

**Shouts, murmurs, and votes:  
Acclamation and aggregation in ancient Greece**

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## Introduction

The aggregation of votes is today considered a defining, if imperfect, mechanism of democratic decision-making. Aggregation has confronted two major challenges in recent decades: one from social-choice theorists emphasizing the instability or manipulability of vote outcomes, and the second from deliberative democrats, highlighting the normative poverty of voting without reason-giving or the capacity to transform preferences. Yet neither social-choice theorists nor deliberative democrats typically seek to eliminate the recourse to counting votes as a means of resolving disputes: their aim is to correct or to supplement the apparent deficiencies of aggregation. After all, aggregation seems to be the only game in town. The way in which collective bodies render decisions is almost always through the process of counting votes, though voting may be preceded by deliberation and the count conducted in any number of ways.

Today, we tend to think of our individual political judgments on matters of importance as being discrete and as being capable of summation. Such a view underlies the use of majority or supermajority rule: almost ubiquitously, we choose a precise number of votes, or a specific percentage of the total, to constitute the appropriate threshold for the adoption of a policy or the election of a candidate. Yet the activity of *counting* inherent in the notion of aggregation – the idea that the outcome of democratic decisions ought to be determined by specifically calculating the number of votes – was not always taken to be the critical means by which we might discover collective preferences. Here I wish to examine the theoretical significance of the following

empirical puzzles: Under what circumstances did aggregation emerge, and why, despite the introduction of formal counting of votes, did mechanisms of acclamation and later of estimation, persist?

Systems of acclamation both preceded and endured long past the invention of aggregative mechanisms. Acclamation took the form of shouts or murmurs or (more controversially) waved hands: what is salient is that these votes were heard or observed *qua* unified whole, rather than counted. Further, even once formal counts were introduced, in many cases the standard mechanism of ascertaining the vote was via the impressionistic process of estimation, rather than counting. Through contrasting aggregation with acclamation – rather than with deliberation, as is today the standard antipode – I hope to highlight the underlying logic of aggregation as it emerged in ancient Greece as a means of exploring the analytical and normative foundations of counting votes.

Aggregation, I shall argue, is aristocratic in its origins. By this, I do not wish to make the obvious point that the counting of individual votes emerged in the context of a body that was comprised of members of an upper class (although this is also true). Instead, what I want to emphasize is that aggregation was originally an institution designed to assess the independent votes of those, and only of those, who possessed a special and superior faculty of political judgment. Acclamation, on the other hand, was a mechanism for the masses, lacking such developed faculties. The perception that the many had judgments worthy of “counting” took time to be “democratized.” Thus, the members of the Spartan *gerousia* and of the Athenian *areopagos*, the bodies in which voting has been thought to originate,<sup>1</sup> were thought to possess a special faculty of

political judgment that made the weighting of individual votes important there, whereas such a faculty was not initially attributed to members of the assemblies. While acclamatory systems, as in Homeric and in Spartan assemblies, do not take account of individual-level judgments, aggregative systems depend upon the view that each member of a body has a vote worthy of being weighed individually (if perhaps not equally, under much later systems of plural voting). Perhaps unsurprisingly, only with the rise of democracy did the view of ordinary citizens as entitled to have their votes *counted* rather than *clumped* emerge. Note that the question here is not of the expansion of the suffrage as such (having one's vote "count" in the usual sense), but in the analytical structure and normative significance of the shift to having individuals' particular judgments subject to summation. Yet even in democratic Athens, the precise counting of votes was generally restricted to circumstances in which preserving independence of judgment was paramount, such as in jury trials, whereas most decisions of the assembly were estimated rather than counted.

First, I will discuss Homeric councils and assemblies, seeking to demonstrate that such institutions may have already taken note of distinctions in the competence of their various members and the functions to which they were appropriately suited, which would later constitute a basis for distinguishing the form of decision mechanism. Second, I trace the development of voting in the archaic period to highlight the coexistence of mechanisms of acclamation and aggregation. Third, I identify artistic efforts to shore up support for aggregative systems during a vulnerable period for democracy in the early part of the fifth century. Fourth, I examine the circumstances under which estimation and counting were used in fifth- and fourth-century Athens to show that such distinctions

remained intact after the democratization of competence, both on epistemic grounds and because aggregation insufficiently conveyed the collective nature of decision-making. As I have suggested, we can begin to explain the analytical foundation of majority rule through exploring the logic of counting votes and of vote thresholds. Such an inquiry also illuminates the possibility that the use of aggregation reflects an attractive respect for individual members of a society as possessing *epistemic* dignity.

### **Acclamation in Homeric councils and assemblies**

Scholars today generally concur that the Homeric works provide valuable historical insights into the sociopolitical context of the late eighth and early seventh centuries.<sup>2</sup> In his accounts of councils and assemblies, Homer does not provide any discussion of voting procedures: in both bodies, decisions were made by acclamation. Although “[t]here is no formal vote hence no counting of votes, and no formal obligation to respect the people’s opinion. . . . it is clearly in the leaders’ interest to heed the assembly’s voice.”<sup>3</sup> Yet the consensual mechanism broke down, rather famously, and it is for this reason that Glotz thought that the counting of votes emerged: “The vote is the prophylactic against civil war; where it does not exist there remains, in default of absolute power, only the alternatives of civil strife or anarchic inertia.”<sup>4</sup> Further, Tsopanakis holds that the evidence that Homer notes that certain matters were decided unanimously, or with the members in complete accord, in fact implies that dissent was not just possible but frequent.<sup>5</sup>

Three such experiences illustrate these failures of consensus. In the famous case in *Iliad* Book 2, Agamemnon holds a council session to determine if the Achaeans will cut and run or hold firm, and then chooses to test the Achaeans by telling them that they should give up on capturing Troy and return home. The Achaeans first rush to the ships, but Odysseus corrals them back. Thersites resists, encouraging the Achaeans to indeed return home, and Odysseus strikes him; Odysseus instead urges the Achaeans to hold out longer in light of the sign from Zeus that they will prevail. Finally, in response, the Achaean army shouts assent to Odysseus' proposal.

A similar experience of dissent is shown in Book 9, in which a devastated Agamemnon calls an assembly of the distraught troops, urging them to return home rather than to try to prevail against Zeus' apparent will. The assembly is initially silent, but then Diomedes speaks in opposition, telling Agamemnon that he should return as a coward if he likes, but the troops will not return before they have sacked Troy. In response, the assembly shouted their approval to Diomedes' recommendation (*epiachon*). Nestor heads them off, however, urging them to wait and for Agamemnon to call a council. Finally, in *Odyssey* Book 24, Homer describes the division among the assembly on the question of whether to avenge the suitors; led by Eupitheus' sorrow rather than by Halitherses ("who alone could see the days behind and days ahead"), more than half (*pleious emesious*) – suggesting estimation -- sprang up for revenge.

It is clearly the case that acclamation may under certain conditions fail to resolve disagreement, as Glotz and Tsopanakis suggest. Yet this falls short as an explanation for the emergence of vote-counting on two grounds. It suggests that there is something fundamentally inadequate about the mechanism of acclamation for decision purposes;

and it asserts that the counting of votes can effectively resolve these deficiencies. It is not the case in either of these two cases from the Iliad that voting would have settled the matter. As Paul Cartledge, drawing on Nicole Loraux, has recently argued, by the time of Athens “every vote on a major policy issue threatened the outbreak of *stasis*.<sup>6</sup> In both cases, the problem appears to be haste or indecisiveness, rather than genuine division: The Achaeans in Book 2 have made up their mind, in opposition to Odysseus, but they are soon cowed. Likewise, in Book 9 the Assembly is not torn: they are persuaded by Diomedes but then subdued by Nestor.

In the case of widespread division, though, it is surely true that no decision may be taken (Glotz’s “anarchic inertia”); why a ballot would resolve matters marked by widespread disagreement more effectively than a voice vote, however, requires some explanation. The archaic Greeks, already relatively sophisticated institutionally, could not have believed that the problem of indecisiveness would have been readily resolved through counting hands: There is no reason that a split vote, and a minority’s refusal to obey, would not result from voting, leading just as readily as acclamation to *stasis*. It is also worth noting, as we shall see in a moment, that the ballot was not introduced first in large bodies, in which the immediate consequences of division might have been large-scale violence, but instead was used to resolve internal disputes among aristocrats. The Spartan assembly retained its acclamatory process despite the introduction of votes in the council and among the ephors; if the concern were truly widespread disagreement, leading to “civil strife or anarchic inertia,” the assembly should have been the proper locus for the introduction of the ballot. So this cannot be the end of the story.

## Wise councils and obedient assemblies

Part of the story of origins may be found in part in the different presentations of the epistemic quality of deliberations in Homeric councils and assemblies, as recent work by Deborah Beck highlights. First, Homer presents speakers in councils differently from the ways in which he presents them in assemblies. The example of Nestor is illustrative of this point. When Nestor speaks to the council – a body of *gerontas*, that which is regarded as if not old then wise – both at 7.325 and at 9.95 in he is identified as “*Nestor, hou kai prosthen ariste phaineto boule*”: Nestor, “whose advice had shown best before this.” Compare this description with how Nestor is described when he speaks to the assembly, as at 2.77: “*Nestor, hos rha Puloio anax en emathoentos*”; “Nestor, he who ruled as a king in Sandy Pylos.” Note here that whereas the salient feature of Nestor as a speaker in a council is his capacity to give good advice, his authoritativeness is what is highlighted in the assembly.<sup>7</sup>

Second, the response of council members to speakers differs from the response of assemblies. In a council the standard response is *hos photo, toisi de pasin headota muthon eeipen* (“so he spoke, and the word he spoke was pleasing to all of them”). However, Beck notes that the formulaic response of an assembly to a presentation is “*hoi d'ara pantes aken egenonto siopei*” (“and they were stricken to silence”), and then after another person had taken his turn, the group responds positively: *hoi, d'ara tou mala men kluon ed epithonto* – “they listened hard to him, and obeyed him.”<sup>8</sup> Whereas an assembly obeys, a council reflects, i.e. on whether or not the argument is pleasing. Both are acclamatory, but the faculty of judgment is more strongly emphasized in the council than

in the assembly. Thus, in “wise councils,” the speaker advises and the members listen reflectively. In assemblies, comprised of ordinary soldiers, the speaker offers an authoritative statement, which is obeyed passively by the assembly. Both are implicitly consensual – again, no vote is taken – but the council suggests the exercise of judgment, whereas the assembly’s response is one of awe and passivity.

Finally, the famous judicial scene on the shield of Achilles (*Il.* 18.503-08) also emphasizes the role of elders in giving their verdicts in a suit over the murder of a relative, with a responsive crowd before them:

The crowd cheered on both, they took both sides,  
 But heralds held them back as the city elders sat  
 On polished stone benches, forming the sacred circle,  
 Grasping in hand the staffs of clear-voiced heralds,  
 And each leapt to his feet to plead the case in turn.  
 Two bars of solid gold shone on the ground before them,  
 A prize for the judge who’d speak the straightest verdict.<sup>9</sup>

The image of the elders speaking sequentially, each rendering his judgment individually and thus conferring special dignity to the speaker, is one echoed in the *gerousia* of archaic Sparta and the *areopagos* of Athens, as we will now see.

### **Counting in the Spartan council of elders**

The Spartan *gerousia* (council of elders) has generally been taken to be one of the first bodies in which the vote was introduced.<sup>10</sup> Although the dating of the *gerousia* and its powers relative to the *apella* (assembly) are both matters of serious contention, that the *gerousia* rendered decisions through the vote is relatively well established. The *gerousia* was not itself chosen by vote. Lycurgus, Plutarch reports, appointed the first *gerousia*, but he also prescribed a procedure by which the most outstanding men over the age of 60 would be elected as members. The people would gather in the assembly, and a small body of judges would be shut in a nearby room, close enough to hear the cries of the assembly (these cries were the normal decision-making procedure in the assembly, Plutarch writes). In an order determined by lot, the candidates for the *gerousia* would pass through the assembly, greeted by the shouts of the crowd; the judges would evaluate which candidates had received the loudest shouts, and those candidates would be elected. (Aristotle denigrated this procedure as puerile.) Note that the idea of expressly voting among multiple candidates -- and the concept of election more generally -- here retains its acclamatory character: the outcome is collective, or “clumped,” rather than rendered by counting individual votes. Yet though the *gerousia* was chosen by an acclamatory voice vote, its decisions do not seem to have been rendered similarly: aggregation may have originated in the *gerousia*.

What evidence do we have that votes in the *gerousia* were aggregated? Unfortunately, the two critical pieces of support are considerably later: the trial of King Pausanias, in 403 BC, and Plutarch’s *Agis* 9-11, probably describing events of the mid-third century. The former case consists in a vote by a court consisting of the 28 *gerontes*, the five ephors, and the other king besides Pausanias; the verdict for acquittal was 14

*gerontes* and five ephors against the other 14 *gerontes* and the king. Here, in an example of the *gerousia* serving as a jury court, do we have a conclusive case of counting votes.

The second case also describes a split among the *gerousia*. Agis' decree, specifying a program of debt forgiveness and land distribution, receives a mixed reaction among the *gerousia*. The assembly is convened, and the question of the decree put to it; though no decision is rendered, Leonidas ensures that the decree is rejected by the *gerousia*, though with only a one vote majority. Finally, a slightly more ambiguous passage from Aristotle (*Politics* 1273a2-3) seems to suggest that if the king and elders concur, they can decide whether or not to submit an issue to the assembly, whereas in case of disagreement, the assembly can address the issue.<sup>11</sup>

Acknowledging the possible difficulties of drawing inferences from the fifth and third centuries<sup>12</sup>, it is plausible (and generally held) that the *gerousia* rendered its decisions by a majority vote. If we believe with Larsen and Staveley that the *gerousia* is likely one of the very first, if not *the* first, locus of political decision-making by counting votes, why might it have been introduced in this context? Here, I wish to suggest that voting emerged not in response to the threat of dissension – in which case we might have expected it to originate in the *apella* – but because of the individual merit of the members comprising the *gerousia*. Recall that the *gerontes* were to be “the best and most deserving men past sixty years old,” and Plutarch muses about the competition that there must have been to determine “who of many wise and good was wisest and best, and fittest to be entrusted for ever after, as the reward of his merits, with the supreme authority of the commonwealth, and with power over the lives, franchises, and higher interests of all his countrymen.” Further, the composition of the *gerousia* suggests that each individual

member might have had particular wisdom -- Staveley 1972 refers to their “dignity,” Forrest 1980 to their “prestige” -- that enabled each one to have special competence, and thus an individual “voice” worth hearing (perhaps literally in the form of deliberation, perhaps figuratively in the form of the vote).

Note also – though here we are on more controversial ground – the role of the *gerousia* in providing a corrective to the *apella*. The *rhetra* prescribes only that the 28 elders and kings, acting collectively, should put proposals before the assembly. The question of the relative power of the *damos* to alter the proposals put before us need not concern us. Instead, let us turn to the “rider” (which we can accept, with most modern scholars, as part of the original text<sup>13</sup>): “if the people speaks crookedly, the elders and kings are to be rejectors.”<sup>14</sup> Discerning what this means for the institutional process of proposals and deliberation has proven extraordinarily complicated. Although the specific institutional form the “removal” or the “setting aside” took remains opaque, it does seem clear that at some point the *gerousia* and kings acting in concert had some power to check a “crooked” action (speech/decision) on the part of the *damos*. What did the “crookedness” consist in? It must have been error, rather than corruption, but of what form? Some have thought that it refers to the assembly altering the proposal in some sort of impermissible fashion; others have thought it simply undercuts the argument that the *apella* had real power to decide upon proposals that are put to them, and that an errant vote failing to ratify the decision of the king and the elders would be reversed. What matters for us here is simply that the reversal was on the grounds of an *incorrect* decision, at least from the perspective of the *gerousia* and kings.

As long as “skolion” refers to the idea that a choice was made incorrectly, and that the *gerousia* (and kings) had some power to check the decision, the functional purpose of the *gerousia* in this context is not simply probouleutic (roughly, agenda-setting) but corrective – that is, it exercises *judgment*. There may well have been disagreements, indeed, and voting was designed as a means of “managing” it in some sense, certainly. But what voting would offer that acclamation in the sense of a voice vote or of murmuring would not do would be to enable *each individual geronte* to render his verdict on a given matter. Why would such power be of importance? To count hands is to implicitly affirm the weight of each individual’s judgment on a matter. Whereas the *damos*’ judgment could be lumped – literally qua “mass” – the judgments of the members of the *gerousia* deserved to be counted individually.

### **Voting in the Athenian *areopagos***

Our evidence about voting in the Athenian *areopagos* is slimmer than that of voting in the Spartan *gerousia*; in fact, even the question of the function of the *areopagos* prior to Solon – whether it served as a council or as a homicide court -- is still unresolved.<sup>15</sup> Yet let us focus on the question of whether the *areopagos* rendered its judgments by voting. In Staveley’s words, “To judge by the fact that the list of eponymous archons is known to have gone back to 681 BC, it is a reasonable assumption that the establishment of a formal aristocratic Council which formulated policy and reached its decisions by vote should be dated at Athens, as at Sparta, to the second part of the eighth century.” Larsen (1949) argues that either in electing magistrates or in

functioning as a law court, formal votes must have been taken. Yet the evidence is relatively sparse: Larsen gives us little reason to think that formal votes were required, as opposed to acclamation, in the resolution of these sorts of matters in particular. One source is the *Eumenides*, in which Athena establishes the *areopagos* to decide the verdict between the Furies and Orestes; if the vote is equal, Athena declares that Orestes will win. Apollo reminds: “Shake out the lots and count them fairly, friends. Honor justice. An error in judgment now can mean disaster. The cast of a single lot restores a house to greatness,” and the vote, once counted, is in fact equal.<sup>16</sup>

If, following Staveley and Larsen, we believe that the *areopagos* did vote, what can we infer from this? Both possible purposes – homicide court or council – are paradigmatic examples of institutions whose function is to exercise judgment. The composition of the body is suggestive on this score: at least in later days the members of the *areopagos* were ex-archons, chosen from the Eupatridai, but in general they are taken to have been leading men from inception. If this is indeed the case – and, if indeed voting originated with that body – this is the sort of circumstance under which we would expect to encounter voting: members with a degree of dignity or standing and a view that they individually possessed a strong faculty of judgment. Their views ought not to be “lumped” together, either through acclamation or through the informal mechanism of “estimating votes,” which we shall encounter in a moment: These are the actors not only whose *independence* of judgment, but whose independent judgment of *an unusually high quality* ought to be counted rather than clumped. Situating the origin of counting of votes with the Spartan *gerousia* and the Athenian *areopagos* highlights the fact that having

one's vote count as such is a marker of distinction, one that was only expanded to the “mass” in democratic Athens.

### **Athena and the challenge to democracy**

Aggregation did not become fully democratized in classical Athens without a struggle. In the decades immediately following Kleisthenes' reorganization of the tribal system and the establishment of demes, and the creation of the Council of 500 according to this new organization, Athenian democracy faced important challenges from would-be tyrants and from Persia. During this period, it seems that the primary matter for which votes were counted in the period was that of ostracism, and the large number of cases of ostracism likely reflects the suspicion of aristocratic leaders on the part of the democrats.<sup>17</sup> Though it is not certain – and was not even clear in ancient times – whether ostracism was one of Kleisthenes' innovations, the mechanism underlying its first usage is clear. It seems to have been via secret ballot; each citizen wrote the name of the other citizen he most wanted to see banished from the city on a potsherd (*ostrakon*), and the citizen receiving the most votes was exiled for ten years.<sup>18</sup>

Beginning with Hipparchos in 487, ostracism was used to confront both the threat of tyranny and the encroachment of Persia.<sup>19</sup> From Plutarch we learn that “some men of great wealth from distinguished families, impoverished by the war and seeing all their power and recognition in the city evaporating with their wealth while others won honors and office, secretly forgathered in a house at Plataea and conspired to overthrow the rule of the people and, if that should fail, to sabotage the cause and to betray it to the

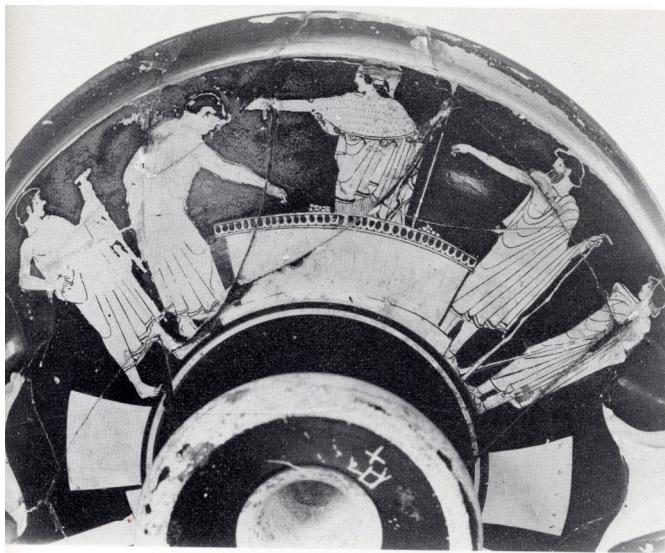
barbarians.”<sup>20</sup> Regardless of the actual motivation of the men, which has been disputed, it is nonetheless plausible on the basis of *ostraka* of the 480s that Agasias, identified as a ringleader by Plutarch, did indeed seek to build an alliance with Persia.<sup>21</sup> Themistocles, who was ostracized himself in 471, had managed to consolidate power through the use of ostracism against his political rivals.

Given the widespread perception that threats faced the democracy, it is not surprising that efforts at affirming democratic institutions may have taken artistic forms as well as political manifestations. The most striking for our purposes is the depiction of voting on vases. It is well known -- and an interesting subject of inquiry in its own right -- that vases rarely depicted images of Athenian political life. As such, those vases that do boast images of political activity are of particular interest. For instance, there is a notable cup by the “Stieglitz painter” depicting on one side heated deliberations among the jurors (Side B), and on the other voting (Side A). In Richard Neer’s words,

“Thematically and pictorially, it glorifies *isonomia* [equality before the law]. All the citizens appear to be on equal terms, without distinctions of wealth or class. Indeed, seated on their *klismoi* with their state-issued walking sticks, the men on Side A look more like enthroned kings than ordinary Athenians. ... It is their participation in the meting out of justice that elevates them so: in the democracy, all the citizens share in the distribution of *nomos*, and all the citizens are therefore king-like.”<sup>22</sup>

More tantalizing, however, are the *kriseis hoplon* vases, or “judgment of arms,” which feature scenes of voters deciding if Ajax or Odysseus will receive Achilles’ armor.

Strikingly, there is no reference in Homer to a vote. Instead, in Odyssey 11, Odysseus recounts how in Hades, Ajax refused to speak to him, still angry over the arms that he had won as a prize, in a contest adjudicated by Athena and captive Trojans. The *kriseis hoplon* vases date roughly from 490-475, that is, during and immediately following the Persian Wars, and after Kleisthenes' reforms. It is remarkable that the image of voting – projected back into Homeric times – came into fashion for red-figure vases during this period. In the image below, Athena presides over a vote, observing a man adding his ballot to the pile.<sup>23</sup>



One explanation for the emergence of this motif might be a desire to affirm the value of voting as an alternative mechanism of conflict resolution, as an argument inspired by Glotz might run.<sup>24</sup> It is indeed worth noting that some of the cups feature scenes of Ajax and Odysseus struggling on one side, perhaps a reference to the wrestling match between the two in Book 23 of the Iliad. Yet an alternative explanation emphasizes the epistemic nature of the vote. On a few of the vases, Athena supervises the vote.

Notably, on the tondo (interior base) of this cup, shown below, Athena directs a youth's vote quite specifically.



It is possible that Athena's presence in guiding the vote reflected not only the mythological account of Athena's support for the outcome, but that the artist wished to suggest that she dispensed wisdom to the voter. A society facing aristocratic threats to democratic institutions may have wished to affirm that the citizens were indeed competent to render decisions. The "Solonian Athena," as Herington termed her, was fully represented by Aeschylus shortly thereafter: "She (and, correspondingly, her city) stands out as a force of intelligence and compromise among warring, purblind gods and men."<sup>25</sup> A desire to represent wise Athena as guiding the judgments of democratic Athens may have animated the artists as they confronted the risk of tyranny and of Persian incursion.<sup>26</sup>

## Ancient Athens and the democratization of judgment

At least in the period following Ephialtes' reforms of 462/1, acclamation was not widely used in Athens, neither in the form of murmurs, nor shouts, nor *viva voce*. This ought not to surprise us: The central concept of *ho boulomenos*, the idea that any ordinary person who wished could participate, for the Athenians suggests a high level of confidence in the political judgment of the average person – that is, the sort of judgment that merited being counted individually.<sup>27</sup> Yet, more remarkably, only in certain circumstances were votes counted rather than estimated. Estimation of a hand-count (*cheirotonia*), the way in which most votes in the classical assembly were taken, is in my view closer to acclamation than to aggregation. Whereas aggregation presupposes both that individual judgments are separable and of intrinsic value, acclamation holds that the body *as such* is the relevant agent of decision. Although estimation does of course entail a sort of impressionist count, the procedure does not precisely account for each person's individual judgments: it too simply captures the dominant sentiment of the crowd, and in this way may more closely resemble acclamation than aggregation.

One might assume that the estimation of the hand-count was introduced for the sake of efficiency, a necessary move given the size of the body (attendance at the assembly numbered around 6,000). Yet under certain circumstances the vote of the *ekklesia* was indeed counted, so the cumbersome nature cannot be the whole story. Hansen suggests that counting of votes was “doubtless” a mechanism to ensure that quorum was reached,<sup>28</sup> though it would seem that the use of the quorum similarly derives

from the logic that a particular number of individual-level judgments is desirable. That is, the idea of a quorum presupposes some importance of a certain large number of individuals rendering votes – and this is because each possesses a judgment worth aggregating. Likewise, Staveley holds that the “multiplicity” of decisions encouraged the use of estimation rather than aggregation. Although this may be the case, nevertheless the fact that in some cases the desire for an accurate count trumped efficiency concerns demonstrates that the size of the body did not inhibit counting where deemed necessary.

Let us compare those cases in which the vote was estimated with those in which the votes were counted. In brief, the primary responsibility of the jurors in the people’s courts (*dikasteria*) was to hear those private suits (*dikai*) that were not heard by an arbiter and public prosecutions (*graphai*). The people’s courts – typically held to be the quintessential democratic institution – used ballots in the form of bronze disks, which were counted.<sup>29</sup> In contrast, most votes of the *ekklesia* (assembly) and the *boule* (council) were estimated, i.e., conducted by *cheirotonia*. The use of estimation extends both to the primary responsibilities of the assembly -- the election of magistrates<sup>30</sup>, the establishment of treaties, and the ratification of legislation – and to the primary business of the Council of 500, notably setting the agenda for the Assembly, including drafting legislation. As *Ath. Pol.* suggests, at least in the fourth century, nine chairmen (*proedroi*) were to “judge” or “assess” or even “estimate” (*krinein*) the vote (XLIV.2). Yet in cases in which an individual’s status was at stake – considerations of ostracism, *adeia*, and the conferral of citizen rights, the *ekklesia kyria* (principal assembly) seems to have used ballots, which were counted. Likewise, it was in these cases for which a quorum of 6000 was needed, suggesting that a large number of people voting separately rather than

collectively were necessary to rule on an individual's fate. Further, when conducting cases of *eisangelia* (public prosecution for political malfeasance), the *boule* voted with first ballots rather than hands (and secondarily with hands to decide on the penalty), and for internal votes of confidence, they first used a system of olive leaves (*ekphyllophoria*) and then ballots. Thus, when the assembly and council conducted their primary legislative and electoral functions, votes were estimated.

Note, first, that the decision to count is independent of the closeness of the vote, and that the size of the body does not seem to be a relevant factor; the size of the jury in the court could be over 1501, and yet the vote would be counted. (Later inscriptions from the Greek world provide the actual numbers of votes even when the decision is unanimous or very nearly so.<sup>31</sup>) Second, at least in the early part of the fifth century, the voter would place the ballot in one of two urns, each representing guilt or innocence, and so the voter's decision was obvious to all.<sup>32</sup> This suggests that the decision to count votes in the classical world was at least initially independent of the desire for secrecy.<sup>33</sup> Yet since by the mid-fifth century, the use of secret ballot was widespread, it is nonetheless possible that the apparent difference between "counted" and "estimated" is in fact generated by the preference for secrecy -- and therefore independence -- in voting in some circumstances.<sup>34</sup> We shall return to this matter in the following section.

Third, to what extent did the choice to estimate (as in the *ekklesia* or *boule*) or to count (as in the jury) reflect different views of the relative merit of the members comprising these bodies? The counting of votes in the jury might well support the argument that, as is sometimes suggested, the jurors were relatively wealthy; such an inference is drawn on the basis of comments by litigators as to the social composition of

the courts, and the fact that the pay for jury service was by the 320s half the pay of attendance at the assembly.<sup>35</sup> This is possible, and if so, would support the aristocratic argument in favor of the use of aggregation for those whose judgments were literally worth something. But we should be careful here: the positions were all open to whomever wished to put himself forward for selection by lot, and further, as several scholars have noted, even relatively impoverished would-be jurors might sacrifice pay for the opportunity to hear the oratory in the courtroom. So whether counting might reflect a difference in status between those who served as jurors and those who served as members of the assembly or council is not clear. Further, as already noted, in contexts in which the fate of an individual was at stake, votes were counted both in the assembly and the council.

Perhaps better, then, to begin from the perspective that Athenian democracy was predicated on the belief that the status of being a citizen conferred a certain epistemic dignity. In other words, to be a citizen meant that one was capable of exercising the faculty of judgment sufficiently well to serve in political life. Such a view is indeed closely reminiscent of Aristotle's account of a citizen as "one who is entitled to share in deliberative or judicial office." (1275b20) But it is not fanciful to think that the Athenian conception of citizenship was akin to this view. Citizenship was a matter of desert, not simply of descent: as has frequently been noted, one's citizenship could be scrutinized and even revoked for failure to fulfill one's duties. Further, as Ober has suggested, the fifth century witnessed the democratization of both *eugeneia* (high birth) and *kalokagathia* (imperfectly translated, beauty-and-goodness).<sup>36</sup> As such, there was no need to differentiate the population according to the criterion of judgment. While

acknowledging the ongoing presence of an “elite,” if we might believe that the citizen members of these various bodies were broadly, by mid-fifth century, indistinguishable on epistemic grounds, how else might we explain the variation between counting and estimating?

### **Secrecy and independence, publicity and influence**

Let us now focus sharply on the *function* of the various institutions of classical Athens, contrasting the cases in which votes were estimated with those in which votes were counted. In general, votes seem to have been counted in Athens when the function of the body was to choose *under conditions of equal information* – typically those requiring retrospective judgment of a particular action or agent – whereas votes were estimated when the matter under consideration was one which *knowledge was unequally distributed*, usually those requiring a prospective judgment of the best course of action.<sup>37</sup> As suggested, however, it is possible that the choice between counting and estimating in later fifth- and fourth-century Athens is in part generated by the preference for secrecy or publicity, so let us take up this issue first.

In a trial, the jurors may be presumed to have relatively equal information: they have each heard the same presentations, and no juror, at least in principle, possesses private information that would make him more likely to reach a superior conclusion. The absence of deliberation before voting in Athenian jury trials affirms this account: there is no need to share information or persuade others when each has equal capability to render a verdict independently. Thus, there is at a minimum no epistemic cost to secrecy. Yet are

there benefits? Such a question may seem willfully naïve: today we usually think that the use of the secret ballot is not only instrumentally but intrinsically valuable, on the grounds that freedom from coercion is critical for individual autonomy. Yet it would be difficult to argue that secrecy had similar value for the Athenians: if it did, *cheirotonia* would not have been preserved alongside the counting of ballots rendered secretly.

Perhaps it was believed that given the presumption of equal ability to render a verdict, public voting on judicial verdicts could serve a sinister purpose. That is, those with a stake in the outcome would seek to distort others' judgments through the use of bribes or threats during the moment of the vote. Whereas in matters concerning all members of a society, such as warfare or legislation, every individual would have to live with the consequences of a bad decision, a vote on an individual's fate would affect members of the society unequally, leaving some with a distinct interest in shaping the verdict regardless of the truth or fairness of the charge. Note here that it is not just that the status of a particular individual was under consideration, since elections to magistracies were conducted by *cheirotonia*, but perhaps that an individual's liberty, and even life, was at stake. Although all citizens would have been affected by the selection of an incompetent magistrate, probably few members of a jury would have a specific interest in the verdict of a given case.<sup>38</sup> As such, secret ballot may have emerged to preserve independent judgments under conditions of *equal information but unequal stake*. The use of private *ostraka* in assembly decisions of ostracism may be on similar grounds. Each citizen had equal opportunity to evaluate a political leader and thus presumably equal capacity to judge, though certain citizens might well have private interests in retaining or excluding a given person.

The advantages of secret ballot are so familiar today, however, that indeed the decision to retain the public form of *cheirotonia* is more intriguing. Public show of hands preserves the ability to alter votes in light of others' views – both through deliberation and even at the moment of voting -- may have been one of the attractive features of *cheirotonia* and of the system of estimation. Again, the estimation of *cheirotonia* served in essence an acclamatory function. An attractive feature of acclamation was its communal aspect: the members' susceptibility to public pressure was in fact a distinct benefit, rather than a liability, of acclamation. Each member could gain a sense of where he stood relative to others on a given matter: he could recognize when he was in the vast minority and alter his vote on the spot, or turn when undecided to those whom he considered knowledgeable for guidance. Whereas one might expect that jurors would have equal access to information necessary to render a verdict, there was little reason to believe that the capacity to judge the best course of action would have been equally distributed among members of the assembly or council, although, as suggested, at least in principle each would have had an equal stake in the outcome. Thus, as in the creation of legislation, in cases in which there may have been *unequal capacity to judge but equal stake*, the vote may have been public. As such, the publicity of *cheirotonia* may have been an appealing attribute of the mechanism.

### **Estimation v. counting**

Yet let us now focus specifically on the use of estimation as opposed to counting. Following the argument that the possibility to alter votes may have been an affirmative

good, one practical reason for estimation might be that the outcome was potentially less stable: a proportion of the crowd on any vote might switch their votes as they surveyed the others, making counting difficult. A second practical reason for estimation might have been the difficulty of counting hands in a body comprised of people of different physical heights and levels of enthusiasm. Yet this still does not explain the choice to estimate: despite the logistical difficulties, in principle hands *could* be counted.

A system of counting considers each voter's ballot discretely. Following a process of counting each vote separately, each individual can identify the role she performed in a decision, whether as a member of a majority or minority. Aggregation, by acknowledging the weight of each individual's vote on both sides of a decision, thus signals respect for the judgments of the distinct individuals who participated in the decision. In contrast, a method of estimation does not account for each vote by definition. Instead, estimation seeks to assess the proportionately larger judgment of the crowd *qua* totality. In this way, by estimating – “clumping” – rather than counting the vote of the body, the communal nature of the activity of *cheirotonia* is affirmed.<sup>39</sup>

In the jury system, the presence of a minority vote was, as we have already seen, recorded -- for instance, Socrates in *Apology* expresses his surprise at the closeness of the vote, that a mere 30 votes would have tipped the balance (36a). A convicted defendant could take some cold comfort in the fact that a minority believed his account. The clear, enumerated presence of such a minority, further, may have had little effect on the enforcement of the outcome. The decentralized nature of punishment in Athens – private citizens did most of the work of implementation alongside magistrates – meant that collective action was not even necessary to enforce penalties.<sup>40</sup> Yet to estimate in a trial

would have left both jurors and defendant to wonder about the accuracy of the outcome and, potentially, to weaken its legitimacy.

The use of estimation in deliberative settings enables those in charge of assessing the vote to take the climate of the body as a whole, or identify the larger share of votes without acknowledging the precise weight of the opposition. In an assembly setting, this may be desirable, especially if the matter under consideration requires the coordination or compliance of thousands of citizens, as would adherence to a new law, or waging war. The presence of a formally counted minority could thus pose a serious challenge to the legitimacy of the outcome, and encourage ongoing lobbying to reverse the decision. Estimation captures the general preponderance of judgments, rather than identifying a specific proportion of a population as supporting or opposing a given proposal. Like acclamation, it is thus a device that aims at capturing and conveying a consensus, rather than the preference of a distinct majority.<sup>41</sup> Estimation may thus affirm to a greater extent than aggregation the collective nature of the choice. Yet particular individuals – especially those in the minority – may not believe that their specific vote was counted; further, they may feel that the full weight of the opposition was not sufficiently noted. Even the winners of an estimated vote may wish to know that their *individual* votes swayed the outcome, rather than having been swept into a pile of faceless supporters. Estimation can give voters no such guarantees, and may, like acclamation, fail to signal the respect for individual judgment conveyed by aggregation.

## **Conclusion**

The counting of votes has a primary position in democratic theory as the ultimate decision-making mechanism for collective bodies, though both its potential for irrationality (because of the risk of cycling) and its unreasonableness (because the vote does not need to be publicly justifiable) have been criticized in recent decades. Further, it seems that there is nothing *intrinsically* democratic about vote-counting: any plural body, however hierarchical or elitist, may implement it, and, indeed, the evidence strongly suggests that it originated in aristocratic bodies such as the *gerousia* and *areopagos*. Yet when we contrast aggregation with acclamation – the original mechanism of democratic decision-making – the distinctiveness and appeal of counting begins to appear.

The variety of acclamatory mechanisms described here – the shouts and murmurs of Homeric assemblies, the *viva voce* mechanisms of Sparta, and the estimations of hands in Athens – are all means by which a collective body, qua mass, expresses its approval or disapproval as one. Even if the vote is conducted sequentially (ayes and nays), the voices are not distinctively separated. Though *cheirotonein* can indeed take an aggregative form – it can be counted – the Athenians do not seem to have attempted to make it so: it is a mechanism of rendering a shared decision, closer to acclamation than to aggregation. Ballot-counting – particularly in conjunction with the use of a quorum or a minimal threshold of votes for public prosecutions (1/5 in the Athenian courts) – fully acknowledges the separateness and independence of votes, and thus of the individual judgment embodied in the casting of the ballot. As I have suggested, the use of voting in the *gerousia* and likely in the *areopagos* signifies respect for the individuals comprising the body.

In classical Athens, the story is more complicated: the choice to estimate most decisions in the assembly and council, but not in the jury court, may be explained on both epistemic and stability grounds. Whereas the acclamatory (public and collective) nature of votes in the assembly enabled individuals to be guided by those they thought were more competent, the aggregative nature of the jury vote – particularly after the introduction of the secret ballot – required that each individual render his *own* judgment on the matter. Further, the use of estimation eliminated the presence of a specific, enumerated minority for assembly and council decisions, while jury verdicts explicitly captured the weight of the opposition. Though the precise knowledge of the proportion opposed would have had little effect on the enforcement of jury verdicts, it might well have led to ongoing dissension in an assembly and council and a risk of defection.

Finally, did the use of counting in jury courts and on matters related to citizen rights and ostracism also signify respect for the individual under consideration? Quite possibly, although we should be careful: it is not simply that a particular *person* was under consideration, since elections to magistracies, including generals, were conducted via *cheirotonia*, but that an individual's life or citizen status was at stake. Why would such decisions have been counted rather than estimated? The answer may be that the independent judgment of citizens was considered not only adequate to the challenge but even paramount in such matters, and again, that the enforcement of the decision would not have depended on collective action.

In recent years, scholars of the ancient world, including Josiah Ober, have sought to affirm an epistemic account of the origins of democratic institutions: Kleisthenes' creation of the Council of 500, on Ober's account, served to pool the knowledge of the

various demes, constituting “the human embodiment of the *knowledge resources* of the entire Athenian polis.”<sup>42</sup> Aggregation, however, has not typically been held to be an epistemic innovation as such. Yet the sort of individual judgment that aggregative systems presuppose and affirm underlie some of the most salient institutions of the Greek world. The democratic choice between acclamation and aggregation depends upon our view of *individual* citizens’ capability to judge well. Acclamation affirms our capacity to learn from each other, even at the moment of judgment, and thus retains no small appeal. Yet aggregation takes a belief in individuals’ competence in rendering judgments to be foundational, and for that reason may have a claim for democrats’ support.

## References

- Allen, Danielle S. 2000. *The World of Prometheus: The Politics of Punishing in Democratic Athens*. Princeton: Princeton University Press.
- Aristotle. 1992. *Nicomachean Ethics*. Trans. David Ross. Oxford: Oxford University Press.
- Aristotle. 1995. *Politics*. Trans. Ernest Barker. Oxford: Oxford University Press.
- Aristotle. 1995. *Rhetoric*. Trans. W. Rhys Roberts, Ed. Jonathan Barnes. Princeton: Bollingen Series of Princeton University Press.
- Andrewes, A. 1966. “The Government of Classical Sparta.” In *Ancient Society and Institutions*. Oxford: Basil Blackwell.
- Beck, Deborah. 2006. *Homeric Conversation*. Cambridge: Harvard University Press.

- Boegehold, Alan L. 1963. "Toward a Study of Athenian Voting Procedure." *Hesperia* 32:4, 366-374.
- Borgeaud, Charles. 1887. *Histoire de Plébiscite*. Geneva: H. George.
- Cartledge, Paul. 2001. *Spartan Reflections*. London: Duckworth & Co.
- Crawford, Michael. 1983. *Archaic and Classical Greece*. Cambridge: Cambridge University Press.
- Finley, M.I. 1979. *The World of Odysseus*. New York: Penguin.
- Forrest, W.G. 1968. *A History of Sparta 950-192 BC*. London: Duckworth.
- Glotz, G. 1929. *The Greek City and its Institutions*. London: Kegan Paul, Trench, Trubner, and Co., Ltd..
- Hansen, Mogens Herman. 1991. *The Athenian Democracy in the Age of Demosthenes*. Oxford: Blackwell.
- Herington, C.J. 1963. "Athena in Athenian Literature and Cult." *Greece and Rome*, 2<sup>nd</sup> series, vol. 10, Supplement: Parthenos and Parthenon (1963).
- Hodkinson, Stephen and Anton Powell. 1999. *Sparta: New Perspectives*. London: Duckworth.
- Larsen, J.A.O. 1949. "The Origin and Significance of the Counting of Votes." *Classical Philology*, 44:3, 164-181.
- MacDowell, Douglas. 1978. *Law in Classical Athens*. Ithaca: Cornell University Press.
- Manin, Bernard. 1997. *The Principles of Representative Government*. Cambridge: Cambridge University Press.
- Murray, Oswyn. 1980. *Early Greece*. Stanford: Stanford University Press.

- Neer, Richard T. 2002. *Style and Politics in Athenian Vase-Painting: The Craft of Democracy, ca. 530-460 BCE*. Cambridge: Cambridge University Press.
- Ober, Josiah. 2005. *Athenian Legacies: Essays on the Politics of Going on Together*. Princeton: Princeton University Press, 2005.
- Ober, Josiah. 1989. *Mass and Elite in Democratic Athens*. Princeton: Princeton University Press.
- Ogden, Daniel. 1997. *The Crooked Kings of Ancient Greece*. London: Duckworth.
- Oliva, Pavel. 1971. *Sparta and her Social Problems*. Prague: Czechoslovak Academy of Sciences.
- Ostwald, Martin. 1986. *From Popular Sovereignty to the Sovereignty of Law*. Berkeley: University of California Press.
- Raaflaub, Kurt A. 2005. "Poets, lawgivers, and the beginnings of political reflection in archaic Greece." In *Cambridge History of Greek and Roman Political Thought*. Cambridge: Cambridge University Press.
- Raaflaub, Kurt A., Josiah Ober, and Robert W. Wallace. 2007. *Origins of Democracy in Ancient Greece*. Berkeley: University of California Press.
- Rhodes, P.J. 1981. *A Commentary on the Aristotelian Athenaion Politeia*. Oxford: Clarendon Press.
- Rhodes, P.J. 1981a. "Notes on Voting in Athens." *Greek, Roman, and Byzantine Studies*, 22:2, 125-132.
- Sambursky, S. 1956. "On the Possible and the Probable in Ancient Greece." *Osiris*, vol. 12, 35-48.

- Shapiro, H.A. 1993. "Pottery, Private Life, and Politics in Democratic Athens." In Ober and Hedrick, eds., *The Birth of Democracy*. Washington, DC.
- Spivey, N. 1994. "Psephological Heroes." In *Ritual, Finance, Politics: Athenian Democratic Accounts Presented to David Lewis*. Ed. R. Osborne and S. Horblower. Oxford: Oxford University Press. 39-51
- Staveley, E.S. 1972. *Greek and Roman Voting and Elections*. Ithaca: Cornell University Press.
- Tsopanakis, A.G. 1954. *La Rhète de Lycurgue-l'Annexe-Tyrtée*. Thessaloniki.
- Urfalino, Philippe. 2007. "La Décision Par Consensus Apparent. Nature et Propriétés." *Revue Européenne des Sciences Sociales*. 45:136, 34-59.
- Wade-Gery, H.T. 1958. *Essays in Greek History*. Oxford: Basil Blackwell.
- Wallace, Robert W. 1989. *The Areopagus Council, to 307 BC*. Baltimore: Johns Hopkins University Press.
- Williams, DJR. 1980. "Ajax, Odysseus, and the Arms of Achilles." *Antike Kunst* 23:137-145.

<sup>1</sup> See Larsen 1949 and Staveley 1972.

<sup>2</sup> Raaflaub and Wallace 2007, p. 24

<sup>3</sup> Ibid., p. 28.

<sup>4</sup> Glotz 1929, p. 56

<sup>5</sup> Here, Tsopanakis argues that: "L'allusion homérique au concept de la majorité reflète peut-être des conditions politiques plus proches du poète."

<sup>6</sup> Cartledge 2007, p. 167.

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<sup>7</sup> Beck 2006, ch. 5; *pace* Finley 1979, p. 123, who argues that council consists in authoritativeness rather than judgment. See also Borgeaud: “Dans l’ancienne assemblée homérique, le peuple n’était pas appelé à se prononcer par un vote proprement dit. Il recevait communication des décisions de l’autorité et, sans délibération d’aucune sorte, manifestait son sentiment par des acclamations ou des murmures.” (Borgeaud 1887, p. 7)

<sup>8</sup> Beck 2006, p. 196

<sup>9</sup> Fagles trans., lines 586-592, p. 484.

<sup>10</sup> See in particular Larsen 1949; Staveley 1972; Tsopanakis 1954, p. 44; Cartledge 2001, p. 35 by implication.

<sup>11</sup> Forrest 1980, p. 49, seems to suggest that “agreement” entails unanimity or its absence.

<sup>12</sup> See Cartledge 2001, p. 35, for the argument that Sparta’s archaic period was also its “classical epoch.”

<sup>13</sup> Though see Ogden 1997, p. 101.

<sup>14</sup> Jeffrey 1976

<sup>15</sup> The primary schism surrounds the question of whether the *Athenaion Politeia* as dispositive with respect to the powers of the pre-Solonian *areopagos*. In brief, the dispute is between those many scholars (Cadoux, de Laix, MacDowell, Rhodes) who argued that the *areopagos* originally functioned as council to the king and then emerged as the major political body in its own right -- the dating of this shift is often the seventh-century (though see Hansen 1991, p. 288, sixth-century) – and those, notably Wallace, who regard the account offered in *Ath. Pol.* as spurious, and argue that the *areopagos* was in essence a homicide court.

<sup>16</sup> Allen 2000, p. 20

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<sup>17</sup> Murray 1980, p. 261

<sup>18</sup> ibid., p. 262

<sup>19</sup> Hansen 1991, p. 35

<sup>20</sup> Plut. Arist. 13.1, translation in Ostwald 1986, p. 176

<sup>21</sup> Ostwald 1986, p. 177

<sup>22</sup> Neer 2002, p. 140

<sup>23</sup> Both images below are taken from Williams 1980; both are from the Painter of the Louvre G 265. Leyden PC 75 (xviii.a.6). Phot. courtesy of the Rijksmuseum van Oudheden.

<sup>24</sup> Williams 1980 and Neer 2002.

<sup>25</sup> Herington 1963, p. 69

<sup>26</sup> Neer holds instead that the imagery of the arms “seeks, uneasily, to reconcile the aristocratic past with the democratic present.” (Neer 2002, p. 146)

<sup>27</sup> As Bernard Manin has argued, this concept helps to explain the support for lotteries rather than election as the means by which most offices would be filled in Athens. Such an argument may also indicate – as Allen implies -- that there was a suspicion of *voting* as undemocratic. (Allen 2000, p. 44) Such an argument, however, is hard to substantiate given the ubiquity of voting, if not of aggregation as such, in Athens.

<sup>28</sup> Hansen 1991, p. 130

<sup>29</sup> I am indebted to Hansen 1991 for this discussion. Note that both Hansen and Staveley hold that because *psephismata* derives from “*psephos*” (pebble), it seems that the Assembly might at some point have voted in the same way as the courts.

<sup>30</sup> See Rhodes 1981a, p. 129

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<sup>31</sup> Lewis xx

<sup>32</sup> See Boegehold 1963, p. 367

<sup>33</sup> Boegehold suggests that “early in the fifth century in the minds of some men who were living in Athens, viz. the painters, there could exist simultaneously and interdependently the notions of *psephoi*, a judicial decision, and a lack of secrecy.” (Boegehold 1963, p. 370) By the time Aeschylus wrote the Eumenides, the vote was secret; in the stage presentation of the play, “two *hydriai* were placed next to one another and covered by a wickerwork funnel called a *kemos*, broad at the bottom and narrow at the top.” (Neer 2002, p. 142) Jurors would place their hands into the funnel, which would conceal the action by which they dropped their ballots in one of the two *hydriai*. Secret ballot is no doubt a mechanism of political power and a democratic innovation, stripping control of the vote away from the aristocracy. Yet it also has epistemic value: ascribed to the *areopagus* by Aeschylus in the Eumenides, secret ballots received the imprimatur of both ancient origins and of being a mechanism of the wise.

<sup>34</sup> Hansen 1991, pp. 209-210

<sup>35</sup> Ober 1989, pp. 42-4.

<sup>36</sup> Ober 1989, pp. 250-260

<sup>37</sup> Of course, the Greeks did not have a developed concept of probability, but it seems their notion of *eikos*, “plausible” or “probable” or “likely,” would have been adequate to these purposes. See Sambursky 1956; Plato, *Phaedr.* 272D.

<sup>38</sup> It seems jurors in Athens could not be excluded on the grounds of partiality; a day’s jury panel was selected without prior knowledge of which cases the jury would judge. According to Hansen, daily selection by lot was likely introduced as a mechanism of

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control following bribery scandals in the late fifth and early fourth century. (Hansen 1991, pp. 197-198)

<sup>39</sup> This may indeed leave room for the judges to distort the outcome, as Aeschines lamented. Yet there is little reason to believe, as we today know all too well, that vote-counting is immune from manipulation. Aeschines 3.3 (cited in Hansen 1991, p. 210).

<sup>40</sup> See Allen 2000, pp. 201-202, and *passim*.

<sup>41</sup> For a subtle discussion of consensual mechanisms, see Urfalino 2007.

<sup>42</sup> Ober 2005, p. 38.