν. . . .
ἐνταῦθ' Ἀριστογεῖτων γράφει ψήφισμα πρῶτον μὲν
ἀπροβούλευτον, ἔπειτα δεινότατον, κελεύον, εἴν μὲν
ὁμολογῆ τὰ ἱμάτι' ἐξενεγκεῖν, ἀποθανεῖν αὐτὸν αὐτίκα,
εἴν δ' ἀρνήηται, κρίνεσθαι.

Aristogeiton's decree was successfully attacked in a γραμὴ παρανόμων, and he was fined 5 talents.¹⁰⁵ The author of our speech concentrates

on general abuse of Aristogeiton, claiming that the facts had been adequately rehearsed by Lycurgus,¹⁰⁶ and Lycurgus' speech is presumably the source of the detailed account in the hypothesis. We may assume that the prytanes brought Hierocles before the boule as well as the ecclesia, and I suspect that the ἀπαγωγή may have resulted in a formal εἰσαγγελία.¹⁰⁷

Finally, more unusual irregularities in the running of the state might be referred to the boule by the ecclesia. IG i² 95 has been tentatively restored by Mr A.G. Woodhead to yield provisions for the boule and ecclesia to call a past prytany to account in the year 418/7.¹⁰⁸ On the general import of the decree he may well be right, but I am unhappy about the restoration of lines 9-12:

τὲν δ' ἐπιλεσίαν ποιῆν [περὶ τῆς
Αἰαντί]-
[δος τὸς πρυτάνες] τῆς Αἰγεΐδος πρυταν[εἰδός εὐθὺς ἀφ'
ἕς ᾧ]-
[ν προβολεύσει ἡε βο]λῆ περὶ τοῦτον πέν]τε ἡμερῶν,
ἡόπος ᾧ]-
[ν δικάζεν ἔχσῃ τῆι βολ]ῆι [τ]ῆι ἐπὶ Ἀντιφ[ῶντος ἄρχοντος].

If the boule is to make a probouleuma and bring the matter before the ecclesia, it is odd to set a time limit so that the boule may δικάζειν within the current year, and in any case the expression τῆι βολῆι τῆι ἐπὶ Ἀντιφῶντος ἄρχοντος ought not to have been possible before the archontic and bouleutic years were made conterminous after the fall of the Four Hundred.

Another tentatively restored inscription from the end of the fifth century has a rider calling on the boule to enquire into the bribery used to obtain a decree:

[— τὲν βολὴν βολευσ]αί ἐν τῆι πρότει ἡέδ-
[ραι ἐν τῶι βολευτερ]οῖ καὶ κολάζεν τῶν [δ]ορο-
[δοκεσάντων καταφσ]εφίζομένεν, καὶ ἐς δικασ-
[τέριον αὐτὸς ἐσάγε]ν, καθότι ἂν δοκῆι αὐτῆ[ι].¹⁰⁹

This makes better sense: the initial verdict is to be the boule's, and the case is presumably to be referred to a δικάστηριον for a penalty more severe than the boule can impose.

In finance, in naval matters and in religion the claims made for the boule by the Athenaion Politeia have been borne out, though in public works evidence for jurisdiction on the part of the boule and of other authorities is almost wholly lacking. Whereas we do our best to keep justice separate from the executive powers, so that even our rulers must obey the rule of law, the Athenians believed that executive authority should be reinforced by judicial power. The infliction of severe penalties was reserved for the people, or for representatives of the people sitting in a δικάστηριον, but the boule, which itself was the city in microcosm, was given enough power to deal with all but the most serious offences which it was likely to uncover in the course of its administrative duties.

(iii) εἰσαγγελία¹¹⁰

In examining the boule's official jurisdiction I have already mentioned several times the procedure known as εἰσαγγελία . According to the Athenaion Politeia εἰσαγγελία was instituted by Solon to enable the Areopagus to try τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους:¹¹¹ though this formulation is more at home in the fourth century than in the sixth, Cylon before Solon and Pisistratus after remind us that the danger of tyranny at that time was very real, while Solon's poems show his awareness of the explosive situation with which he was dealing. That he provided for εἰσαγγεῖαι to the Areopagus on major charges of public importance, such as attempting to set up a tyranny, does not seem inherently unlikely. Some have thought that εἰσαγγεῖαι were partly or wholly transferred to the boule and ecclesia by Cleisthenes, but I shall argue in the appendix to this chapter that no change was made until the reforms of Ephialtes.¹¹²

The nature and content of the νόμος εἰσαγγελτικός in the period of the orators have been much disputed. The first strand in the lexicographers' account (derived according to the Lexicon Rhetoricum Cantabrigiense from Caecilius) reserves this process for ἔγγραφα δημόσια ἀδικήματα.¹¹³ The other strand in our tradition enumerates specific offences which were to be dealt with by εἰσαγγελία (I underline these parts of the law which are quoted by Hyperides):-

- (i) ἐάν τις τὸν δῆμον τὸν Ἀθηναίων καταλύῃ . . . ἢ συνέηποι ἐπὶ καταλύσει τοῦ δήμου ἢ ἐταιρικὸν συναγωγήν,¹¹⁴
- (ii) ἢ ἐάν τις πόλιν τινα ἢ κώριον ἢ φρούριον προδῶ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατῶν,¹¹⁵
- (iii) ἢ ῥήτωρ ὢν μὴ λέγῃ τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων κρήματα λαμβάνων καὶ δωρεὰς παρὰ τῶν τῶν ἀντιθέτων ἀποτόντων τῷ δήμῳ,¹¹⁶

(iv) ἢ εἰς τοὺς πολεμίους ἄνευ τοῦ πεμφθῆναι ὀφικνεῖται
ἢ νικοῖη παρ' αὐτοῖς ἢ στρατεύηται μετ' αὐτῶν ἢ
δῶρα λαμβάνῃ.¹¹⁷

This does not exhaust the list of offences which might be dealt with by εἰσαγγελία, and Hager and Thalheim tried to add further clauses to the νόμος, so as to bring within its scope all charges which were in fact the subject of εἰσαγγελία. Hager added dockyard offences, on the basis of the bouleutic decree preserved in a navy-list:-

εἶναι δ' εἰσαγγελίαν αὐτῶν εἰς τῆς βουλῆν καθότιερ εἰν
τις ἀδικεῖ περὶ τὰ ἐν τοῖς νεωρίοις,¹¹⁸

and trading offences, from the title of a speech by Dinarchus:-

κατὰ Πυθέου περὶ τῶν κατὰ τὸ ἐμπόριον εἰσαγγελία.¹¹⁹

Thalheim proposed to add also deceiving the people by false promises, παραπρεσβεῖα, and actions endangering the Second Athenian League.¹²⁰

Bonner and Smith have attacked the whole principle underlying the search for additional clauses, arguing that the purpose of the νόμος εἰσαγγελτικός was to ensure the use of this procedure in certain cases, not to rule it out in others.¹²¹ Certainly the degeneration of εἰσαγγελία into a means of dealing with petty crime, of which Hyperides complains,¹²² suggests that there was no finite list of offences to which it could be applied. Though terms like conspiracy against the demos invited misinterpretation, I think we should accept the non-specific strand in the tradition, allowing εἰσαγγελία for ἄγραφα δημόσια ἀδικήματα as well as for specified acts of treason and corruption.¹²³ Any major public offence was liable to be tried by this means, and it may be that the listing of eisangelitic offences did not keep pace with accepted practice.

The procedure followed has been disputed no less hotly than the range of charges to which it was applicable. One case of which we have a detailed account, that of the trierarch Theophemus in 357/6, has already been discussed. When Theophemus assaulted a man who was trying to take security for the return of trierarchic equipment (which the boule had authorised him to recover in any way possible), the injured man began by making a comparatively informal complaint to the boule, which regarded the assault as a public offence rather than a private injury, and told him to make an εἰσαγγελία : the prytanes were to set aside two days for Theophemus' trial ὡς ἀδικοῦντι καὶ διακωλύοντι τὸν ἀπόστολον . The trial took place, plaintiff and defendant spoke, and on a secret ballot the defendant was found guilty; the boule had then to vote by show of hands whether to fine Theophemus 500 drachmae (the most it could do on its own authority) or to pass the case to a δικαστήριον , but the plaintiff was content with an "additional penalty" of 25 drachmae.¹²⁴ Hearing by the boule constituted a full trial, and if it was satisfied with a penalty within its own competence the case need go no farther; if a heavier penalty was thought appropriate the case must go before a δικαστήριον . No mention is made of the ecclesia.

εἰσαγγελία certainly could involve the ecclesia, as we see from the unsavoury career of Agoratus at the end of the Peloponnesian War.¹²⁵ Lysias claims that as the democratic leaders objected to the peace terms which Theramenes brought back from Sparta he decided to eliminate them from politics before the terms were discussed in the ecclesia: Agoratus was Theramenes' main tool, but was to appear as an unwilling witness.¹²⁶ At a secret meeting of the boule (which in 405/4 was corrupt and oligarchically inclined) Theocritus gave news of a conspiracy, but would not himself reveal any name except that of Agoratus.¹²⁷ The boule resolved that some of its members should go down to the

Piraeus to fetch Agoratus: they met him in the agora and tried to arrest him, but Nicias and others offered themselves as guarantors.¹²⁸ The bouleutae took the guarantors' names and returned to Athens; Agoratus and his friends took refuge by the altar at Munichia, but he refused to escape from Attica.¹²⁹ The boule enacted another decree (presumably, that Agoratus was to be interrogated at once), and οἱ ἐκ τῆς βουλῆς came to Munichia. Agoratus left the altar and went with them - of his own free will, Lysias claims.¹³⁰ He was taken to the boule, and there he denounced his guarantors, Theramenes' opponents, and others;¹³¹ and was produced before an assembly in the theatre at Munichia, where he repeated his denunciations.¹³² This assembly voted that his victims should be arrested and tried in a δικάστηριον¹³³ (but granted ἔδοξα to one Menestratus at the request of a relative of Critias¹³⁴). At this stage in the affair peace was made with Sparta and the Thirty came into power. Ignoring the decree of the assembly, they arranged for the trial to be held in a boule whose members voted under the watchful eyes of the Thirty:¹³⁵ Agoratus¹³⁶ and Menestratus¹³⁷ were released as public benefactors, and their victims were condemned to death. To prove Agoratus' involvement in the affair, Lysias cites the decrees of the boule and demos περὶ ὧν Ἀγοράτος κατεῖρηκεν, and remarks that the formal verdict acquitting Agoratus read, διότι ἔδοξε τάληθῆ εἰσαγγεῖλαι¹³⁸; likewise Menestratus was released, δόξαντα τάληθῆ εἰσαγγεῖλαι.¹³⁹ The man who at first was arrested to face a charge of conspiracy was transformed by turning state's evidence into the prosecutor of his victims,¹⁴⁰ and had the democracy not been overthrown the case would have passed through all three bodies competent to hear εἰσαγγεῖλαι - boule, ecclesia and a δικάστηριον. Nor can the ecclesia have been eliminated from the procedure after the fall of the Thirty: in the case of Ergocles, in 388, the ecclesia apparently met twice on consecutive days, to discuss verdict and penalty;¹⁴¹ in the εἰσαγγελία against Lycophon

in 333 Hyperides' speech was delivered before δικασταί , but

ἐν τῷ δήμῳ τὸ πρῶτον αὐτοὶ εὐθὺς ἤκιδσαντο;¹⁴²

and the Athenaion Politeia and the lexica record that time was provided for the hearing of εἰσαγγελίαι at the κυρία ἐκκλησία of each prytany.¹⁴³

It has been suggested that the three-stage procedure intended in the case of Agoratus was obligatory, at any rate in cases where a fine imposed by the boule was inadequate. Ferguson wrote:

The Council lacked the power to submit an eisangelia involving treason to a dikastery without the thesmothetae first laying it before the demos,¹⁴⁴

and took the reference of Antiphon's case directly from the boule to a δικαστήριον as an indication of the constitutional irregularity of the régime of the Five Thousand. Reference of the case immediately from the boule to a δικαστήριον he described as "an aggrandisement of the Council," but Clinias' tribute decree, probably in the 440's, provides for immediate reference from the boule to the heliaea,¹⁴⁵ and since the full judicial power of the demos resided with those of its members who sat in the δικαστήρια¹⁴⁶ I am not convinced that this by-passing of the ecclesia need ever have appeared undemocratic. The details of known εἰσαγγελίαι are hard to reconcile with Ferguson's theory.

The relations of the boule and ecclesia provide the most difficult problem. The trials of Antiphon, Agoratus and Theophemus all began in the boule, and this practice was at any rate commonly observed. Isocrates in listing the ways in which it is possible to proceed against συκοφάνται mentions

γραφῶς μὲν πρὸς τοὺς θεσμοθέτας, εἰσαγγελίας δ' εἰς τὴν βουλήν, προβολῶς δ' ἐν τῷ δήμῳ,¹⁴⁷

which ought to mean that the boule was the normal recipient of εἰσαγγελία. Yet there is evidence to suggest that an εἰσαγγελία might be begun in the ecclesia, and Harpocration thought that ἡ πρώτη κατάστασις could be made to the boule or the ecclesia.¹⁴⁸ First mention of the Mysteries scandal in 415 was made, according to Andocides, in the ecclesia,¹⁴⁹ and this constituted an εἰσαγγελία;¹⁵⁰ Isocrates in a far less detailed account writes of an εἰσαγγελία to the boule,¹⁵¹ and it is not disputed that the boule was made ἀποκράτωρ and received the later charges.¹⁵² It seems likely from Andocides' wording that Pythonicus had not given prior notice of his allegations, but it also appears that the item on the agenda under which his allegations were made was, the dispatch of the Sicilian expedition. But time was, as I have said, provided expressly for

τῶς εἰσαγγελίας . . . τὸν βουλόμενον ποιεῖσθαι

in the κυρία ἐκκλησία of each prytany,¹⁵³ and this may point the way to a solution. I have discussed in chapter II the rule of προβούλευσις, by which any matter on which the ecclesia voted had first to be discussed by the boule, and suggested there that the provision for εἰσαγγελία and προβολαί in the κυρία ἐκκλησία and ἕκαστηρία in a second assembly constituted a partial exception to the rule: under these items a matter could be given its first airing in the ecclesia, but since it had not yet been discussed by the boule the ecclesia could only reject the matter out of hand or provisionally accept it and refer it to the boule for further consideration.¹⁵⁴ If this is correct the beginnings of an εἰσαγγελία will have been similar to the beginnings of a decree: like any other business transacted by the ecclesia it had to be discussed by the boule before the ecclesia could reach a final decision; normally the boule would be the first public authority to discuss it, but it was possible for the question to originate in the ecclesia and be referred back to the boule.

This I believe was intended to be the main characteristic of eisangelitic procedure in the post-Ephialtic democracy, that εἰσαγγελίαι were heard not by the ordinary courts but by the final authorities in Athens, the boule and demos.

But we know that the δικαστήρια did come to be involved in εἰσαγγελίαι, at any rate before the end of the fifth century. Some instances have already been mentioned, and many could be added. Timotheus, on a charge which should have been the subject of an εἰσαγγελία, was fined 100 talents by voters who had taken an oath;¹⁵⁵ Aristophon, very probably on an εἰσαγγελία, was acquitted in a δικαστήριον by two votes;¹⁵⁶ and Philocrates, certainly on an εἰσαγγελία, was condemned in a δικαστήριον.¹⁵⁷ Hyperides implies in the opening of his speech for Euxenippus that in the days when εἰσαγγελίαι were directed against prominent men (who normally did not remain in Athens to await the verdict) on serious charges the cases regularly came before a δικαστήριον.¹⁵⁸ Just as the boule's hearing was a full trial, and the verb καταγιγνώσκειν could be used of its condemnation,¹⁵⁹ it appears from the acquittal of Aristophon and indeed from the general remarks of Hyperides that the court's hearing also was a full trial, not merely a meeting to sentence a man who had already been convicted. The same was presumably true of εἰσαγγελίαι heard by the ecclesia, and a man threatened with a serious penalty by this means will thus have had at least two chances of acquittal, though on charges carrying a fixed penalty beyond the competence of the boule the hearing in the boule may have been purely formal.¹⁵⁰

Many cases were referred by the boule to the δικαστήρια, some to the ecclesia, and it was at any rate possible for all three bodies to be involved. A clue to the explanation is perhaps provided by a passage in Aristophanes' Wasps:

ἔτι δ' ἡ βουλὴ χῶ δῆμος ὅταν κρῖναι μέγα πράγμα' ἀκορήσῃ
ἐψηφίσται τοῦς ἀδικοῦντας τοῖσι δικασταῖς παραδοῦναι.¹⁶¹

I believe that Ephialtes, or whoever deprived the Areopagus of the right to hear εἰσαγγεῖλαι, intended that they should be heard instead by the boule, with reference to the demos sitting in its judicial capacity as the undivided ἡλιαία - but his measure providing for this probably specified no more than "boule and demos." The development of the separate δικαστήρια and reduction of the archons' judicial power are poorly attested,¹⁶² but I suspect that the old concept of the heliaea as a judicial session of the ecclesia lingered for some time after it had become normal for the heliaea to be divided into δικαστήρια. Perhaps the last active occurrence of the old sense of the word is its restoration in Clinias' tribute decree:

[hō δ' ἄν]
καταγνῶι ἡ[ε βολέ, μὲ τιμᾶν αὐτῶι κυρία ἔστο [ἀλλ' ἐσ]-
φερέτο ἐς τιὰν ἑλιαίων εὐθύ]ς.¹⁶³

Shortly afterwards we find a reference to "the heliaea of the thesmo-
thetae,"¹⁶⁴ and it is presumably this that is meant when Thudippus' assessment decree mentions

[τῆς ἑλιαίας καὶ τ]ῶν ἄλλον δικαστηρίων.¹⁶⁵

It is assumed that when the change was complete the courts of the thesmothetae, meeting in the building of the old heliaea, retained the name of the heliaea also. With the name, they must have retained also some of the aura of the old heliaea, and must still have been thought of as judicial sessions of the demos: at any rate it is abundantly clear that the δικαστήρια acquired the right to inflict those heavy penalties which were reserved in the laws reissued at the end of the fifth century for the δῆμος πληθύων.¹⁶⁶

A rule that εἰσαγγεῖλαι were to be heard by the boule and

demos would thus become open to two interpretations. Provision that εἰσαγγελῖαι might receive their first airing in the ecclesia, probably made when εἰσαγγελῖαι were taken away from the Areopagus, will have suggested that ὄμιμος should be interpreted as the ecclesia, yet before the end of the fifth century it seems to have been accepted that the full judicial powers of the demos were vested in the separate δικαστήρια.¹⁶⁷ While this development was taking place, the boule was acquiring the official jurisdiction which we have examined in the previous section.¹⁶⁸ If the laws concerning εἰσαγγελῖαι did contain fairly general provisions as well as a list of major public offences which ought to be dealt with by this means, the line between εἰσαγγελῖαι and other charges heard by the boule will have become blurred - and some of the laws giving the boule official jurisdiction may have specified reference to the δικαστήρια.¹⁶⁹ It was clear enough what charges might be laid before the boule, but it may sometimes have been less clear, especially with offences which were covered by more than one law, whether what was going on was or was not an εἰσαγγελῖα. If an εἰσαγγελῖα was first made in the assembly, the law being followed was clear, and by ordering a probouleuma the assembly could retain ultimate control; but the assembly's time was valuable and the volume of public business tended to increase: the assembly may frequently have ordered the boule not to report back but to refer cases to a δικαστήριον for a heavy penalty, and the boule will have tended to use the δικαστήρια for εἰσαγγελῖαι of which it was the first recipient, except in a few cases of major importance. In this way εἰσαγγελῖαι will have been assimilated procedurally to the boule's official jurisdiction,¹⁷⁰ and I believe the lines which I quoted from the Wasps refer to the beginnings of this transference to the δικαστήρια of the μεγάλα πράγματα which should have been judged by the boule and demos.¹⁷¹

εἰσαγγεῖλαι on major charges of public importance might be submitted either to the ecclesia or to the boule. If the ecclesia was the recipient it could not immediately give the charge a full hearing: it could reject it out of hand, or else it had to refer the case to the boule, when it might commission a probouleuma or order reference to a δικαστήριον or leave the boule discretion to decide further procedure.¹⁷² If the boule was the recipient, it had this discretion in any case. The boule then considered the charge, and if it acquitted, the trial was over. If it convicted, the heaviest penalty it could impose was a fine of 500 drachmae, enough to prevent further waste of time in routine matters, but not enough for the major offences which εἰσαγγεῖλαι was intended to cover. In these cases a second hearing was required, before the ecclesia or a δικαστήριον, to reconsider the verdict and if necessary to pass sentence (if the charge carried no fixed penalty, the boule could make suggestions). The boule also had jurisdiction in a variety of official cases, to which the word εἰσαγγεῖλαι was not technically appropriate: here too its punitive power was limited to a fine of 500 drachmae, but it could refer the case to a δικαστήριον if a heavier penalty seemed appropriate. Confusion inevitably resulted, and the similarity of procedure obliterated the distinction between two originally very different forms of trial.

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(iv) δοκιμασία

I conclude with a note on a quasi-judicial activity of the boule, the holding of various δοκιμασία (checks on a man's qualifications for some duty or privilege). Most δοκιμασία were held in the δικαστήρια, but in the time of the Athenaion Politeia there were four kinds in which the boule was involved: the δοκιμασία of the ἔφηβοι on their enrolment; that of the ἵππεῖς, πρόδρομοι, ἄμιπποι and of the horses used by the cavalry; that of the ἑδύνατοι entitled to a subsistence grant; and that of the next year's archons and bouleutae.

According to the Athenaion Politeia an Athenian came of age at eighteen, and was subjected to a δοκιμασία before enrolment in his deme. The process began with a διακήρυξις in the deme to exclude any who were under age, or were not free and of citizen birth: a candidate rejected on the criterion of freedom might appeal to a δικαστήριον, and if the court upheld the deme's judgment he would be sold as a slave. The candidates were then vetted by the boule on the criterion of age, and if the demesmen had accepted any one under age they might be punished by the boule.¹⁷³

For administrative convenience δοκιμασία and registration did not follow immediately after a man's birthday, but took place in an annual ceremony, probably early in the new year.¹⁷⁴ Whereas the Athenaion Politeia seems to insist that a man must have reached his eighteenth birthday,¹⁷⁵ the most natural inference from Demosthenes' first speech against Aphobus is that he was enrolled after his seventeenth birthday, in the course of his eighteenth year.¹⁷⁶ Ages could be specified in Athens by either: ^{means} bouleutae¹⁷⁷ and dicasts¹⁷⁸ were men who had "reached the age of thirty"; διατητῆς were men "in their sixtieth year."¹⁷⁹ Dr Pélékidis tries to support the rule of the Athenaion Politeia from the epitaph of Dexileos of Thoricus,

but something has gone wrong with his calculations:¹⁸⁰ if Dexileos had completed two years' service as an ἔφηβος before he became one of the κέντε ἰκπεῖς, those two years should have contained his eighteenth and nineteenth birthdays, so that he will have been registered in his eighteenth year. Specification that a certain birthday should have been reached is obviously the more convenient rule in cases where a man who has become eligible will remain eligible for life, but the parallel of the διαίτηται suggests that the other form of specification may have been preferred for an event which could take place only in one year of a man's life. Registration at the beginning of the year in which a man's eighteenth birthday fell is perhaps the likelier solution.

According to the Athenaion Politeia there was a possibility of reference from the deme-assembly to the courts on the criterion of freedom, and compulsory reference to the boule on the criterion of age. In Aristophanes' Wasps Philocleon includes the following in his list of the delights enjoyed by dicasts:

παίδων τούτων δοκιμαζομένων αἰδοῦντα κέρεστι θεῶσθαι.¹⁸¹

The Athenaion Politeia's account may be incomplete, and it may be that both courts and boule were entitled to take notice of all criteria for citizenship, but any connection between the δικαστήρια and this δοκιμασία would provide a sufficient excuse for this remark in comedy.¹⁸²

The names of those accepted as citizens were placed on the ληξιαρχικὸν γραμματεῖον,¹⁸³ which apparently differed from the ἐκκλησιαστικὸς πίναξ.¹⁸⁴ Inclusion in the first preceded inclusion in the second, and it has been inferred from a passage in Xenophon that registration on the ἐκκλησιαστικὸς πίναξ came when a man was twenty (or in his twentieth year).¹⁸⁵ It is not necessary for our present

purposes to examine the problems connected with the institution of the ἔφηβεῖα, but if this two-year gap between registration as a citizen and inclusion on the lists of those entitled to attend the assembly is to be accepted, we have an additional reason for dissenting from Wilamowitz' view that this system of two years' compulsory training was first devised in the years after Chaeronea:¹⁸⁶ the δοκιμασία of young citizens goes back at any rate as far as Aristophanes' Wasps, and is unlikely to be a more recent creation than Cleisthenes' deme organisation; and the antiquity of the oath sworn by the ἔφηβοι is generally acknowledged.¹⁸⁷ In the ephebic system as recorded in the Athenaion Politeia the young citizens displayed their prowess after their first year's training at an assembly held in the Theatre of Dionysus;¹⁸⁸ but later, when the ἔφηβεῖα had ceased to be compulsory and became the preserve of the rich they made their ἀσπίδες not to the whole demos but to the boule.¹⁸⁹

In addition to the regular vetting of men in their eighteenth year, special checks were made from time to time when it was suspected that unqualified men had found their way on to the lists of citizens. Any such διαψήφισις was an extraordinary event, and the procedure may have been different on different occasions, but the boule was not involved in the one check for which information is available: in the διαψήφισις ordered by a law of Demophilus in 346/5 the assemblies of the separate demes were to vote on each member of the deme, and any rejected by their deme could appeal to a δικαστήριον.¹⁹⁰

The boule also performed various δοκιμασίαι in connection with the cavalry, which enabled Xenophon to make the generalisation,

ἡ πόλις . . . προσέταξε δὲ τῇ βουλῇ συνεπιμελεῖσθαι τοῦ ἱππικοῦ.¹⁹¹

The Athenaion Politeia lists its functions as follows:¹⁹² it held a

δοκιμασία of the cavalry's horses, with the power to withhold the fodder grant from a man who was not feeding his horse adequately and to brand and reject those horses which could no longer do what was required of them; it vetted the special forces known as ἀρβύροισι and ἄμιπποι, presumably checking their physical ability to do their duty; and it checked the cavalry lists compiled by a board of ten elected καταλογεῖς: every man listed apparently had to appear in person before the boule. The lists of the καταλογεῖς were presented to the boule by the hipparchs and phylarchs, and we now have an inscription of 282/1 in which the cavalry honours the hipparchs and phylarchs, who inter alia have taken care of the τιμήσεις and δοκιμασίαι, and have held the τῶν συμμάτων δοκιμασία with the boule.¹⁹³ The boule's rejection of unfit horses is attested also by Xenophon¹⁹⁴ and Hesychius,¹⁹⁵ though Photius ascribes it to the generals¹⁹⁶ and Pollux is non-committal.¹⁹⁷ Its δοκιμασία of the cavalry also is mentioned by Xenophon,¹⁹⁸ but in the complaint that Alcibiades had insinuated himself into the cavalry without undergoing a δοκιμασία the words, οὔτε ἄφ' ἑῶν δοκιμασθεῖς, are addressed to δικασταί.¹⁹⁹

A late archaic vase-painter of the Brygan circle (c.500?) has given us a representation of one of these δοκιμασίαι: three young horsemen are submitting themselves and their horses to a commission of two men, identified by Körte as bouleutae, and a secretary; a man with a staff, perhaps one of the hipparchs, is also present.²⁰⁰ Körte, writing before the discovery of the Athenaion Politeia, distinguished between the annual review of the existing cavalry, and the check on new entrants, assuming that the former took place in the presence of the whole boule but new entrants were vetted by a small sub-committee, and that the δοκιμασία-painter's vase illustrates the latter.²⁰¹ Clearly the detailed examination, whether of old cavalrymen protesting

their inability to continue in the service or of new recruits, must have been carried out by a few men, but this was probably followed by a parade in the presence of the whole boule, after which a vote was taken. In any case the δοκιμασία-painter could hardly be expected to depict the whole boule.

The boule's concern for the cavalry's horses is analogous to its concern for the navy's ships, and its power over cavalymen who failed to take good care of their horses may be compared with that over trierarchs who failed to return ships and equipment in good condition. The other δοκιμασία seem to have been checks that men were fit and competent to perform their special tasks. These tasks of the boule fit in with its general duty to ensure that equipment and men with special responsibilities were available whenever the state needed them.

A third form of δοκιμασία held by the boule was that of the invalids with property of less than three minas, who were entitled to a subsistence grant from the state:²⁰² they apparently had to undergo this examination annually.²⁰³ Grants to war invalids are said to have been instituted in the sixth century, by Solon or Pisistratus,²⁰⁴ but though such grants may perhaps have been made this early to a few men on some specific occasion (probably as στήσις ἐν κρυτανεῖῳ rather than a cash grant) this regular system of ἀποδοσία τροφή must be a creation of the Periclean or post-Periclean democracy. In the time of Lysias the grant was 1 obol per diem;²⁰⁵ in the reign of Alexander, 2 obols;²⁰⁶ and Philochorus' figure of 9 drachmae a month probably reflects a commutation made in the twelve-tribe period when there were as many prytanies as months²⁰⁷ - an invalid's grant was always less than the wage which an unskilled but able-bodied citizen could earn. The boule's task will have been to check that the invalids' property was worth less than three minas, and that their disabilities

were such as to hinder them from earning their living. Lysias wrote a speech for an invalid to address to the boule,²⁰⁸ when an unnamed enemy objected that he must be an able-bodied man as he could ride on horseback (though he could walk only with two sticks),²⁰⁹ and that in any case he did not need the money (his father had left nothing, until recently he had had to keep his mother, he had no children, and though he plied a trade he could find no assistant who could take over when he grew too old to continue with it.)²¹⁰

Finally, there is the δοκιμασία of bouleutae and archons, of which we read:

δοκιμάζει δὲ καὶ (sc. ἡ βουλή) τοὺς βουλευτὰς τοὺς τὸν ὕστερον ἐνιαυτὸν βουλευσόντας καὶ τοὺς ἐννέα ἄρχοντας. καὶ πρότερον μὲν ἦν ἐκδοκιμάσαι κυρία, νῦν δὲ τοῦτοις ἔφεσις ἐστὶν πρὸς τὸ δικαστήριον.²¹¹

Later in the Athenaion Politeia²¹² the δοκιμασία of the archons is described in greater detail, and is said to take place

ἐν τε τῇ βουλῇ καὶ κώλιν ἐν δικαστηρίῳ.

Prospective archons were asked about their ancestry and family shrines, their treatment of their parents, their payment of taxes,²¹³ and their military service. Accusations might be brought, and the candidates were given the opportunity to reply:

οὕτω δίδωσιν ἐν μὲν τῇ βουλῇ τὴν ἐπιχειροτονίαν, ἐν δὲ τῷ δικαστηρίῳ τὴν ψήφον. ἐὰν δὲ μηδεὶς βούληται κατηγορεῖν, εὐθὺς δίδωσι τὴν ψήφον.

This ballot used to be a pure formality when no objections were brought, with one man giving "the vote of the court," but before the Athenaion Politeia was written it had been made a genuine vote, in case a

candidate colluded with his objectors. Three stages are thus envisaged in the development of this δοκιμασία : in the first, it was conducted by the boule alone, from whose decision no appeal was possible; later it was begun in the boule but afterwards referred to a δικαστήριον - apparently whether the boule accepted or rejected the candidate, since provision was made for a purely formal vote if no objections were brought; finally, the court was required to vote seriously regardless of what had happened in the boule. This double δοκιμασία of the archons seems to be confirmed by a reference to the thesmothetae in Demosthenes' speech against Leptines:

δὲς δοκιμασθέντας ἄρχειν, ἔν τε τῇ βουλῇ καὶ παρ' ἑμῶν
ἐν τῷ δικαστηρίῳ.²¹⁴

Reference from the boule to a δικαστήριον after the equivalent of an acquittal would be unique, and some scholars have refused to believe in it.²¹⁵ The Athenaion Politeia's second stage would seem to guarantee it, but this in itself is hard to credit. In all other instances of ἔφεσις to a δικαστήριον the court's power to give the final decision is taken very seriously, and is regarded as an important element in the democracy, and it does not seem likely that a reformer would at the same time give the right of final decision in all δοκιμασίαι to the δικαστήρια and in the case of the archons provide for a purely token vote in cases where no objection had been lodged. But if ἔφεσις did become obligatory in all cases, there would be more point in an argument provided by Lysias for a man who attacked Evander (very probably the archon of 382/1) at his δοκιμασία in the boule:

ἂν δὲ καὶ ἐκὶ τοιόνδε λόγον τράπονται, ὡς ὁ χρόνος οὐκ
ἐγγχεῖ ἄλλον ἐπικληῖσαι, ἀλλὰ ἀνάγκη, ἐὼν αὐτὸν ἀπο-
δοκιμάσητε, ἄουσα τὰ κάρτια ἑρὰ γίνεσθαι, τούτ'

ἐνθυμήθητε, ὅτι πάλαι ὁ χρόνος παρελήλυθεν. ἡ γὰρ αὔριον ἡμέρα μόνη λοιπὴ τοῦ ἐνιαυτοῦ ἐστίν, ἐν ᾗ τούτῃ τῷ αὐτῷ σωτήρι θυσία γίνεται, οἰκαστήριον δὲ παρὰ τοὺς νόμους ἀδύνατον (καταρτῆ) πληροῦσθαι. εἰ δὲ ταῦτα κύνθ' οὗτος ἕστε γένεσθαι διαπέπρακται, τί προσδοκῆσαι <δεῖ> δοκιμασθέντ' αὐτὸν ποιήσειν;²¹⁶

When Evander's friends try to defend his appointment on the grounds that it is now so late in the year that if he is rejected there will be no time to appoint another man before the inaugural ceremonies of the new year, the objector is to reply that it is in any case too late to complete the panel of archons in time for the new year,²¹⁷ since a court cannot be convened to ratify the boule's acceptance of his in time.²¹⁸

That double δοκιμασία for archons was the rule in the fourth century must, I think, be accepted; whether the Athenaion Politeia's second stage ever existed is doubtful (perhaps the purely formal vote when no objection was made belongs to the period before ἔφεσις was introduced).²¹⁹ The nature of the questions officially prescribed suggests that the institution is an old one, older than the full democracy in which the δικαστήρια played so important a part, and probably older than the Cleisthenic boule of five hundred.²²⁰ If this δοκιμασία goes back to the sixth century, we should expect it to be conducted by the ex-archons in the Areopagus rather than the boule of four hundred, and its transfer to the boule and δικαστήρια may have been a part of Ephialtes' reform.²²¹

Double δοκιμασία is mentioned only for the archons, and the vetting of four or five hundred bouleutae must have been an arduous business which the Athenians would not duplicate unnecessarily. Here ἔφεσις is likely to have meant optional reference or perhaps automatic appeal to a court for those men whom the outgoing boule rejected,

and I imagine that the original check will always have been made by
the outgoing boule.²²²

Appendix The Punitive Powers of the Boule

The normal picture of the boule's history as a lawcourt is based principally on the following passage in the Athenaion Politeia :-

ἡ δὲ βουλὴ πρότερον μὲν ἦν κυρία καὶ χρήμασιν ζημιῶσαι καὶ δῆσαι καὶ ἀποκτείνειν, καὶ ἀσπίμαχον ἀδικίας ἀγαγούσης εἰς τὸν δῆμιον καθήμενον ἤδη μέλλοντα ἀποθνήσκειν ἐμμηλότης δ' ἄλλωπερῆθεν ἀφείλετο, οὐ φάσαιεν δεῖν ἄνευ δικαστηρίου γνώσεως οὐδένα τῶν πολιτῶν ἀποθνήσκειν· καὶ κρίσεως ἐν δικαστηρίῳ γενομένης ὁ μὲν ἀσπίμαχος εἰς ἄστυ καὶ ἐκφυγῆσαν ἔσχεν ὁ ἀπὸ τοῦ τυκάνου, ὁ δὲ ὄψιμος ἀφείλετο τῆς βουλῆς τὸ θανατοῦν καὶ δεῖν καὶ χρήμασιν ζημιῶσαι, καὶ νότον ἔθετο, ἂν τις ἀδικεῖν ἢ βουλὴ καταγνῶ ἢ ζημιῶσαι, τὰς καταγνῶσεις καὶ τὰς ἐπιζημιώσεις εἰσάγειν τοὺς θεσμοθέτας εἰς τὸ δικαστήριον, καὶ ὅτι ἐν οἷς δικασταὶ ψηφίζονται, τοῦτο κύριον εἶναι.²²³

In this appendix I try to show that there was never a time when the boule's judicial powers were unlimited: after working backwards through the evidence for the powers which the boule exercised, I shall re-examine the nature of the bouletic oath, and the so-called Charter of the Democracy, IG i² 114, and conclude with the suggestion that the boule first acquired judicial powers (apart from the discipline of its members and the δοκιμασία of its successors) in the reforms of Ephialtes, and that a limit was set to these powers from the beginning.

I remarked at the beginning of this chapter that the result attributed to Eumelides' rescue of Lysimachus is too drastic: the boule was in the fourth century able to impose fines up to 500 drachmae,²²⁴ and to imprison in certain circumstances.²²⁵ But it could not impose

finer above this limit, and it could not pass the death sentence.

Midias could say to the boule,

ἀγνοεῖτ', . . . ὃ βουλή, τὸ κρῖγμα; καὶ τὴν δόλιχον
ἔχοντες . . . μέλλετε καὶ ζητεῖτε καὶ τετύφωσθε; οὐκ
ἀποκτενεῖτε;²²⁶

but Demosthenes represents this as highly improper, and despite his interest in the case there is no reason to doubt that he is right.

About 386 the boule was tempted to have offending corn-dealers executed ἄκριτοι (that is, without a trial in the proper form),²²⁷

and there is a similar case as early as 393, where a man charged before the boule says,

παρὰ μικρὸν ἦλθον ἄκριτος ἀποθανεῖν, τελευτῶντες δὲ
ἐπέσθησαν ἐγγυητὰς παρ' ἐμοῦ δεξασθαι.²²⁸

(These men, whom it would have been improper for the boule to condemn to death, were not citizens but foreigners.²²⁹ We know of one occasion

in the fourth century when the boule did pass sentence of death on a Cean:²³⁰ it is natural that the rights of aliens should have been less than those of citizens, though likely that the boule's greater power over aliens was simply inferred from the absence of any clearly stated restriction in the laws, so that public opinion was unhappy about the exercise of these powers except in moments of such strong feeling as would be aroused by the killing of an Athenian πρόξενος .) On the restoration of the democracy in 403/2 Archinus brought before the boule a man who was failing to respect the amnesty, and secured his condemnation to death:

πέρας ἄκριτον ἀποκτεῖναι.²³¹

We must not place too much faith in the ἄκριτον here, since the procedure would certainly have been irregular at the time when the Athenaion Politeia was written and the word may have been used anachronistically,

but it is at least very likely that this condemnation was in fact irregular.²³² The obligation to accept guarantors in most cases instead of arresting a man until his trial or the payment of his debt, was written into the bouleutic oath,²³³ and there is no evidence that in the fourth century the boule possessed the right of penal, as opposed to precautionary imprisonment.

These limitations are known to have existed in the fourth century, and though there is no indication of date in the passage which I have quoted from the Athenaion Politeia,²³⁴ it has been thought that another passage provides a terminus post quem. After listing the eleven μεταβολαί which the constitution has undergone, the author writes:

ἅπαντων γὰρ αὐτὸς αὐτὸν πεποιήκειν ὁ δῆμος κύριον, καὶ πάντα διοικεῖται ψηφίσμασιν καὶ δικαστηρίοις, ἐν οἷς ὁ δῆμος ἐστὶν ὁ κρατῶν. καὶ γὰρ αἱ τῆς βουλῆς κρίσεις εἰς τὸν σῆμον ἐληλύθασιν.²³⁵

This implies, it has been said, that the transference of the boule's κρίσεις to the demos occurred in or after the eleventh μεταβολή, and Wilamowitz²³⁶ and Sandys²³⁷ accordingly supposed that the boule possessed unrestricted judicial powers at least until 403. But other references to the judicial activity of the boule show that this simple solution cannot be accepted.

It is certain that the boule appointed by the Thirty was frequently used as a lawcourt with full condemnatory powers. We are told that it gladly condemned the informers who were first charged before it;²³⁸ Critias denounced Theramenes to the boule,²³⁹ and when he was afraid that the boule would acquit him struck his name off the roll of the three thousand privileged citizens and pronounced his condemnation on behalf of the Thirty;²⁴⁰ Agoratus' victims were condemned by

the boule, with the Thirty sitting on the prytanes' benches to see how the bouleutae voted.²⁴¹ At first the boule was the only judicial body, but a law enacted shortly before the condemnation of Theramenes reserved for the three thousand the right to a trial before the boule, and gave the Thirty full powers over all other Athenians.²⁴² (The Eleusinians whom the Thirty exterminated in preparation for their flight from Athens were condemned by an assembly of the three thousand;²⁴³ Demaretus was killed under the régime of the Ten, it is not clear by whom.²⁴⁴) If it had not been possible immediately before the oligarchy for the boule to condemn to death, the precedent will have been useful both to Archinus and to those fourth-century accusers who urged the boule to exceed its powers; but the democrats took care to annul the acts of the Thirty,²⁴⁵ and there can be no question of the boule's having legally retained rights given it by the oligarchs: if about the turn of the century the boule possessed unlimited judicial powers, these powers must have been granted or regranted by the democrats after the fall of the Thirty.

Immediately before the oligarchy, in the years after the fall of the Four Hundred, it appears that it had not been possible for the boule to condemn to death. After Athens' defeat at Aegospotami in 405 Cleophon attacked the boule as disloyal, and Satyrus, one of the bouleutae, persuaded the boule to arrest Cleophon and bring him before a $\delta\iota\kappa\alpha\sigma\tau\acute{\eta}\rho\iota\omicron\nu$. Nicomachus, one of the men engaged in revising the Athenian law code, produced on the day of the trial a law permitting the boule to sit with the jury, and this device enabled the boule to secure Cleophon's condemnation.²⁴⁶ We have already seen that the trial of the generals who failed to pick up survivors after the battle of Arginusae in 406 was initiated by the boule. The generals were first deposed by $\omicron\acute{\iota}\ \acute{\epsilon}\nu\ \omicron\acute{\iota}\kappa\omega$ - presumably the ecclesia - and one of them was prosecuted in a $\delta\iota\kappa\alpha\sigma\tau\acute{\eta}\rho\iota\omicron\nu$ for peculation and misconduct, but the proceedings which led to their condemnation by a

riotous assembly began when they reported on the battle to the boule, and were arrested to be produced before the demos.²⁴⁷ The trial of Antiphon and Archeptolemus is ascribed by Caecilius to the archonship of Theopompus,²⁴⁸ who replaced Mnasilochns on the fall of the Four Hundred early in 411/0.²⁴⁹ If we follow Professor Meritt in associating the restoration of the full democracy with the battle of Cyzicus,²⁵⁰ this trial will have taken place under the régime of the Five Thousand, and this seems to be borne out by various peculiarities in the document preserved for us.²⁵¹ It appears from the decree that Antiphon and Archeptolemus were denounced to the boule by the generals, and the boule voted that they should be arrested, and prosecuted in a δικάστηριον by the generals and ten bouleutae.²⁵²

We thus have three instances, two from the full democracy and one from the limited democracy of 411/0, of the boule's transferring a case in which it was hostile to the accused to an organ of the demos, either the ecclesia or a δικάστηριον . There is also a rider to a decree of 409, ordering the boule to investigate a charge of using bribery to secure a decree, and to produce the offenders in a δικάστηριον, καθότι ἂν δοκῆι αὐτέῃ .²⁵³ Cloché pointed out²⁵⁴ that in the two later cases the boule appears to have been more hostile to the accused than the populace as a whole, and took special measures to secure a conviction. In these circumstances we must surely believe that if the boule had been entitled to pass sentence it would have done so, and that the boule's powers were therefore already at this time restricted. In all these cases the boule at least retained the power of arrest,²⁵⁵ but the charges all concern treasonable activity (Cleophon accused the boule of treasonable conspiracy, and was probably himself condemned as a traitor²⁵⁶), and the boule was entitled to arrest men awaiting trial on these charges even in the time of Demosthenes.²⁵⁷ There is nothing to suggest that in the last years of the Peloponnesian

Was the boule's powers were greater than in the fourth century.

Confirmation that by the late fifth century the boule's powers were limited is commonly drawn from a badly mutilated inscription published as IG i² 114 and subsequently studied by Professor Wade-Gery.²⁵⁸ I shall have more to say about this tantalising document below, in considering the nature of the bouleutic oath, but here it will be sufficient to remark that the document was almost certainly inscribed very soon after the fall of the Four Hundred; that much of it is concerned with the boule and with steps that may not be taken ὄνευ τοῦ δέμο τοῦ Ἀθηναίων πλεθύοντος ; and that among these steps seem to be the infliction of the death penalty (1.36) and some other form of penalty (θοῶν ἐπιβαλεῖν, 1.41), while the sum of 500 drachmae, which was the limit up to which the boule could impose fines in the fourth century, also makes an appearance (1.31).²⁵⁹ The precise significance of the document is disputed, but it would be generally accepted that it testifies to restrictions on the powers of the boule, which ought to have been observed at the time when the document was inscribed or reinscribed.

Cloch , accepting that the boule's powers were limited between 410 and 404, but believing that the story of Eumelides and Lysimachus should be dated after the eleventh μεταβολή in the Constitution, suggested that the boule lost its full powers at some time before 410, but recovered them after the fall of the Thirty, only to lose them again early in the fourth century. The final change he dated before 386, recognising that it would not have been proper for the boule to pass sentence on Lysias' corn-dealers, but he overlooked the parallel case of the speaker of Isocrates' Trapeziticus, not later than 393: if the boule's powers were increased in 403, it cannot have retained these additional powers for more than ten years.²⁶⁰ The only piece of evidence which suggested to Cloch  that the boule possessed full judicial powers at any time after 403 is Athenaion Politeia, 41. ii.

It would be surprising if the author regarded the removal of so recently granted a power as an important part of the democracy's development, and I believe that a proper reading of the text need not indicate that he associated the reduction of the boule's powers with the eleventh μεταβολή at all. The eleventh change is the last, and since Athens' constitutional history has been represented as the development of democracy with occasional setbacks it is not unnatural that at the end the author should summarise what has taken place. It is the final result of the whole process, that the demos has made itself κύριος and administers everything by decrees and δικαστήρια, that even the κρίσεις of the boule have passed to the demos. The introduction of assembly pay, which follows in § iii, happens to be a change made after 403, but I believe it is mentioned not for that reason but to illustrate the growth in the power of the demos. I am not satisfied that this passage can be used to date the restriction of the boule's powers, and if I am right there is nothing which obliges us to believe that the boule of the democracy possessed unlimited judicial powers at any time after 410.^{260A}

The oligarchs of 411, like those of 404, made the boule rather than the assembly of all qualified citizens the sovereign body:

ἔλθοντας δὲ αὐτοὺς τετρακοστούς ὄντας ἐς τὸ βουλευτήριον ἄρχειν ὅπη ἂν ἄριστα γινώσκουσιν ἀτοκράτερας, καὶ τοὺς πεντακισχιλίους δὲ συλλέγειν ὅσταν αὐτοῖς δοῖν. ²⁶¹

These men chose all magistrates themselves, and all organs of popular government were suspended. Judicial functions, like all others, were discharged by the Four Hundred: Andocides was arrested and brought before them, and though he saved his life by seeking refuge at the ἐστία

Fastening to a plank seems to be not merely a brutal and spectacular form of imprisonment, but the preparation for execution by ἀποτυμπανισμός,²⁷⁰ and though the punishment has its part to play in the plot the involvement of the boule does not. This passage does therefore suggest that the boule possessed greater powers at the time of the Thesmophoriazusae than later.

Yet we shall find that the Thesmophoriazusae is unique in implying that the boule's judicial powers were unlimited. The next instance which we meet as we work back is the Hermocopid and Mysteries scandal of 415. The charge of profaning the Mysteries was first made by εἰσαγγελία in the ecclesia,²⁷¹ whereupon the prytanes cleared the meeting of non-initiates so that evidence could safely be heard.²⁷² It is presumably this assembly which gave the boule its special commission, since the boule had already been made αὐτοκράτωρ when Teucus wrote from Megara to offer information on both charges.²⁷³ After further information had been offered, one of the bouleutae proposed that those charged with profanation be tried in a δικάστηριον, and was overwhelmingly defeated in the earliest recorded γραφή παρανόμων.²⁷⁴ Some men who had been denounced fled from Attica and were condemned to death in their absence;²⁷⁵ Andocides' father, who remained in Athens,²⁷⁶ appears thanks to this γραφή παρανόμων to have avoided trial altogether. Presumably as soon as each set of names had been produced and the men denounced had fled a trial was rapidly held, and since Speusippus on receipt of the fourth μήνυσις had proposed that the trial be held in a δικάστηριον it is likely that those trials which were not blocked were held in a δικάστηριον.

The charge of mutilating the Hermae could first be pressed when Teucus offered information to the boule.²⁷⁷ A board of ζητησά

was appointed, apparently to help in the investigation of both charges,²⁷⁸ and recommended vigorous action, so that every meeting of the boule was expected to issue in arrests.²⁷⁹ Diocliides made an εἰσαγγελία to the boule, which promptly suspended the decree forbidding the torture of citizens.²⁸⁰ Two bouleutae who were accused fled from Attica, after which at a secret meeting the boule decided to arrest the others whom Diocliides denounced, and made a military disposition of the citizens.²⁸¹ Andocides was induced by his fellow-prisoners to turn state's evidence;²⁸² further arrests were made and his account was investigated by the boule and ζητηταί ;²⁸³ Diocliides admitted his perjury and a δικαστήριον sentenced him to death,²⁸⁴ while four men whom Andocides denounced went into exile - and were no doubt condemned in absence to death.²⁸⁵

So much can be learned from Andocides. Alcibiades seems primarily to have been suspected of profaning the Mysteries,²⁸⁶ and was accused before the boule. Without success he demanded from the ecclesia an immediate trial; after he had sailed for Sicily it was decided to recall him, the Salaminia was sent to fetch him and other suspects, and in due course he and they were condemned in absentia. The language of Isocrates implies that this was the work of the boule:

συστήσαντες τὴν βουλὴν καὶ τοὺς ῥητόρας ὑπ' αὐτοῖς
ποιησάμενοι.²⁸⁷

The account of Thucydides, who as usual eschews technical language, leads us to suspect that some organ of the demos was responsible:

ὧν (sc. the fall of the Pisistratids) ἐνθυμούμενος ὁ δῆμος ὁ
τῶν Ἀθηναίων . . . χαλεπὸς ἦν τότε καὶ ὑπόπτῃς ἐς τοὺς
περὶ τῶν μυστικῶν τὴν αἵτιαν λαβόντας, καὶ πάντα αὐτοῖς
ἐδόκει ἐπὶ ξυνωμοσίᾳ ὀλιγαρχικῇ καὶ τυραννικῇ πεπερᾶσθαι.²⁸⁸ . . .

(Andocides then gave information about the mutilation of the
Hermae.) ὁ δὲ δῆμος ὁ τῶν Ἀθηναίων ὕσμενος λαβὼν, ἕως ἤφ'ετο, τὸ
σαφὲς . . . τὸν μὲν μηνυτὴν εὐθὺς καὶ τοὺς ἄλλους μετ'
αὐτοῦ ὅσων μὴ κατηγοροῖται ἔλυσαν, τοὺς δὲ κατατιθαθέντας

κρίσεις ποιήσαντες τοὺς μὲν ἀπέκτειναν, ὅσοι ἐξουελήφθησαν, τῶν δὲ οἰαφυγόντων θάνατον καταγνόντες ἐπανέτερον ἐρήθειον τῷ ἀποκτείναντι.²⁸⁹ . . .

(This matter being settled, there was renewed suspicion of Alcibiades on the profanation charge,) ὥστε βουλόμενοι αὐτὸν ἐς κρίσιν ἄγαγόντες ἀποκτεῖναι κέμπουσιν οὕτω τὴν Ζαλαμινίαν ναῦν ἐς τὴν Ζικελίαν ἐπὶ τε ἐκεῖνον καὶ ὣν περὶ ἄλλων ἐμεμήνητο.²⁹⁰ . . .

(These men escaped to the Peloponnese.) οἱ δὲ Ἀθηναῖοι ἐρήμην οὐκὴ θάνατον κατέγνωσαν αὐτοῦ τε καὶ τῶν μετ' ἐκεῖνου.²⁹¹

It is likely enough that the boule, as investigating authority, was responsible for the decision to recall Alcibiades to stand his trial, but there is nothing here to conflict with the impression given by Andocides, that no sentences were passed by the boule.

The boule's special commission covered both charges, and apparently enabled it to suspend the decree against torture, and to give general emergency instructions to the citizens (if the suspicion of political conspiracy found in Thucydides is authentic, the charges may have been such as to justify the boule's arrests even under fourth-century law), but whenever an actual or prospective condemnation is attributed to a particular judicial body that body is a δικαστήριον . If even a boule which was ἀποκράτωρ was prepared to hand over to the courts men accused of profanation, it is highly unlikely that the boule even without special powers was entitled to condemn to death.²⁹² It is quite likely that a hurried decree of the ecclesia had made the boule ἀποκράτωρ without specifying how far it might exceed its normal powers, and I have suggested above that the intention was probably to give the boule a free hand in procedure rather than to raise any restrictions on its powers of punishment,²⁹³ but the fact that the boule referred these charges to the δικαστήρια remains good evidence.

In a decree regulating the offering of first-fruits at Eleusis (the dates suggested for it range from 445 to 415, but most scholars are now agreed in placing it near the end of this period²⁹⁴) the following rule is laid down for offences concerning the Πελαργικόν:

ἐὰν δέ τις παραβαίνει τούτον τι, ἀποτινέτο πεντακοσίας δραχμάς, ἐσαγγελέτο δὲ ἡ[ο] βασιλεὺς ἐς τὴν βουλῆν.²⁹⁵

The fixing of the fine at 500 drachmae may of course be purely coincidental - 500 is a convenient round number - but it is at any rate possible that this sum was chosen because it already represented the maximum penalty which the boule might impose without referring the case to a δικάστηριον.

Professor Kahrstedt made use in this connection of two lines from Aristophanes' Wasps, which I have interpreted as a comment on the use of the δικάστηρια to hear εἰσαγγεῖται:

ἔτι δ' ἡ βουλὴ καὶ δῆμος ὅταν κρίναι μέγα κρῖμα' ἀπορήσῃ,
ἐψηφίσται τοὺς ἀδικοῦντας τοῖσι δικάσταῖς παραδοῦναι.²⁹⁶

If the boule and demos voted to transfer cases to the δικάστηρια, he claimed, it must still have been possible for them in 422 to vote that a case should not be transferred to a δικάστηριον, and to pass judgment on the spot. But whether or not my view of this passage is correct, the conjunction in it of boule and demos makes it very difficult to draw any conclusion as to the rights of the boule alone. Aristophanes himself was prosecuted in the boule by Cleon, after the production of his Babylonians,²⁹⁷ but we have no detailed information on what took place.

The Athenian settlement with Chalcis in 446/5 involved an oath to be taken by the boule and dicasts on behalf of Athens:

οὐκ ἔχσεσθ' ἑκαταίδεαι, ἐκ ἑκαταίδεου οὐδὲ τὴν κίβιν ἀνάστατον ποέσο οὐδὲ ἰδιδόσεν οὐδένα ἀτιμόσο οὐδὲ φαρῆσι ζεμιόσο οὐδὲ χσυλλέφοομαι οὐδὲ ἀποκτενῶ οὐδὲ χρέωσθαι ἀφαιρέσθαι ἀκρίστο οὐδενὸς ἄνευ τοῦ δήμου τοῦ Ἀθηναίων.²⁹⁸

Bonner and Smith insist that if protection of this kind was given to the allies, a fortiori Athenian citizens must have been safeguarded against severe penalties inflicted ἄνευ τοῦ δήμου : we have already seen that in the fourth century, when the boule's right to punish citizens was undoubtedly limited, it could still sentence a Cean to death.²⁹⁹ Shortly before this, about 447, the decree of Clinias which laid down more stringent regulations for the collection of tribute from the allies and their bringing a cow and panoply to the Panathenaea, specified a procedure for dealing with offenders in which the boule's power was certainly limited:

ὅταν ἔ τις Ἀθηναῖος ἐ χρηματικός ἀδικῆι περὶ τῶν φόρων, ἴδον δεῖ τὰς κόλεις γραφύσας ἐν γραμματεῖον τοῖς ἀπόροσ[ιν ἀποκέρπειν Ἀθήναζε, ἔστο δὲ τὸν γραφύσασθαι πρὸς τὰς πρυτάνες τῶι βιολομένωι Ἀθηναίων καὶ τῶν χρηματικῶν· οἱ δὲ πρυτάνες ἐσφύοντον ἐς τὸν βουλὴν [τὴν γὰρ ἐν κέντρῳ] ἢ γραμματεῖον ἢ εἰθῆν ὑνέσθο δόρον μυριάσι δραχμῶσιν ἡέκατος· [ἢ δ' ἀνικαταγνῶι ἢ ε βολέ, μὲ τιμῶν ἀπ[ὸ] τῆ κυρία ἔστο ἄλλ' ἐσφορέτο ἐς τὴν ἑλιαίαν εὐθύς· ὅταν δὲ δόχοι [ἀδικῶν, γνόμας ποιέσθον οἱ πρυτάνες ἢ οἱ τὸν δοκῶι ἀπ[ὸ] τῆ παθῶν ἢ ἀποτεῖσαι. καὶ εἰάν τις περὶ τὴν ἀκαίρογῶν τῆς βοῆς ἢ τῆς πανθοκλαίας ἀδικῶι, κίς γραφῶι ἐναίκατ' αὐτῶ καὶ τὴν ζεμίαν κ[ατὰ] ταύτῃ.³⁰⁰

The fine to which each of the prytanes would be liable for failing to bring a case before the boule must be restored as 1,000 or 10,000 drachmae, and we may assume that any defaulting allies would be very heavily penalised. This decree does not prove that the boule's powers were already limited in other cases within its jurisdiction, but it does at any rate make it seem reasonably likely.

From the middle of the fifth century to 411, only the Thesmophoriazusae suggests that the boule's powers were unlimited or at any rate greater than in the fourth century, while there are some texts which seem to point in the other direction. Their import is not so clear that my conclusions could not be upset by a good contrary instance, but we must ask how good a contrary instance the Thesmophoriazusae provides. Though the date of 411 is generally accepted for this play, 410 has had its champions,³⁰¹ and if 410 is the correct date the play will have been completed and produced under the régime of the Five Thousand. The condemnation of Antiphon and Archeptolemus shows that the δικαστήρια still existed under this régime,³⁰² but the "moderates" may have allowed the boule greater powers than it possessed under the democracy, and Aristophanes may have reacted by crediting the boule with greater powers than the "moderates" allowed it (the example of the Four Hundred was still very recent). I believe that 410 is a possible date for this play, though I would not claim certainty for it,³⁰³ and if this is right it can be argued that the restrictions on the boule's judicial powers go back as far as the middle of the fifth century.

Before the middle of the fifth century we have no mention of the boule's discharging judicial functions, but Cloché attempted to show from Herodotus that the original restriction of its powers antedates even the Persian Wars. In 479 Mardonius sent Murychides to Athens to offer peace terms; when a member of the boule proposed that these terms be submitted to the ecclesia this so angered his colleagues that

he was stoned to death, and Murychides was sent away without a reply.³⁰⁴ Cloché rightly saw no legal significance in the lynching, but he emphasised that the boule was already obliged to consult the ecclesia on questions of peace and war. Now in IG i² 114 the declaration of war is one of the steps which may not be taken ὄνευ τῷ ὀέμο πλεθούοντος,³⁰⁵ and if this requirement already existed in 479 we may suspect, he argued, that the boule's judicial restrictions already existed too, and may plausibly ascribe this restriction of the boule to the oath imposed on that body probably in 501/0 and still sworn by the bouleutae in the time of the Athenaion Politeia:

ἐφ' Ἐρμοκρέοντος ἄρχοντος τῇ βουλῇ τοῖς πεντακοσίοις τὸν ὄρκον ἐκοίτησαν ὃν ἔτι καὶ νῦν ὀμνύουσιν.³⁰⁶

He noted the institution of the strategia about the same time as an indication of the "democratic advance" of the period.

These arguments are open to a number of objections.³⁰⁷ Cloché must surely have been mistaken to argue from the demos' sovereignty in peace and war to a restriction of the boule's judicial powers: peace and war is one of the first issues in which a popular assembly acquires sovereignty, since in war every citizen has a part to play and those who wage war must be sure of popular support; even in the Homeric poems an occasional assembly is necessary, and the institution of the hoplite army led inevitably to the hoplites' demanding certain political powers. But is it right to regard consultation before sentence of death is passed as one of the basic citizen rights? The American Declaration of Independence regards life, liberty and the pursuit of happiness as inalienable human rights, and the twentieth-century scholar may be pardoned (if not positively lauded) for treating the death sentence as a major issue; but a society which allowed the immediate killing of an adulterer caught in the act might well not share our views.³⁰⁸

Cloché is by no means alone in regarding the imposition of the bouleutic oath as a means of lessening the powers of the boule.

Professor Larsen has written,

It is natural to believe that when the bill (IG i² 114) states that the boule cannot act on certain questions without consulting the "entire demos," this means that the right to take final action on these questions formerly belonged to the boule and is now being taken away from it.³⁰⁹

He reaches the startling conclusion that before the oath was imposed

The boule was so powerful that it can almost be said that Athens for a few years possessed a representative government.³¹⁰

We may well wonder if this is correct. In some circumstances this kind of explanation would be acceptable, and we may be sure, for instance, that the requirement added in 410 that the bouleutae should sit in the places allocated to them³¹¹ was directed against a real evil. But what we know of the two decades before Marathon does not make a major restriction of the powers of the five hundred, less than ten years after their establishment by Cleisthenes, very likely; and unless they had been alarmed by some actual abuse of power it is hard to see why Athenian democrats should ever have wanted to reduce the boule's powers. To the political theorist the boule was a characteristic organ of democracy:

αὕτη (sc. ἡ τῶν προβούλων ἀρχή) γὰρ τῆς δημοκρατικῆς βουλῆς οὐ δημοτικὸν· οὐδὲ μὲν γὰρ εἶναι τι τοιοῦτον ἢ ἐπιμελὲς ἔσται τοῦ δήμου προβουλεύειν, ὅπως ἄρχοντες ἔσται. . . . καταλύεται δὲ καὶ τῆς βουλῆς ἡ δύναμις ἐν ταῖς τοιαύταις δημοκρατίαις ἐν αἷς αὐτῆς συνίεν ὁ δῆμος χρηματίζει περὶ πάντων. τοῦτο δὲ συμβαίνειν εἶωθεν ὅταν εὐπορίᾳ τις ἤμισθοῦ τοῖς ἐπιλησιαζουσιν· σχολάζοντες γὰρ συλλέγονται τε πολλακίς καὶ ἅπαντα αὐτοὶ κρίνουσιν.³¹²

Aristotle's conditions did not obtain in Athens in 500 B.C., and Cloché himself demonstrated in another article³¹³ that even after the maturing of full democracy and the ἑμμοσιος πόλις no attempt was made to reduce its powers. The boule was the city in microcosm, μικρὰ πόλις ;³¹⁴ the system of appointment made it a fair cross-section of the citizen body and enabled most if not all of those who wished to serve for one year.³¹⁵ It represented the demos and so could be trusted with great powers by the demos: a deliberate reduction of its powers is conceivable only in such circumstances as we find in 410, and highly unlikely ninety years before that date. A far more attractive explanation of the bouleutic oath is that of Peremans, that the detailed working-out of Cleisthenes' reforms took several years, and the imposition of the oath on the bouleutae was a measure to set the seal on the completed reorganisation rather than a device to set new limitations to the power of the boule.³¹⁶

But can we even be certain that this judicial limitation appeared in the oath of 501/0 at all? As I have remarked, it does not follow from the fact that the people had the right to make peace or war in 479 and probably earlier. The author of the Athenaion Politeia writes of the oath ὄν ἔτι καὶ νῦν ἰμνύουσιν , and Cloché and others have inferred that he thought the oath had remained unchanged in content until his own day.³¹⁷ The members' new obligation to sit in their allotted seats as from 410/09 is admitted as an obstacle, but is not regarded as insuperable, and Bonner and Smith went so far as to assert that "Aristotle's statement is doubtless substantially correct."³¹⁸ It is not obvious, however, that the author is referring to the content of the oath. It would be possible for an Englishman to say that our country has the same legislative machinery today as in the reign of Elizabeth I: enormous changes have been made

in the past four hundred years, but we still have a Queen and two Houses of Parliament, and laws are still made by the Queen in Parliament - and so in a sense we still have the same legislative machinery.³¹⁹ If the essence of the bouletic oath was a declaration of allegiance to the constitution and an undertaking to work for the good of the city, then particular clauses concerned with the actual powers of the boule could come and go without invalidating the claim that "the same oath" was being sworn. Peremans contrasts the more specific language of A.P. 7.i, where a particular clause in the oath taken by the archons is thought to have persisted from the legislation of Solon to the writer's own day.³²⁰

We have followed the evidence for the boule's judicial powers back as far as the middle of the fifth century, and have seen that at no time except under an oligarchic régime need these powers have been unrestricted. The rejection of Mardonius' peace offer tells us nothing about the boule's judicial powers, while the oath imposed at the end of the sixth century probably involved no new limitation of the boule's power, and cannot be shown to have contained at that time the restricting clauses with which we are concerned: there are no other texts which seem to bear on the judicial work of the boule before the middle of the fifth century. In the second half of this appendix I shall try to substantiate my belief that before the reforms of Ephialtes the boule had no serious judicial powers, and that Ephialtes laid the foundations of the limited jurisdiction which it can be seen to have exercised from the middle of the fifth century onwards: that is, that the Athenaion Politeia was mistaken to claim that the boule πρότερον μὲν ἦν κυρία καὶ χρήμασιν ζημιῶσαι καὶ οἴσαι καὶ ἀποκτεῖναι.

I begin with a closer look at the bouletic oath and IG i² 114.

The clauses which are known at some time to have been embodied in the oath are as follows:³²¹

1. κατὰ τοὺς νόμους βουλευεῖν.³²²
2. τὰ βέλτιστα βουλευεῖν τῇ πόλει / τῷ δήμῳ τῶν Ἀθηναίων.³²³
3. οὐδὲ δῆσω Ἀθηναίων οὐδένα, ὅς ἂν ἔργῳ καὶ τρεῖς καθέστη τὸ αὐτὸ τέλος τελοῦντας, κλῆν ἔάν τις ἐκὶ προουσίᾳ τῆς πόλεως ἢ ἐκὶ καταλύσει τοῦ δήμου συνίων ἀκτῶν, ἢ τέλος πριάμενος ἢ ἐργουησάμενος ἢ ἐκλεγὼν μὴ καταβάλλῃ.³²⁴

[cf. 3A, not in Wade-Gery. "Oath of demos and boule": μηδένα μήτε ἐξελαῖν μήτε δῆσειν μήτε ἀποκτενεῖν ἄκριτον.³²⁵]

4. ἀποφαίνειν εἴ τις τινα οἴδε τῶν λαχόντων ἀνεκπιτήδειον ὄντα βουλευεῖν.³²⁶

cf. 4A, not in Wade-Gery. δοκιμασία of archons: δοκιμάσαντες τὸν ἄξιον τῆς ἀρχῆς στεφανώσιν.³²⁷

5. καθεδεῖσθαι ἐν τῷ γράμματι ᾧ ἂν λάχωσιν — ADDED TO OATH IN 410/09.³²⁸
6. ἔάν τις κόπτη νόμισμα ἀργυρίου ἐν ταῖς πόλεσι ἢ μὴ χρῆται νομισμασιν τοῖς Ἀθηναίων ἢ σταθμοῖς ἢ μέτροις, ἀλλὰ ξενικοῖς νομισμασιν καὶ μέτροις καὶ σταθμοῖς, τιμωρήσομαι καὶ ζημιώσω κατὰ τὸ πρότερον ψήφισμα ὃ Κλέαρχ[ος εἶπεν] — ADDED TO OATH c. 448.³²⁹
- [7. γέγονα οὐκ ἔλαττον ἢ τριάκοντα ἔτη.³³⁰]
8. οὐ δέξομαι ἔνδειξιν οὐδὲ ἀπαγωγὴν ἔνεκα τῶν πρότερον γεγενημένων, κλῆν τῶν φυγόντων — MUST HAVE BEEN ADDED TO OATH IN 403/2.³³¹
- [9. Oath sworn by boule and dicasts to Chalcis in 446/5, almost certainly once for all, quoted above on p. 200. ³³²]
- ? [10. μηδὲν παράνομον ἐπινηφίζειν.³³³]

Clauses 1 and 2 are patriotic generalities, fundamentally different from any other clauses which we know: they must surely have formed

part of the original oath, and may at first have comprised almost the whole of the oath.³³⁴ The other fragments all embody specific safeguards and assurances. 10, if this was a separate clause, is so closely related to the basic duty of the boule that it may well have been in the oath from the beginning; 7, though attested for the heliastic oath, may not have been needed as a clause in the bouleutic oath, as the selection procedure for bouleutae was more rigorous, but there is no need to doubt that the lower age limit of 30 was Cleisthenic or Solonian.³³⁵ 5, 6 and 8 are datable additions, and 9, which was probably not incorporated in the regular oath, is also datable. This leaves only 3 and 4, the clauses concerned with the judicial powers of the boule. In section iv of this chapter I suggested that the boule always held the δοκιμασία of its successors (in which case the relevant clause may always have been in the oath), and took over the δοκιμασία of the archons from the Areopagus in 462/1;³³⁶ in the first part of this appendix I was unable to produce any evidence for the boule's involvement before the middle of the fifth century in matters to which clause 3 could apply. There is perhaps one indication that some items may have been added to the bouleutic oath not long before the middle of the fifth century: clause 6, an undertaking to enforce a particular decree, is a surprisingly specific insertion, yet the various fragments of the decree yield enough of the text for us to be fairly certain that the insertion was made:

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προσγράψαι δὲ πρὸς τὸν ὄρκιον τὸν τῆς βουλῆς τὸν γραμματέα τὸν τῆς βουλῆς εἰς τὸ λοιπὸν ταῖδε.³³⁷

I find it hard to believe that this would have been done if the bouleutic oath had remained unaltered for over fifty years; but if in the past ten to fifteen years various changes in the powers of the boule had been consolidated by changes in the oath, as Cleisthenes' reorganisation had been consolidated by the imposition of the oath, it could more easily have occurred to Clearchus that a similar device would provide a useful

safeguard to his decree.

The only other evidence bearing on the bouleutic oath has to be extracted from IG i² 114. This comprises one large, one medium and two small fragments, probably inscribed in the last decade of the fifth century, which together provide about a third of the original inscribed surface over 60 lines. The large fragment is very badly preserved indeed: Hiller von Gaertringen dismissed the whole of lines 1-16³³⁸ with the words pleraque deleta sunt, and when I examined the stone in 1964 I could not confidently identify any letters in the first eight lines nor more than twelve in lines 9-16.³³⁹ Beyond this point a few words and phrases can be made out, and we seem to be in the middle of an oath, with the verb ἐπιψηφίζω in the first person singular and οὐ for negative. But from line 29 onwards we have verbs in the infinitive and μή to indicate negation: there are references to the boule of five hundred and the bouleuterium, and perhaps to the sum of 500 drachmae.³⁴⁰ This part of the inscription ends in line 34, where τὰδ[ε] ἔδοχθ[ε] can be made out. After this begins a list of steps which may not be taken ἄνευ τοῦ δέμο τοῦ Ἀθηναίου πλεθύοντος (a phrase which also occurs in the earlier part of the inscription³⁴¹): declaration of war, condemnation to death,^{341A} θοὰν ἐπιβαλεῖν, and something which involves public money, the boule and retirement from office.

Wade-Gery claimed to detect in the first part of the inscription clauses 3 (ll. 7-10) and 2 (ll. 21-2) of the oath, and also something analogous to 10 (ll. 27-9); but his restorations are based on very meagre remains, and apart from two occurrences of the verb ἐπιψηφίζω and one of the phrase ἄνευ τοῦ δέμο τοῦ Ἀθηναίου πλεθύοντος I do not think anything of significance can be recovered from the oath's contents - though it seems likely enough that it is the bouleutic oath with which we are dealing, and the whole document is probably a part of that collection of laws which in the fourth century would have been called

the νόμος βουλευτικός. Enough survives of the regulations in the second half of the inscription for it to be of some importance to know whether this is simply a republication at the end of the fifth century of an older law or laws, or incorporates new provisions.

Kirchhoff remarked:

Priscae dictionis vestigia in verbis fragmentorum conspicua in eam deducunt sententiam, ut non primum illo anno haec sancta esse existemus, verum renovatam populiscito continere antiquioris aevi constitutionem aliquam, quae hoc ipso anno denuo fuerit promulgata.³⁴²

Cloch  wanted to link the whole document with the original imposition of the bouleutic oath in 501/0, and under his influence Hiller von Gaertringen in the editio minor was more specific:

Priscus dictionis color saeculi initium decet.

Two phrases do seem to point to an early origin: the τ  ε ε  οχσεν of l. 34 recalls the ταυτ' ε  οχσεν of the Hecatompedon Inscription,³⁴³ while θωγ (θο ν  πιβαλ ν, l. 41) seems to be an early word.³⁴⁴ There are no other clear indications of antiquity, but it has been suggested that the all-pervasive  νευ τ    μο τ  'Αθηναίων πλεθϋόντος should be regarded in this light: there is no other occurrence of the phrase in an Athenian context,³⁴⁵ and the working of the Athenian state after the fall of the Four Hundred is sufficiently well documented for it to be surprising that there should be no other mention of a legal requirement that was made or confirmed at the end of the fifth century; furthermore, we know that by the end of the fifth century capital punishment and other severe penalties were within the competence of the δικάσθηρια.³⁴⁶ We know that the Athenians were content to retain obsolete expressions in their laws,³⁴⁷ and it is quite likely that this phrase is a survival from an earlier period. Cloch  suggested that δ μος πλεθϋων should be regarded as a "plenary assembly", perhaps exemplified in the body of at least six thousand which was required for an ostracism under the law of Cleisthenes,³⁴⁸

and believed that by the end of the century the δικαστήρια were deemed to represent the δῆμος πληθύων in judicial matters. Against this, Sencie and Peremans argued³⁴⁹ that the requirement of a plenary assembly would be more fitted to the developed democracy of the late fifth century than to the date to which Cloché assigned the original law; and they thought that ἄνευ τοῦ δέμο πλεθύοντος ought to be rendered, "without the people present en masse in Athens" (a requirement which would be peculiarly appropriate to the circumstances of 410). This interpretation I find very unconvincing. Cloché's is, I think, possible, but I incline to a simpler explanation, that δῆμος πληθύων means no more than "the people in assembly".³⁵⁰ Like Cloché I have to suppose that the δικαστήρια came to be recognised as representative of the δῆμος πληθύων, but this is easier if what they represented was not a special body but the ordinary assembly. By 446/5 we have an oath with the shorter but (I believe) equivalent formula, ἄνευ τοῦ δέμο τοῦ Ἀθηναίων,³⁵¹ but there is nothing to show that the fuller expression had become obsolete half a century before this, and even at this date a more conservative drafter might have been prepared to employ it. In the present state of our evidence we may say that measures embodying the longer formula are likely to have been drafted before 450, but I do not think that greater precision is possible.

Dr D.M. Lewis has recently introduced a new factor into the discussion.³⁵² In line 43 of the inscription we read

[h]όπος ἄν δοκῆι : : : δέμοι τοῦτ[ι] Ἀθηναίων πλε[θύοντι].

The three pairs of points after δοκῆι are clearly visible, and τοῦτ[ι] is an irresistible restoration. It is amazing that τοῦτ[ι] should never have been inscribed here, and Dr Lewis suggests that this stone "was carved by a careful man transcribing a damaged original with such

fidelity that he preferred to mark three blank spaces which he could not read rather than make what appears to us the easiest of conjectures." Such caution in a copyist is barely credible, but the phenomenon to be explained is a strange one and I think the explanation must stand unless a better can be found.

A word of warning is necessary about what we are dating. The publication of the laws at the end of the fifth century seems to have involved the collection in an organised code of what had previously been scattered and unconnected enactments, and the occurrence of *τάδε ἔδοξε*

in the middle (l. 34) of our inscription confirms that this is likely to have happened here. In such a case, conclusive proof of the antiquity of one item would not help us to date the contents of any other part of the document. It seems likely that there is much in this inscription going back to the first half of the fifth century, including the reservation for the *δῆμος πληθύνων* of the death sentence and the infliction of *θωαί*,³⁵³ but we know of changes made in the bouleutic oath in the second half of the fifth century, and these and other changes affecting the boule ought to have been included in the consolidated *νόμος βουλευτικός*.

The upshot of our enquiry is, that although judicial restrictions need not have formed a part of the original bouleutic oath as imposed in 501/0, we have some grounds for believing that the right of severe punishment had been reserved for the demos before the middle of the fifth century, and I have suggested that changes may have been made in the oath not long before Clearchus carried his coinage decree.

Though we have no evidence for judicial activity on the part of the boule in the first half of the century, we do know of some important trials. About 493 the tragedian Phrynichus was fined 1,000 drachmae for his *Μιλήτου ἄλωσις* by *Ἀθηναῖοι*,³⁵⁴ and Miltiades was

acquitted in a (the ?) δικαστήριον on a charge of tyranny in the Chersonese;³⁵⁵ in 489 Miltiades was prosecuted before the demos by Xanthippus:

θανάτου ὑπαγαγὼν ὑπὸ τὸν δῆμον Μιλτιάδεα ἐούσαν τῆς Ἀθηναίων ἀπάτης εἶνεκεν.³⁵⁶

The demos appears again in a story for which Lycurgus is our sole authority:

Ἴππαρχον γὰρ τὸν Χάρμου, οὐχ ὑπομείναντα τὴν περὶ προδοσίας ἐν τῷ δήμῳ κρίσιν ἀλλ' ἔρημον τὸν ἄγωνα ἐάσαντα, θανάτῳ τοῦτον ζημιώσαντες.³⁵⁷

For^{the} condemnation of Themistocles, Craterus found a document embodying the name of the prosecutor, who is named both in the Lexicon Rhetoricum Cantabrigiense³⁵⁸ and by Plutarch:³⁵⁹ the Lexicon regards the trial as an instance of εἰσαγγελία, while Plutarch writes of the prosecutor γράψαμενος αὐτὸν προδοσίας. Thucydides ascribes his condemnation to Ἀθηναῖοι;³⁶⁰ while the Athenaion Politeia has a strange story of his assisting Ephialtes' attack on the Areopagus, in order to avert his own arrest and trial.³⁶¹ Finally, when Cimon returned to Athens from the siege of Thasos he was charged with taking bribes not to attack Macedon, and Pericles was among his prosecutors. According to the Athenaion Politeia Pericles κατηγορήσε τὰς εὐθύνας Κίμωνος στρατηγοῦντος;³⁶² Plutarch tells us that Pericles was εἷς τῶν κατηγορῶν . . . ὑπὸ τοῦ δήμου προβεβλημένος,³⁶³ and writes of this trial, in which Cimon was acquitted, as a δίκη³⁶⁴ and of Cimon's defending himself before the δικασταί.³⁶⁵

All six, except perhaps the trial of Phrynichus, could have been dealt with by εἰσαγγελία, though it would be dangerous to say that any of them could have been dealt with only by that procedure. Scholars

disagree on the authority which would have heard εἰσαγγελίαι between the reforms of Cleisthenes and those of Ephialtes, but it has commonly been assumed that some at any rate of these charges were heard by the ecclesia, and that Cleisthenes must therefore have given eisangelitic jurisdiction to the boule and ecclesia, either in place of the Areopagus or as a permissible alternative to it.³⁶⁶ We have no clear evidence that Cleisthenes showed any interest at all in the Areopagus, or in the powers of the boule and ecclesia as opposed to the composition of the boule,³⁶⁷ though Bonner and Smith write that

Cleisthenes was interested in transferring both political and judicial powers from the oligarchic body, the Areopagus, to the democratic bodies, the boulé and the assembly.³⁶⁸

But Ephialtes, we know, was interested in transferring powers from the Areopagus to the boule and the assembly, and it is worth asking whether the six trials I have mentioned can be explained without crediting Cleisthenes with an otherwise unattested judicial reform. Another way in which trials could reach the demos at this time was by ἔφεσις from the personal jurisdiction of an archon,³⁶⁹ and I am inclined to suspect that the first four were referred to the undivided heliaea in this way. The trial of Themistocles is described as an εἰσαγγελία by the Lexicon Rhetoricum Cantabrigiense, while Plutarch uses the participle γραψάμενος : whether the lexicographer has been misled by Theophrastus' list of charges which could be made the subject of an εἰσαγγελία , or Plutarch has used a technical term in a non-technical sense, cannot be decided with certainty, but the strange story in A.P. 25. iii-iv might lend some support to the view that this charge was an εἰσαγγελία heard by the Areopagus.³⁷⁰ The Athenaion Politeia links the prosecution of Cimon with his εὐθυναί , which may be a guess but if so is an intelligent guess: it has been suggested that before 462/1 εὐθυναί were the concern of the Areopagus,³⁷¹ and it would make

excellent political sense if in the 460's the Areopagus condemned Themistocles and acquitted Cimon.

In six important cases there is no mention at all of the boule, and if the boule's judicial powers were as great at this time as later in the fifth century we might have expected it to play some part in the accounts of these trials. Arguments from such small silences as these are bound to be dangerous, but our sources do mention the boule in connection with other events of this period,³⁷² and it is at any rate possible that the boule is not mentioned here because it had not yet acquired the powers which it was to exercise later.

Powers which the boule did not possess early in the fifth century but did possess by the middle of the century may well have been acquired through the reforms of Ephialtes, to which I now turn. The principal evidence for the content of these reforms can be set out in three short quotations. In the Athenaion Politeia we read that after the Persian Wars the Areopagus, though gradually weakening, dominated the state; Ephialtes became προστάτης τοῦ δήμου and began to attack this body:

καὶ πρῶτον μὲν ἀνεῖλεν πολλοὺς τῶν Ἀρεοπαγιτῶν, ὑγῶνας ἐπιφέρων περὶ τῶν διεφθαρμένων· ἔπειτα τῆς βουλῆς ἐκί Κόνωνος ἄρχοντος (462/1) ἅπαντα περιεῖλετο τὰ ἐπίθετα δι' ὧν ἦν ἡ τῆς πόλεως φυλακὴ, καὶ τὸ μὲν τοῖς πεντακοσίοις, τὰ δὲ τῷ δήμῳ καὶ τοῖς δικαστηρίοις ἀπέδωκεν.³⁷³

Plutarch is at his most informative in the life of Cimon:

τελέως ἀνεθύντες οἱ πολλοὶ καὶ συγχέαντες τὸν καθεστῶτα τῆς πολιτείας κόσμον τὰ <τε> πατρία νόμιμα, οἷς ἐγγῆνον πρότερον, Ἐφιάλτου προεστῶτος ἀφείλοντο τῆς ἐξ Ἀρείου πάγου βουλῆς τὰς κρίσεις πλὴν ὀλίγων ἀπίστων, καὶ τῶν δικαστηρίων κυρίους ἑαυτοὺς ποιήσαντες εἰς ἄκρατον δημοκρατίαν ἐνέβαλον τὴν πόλιν.³⁷⁴

Philochorus credited Ephialtes with the creation of a board of νομοφύλακες, not otherwise known before the reign of Alexander:

ἑπτα δὲ ἦσαν καὶ κατέστησαν, ὡς Φιλόχορος, ὅτε Ἐφιάλτης μόνον κατέλιπε τῆς ἐξ Ἀρείου πάγου βουλῆς τὰ ὑπὲρ τοῦ σώματος.³⁷⁵

Other sources have very little to add. We learn that the Areopagus retained jurisdiction in arson and certain religious cases as well as for homicide,³⁷⁶ but that is all.³⁷⁷

We can at any rate recover the campaigning slogans used by Ephialtes and his opponents: the Athenaion Politeia's reference to ἐκίθιστα must surely be derived from anti-Areopagite propaganda, while there are close parallels to Plutarch's τὸν καθεστῶτα κόσμον τὰ <τε> πάτρια / νόμιμα in Diodorus and Pausanias.³⁷⁸ What the Areopagus lost could variously be represented as accretions or as established rights, they included an important element of judicial power, and they gave the Areopagus a φυλακὴ τῆς πολιτείας.

Despite the mention of "accretions" in chapter 25, the Athenaion Politeia makes three earlier references to the Areopagus' guardianship of the laws. It occurs first in the early, pre-Draconian state:

ἡ δὲ τῶν Ἀρεοπαγιτῶν βουλὴ τὴν μὲν τάξιν εἶχε τοῦ διατηρεῖν τοὺς νόμους, δικάζει δὲ τὰ πλεῖστα καὶ τὰ μέγιστα τῶν ἐν τῇ πόλει, καὶ κολάζουσα καὶ ζημιοῦσα πάντας τοὺς ἀκοσμοῦντας κυρίως.³⁷⁹

In the so-called Draconian constitution the Areopagus is guardian of the laws, sees that the ἀρχαί rule according to the laws, and hears εἰσαγγελίαι ;³⁸⁰ while Solon, though creating a new boule of four hundred, was thought not to have tampered with the rights of the Areopagus:

τὴν δὲ τῶν Ἀρεοπαγιτῶν (sc. βουλήν) ἔταξεν ἐκὶ τὸ νομοφυλακεῖν, ὅσοις ὑπῆρχεν καὶ πρότερον ἐπίσκοπος οὔσα τῆς πολιτείας, καὶ τὰ τε ἄλλα τὰ πλεῖστα καὶ τὰ μέγιστα τῶν πολιτικῶν διετήρει καὶ ~~(ἐπε)~~ τοὺς ἀμαρτάνοντας ἠΰθουνεν κυρία οὔσα καὶ ζημιοῦν καὶ κολάζειν, καὶ τὰς ἐκτίσεις ἄνεφερον εἰς τὴν πόλιν, οὐκ ἐπιγράφουσα τὴν πρόφασιν δι' ὃ τὸ ἐκτίνεσθαι, καὶ τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν, Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν.³⁸¹

Plutarch writes in similar terms of the functions of the Areopagus, and quotes a law from the thirteenth *ἄξων* to prove the existence of this council before Solon's legislation.³⁸² In the later chapters of the life of Solon he gives us further quotations from the *ἄξονες* and although much that we read, particularly about the pre-Solonian state, is based on inference, I believe that ancient scholars had in these laws and in the poems of Solon enough material to guarantee that the general picture which we are given of the constitution in the sixth century is not far from the truth. In this early period jurisdiction was exercised also by the nine archons, but Solon provided for *ἔφεσις* from their verdicts to the heliaea.³⁸³ In connection with Cleisthenes, as we have already noticed, the Areopagus is not mentioned, and there is no direct indication of any change in judicial machinery.

The guardianship of the laws is commonly interpreted either as some specific function of the Areopagus, a safeguard against illegal legislation or administration like that later provided by the *γραφεὶ παρανόμων* and *νόμοις μὴ χρῆσθαι*,³⁸⁴ or as a comprehensive name for all the various ways in which the Areopagus could enforce respect for the laws.³⁸⁵ The association of *νομοφυλακεῖν* with the Areopagus is certainly very old: it may be older than written laws, or it might perhaps be associated with the first codification of the laws,

by Draco. Whatever its exact origin it is probably not to be associated directly with any one or more of the specific rights exercised by the Areopagus at the beginning of the fifth century: I imagine that it was intended as a comprehensive name for all the various ways in which the Areopagus could enforce respect for the laws at the time when the title was first conferred, and became the pretext on which the Areopagus based different rights which it assumed in different circumstances later. That is, by reinterpreting a general description of its judicial function, the Areopagus came to exercise insecurely based powers which could be regarded either as established rights or as accretions.

Professor Sealey in his recent study of Ephialtes has claimed that the Areopagus did not lose its right to initiate business in the ecclesia, which it seems to have exercised on occasions in the time of Demosthenes;³⁸⁶ and that the change from full jurisdiction of an archon with appeal lying to the heliaea, to preliminary enquiry by the archon, with regular reference to his δικαστήριον, is likely to have been a natural and gradual change rather than an abrupt and legally enforced reform³⁸⁷ (with which I agree). We are left, he claims, with the transfer of εὔθυναι from the Areopagus to the board of εὔθυνοι and the courts as the only way in which the guardianship of the laws might have been destroyed, and he interprets Ephialtes' attacks on individual Areopagites περὶ τῶν διεφθήμενων as prosecutions for corruption in the conduct of εὔθυναι.³⁸⁸ Ephialtes must have done something, Sealey points out, or he would not have been murdered, but we may perhaps wonder whether the reorganisation of εὔθυνοι, important as it was, was enough to merit assassination. I believe that this was one of the ways in which the courts gained from Ephialtes' reform, but that this is only a small part of the story.

We have seen in this chapter that by the fourth century the boule was functioning as a law-court in a number of ways:

- (i) It had a disciplinary jurisdiction over its own members, which it is likely always to have possessed.

- (ii) It had an "official" jurisdiction over most magistrates, and over private citizens who failed in their official duties.
- (iii) It heard εἰσαγγελλῆαι.
- (iv) It conducted certain δοκιμασίαι.

I believe that the boule was created by Solon and reorganised by Cleisthenes primarily as a probouleutic council, and that until 462 its judicial power was limited to internal discipline and the δοκιμασία of (probably) the next year's bouleutae only. εἰσαγγελλῆαι were the preserve of the Areopagus, and so too was such official jurisdiction as existed at that time (less and more primitive than in the period for which we have evidence), together with some δοκιμασίαι - at any rate that of the archons. If the Areopagus lost all of these in 462/1 the boule, ecclesia and δικαστήρια will all have benefited, and Ephialtes will have done more than enough to deserve assassination by a diēhard.

Some of the powers which it was exercising the Areopagus had assumed on the basis of its position as guardian of the laws, and to be complete the reform must somehow have taken away from the Areopagus this useful title.³⁸⁹ Its members, who since 487 had been appointed to the archonship by lot,³⁹⁰ and who before long were to come from all but the lowest property-class,³⁹¹ were no longer to be guardians of the laws. They were not formally deprived of the right of πρόσδοδος to the boule and demos, but they were formally discredited, and no one in future would pay much attention to a γνώμη Ἀρεοπαγιτῶν; no one, that is, until more than a hundred years later Isocrates wrote his Areopagitic and Demosthenes took the Areopagus into his ἑταιρεία. Only once in the intervening century did the Areopagus become prominent, when in 403/2 Tisamenus entrusted the revised law code to it,³⁹² and we can only suppose that even the democrats had been affected by oligarchic talk about the πατριος πολιτεία.³⁹³ Perhaps this

is why our sources knew so much less about Ephialtes than about Cleisthenes and Solon: though his reform did involve the judicial changes which I have outlined the essence of it was, quite simply, that the Areopagus was no longer to be guardian of the laws.

The transfer of judicial procedures may have involved not only the enactment of new measures which could later be collected in the νόμος βουλευτικὸς, but also an addition to the oath sworn by the bouleutae. We are now in a position to see how what Cloché rejected as impossible could in fact have happened, that restrictive clauses were incorporated in the oath at a time when the boule's powers were not reduced but considerably increased. Ephialtes was bringing to political insignificance a body which, at any rate according to his own propaganda, had been improperly extending its powers. The boule in turn was now being given a position of great importance in the running of the state and, representative of the demos as it was,³⁹⁴ there was perhaps a danger that it too might start to amass ἐπίθετα. Unless it did so, no democrat would want to reduce its powers, but some precaution against its abusing or gradually and imperceptibly enlarging its new powers will have seemed at this time very desirable. Hence the requirement that the boule's jurisdiction should be final only for routine offences; hence the acknowledgment of its limitations in the oath. .

The explanation that I offer takes into account all the evidence for the boule's judicial powers except the two passages commonly regarded as fundamental:

ἡ δὲ βουλὴ πρότερον μὲν ἦν κυρία καὶ χρήμασιν ζημιῶσαι
καὶ δῆσαι καὶ ἀποκτεῖναι.³⁹⁵
αἱ τῆς βουλῆς κρίσεις εἰς τὸν δῆμον ἐληλύθασιν.³⁹⁶

If I believe, as I do, that the Athenaion Politeia is mistaken, I must at least try to show how the mistake may have arisen. Enough modern

scholars have regarded the presence of restrictions in the bouleutic oath as proof that before the oath was imposed the restrictions did not exist, for it to be perfectly credible that an ancient writer should have made the same mistake. When the Athenaion Politeia was written the boule swore not to exceed certain limits which had been set to its powers, and the bouleutic oath was first imposed in 501/0: the inference may have been as natural to our author as it was to Cloché, to Bonner and Smith, and to Larsen. There is also another factor which may have made for misunderstanding. There were in Athens two βουλαί , the Areopagus, and the Five (earlier Four) Hundred. The Areopagus was the older, and must for some time after the creation of the new council have remained The Boule, par excellence. Scarcely any of our evidence for early history is contemporary, and when our authorities were writing the Five Hundred were The Boule,³⁹⁷ but even in the Athenaion Politeia's account of Ephialtes we find βουλή (alone) used of the Areopagus, while the Five Hundred are identified by their number.³⁹⁸ I would suggest that fourth-century Athenians were led by the fact of the bouleutic oath and the normal usage of their own day to misunderstand a remark to the effect that ἡ βουλή had once possessed unlimited judicial powers, and that the story of Lysimachus and Eumelides, far from guaranteeing the truth of the Athenaion Politeia's assertion, has been invented or distorted to illustrate this misunderstanding.

CHAPTER V : CONCLUSION

In the foregoing chapters I have examined the membership and activities of the Athenian boule from the time of Cleisthenes onwards. In all probability Cleisthenes' boule was not a wholly new creation. Solon is said in the Athenaion Politeia and by Plutarch to have established a boule of four hundred, a hundred from each of the four old tribes,

οὗς προβουλεύειν ἔταξε τοῦ δήμου καὶ μηδὲν ἔαν ἀπροβούλευτον εἰς ἐκκλησίαν εἰσφέρεισθαι.¹

We know scarcely anything about Solon's boule, and some scholars have refused to believe in its existence, but this scepticism seems unjustified.² Since the Areopagus would for some time be dominated by aristocrats who had gained admission before Solon's reforms, the creation of a second council makes sense in the light of his use of wealth as the sole qualification for office, and the fact that Pisistratus was not prevented from obtaining a bodyguard and becoming tyrant does not of course prove that there was no probouleutic council to restrain the impulses of the people.³ It is scarcely possible that Cleisthenes' deme organisation could have been completed in time for the new boule of five hundred to resist Cleomenes in 508/7, and pace Hignett it is surely inconceivable that an attempt should have been made to dissolve the ancient council of the Areopagus; therefore the boule which resisted Cleomenes ought to have been the four hundred.⁴ A century after Cleisthenes an oligarchic constitution was for a short time set up, and a document issued by the oligarchs began with the words,

βουλεύειν μὲν τετρακοσίους κατὰ τὰ πάτρια.⁵

we must not automatically accept any statement made by oligarchic propagandists, but it would be surprising, I think, if at the end of the fifth century knowledge of the sixth was already so slight that a (surely needless) falsehood of this kind could be perpetrated. Plutarch goes on to

compare the two βουλαί with a ship's two anchors,⁶ and it is an attractive suggestion that here he is alluding to one of Solon's poems.⁷

The new boule is said to have been probouleutic, and I imagine that this was its only major function. It may have been given limited disciplinary powers to ensure good order at meetings,⁸ and if its members were required to undergo a δοκιμασία before entering office this examination may have been conducted by the retiring boule.⁹ We are not told of any prytany system in this boule: meetings were probably convened and presided over by the archon or the college of archons;¹⁰ they need not have been frequent.

Pisistratus dominated Athens without tampering with the constitution,^{10a} and Solon's boule still existed in 508/7, when it resisted Cleomenes' attempt to give power to Isagoras. Cleisthenes' reforms were allowed to stand, and Attica was given a new political organisation, based on the distribution of about 170 demes among ten new tribes. The membership of the boule was increased to five hundred: each of the ten tribes had fifty seats, apportioned among the demes in proportion to their size.¹¹ I believe that this organisation of Attica was the essence of Cleisthenes' reform of the city's government. Some modern scholars have thought that he was concerned also with the relative powers of the different bodies in the state, and attempted to strengthen the boule and ecclesia at the expense of the Areopagus,¹² but this view is to be found in none of our ancient sources. There is no allusion to the boule before 462 which need imply that it possessed more than probouleutic powers; the assembly had legislative power and (as the heliaea) appellate jurisdiction; but I have tried to show that until the time of Ephialtes the Areopagus retained the right to hear εἰσαγγελίας,¹⁴ to hold the δοκιμασία at any rate of prospective archons,¹⁵ and to conduct the εὐθυναί of retiring magistrates.¹⁶ In 501/0 the boule first swore the oath ὄν ἔτι καὶ νῦν ὀμνύουσιν.¹⁷

Some scholars have thought that the imposition of this oath marks a departure from Cleisthenes' constitution, by which the boule lost to the people powers which it had been given by Cleisthenes, such as the right to commit the state to peace or war, and the right to condemn to death. However, the institution of an oath need not mean that the restrictions embodied in the oath are new. The year 501/0 is very close to the date of Cleisthenes' reforms, and we have no direct mention of a reform which ought to have been of as great importance as his. I prefer to believe that it took until 501 to work out the details of Cleisthenes' organisation, and that the boule of 501/0 was the first to take the bouleutic oath because it was the first boule in which the demes and tribes were represented as Cleisthenes had planned.¹⁸ It was the organisation alone which Cleisthenes changed; in other respects the boule remained as Solon had established it, simply a probouleutic body. Meetings of the boule and ecclesia were perhaps more frequent in 500 than in 590, but they cannot yet have been very frequent, and I doubt whether it was found necessary to divide the boule into tribal prytanies this early.¹⁹

Ephialtes' reform marks a turning-point in the history of the ^hboule. In 462/1 the Areopagus, the older council in Athens, falling in prestige since the lot had been introduced in 487 for the appointment of the archons who became its members,²⁰ was deprived of powers which its enemies represented as accretions, and these were given to the boule, the ecclesia, and the δικαστήρια into which the heliaea was divided.²¹ Ancient writers seem to have been able to discover very little of what was involved, but the powers in question seem to have been primarily judicial or quasi-judicial. Among the changes, I have suggested, was the transfer of the right to hear εἰσαγγελίαι, major charges of public importance, to the boule and demos;²² also the transfer to the boule and δικαστήρια of the mechanisms through which the state supervised its magistrates. Most δοκιμασίαι were conducted by the courts, but

the boule now held the first, perhaps for a time the sole, examination of the archons, and outside the strictly magisterial sphere it acquired an interest in the cavalry, in the enrolment of citizens on their coming of age, and, when the system of grants was instituted, in the examination of invalids who applied for support from the state.²³ Magistrates who passed their $\delta\omicron\kappa\iota\mu\alpha\sigma\acute{\iota}\alpha$ and entered on their office had to submit their accounts each prytany to a committee of bouleutae, and the boule played a smaller part in the main examination to which they submitted at the end of the year.²⁴ Some of the activities which I have mentioned in the last two sentences may have been undertaken by the boule only after the time of Ephialtes, but I believe that he at any rate set the pattern for the boule's later development as the overseer and coordinator of a wide range of public activities.

By the late fifth century the boule was playing a vital part in the running of the state. It retained, of course, its original probouleutic function, in consequence of which it received foreign envoys,²⁵ heard reports from Athenians holding regular or extraordinary appointments,²⁶ and discussed every matter which might be the subject of a decree of the assembly.²⁷ It had come to be regarded as generally responsible for the financial well-being of Athens. We have seen it involved in assessing and collecting the tribute paid by members of the Delian League; we have seen it interested in the sacred treasuries which were so important to Athens in the Peloponnesian War. The boule supervised the poletae, who placed state contracts of all kinds, the apodectae (not mentioned before 418/7), who received state revenue, and the colacretae, who (until their duties were taken over in or shortly before 411 by an enlarged board of Hellenotamiae) made all payments on behalf of the state. The part which it played in finance was typical: routine work was handled by a number of separate committees, each active in a limited field, while the boule supervised them all - the more public parts of their duty were discharged in its presence - and so was able to piece together the whole picture, and

to advise the assembly if a new tax was needed, or if the money was not available for a new undertaking.²⁸ For the army the boule's responsibility was slight - it was involved to some extent in the enrolment of adult citizens, and conducted the δοκιμασία of the cavalry and other special forces - but it played an important part in Athens' naval organization. Through a sub-committee of trieropoei it was responsible for the building of new ships (though the number to be built was decided, perhaps from year to year, by the assembly), and it acted as overseer to the epimeletae who were the custodians of all that the dockyards contained. We have seen that it is difficult to define the powers of the boule and assembly in the dockyards, but it was commonly the boule that decided what was to be done with particular ships and items of equipment. The boule had important duties again when an expedition was sent out.²⁹ The great public buildings of the Periclean period were supervised by boards of popularly elected epistatae, but the boule was involved in the approval of plans (though the assembly sometimes claimed the right to decide even points of detail.)³⁰ The administration of festivals was shared between the priests and boards of hieropoei, and some at any rate of the hieropoei were appointed from the boule, while the boule as a whole was involved in the Eleusinian Mysteries and the Dionysia.³¹ In the fifth century and the first third of the fourth century the principal public secretary was a member of the boule, serving for one prytany.³² The boule's position was reinforced by the fact that it was made a judge in its own causes. In finance, in naval matters, probably in connection with public works, and on certain religious questions, the boule acted as a court with limited powers of punishment; if it felt that a heavier penalty was called for than it could impose it would refer the case to a δικαστήριον for a second hearing. In this way it had jurisdiction over a great many public officials, and over private citizens in respect of their public obligations; we are told that it could entertain a charge of misconduct against an official from any citizen, and many other cases of misconduct will have become apparent to the boule in the course of its administrative duties, in particular the interim examination of

accounts made each prytany by logistae appointed from the boule.³³

Finally, charges of major offences against the state will have come to the boule as εἰσαγγελίαι, though if the procedure was not abused reference to the assembly or a court representing the demos for a heavy penalty will have been normal.³⁴

The assembly remained sovereign; it took all major decisions, and elected the holders of offices in which special skill was considered necessary: but in the course of the fifth century the boule had become an essential adjunct of the sovereign assembly. Five hundred men devoted one year to the work which could not be done by an assembly of thousands, but still had to be done. They took the lesser, "ministerial" decisions, which could not wait for the next meeting of the assembly, but had to be taken to ensure that the people's will was carried out; they watched over the activities of a wide range of public officials, and punished themselves or brought before a court men who failed in their duty to the state; and by keeping in touch with so many matters of public concern they could advise their fellow-citizens in the assembly when further decisions needed to be taken. Much of this has been admirably stated in an essay by the late Professor Gomme,³⁵ but I cannot follow him in his conclusion that because the assembly took the major decisions it was only in the assembly that major issues were discussed.³⁶ It is proved beyond doubt that in the fifth and fourth centuries genuine debates were held, real decisions were taken, in the assembly; but I have tried to show that even at this time policy was discussed in the boule, and the boule was prepared in its probouleumata to make recommendations on important and controversial topics as well as on matters of routine: many decrees concerning Athens' relations with other states were published in a form showing that the basic text had been approved by the boule.³⁷

We do not know how often the assembly was now meeting: an increase in the number of ordinary meetings in the year from ten to forty may have

taken place towards the end of the fifth century,³⁸ but payment for attendance was not introduced until after 403.³⁹ The boule, however, was now fully occupied. The division into prytanies, to provide a standing committee to which urgent business could be taken at any time, must have been made by Ephialtes if it had not been made before, and it will soon have been found necessary for the boule to hold frequent meetings (it is uncertain how old the rule of the Athenaion Politeia is, that the boule met daily except on holidays^{39a}). Payment for attendance at meetings was being made in 411; very probably its introduction is to be dated between 461 and 431.⁴⁰ By 411 appointment was made by lot from the candidates in each deme, and about 453/2 appointment by lot to the boule was stipulated when Athens saw to the establishment of a democratic constitution in Erythrae, but it is possible that at first the members had been elected.⁴¹ Service was for one year, and it may not have been necessary in the fifth century, as it was in the fourth, to allow men to serve twice in their lives.⁴² The result was, as Gomme pointed out, that

From a quarter to a third or more of citizens over thirty at any one time had had such political experience as membership of the council gave; the difference, that is, in experience and knowledge, between the average councillor and the average citizen in the assembly at any time was not great. Most of the citizens had had, as councillors and in one of the many minor administrative offices, some close experience of the day-to-day conduct of state affairs, none had much.⁴³

In essence Gomme's statement is correct - no doubt most men who were willing to serve had the opportunity to do so, but the system could not have worked unless a fairly high proportion of citizens had been willing to serve,⁴⁴ and the boule will have played an important part in educating the citizens so that their assembly could be a responsible sovereign body⁴⁵ - but he perhaps went too far in minimising the difference between

the bouleutae for the time being and the lay citizens in the assembly. Probably most of the citizens who bothered to attend an ordinary meeting of the assembly had some experience of public office, but a comparatively small number will have had recent experience, and only those holding office at the time will have had that knowledge of the immediate situation without which responsible decisions cannot be taken. According to Gomme,

the council is so important that it is indispensable; it is the lynch-pin of the democracy; it is the first object of attack by the enemies of the democracy; but it is not powerful. By its activity, its effective execution of its many duties, it secured the predominance of the assembly and so its own subordination.⁴⁶

Certainly the boule was a selection of citizens taking their turn in office, not a powerful governing class with vested interests to protect, but I would say that for this very reason it could be trusted to be powerful. When the sovereign body was a large assembly, unable to hold frequent meetings, a council with executive and judicial powers in so wide a field was bound to become powerful, not least because it was the city's centre of information, but because all citizens could take their turn in exercising this power the assembly had nothing to fear.

I cannot therefore share the view, which has often been advanced, that as the democracy came to completion the powers of the ecclesia were increased at the expense of the boule.⁴⁷ That in the course of the fifth century there was in practice a considerable advance towards *ἰσηγορία*, an increase in the proportion of citizens who were prepared to play an active part in running the state, I imagine no one would deny. But the men brought into politics by the spread of the view that any citizen might have something worth-while to say in the assembly are the very men who will have responded to the doctrine that all citizens should serve the state through the boule and other public offices, and I imagine that both in 500 and in 400, and still in 200 B.C., the boule was fairly representative of those citizens who were politically minded.⁴⁸

The institution of the bouletic oath I interpret as the culmination of Cleisthenes' reform, not as a removal of powers which he had given to the boule; and I believe that Ephialtes gave the boule judicial powers which from the start were limited because of the way in which the Areopagus was thought to have extended its powers. The sovereignty of the ecclesia was in this way firmly asserted, but as the range of public activity expanded in the heyday of the Delian League it became increasingly true that the boule was "the instrument through which the Demos ruled."⁴⁹ Aristotle regarded a boule as a characteristic organ of democracy, but thought that its power might be eroded in a state where generous pay gave the assembly the chance to meet frequently and attend to detailed business directly:⁵⁰ but there was no payment for attendance at the assembly in fifth-century Athens.

The failure of the democracy to win the Peloponnesian War led some Athenians to doubt the value of their democratic institutions. When news of the disaster in Sicily reached Athens late in the summer of 413,

ἔδοκει . . . ἀρχὴν τινα πρεσβυτέρων ἀνδρῶν ἐλέσθαι,
οὔτινες περὶ τῶν παρόντων ὡς ἂν καιρὸς ἦ προβουλεύσουσιν.⁵¹

The πρόβουλοι were ten in number, perhaps aged forty or more.⁵² Our only guide to their powers is an unreliable one, Aristophanes' Lysistrata.⁵³ There a πρόβουλος goes to the Acropolis to obtain money for the purchase of oars,⁵⁴ finds his way barred by Lysistrata and her friends, orders the τοξόται to arrest them, and finds himself heading a battle against the women;⁵⁵ defeated, the old man is arrayed for his funeral, and goes off to show himself to his fellow-πρόβουλοι.⁵⁶ Later in the play he meets a Spartan herald who comes looking for the Athenian "gerousia or prytanes", interrogates him, and orders him to go back and tell the Spartans to send πρεσβεῖς αὐτοκράτορες to Athens, while he himself will tell the boule to appoint πρεσβεῖς.⁵⁷ If his powers are fairly represented the πρόβουλοι must have taken over some of the

functions of the boule and prytanes, though the boule remained in existence, to be paid off before the end of 412/1.⁵⁸ When Pisander paid his second visit to Athens, in the spring of 411, thirty συγγραφεῖς were appointed, comprising the ten πρόβουλοι and twenty others,

οἵτινες ὁμόσαντες ἤ μὴν συγγράψειν ἃ ἂν ἴγγωνται βέλτιστα εἶναι τῇ πόλει συγγράψουσι περὶ τῆς σωτηρίας.⁵⁹

At an assembly held at Colonus approval was given to the principle that citizen rights should be restricted to

τοῖς δυνατωτάτοις καὶ τοῖς σώμασιν καὶ τοῖς χρήμασιν
λητουργεῖν μὴ ἔλαττον ἢ πεντακισχιλίοις,

and that there should be a boule of four hundred - κατὰ τὰ πάτρια, no doubt, but perhaps not openly authorised at this stage

ἐλθόντας . . . ἐς τὸ βουλευτήριον ἄρχειν ὅπῃ ἂν ἄριστα γιγνώσκωσιν αὐτοκράτορας.

A hundred men were appointed to work out the details of the constitution, and they perhaps nominated themselves and three hundred others as bouleutae.⁶⁰

An oligarch who accepted the pattern of boule and ecclesia could still differ from a democrat on two fundamental points: the qualification for membership of the ecclesia, and the relative powers of boule and ecclesia. In 411 limitation of the ecclesia's membership seems to have been accepted by all the men who were behind the revolution, but the transfer of effective sovereign power to the boule⁶¹ seems to have been the work of extremists, who expected opposition on this score.⁶²

After four months a Spartan success off Eretria precipitated the fall of the four hundred,⁶³ and a régime came into being which adhered to the

restriction of the citizen body, but accepted the democratic principle that the ecclesia rather than the boule should be sovereign.⁶⁴ The *ἑὺκρασις* which Thucydides admired⁶⁵ was achieved by combining a democratic tenet with an oligarchic one. The size of the boule in this compromise régime reverted to five hundred, but the members may have been elected, and although the sovereignty of the ecclesia was affirmed in principle the boule may have enjoyed slightly greater powers than under the normal democracy.⁶⁶ Full democracy was restored in the summer of 410,⁶⁷ but another experiment with oligarchy was made with the approval of Lysander after Athens had capitulated to Sparta in 404.⁶⁸ Thirty men, commissioned to draft a constitution, seized power for themselves;⁶⁹ the officials whom they appointed included a boule which was subservient to them, and the rights of the three thousand who constituted the citizen body seem to have been minimal.⁷⁰ The boule survived when the thirty gave way to the ten,⁷¹ but in the summer or autumn of 403 the oligarchy fell, and the state prepared to make a fresh start.⁷²

In the forty years which followed the democratic restoration certain changes affecting the boule were made in the machinery of government. After two unhappy experiences of what could happen when full power was wielded by a few men we should expect the sovereignty of the demos to have been strongly affirmed, and since there is no trace in contemporary writers of further controversy on the relative powers of the boule and ecclesia I believe that this is what happened.⁷³ Superficial study of the evidence might suggest that for a short time the boule had the power to enact decrees which would normally require the assembly's approval,⁷⁴ or that for a short time it possessed unlimited judicial powers,⁷⁵ and that after a while these powers were taken away and the boule reverted to its earlier position; but I am not satisfied that its powers were enhanced in this way, and if the final restoration of the democracy was later than the "restoration" of 403/2 we ought to find clearer signs of

this. Changes which undoubtedly were made have been construed as an attack on the position of the boule, aimed at making it less powerful than it had been before 411. By 378/7 the presidency of the boule and ecclesia had been transferred from the prytanes to a board of proedri, comprising one man from each of the tribes not in prytany,⁷⁶ and in the course of the 360's the decision was made to appoint the principal state secretary for a year at a time from outside the boule, instead of for one prytany only from the bouleutae.⁷⁷ This is probably to be explained in terms of administrative convenience and a desire to lighten men's burdens by sharing out work more fairly: I do not believe that the boule's position in the state was seriously weakened as a result of these changes, or that any one intended this to happen. Another change made early in the fourth century was in the field of financial organisation. Whereas in the fifth century all state payments were made from a central fund, until about 411 by the colacretae (who worked under the control of the boule), in the fourth century the apodectae made a μερισμός of the revenue which they collected to various authorities who had an allowance which they could spend at their discretion.⁷⁸ Here any renunciation of power was made by the demos, which no longer claimed the right to authorise separately each item of public expenditure, and the boule through its supervision of the apodectae and through the examination of accounts which its logistae made each prytany controlled the working of the new system as it had the old. With the introduction of payment for attendance at the assembly⁷⁹ Athens could have approached the conditions in which Aristotle saw that a democratic boule might be relieved of its power,⁸⁰ but the payment was not over-generous and - more important - meetings of the assembly were not made sufficiently frequent for the demos to be able to rule directly instead of through the boule. I therefore believe that in the first half of the fourth century the boule played very much the same part in the running of the state as in the second half of the fifth century, and had not been made less powerful.⁸¹

From the middle of the fourth century, however, there are signs of a different kind of change, which affected boule and ecclesia alike. Having made the great discovery that political wisdom is not a monopoly of the well-born or of the rich, the first generations of Athenian democrats had devised a system of office-sharing in which, while a great many citizens were encouraged to take their share of work and responsibility, no great value was set on ability and experience. To most offices appointment was by lot, and most offices a man could hold only for one year in his life.⁸² The collegiate principle and the limited scope of most offices will have limited the harm that one dishonest or incompetent man could do, but they will also have limited the good that could be done by an able administrator. In some fields the cost in inefficiency was too great to be tolerated, and in the third quarter of the fourth century ways were found of giving extensive financial powers to men of proved ability. Many of the details remain obscure,⁸³ but it is clear that from the late 350's to the early 330's an elected theoric official or board of officials controlled a fund which provided money not only for festival distributions to the citizens but also for a wide variety of public undertakings, so that Eubulus and other holders of the office acquired considerable influence in the state; and that in the 330's and 320's Lycurgus held a position which gave him similar power and influence. According to Aeschines the theoric officials controlled or superseded other officials,⁸⁴ and I have suggested that their power depended first on their direct control of a fund that was built up to considerable dimensions, and secondly on their becoming involved, like the boule, in the work of a number of separate "departments". A single man or a small board, elected and able to be re-elected, had acquired that privilege of access to a wide range of activities which had previously been the monopoly of the boule. About 336 the theoric officials were weakened by a law of Hegemon,⁸⁵ but in the 320's they were still involved in the contract-making work of the poletae, and mentioned with

them we find another elected official, the treasurer of the stratiotic fund.⁸⁶ Lycurgus' constitutional position is harder to determine, but his influence is undoubted, and I believe that he too must have been involved in the work of various boards. A new pattern was being set in financial control: various changes were tried in the decades after Alexander's death, but from the early third century the treasurer of the stratiotic fund and the board (in oligarchic periods, a single official) ἐπὶ τῆ διοικήσει controlled Athenian finance. The μερισμός to independent spending authorities seems to have been abandoned, though the central officials may have distinguished sums which they spent on different accounts; no more is heard of such boards as the apodectae and poletae.⁸⁷

A similar move from democratic to expert control can be detected in the field of public works, though the evidence is insufficient for us to follow the development in detail. In the fifth century the ecclesia sometimes decided even small points, and each major undertaking was entrusted to the care of a popularly elected board of epistatae. Our most informative fourth-century document is the νόμος for the rebuilding of the walls, usually dated to 337/6: this provides that συγγραφαί are to be submitted by the salaried architects whom the state now employs and by any one else who wishes, the choice of the συγγραφαί to be followed being apparently entrusted to the boule;⁸⁸ and for the supervision of the work the demos is to elect epistatae to cooperate with the tribally appointed τελεχοκότος.⁸⁹ The only serious difference between this and fifth-century practice lies in the existence of permanent state architects; but it is perhaps worth noticing as a sign of lessening public interest in the detailed control of public works that the Lycurgan period of building activity does not seem to have produced a set of documents comparable with that left by the Periclean. In the Hellenistic period we find frequent references in connection with religious works to the ἀρχιτέκτων ὁ ἐπὶ τὰ ἱερά and the στρατηγὸς ὁ ἐπὶ τὴν παρασκευήν, and it was normal for these to co-operate with the relevant

priest and a lay committee on which some places might be allocated to Areopagites or bouleutae.⁹⁰ The decree ordering rebuilding of the walls in 307/6 shows that the boule was to be involved in some way,⁹¹ but thereafter the boule and ecclesia did not normally concern themselves with the details of public works.

Though they were not so foolish as to disregard experts altogether the Athenian democrats in their heyday believed very firmly that experts should be answerable to the people, and subjected their activities to close scrutiny.⁹² The boule on behalf of the demos had for this reason become involved in a wide range of activities, but in finance certainly and perhaps in public works as well there seems from the mid fourth century to be a greater dependence on experts, with a move away from the view that their task was merely to help the demos make up its own mind. By placing greater faith in specialists the boule and ecclesia were together, in the interests of more efficient administration, withholding some of their constitutional power.

After the death of Alexander, pressure from outside powers helped to produce a great number of constitutional changes in Athens, particularly at the end of the fourth century and the beginning of the third. In 262, after Athens had made her last attempt at self-assertion, in the Chremonidean War, the city came under Macedonian domination again, and after a period of direct Macedonian rule a régime with oligarchic leanings was established. With the liberation in 229 came a reversion to a fuller democracy, and Athens remained free but unimportant until occupied by Sulla in 86. Diodorus' history exists only in fragments after the end of book xx (302/1), and our knowledge of Athenian history thereafter is slight: it is not possible to say much about the boule. Most if not all régimes retained the basic constitutional mechanism of boule and ecclesia, though some made little use of them, and on the fall of Lachares' tyranny in 295 it was felt desirable to appoint a new boule immediately, so that each tribe enjoyed a short prytany in the last

three and ^ahalf months of the year.⁹³ Published decrees show that sovereignty normally remained with the ecclesia, though after the early third century signs of serious debate in the ecclesia are few, and it seems to have been increasingly normal for the ecclesia to adopt unaltered suggestions put to it by the boule.⁹⁴ In 307/6 the "Macedonian" tribes Antigonis and Demetrias were created, and thereafter the number of tribes varied as new benefactors had to be recognised or old ones could safely be dethroned. Each tribe continued to provide 50 bouleutae, and so the changes in the number of tribes affected the size of the boule;⁹⁵ but the New Bouleuterium, built about 400 B.C., was never enlarged, and it is unlikely that there was room in it for every member of the enlarged council.⁹⁶ Now that Athens' position in the Greek world was relatively unimportant, public service must have seemed less attractive than in the fifth and fourth centuries, and even under "democratic" régimes, when there was no property qualification for citizenship, it must have become increasingly hard to find a sufficient number of bouleutae. Restriction of service to two years in a man's life is not known to have been abandoned in this period, but the allocation of a fixed number of seats to each deme was probably found too restrictive, for this system seems to have broken down in the second century.⁹⁷

During the Hellenistic period, as I have said, sovereignty remained with the ecclesia when it was not usurped by a single man. But in 83 Sulla enforced on the city a constitution in which the boule could take on its own authority decisions for which it would previously have asked the ecclesia's approval. Meetings of the ecclesia were revived under Caesar, suppressed under Antony, and revived again under the Empire; the Areopagus took its place beside the boule and ecclesia as one of the main bodies corporate in the state, and became perhaps more important than the other two - but as a city revered largely for its past Athens no longer had important decisions to take, and it seems that the chief business of all three bodies was to sacrifice to the gods, to award

honours, and to permit the award of honours by others.⁹⁸ The attractions of a career in the boule were few, and there are signs that it became harder to find members: in A.D. 126/7 when the creation of the tribe Hadrianis again brought the number of tribes to thirteen, the boule was not enlarged to a membership of 650 but reduced to a little over 500;⁹⁹ and later in the second century we find that the ban on a man's serving more than two years in the boule had been lifted.¹⁰⁰ The prytany-lists of the late second and early third centuries, naming with the prytanes a large number of *ἀελοῖτοι*, many of them religious functionaries, form the last set of documents for which the boule was responsible.¹⁰¹ The archaeologists must have the last word: the bouleuterium was abandoned after the Herulians' sack in A.D. 267, but the Tholos was repaired and remained in use until the beginning of the fifth century, and the Metroon was used for a time after that before the whole of the site which the boule had occupied was abandoned.¹⁰²

Solon had created the boule of four hundred as a counterweight to the aristocratic influence of the Areopagus: a standing committee of the ecclesia, which by its advance preparation of business could enable the ecclesia to debate more effectively on the few occasions when it met. Cleisthenes changed the organisation of the boule, basing its membership on his new system of demes and tribes and so giving it the chance to become truly representative of the citizen body, but I do not believe that he changed the part played by the boule in the working of the state. The major break with the past was made by Ephialtes, who transferred various powers from the Areopagus to the boule, the ecclesia and the *δικαστήρια*: the boule's gains included various powers over state officials, and on this foundation an impressive structure of executive and judicial powers was built, which in turn made the boule well informed and so well able to advise the assembly when fresh legislation was considered. The boule was a fair cross-section of the citizen body, and its membership changed every year: its interests were the people's interests, and so it could be trusted with great power by the people.

In the second half of the fifth century and the first half of the fourth the boule was the instrument through which direct democracy - control by the people of all that concerned the people - was made to work. But with the rise of Eubulus to a dominant position in the field of finance we see the beginning of a change: in the interests of efficiency the people became more willing to trust an expert, and the influence of amateurs in the boule and ecclesia alike was weakened. Another change was set in motion by Philip and Alexander and continued by the dynasts who followed them: the day of the city state was over; the Greek πόλις might be free and independent only by courtesy of a powerful ruler who hoped by a show of generosity to gain their support; and the affairs of individual cities were of correspondingly little account. In the uncertainty of the first two generations after Alexander's death the ecclesia remained active when activity was safe; but as Athens learned to live with her new status there was less need for ordinary citizens to take a keen interest in politics, and the boule ruled not by virtue of its constitutional position but because it was less troublesome if the boule did the work and the ecclesia accepted its recommendations. As a city of the Roman Empire Athens retained her traditional organs of government, including the boule, but there was no longer much government to occupy them.