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# The History of the Council

## THE 6TH CENTURY BCE

Even before the Athenians established a democracy, the Council played a central role in the government of Athens. Solon, the Athenian legal reformer of the 6th century BCE (source for date: *OCD*<sup>3</sup>), established a Council of 400 citizens, 100 from each of the four traditional tribes (βουλὴν δ' ἐποίησε τετρακοσίους, ἑκατὸν ἐξ ἑκάστης φυλῆς), and gave the Areopagus authority as “guardian of the laws” (ἔταξεν ἐπὶ τὸ νομοφυλακεῖν) (Aristot. *Ath. Pol.* 8.4). According to Plutarch, Solon’s Council existed as a check on the power of the people; the 400 Councillors were “to deliberate before the People, and nothing was to be brought before the Assembly without an initial resolution of the Council” (οὓς προβουλεύειν ἔταξε τοῦ δήμου καὶ μηδὲν ἂν ἀπροβούλευτον εἰς ἐκκλησίαν εἰσφέρεισθαι) (Plut. *Sol.* 19.1). Plutarch goes on describe the Council of the Areopagus and this Council of 400 as “just like anchors” (ὥσπερ

ἀγκύραις), intended to keep the people of Athens quiet (Plut. *Sol.* 19.2).

Ironically, the only source that describes this early Council actually acting, describes how the Council allowed Pisistratus to become tyrant of Athens in the middle of the 6th century BCE (source for date: *OCD*<sup>3</sup>). Diogenes Laertius describes how, when Pisistratus was winning favor among the People in his efforts to become tyrant, Solon came before the Assembly wearing a shield and carrying a sword, and urged the People to oppose Pisistratus. “But the Council,” Diogenes reports, “being of the party of Pisistratus, said that he was insane” (καὶ ἡ βουλή, Πεισιστρατίδαι ὄντες, μαίνεσθαι ἔλεγον αὐτόν) (Diog. Laert. 1.49).

The passage from Diogenes Laertius is confusing, however, since Solon appears before the Assembly (εἰς τὴν ἐκκλησίαν), while it is the Council (ἡ βουλή) that accuses him of insanity. This confusion, and the general lack of evidence regarding a pre-democratic Council, do raise questions about the existence of this body before the 5th century.

On the other hand, in the oligarchic coup of 411 BCE, when the democracy was temporarily overthrown, the first act of the oligarchic revolutionaries was to “set up a Council of 400, according to the ways of the ancestors” (βουλευεῖν μὲν τετρακοσίους κατὰ τὰ πάτρια) (Aristot. *Ath. Pol.* 31.1; source for date: *OCD*<sup>3</sup>). The claim that a Council of 400 was traditional certainly sounds like pro-

paganda, but it might be further evidence that a smaller Council existed before the democracy.

#### CLEISTHENES AND EPHIALTES

When Cleisthenes reformed the government of Athens shortly after 508 BCE (source for date: *OCD*<sup>3</sup>), he replaced the traditional four tribes of Athens with ten new tribes (Hdt. 5.96) and increased membership in the Council to 500 citizens, fifty from each tribe (Aristot. *Ath. Pol.* 21.2–4; Aristot. *Pol.* 1319b19–27).

In 501 or 500 BCE, when Hermocreon was archon, Cleisthenes instituted the so-called “Bouleutic Oath”, the oath that every citizen swore upon beginning his service on the Council (Aristot. *Ath. Pol.* 22.2; source for date, P.J. Rhodes, *Commentary on the Aristotelian Athenaiion Politeia* [Oxford, 1993] 262). Aristotle says that the oath instituted at this time was the same one “which they swear even now [that is, in Aristotle’s time, the middle of the 4th century BCE – CWB]” (ὅν ἔτι καὶ νῦν ὀμνύουσιν) (Aristot. *Ath. Pol.* 22.2).

According to Aristotle, Ephialtes brought about a reform of the Court of the Areopagus by denouncing the Court before the Council of 500 (τῆς βουλῆς τῶν πεντακοσίων) and the Assembly (ἐν τῷ δήμῳ) (Aristot. *Ath. Pol.* 25.4): “First he made away with many of the members of the Council of the Aeropagus by bringing legal proceedings against them about their acts of administration; then in

the archonship of Conon he stripped the Areopagus of all its added powers which made it the safeguard of the constitution, and assigned some of them to the Five Hundred and others to the People and to the jury-courts” (Aristot. *Ath. Pol.* 25.2). The archonship of Conon was the year 462/1 (source for date: P.J. Rhodes, *Aristotle: the Athenian Constitution* [Penguin, 1984] 69).

Aristotle is not very clear as to what he means when he says that the Areopagus lost “all its added powers which made it the safeguard of the constitution” (ἅπαντα περιεῖλε τὰ ἐπίθετα δι’ ὧν ἦν ἡ τῆς πολιτείας φυλακή) (Aristot. *Ath. Pol.* 25.2), and that that power was given to the Council and the Courts. No ancient source, in fact, lists the powers that the Council acquired after the reforms of Ephialtes, but it is possible to make some educated guesses.

We know that the original Council, as Solon set it up, existed “to deliberate before the People, and nothing was to be brought before the Assembly without an initial resolution of the Council” (οὓς προβουλεύειν ἔταξε τοῦ δήμου καὶ μηδὲν ἔαν ἀπροβούλευτον εἰς ἐκκλησίαν εἰσφέρεισθαι) (Plut. *Sol.* 19.1). This is the Council’s “probouleutic” function, the function of “planning beforehand.” In the fourth century, on the other hand, we see that the Council functioned like a court of law or a court of inquiry under certain circumstances, conducting trials of state prosecution (εἰσαγγελίαι) and conducting audits of public officials (δοκιμασίαι) – these functions are described with citations to the ancient evidence elsewhere in this article and the

article on the institution of the Council, but several 5th century examples of the Council conducting state prosecutions (εἰσαγγελίαι) appear in a speech by Antiphon from 412 BCE (Antiph. 6.35; Antiph. 6.49).

Since Aristotle says that the authority to “safeguard the laws” passed from the Areopagus to the Council and the Courts with the reforms of Ephialtes (Aristot. *Ath. Pol.* 25.2), and since the authority to conduct state prosecutions and audits must have been granted to the Council at some point, we might suppose that these judicial functions were added to the Council’s probouleutic function in 462/1 BCE.

Aristotle connects this event to a newfound feeling of power among the common people of Athens following the Persian Wars, when the less wealthy citizens by serving in the navy had saved the city. He makes the connection between naval victories and the reform of the Court of the Areopagus explicitly in his *Politics* (Aristot. *Pol.* 1274a). Also, by 462 BCE, when Ephialtes made his reforms, the archons (the future members of the Court of the Areopagus) were chosen by lot, not by vote (Aristot. *Ath. Pol.* 22.5). It is possible that this change made the institution seem less prestigious, and thus worthy of holding fewer powers [This interesting suggestion is from P.J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1993) – CWB].

Aristotle maintains that the Areopagus lost power as Athens became more democratic, while Rhodes suggests that the Areopagus lost power as it became, itself, less aris-

tocratic. There is no reason why both of these causes could not have influenced the Athenians' willingness to shift power from the Areopagus to the Council, but the ancient theory of Aristotle and the modern theory of Rhodes offer a convincing symmetry.

#### THE 5TH CENTURY BCE

Most of our evidence regarding the Council comes from the 4th century, the speeches by Attic orators (see Oratory) and Aristotle's *Constitution of the Athenians* (Aristot. *Ath. Pol.*). But our sources give us a few interesting anecdotes that illustrate the Council in action, as well as some descriptions of the Council's role in the crises that the Athenian democracy faced during its first 100 years.

Diodorus Siculus gives an anecdote that shows the Council conducting foreign policy in the early 5th century. He says that after the Persian Wars, when the Athenians were planning to fortify their city, the Spartans urged them not to build walls (Diod. 11.39.4). "While the Athenians were at a loss what they should do, Themistocles, who enjoyed at that time the highest favour among them, advised them to take no action; for he warned them that if they had recourse to force, the Lacedaemonians [that is, the Spartans – CWB] could easily march up against them together with the Peloponnesians and prevent them from fortifying the city. But he told the Council in confidence that he and certain others would go as ambassadors to Lacedaemon

to explain the matter of the wall to the Lacedaemonians; and he instructed the magistrates [the archons, τοῖς δὲ ἄρχουσι – CWB], when ambassadors should come from Lacedaemon to Athens, to detain them until he himself should return from Lacedaemon, and in the meantime to put the whole population to work fortifying the city. In this manner, he declared to them, they would achieve their purpose.” (Diod. 11.39.5).

This function of the Council, as a body that was democratic, like the Assembly, but also able to keep secrets, because of its smaller size and indoor meetings, appears in another anecdote from Diodorus. Here, Themistocles has plans to fortify the Piraeus, the harbor of Athens. We can see from the passage that the Athenians were worried not only about their (potential) enemies, the Lacedaimonians (another name for the Spartans), but about Themistocles’ own intentions; was he aiming to become tyrant? The Athenians wanted to know what Themistocles was up to, but did not want the whole world to know what Themistocles was up to. Diodorus describes the solution:

“Now as Themistocles pondered these matters, he decided that he should not make public announcement of his plan, knowing with certainty that the Lacedaemonians would endeavour to stop it; and so he announced to the citizens in Assembly that he wished both to advise upon and to introduce important matters which were also to the advantage of the city. But what these matters were,

he added, it was not in the public interest to state openly, but it was fitting that a few men should be charged with putting them into effect; and he therefore asked the people to select two men in whom they had the greatest confidence and to entrust to them to pass upon the matter in question. The people acceded to his advice, and the Assembly chose two men, Aristeides and Xanthippus, selecting them not only because of their upright character, but also because they saw that these men were in active rivalry with Themistocles for glory and leadership and were therefore opposed to him. These men heard privately from Themistocles about his plan and then declared to the Assembly that what Themistocles had disclosed to them was of great importance, was to the advantage of the state, and was feasible. The people admired the man and at the same time harboured suspicions of him, lest it should be with the purpose of preparing some sort of tyranny for himself that he was embarking upon plans of such magnitude and importance, and they urged him to declare openly what he had decided upon. But he made the same reply, that it was not to the interests of the state that there should be a public disclosure of his intentions. Thereupon the people were far the more amazed at the man's shrewdness and greatness of mind, and they urged him to disclose his ideas secretly to the Council, assuring him that, if that body decided that what he said was feasible and advantageous, then they would advise it to carry his plan to completion. Consequently, when the



Council learned all the details and decided that what he said was for the advantage of the state and was feasible, the people, without more ado, agreed with the Council, and Themistocles received authority to do whatever he wished. And every man departed from the Assembly in admiration of the high character of the man, being also elated in spirit and expectant of the outcome of the plan” (Diod. 11.42.1–6).

In this instance, the Assembly took two courses of action, one after another. First, it went along with Themistocles’ suggestion by appointing two citizens to confer with him privately and to report their opinion back to the Assembly. But the Athenians still seem to have been uneasy with the idea of acting on the recommendation of only two men. Instead, they took advantage of the nature of the Council – it was fully democratic and included a number of citizens (500 in all, 50 sitting each month), but could also confer in private, away from potentially hostile ears.

Thucydides tells the story of how the Athenian Alcibiades manipulated the Athenians into forming an alliance with Argos by presenting certain information to the Council and different information to the Assembly (Thuc. 5.45; Plut. *Nic.* 10.4–6; Plut. *Alc.* 14.4–6).

From a speech by the orator Antiphon, we see the Council exercising a judicial function in the 5th century BCE. At Antiph. 6.35 the speaker says, “I was about to prosecute Aristion, Philinus, Ampelinus, and the secretary to the

Thesmothetae [θεσμοθέτης) was the name given to six of the nine archons, with the other three being the ‘Archon’ (ἄρχων), the ‘King Archon’ (βασιλεύς), and the ‘Warlord’ (πολέμαρχος (Aristot. *Ath. Pol.* 55.1) – CWB], with whose embezzlements they had been associated, on charges which I had presented to the Council in the form of an impeachment” (κατηγορήσειν ἔμελλον Ἀριστίωνος καὶ Φιλίνου καὶ Ἀμπελίνου καὶ τοῦ ὑπογραμματέως τῶν θεσμοθετῶν, μεθ’ οὗπερ συνέκλεπτον, περὶ ὧν εἰσήγγειλα εἰς τὴν βουλήν). Shortly thereafter, he mentions that while serving on the Council himself, he had brought charges (εἰσαγγελίαι) against several public officials – the Public Purchasing Agents (πορισταί), the Public Auctioneers (πωληταί), the Bailiffs (πράκτορες), and the clerks attached to them (Antiph. 6.49). On this occasion, he requested that the Council conduct an investigation and get to the bottom of the matter (ὡς χρὴ ζητοῦντας ἐπεξελθεῖν τῷ πράγματι) (Antiph. 6.49). These cases both involve alleged misdeeds of public officials, hence the intervention of the Council.

#### THE OLIGARCHIC COUP OF 411 BCE

Thucydides and Aristotle also describe at length the oligarchic *coup d'état* in 411, when the democracy was overthrown and replaced for a short time by an oligarchy. The role of the Council, and changes to its composition and powers, played a prominent part in these events.

This oligarchic coup began after the Athenian expedition against Sicily ended in disaster in 413 (these events are described in Thuc. 6–7). After news of the defeat came to Athens, the Athenians were certain that the Sicilians would send a fleet to invade Attica (Thuc. 8.1.2). Thucydides describes Athens’ response to this crisis: “Nevertheless, with such means as they had, it was determined to resist to the last, and to provide timber and money, and to equip a fleet as they best could, to take steps to secure their confederates and above all Euboea, to reform things in the city upon a more economical footing, and to elect a board of elders to act as preliminary advisers regarding the state of affairs as occasion should arise. In short, as is the way of a democracy, in the panic of the moment they were ready to be as prudent as possible.” (Thuc. 8.1.3–4).

This “board of elders” (ἀρχὴν τινα πρεσβυτέρων ἀνδρῶν) were “to be preliminary councillors” (προβουλευσούσιν) to Athens. Aristotle, in his work on politics, has an interesting and relevant discussion of Councils (βουλαί) and Boards of Preliminary Councillors (Aristot. *Pol.* 1299b): “But there are also some offices peculiar to special forms of constitution, for instance the office of Preliminary Councillors. This is undemocratic, although a Council is a popular body, for there is bound to be some body of this nature to have the duty of preparing measures for the popular assembly, in order that it may be able to attend to its business; but a preparatory committee, if small, is oligarchical, and Preliminary Councillors must necessarily

be few in number, so that they are an oligarchical element. But where both of these magistracies exist, the Preliminary Councillors are in authority over the Councillors, since a councillor is a democratic official, but a preliminary councillor is an oligarchic one. Also the power of the Council is weakened in democracies of the sort in which the people in assembly deals with everything itself.”

So, according to Aristotle’s understanding of politics in Greek cities, the addition of a board of “probouloi,” Preliminary Councillors, was an move away from democracy and toward oligarchy. Returning to Thucydides, then, it seems from his comment that in this crisis Athens was “ready to be as prudent as possible” (Thuc. 8.1.4) suggests that, in the historian’s eyes, less democracy equalled greater prudence.

The only evidence that we have for the powers of these Preliminary Councillors is a scene from Aristophanes’ *Lysistrata*, and since this is a comic play, it is not the most reliable historical evidence. Nevertheless, it is interesting. In this play, produced and performed for an Athenian audience in 411 BCE (source for date: *OCD*<sup>3</sup>), there is a character who is one of the Preliminary Councillors (πρόβουλος). We see him, in one scene, going up to the Acropolis to get some public funds to purchase supplies for the navy (Aristoph. *Lys.* 420–423). In another scene he orders the Scythian Archers (τοχόται) to arrest someone (Aristoph. *Lys.* 430–466). Still elsewhere, he orders a herald to arrange for the Spartans to send ambassadors to Athens, and says

that he himself will order the Council to appoint Athenian ambassadors (Aristoph. *Lys.* 590–610). If this portrayal of a Preliminary Councillor is at all based on the reality of Athens in 411 BCE, it suggests that the Preliminary Councillors had taken over many of the responsibilities formerly belonging to the Council: funding the navy, enforcing order, arranging ambassadors.

The events of the year 411 BCE support Aristotle's assertion that, while the Council was a democratic institution, these Preliminary Councillors leaned toward oligarchy (source for date: *OCD*<sup>3</sup>). These men, the Probouloi (προβούλοι), seem to have been instrumental in establishing the so-called "Oligarchy of 400" (οἱ τετρακόσιοι); we have an anecdote in Aristotle's *Rhetoric* in which a certain Sophocles, one of the Preliminary Councillors appointed in 413, admitted to overthrowing the democracy (note that Aristotle is interested in rhetoric here, not history):

"If a conclusion is put in the form of a question, we should state the reason for our answer. For instance, Sophocles being asked by Pisander whether he, like the rest of the Preliminary Councillors (τοῖς ἄλλοις προβούλοις), had approved the setting up of the Four Hundred, he admitted it. 'What then?' asked Pisander, 'did not this appear to you to be a wicked thing?' Sophocles admitted it. 'So then you did what was wicked?' 'Yes, for there was nothing better to be done.'" (Aristot. *Rh.* 1419a)

Also, the orator Lysias describes how Theramenes was a leading proponent of the oligarchy in 411, “And also his father, being one of the Preliminary Councillors, was active in this business” (καὶ ὁ μὲν πατὴρ αὐτοῦ τῶν προβούλων ὧν ταῦτ’ ἔπραττεν) (Lys. 12.65).

The Athenians brought an end to their democracy and instituted an oligarchy by, first, appointing ten “Commissioners” (συγγραφεῖς) who were charged with re-writing the constitution of Athens (Thuc. 8.67.1). Aristotle says that there were twenty of these, and that they were in addition to the ten Preliminary Councillors already in office (Aristot. *Ath. Pol.* 29.2).

This is not the place to give all the details of the reforms that the oligarchs put in place after the coup of 411 BCE. For our purposes, it is enough to note that these Commissioners proposed a new Council, consisting of 400 men; there would be no more stipends, which allowed poorer citizens to serve in public offices; five men would be chosen as “Presidents” (προέδροι); these would each choose 100 men for the Council, and each of those 100 would choose three others, thus creating the Council of 400 (Thuc. 8.67.3; Aristot. *Ath. Pol.* 29.5). This new government claimed that a Council of 400 was “according to the ancestral constitution” (κατὰ τὰ πάτρια) (Aristot. *Ath. Pol.* 31.1). This Council of 400 would have the power to choose 5000 Athenians who would be the only citizens eligible to participate in assemblies (Thuc. 8.67.3; Aristot. *Ath. Pol.* 29.5).

Thucydides describes how this new Council of 400 collected an armed gang, confronted the “Councillors who had been chosen by lot” (τοῖς ἀπὸ τοῦ κυάμου nullβουλευταῖς), that is, the democratic Council, paid them their stipends, and send them home (Thuc. 8.69.4; Aristot. *Ath. Pol.* 32.1).

What is significant for our understanding of the role of the Council is that, according to both Aristotle and Thucydides, democracy at Athens came to an end when the democratic Council (the one chosen by lot) was dissolved (Thuc. 8.69.4; Aristot. *Ath. Pol.* 32.1–2). It is also significant that this oligarchy seems to have been put in place – the Preliminary Councillors and Commissioners appointed, stipends ended, the democratic Council dissolved – with the cooperation, or at least without opposition, from the democratic Assembly. Thucydides says that the democratic Assembly cooperated in its own destruction: “...the Assembly, when it had ratified these other things, with no one speaking against them, was dissolved” (... ἡ ἐκκλησία οὐδενὸς ἀντειπόντος, ἀλλὰ κυρώσασα ταῦτα διελύθη) (Thuc. 8.69.1). Aristotle says that the new constitution was ratified “by the masses” (ὑπὸ τοῦ πλήθους) (Aristot. *Ath. Pol.* 32.1).

There is an interesting contrast, with the Assembly cooperating in creating a limited, oligarchic government (Thuc. 8.69.1; Aristot. *Ath. Pol.* 32.1), but the Council having to be evicted by an armed gang (Thuc. 8.69.4; Aristot. *Ath. Pol.* 32.1). This contrast brings to mind Solon, who, according

to Plutarch, established the Council to prevent the People from damaging the constitution (Plut. *Sol.* 19.1–2).

#### BETWEEN OLIGARCHY AND TYRANNY

This oligarchic government lasted only four months before it was replaced by another government in which the power was in the hands of 5000 Athenians – more democratic, but still a far cry from the radical democracy defined by Cleisthenes (Aristot. *Ath. Pol.* 33.1). That government, in turn, lasted only a short time before “the People quickly seized control of the constitution from them” (τούτους μὲν οὖν ἀφείλετο τὴν πολιτείαν ὁ δῆμος διὰ τάξους) (Aristot. *Ath. Pol.* 34.1).

A speech by Andocides quotes the first decree issued by the restored democracy, in 410 BCE (source for date: *OCD*<sup>3</sup>): “Enacted by the Council and People. Prytany of the tribe Aeantis. Secretary: Cleigenes. President: Boethus. The enactment following was framed by Demophantus and his colleagues. The date of this decree is the first sitting of the Council of Five Hundred, chosen by lot, at which Cleigenes acted as Secretary. If anyone shall suppress the democracy at Athens or hold public office after its suppression, he shall become a public enemy and be slain with impunity; his goods shall be confiscated and a tithe given to the Goddess [i.e. Athene – CWB]” (Andoc. 1.96). Again, we should note that this decree defines the restoration of the Democracy in terms of the Council: “the first sitting of



the Council of Five Hundred, chosen by lot” (ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος ἢ βουλή οἱ πεντακόσιοι οἱ λαχόντες τῷ κυάμῳ) (Andoc. 1.96).

Once the oligarchy had been overthrown in 410 BCE, the restored democratic government immediately set up a body of “Law Publishers” (ἀναγραφεῖς τῶν νόμων) to publish all of the laws, especially those of Draco and Solon (IG I<sup>3</sup> 104.5–6; Lys. 30.2; Lys. 30.25; source for date: Hansen, *Athenian Democracy*, 162–3). Nicomachus was in charge of this board, as “Commissioner of Laws” (τῶν νόμων ἀναγραφεὺς), and was originally supposed to complete publication in four months (Lys. 30.2). The board spent six years, however, compiling and publishing Solon’s body of laws (Lys. 30.2–3). The published laws, which included the homicide law of Draco and laws regarding the powers of the Council (ML 86; IG I<sup>3</sup> 105) were inscribed on the wall of the Stoa Basileios in the Agora (Lys. 30.2–3).

In 406 BCE, the Athenians won a naval victory over the Spartans near the Arginousae islands in the Aegean – the battle is described at Xen. *Hell.* 1.6.24–35 and (quite differently) at Diod. 13.76–79 and Diod. 13.97–100 (source for date: *OHCW*). After the battle, the Athenians launched an effort to rescue their men from some disabled ships, but a storm prevented the rescue. This battle and the failed rescue attempt set the stage for a famous miscarriage of justice on the part of the Athenian democracy, in which the Council played an important role.

Of the eight generals who had taken part in the battle, only six returned to Athens, and these were six made statements about the battle in front of the Council (Xen. *Hell.* 1.7.1–3). Timocrates proposed to the Council that they should be imprisoned and tried by the Assembly, whereupon a meeting of the Assembly was called (Xen. *Hell.* 1.7.3–4). Xenophon says that the generals had written a letter to both the Council and the Assembly blaming the storm for their failure to rescue the sailors, and a certain Theramenes held this up as evidence that the generals, alone, were to blame (Xen. *Hell.* 1.7.4). Xenophon goes on to note that Theramenes had been present at the battle and had, in fact, been given the job of rescuing the men (Xen. *Hell.* 1.7.5).

Each of generals gave a speech in his own defense at this meeting of the Assembly, but Xenophon says that “These speeches were short, since they were not allowed to speak for the length of time permitted by law” (Xen. *Hell.* 1.7.5). Despite some public sympathy for the generals, the Athenians decided “that the matter should be postponed to another meeting of the Assembly (for by that time it was late in the day and they could not have distinguished the hands in the voting), and that the Council should draft and bring in a proposal regarding the manner in which the men should be tried.” (Xen. *Hell.* 1.7.7).

According to Xenophon, Theramenes and the others opposed to the generals bribed a man named Callixeinus, who was serving on the Council at the time (see Xen. *Hell.*

1.7.9) to testify against the generals when the Council met next (the festival of the Apaturia caused a delay of several days between the first Assembly and the next meeting of the Council) (Xen. *Hell.* 1.7.8–9). When the Assembly was convened, the Council brought to it a proposal (γνώμη) written by Callixeinus (Xen. *Hell.* 1.7.9). The proposal stated that there would be no more speeches on the matter of the generals, but that the Assembly would go straight to a vote; the voting would be by tribes, using pebbles dropped in urns (διαψηφίσασθαι Ἀθηναίους ἅπαντας κατὰ φυλάς) (Xen. *Hell.* 1.7.9). The question on which they would vote, as Xenophon reports it, was loaded: “[Did] the generals seem guilty of not picking up the men who had won the naval battle?” (δοκοῦσιν ἀδικεῖν οἱ στρατηγοὶ οὐκ ἀνελόμενοι τοὺς νικήσαντας ἐν τῇ ναυμαχίᾳ) (Xen. *Hell.* 1.7.9). The generals had admitted as much, but claimed that the storm made it impossible. If the generals were found to be guilty by the voting, the proposal said, they would be put to death by the Eleven, and their property would be confiscated to the state, with one tenth of it going to the treasury of Athene (Xen. *Hell.* 1.7.10).

Euryptolemus and a few others then issued a charge of “illegal proposal” (παράνομα φάσκοντες συγγεγραφέναι) against Callixeinus, a procedure designed to prevent the Assembly from violating the law (Xen. *Hell.* 1.7.12). In a speech, as reported by Xenophon, Euryptolemus explained in what way this proposal was illegal, when he asks his fellow Athenians: “What is it, pray, that you fear, that you are

in such excessive haste? Do you fear lest you will lose the right to put to death and set free anyone you please if you proceed in accordance with the law, but think that you will retain this right if you proceed in violation of the law, by the method which Callixeinus persuaded the Council to report to the people, that is, by a single vote?” (Xen. *Hell.* 1.7.26). If the Athenians want to put the generals on trial they may, Euryptolemus says, but by the legal procedure: “let the men be tried, each one separately, and let the day be divided into three parts, one wherein you shall gather and vote as to whether you judge them guilty or not, another wherein the accusers shall present their case, and another wherein the accused shall make their defence” (Xen. *Hell.* 1.7.23).

Xenophon says that “some of the People clearly favored this, but the majority shouted that it was a terrible thing is anyone should not let the People do whatever they wanted” (τοῦ δὲ δήμου ἔνιοι ταῦτα ἐπήγουν, τὸ δὲ πλῆθος ἐβόα δεινὸν εἶναι εἰ μὴ τις ἑάσει τὸν δῆμον πράττειν ὃ ἄν βούληται) (Xen. *Hell.* 1.7.13). Euryptolemus and the others, fearing that they would be put on trial as well, withdrew their charge (Xen. *Hell.* 1.7.13).

The proposal of Callixeinus almost failed to come to a vote, because the members of the Council who were serving as Prytanēs (τῶν δὲ πρυτάνεων τινῶν) said that they would not allow it, since the “vote was illegal” (τὴν διαψήφισιν παρὰ τὸν νόμον) (Xen. *Hell.* 1.7.14).

Xenophon continues his account: “Then the Prytanes, stricken with fear, agreed to put the question – all of them except Socrates, the son of Sophroniscus; and he said that in no case would he act except in accordance with the law” (Xen. *Hell.* 1.7.15). This Socrates was the famous philosopher, and according to other ancient sources he was not only serving as one of the Prytanes of the Council during these events, but was Epistates, “President” on this day. Xenophon’s *Memorabilia*, he says that Socrates “was on the Council and had taken the counsellor’s oath by which he bound himself to give counsel in accordance with the laws, it fell to his lot to preside in the Assembly when the people wanted to condemn Thrasyllus and Erasinides and their colleagues to death by a single vote. That was illegal, and he refused the motion in spite of popular rancour and the threats of many powerful persons” (Xen. *Mem.* 1.1.18; see also Plat. *Gorg.* 473e; Plat. *Apol.* 32b; Xen. *Mem.* 4.4.2).

In Plato’s *Gorgias*, Socrates himself describes these events to Polus with a certain amount of dark humor (the context is a discussion of how it is better to suffer injustice than to commit it): “Polus, I am not one of your statesmen: indeed, last year, when I was elected a member of the Council, and, as my tribe held the Presidency, I had to put a question to the vote, I got laughed at for not understanding the procedure” (Plat. *Gorg.* 463e); by “not understanding the procedure,” Socrates is referring to the illegal procedure of trying all the generals with a single vote, and with no opportunity for them to defend themselves.

Despite the refusal of Socrates the Epistates to allow the vote, the procedure continued in the Assembly, with Euryptolemus giving a speech on behalf of the generals (Xen. *Hell.* 1.7.16–33) and putting forward a motion that “the men should each be given a separate trial in accordance with the decree of Cannonus” (κατὰ τὸ Κανωνοῦ ψήφισμα κρίνεσθαι τοὺς ἄνδρας δίχα ἕκαστον) (Xen. *Hell.* 1.7.34); the decree of Cannonus was the law that governed the trial and punishment of anyone who did harm to the people of Athens (Xen. *Hell.* 1.7.20). The Assembly voted in favor of the Council’s original proposal, voted once on the guilt of all eight generals, and the six generals who were in Athens were put to death (Xen. *Hell.* 1.7.34; for a more condensed version of these events, see Diod. 13.101.1–7).

In this case, the Council clearly failed in its function as a check on the vicissitudes of the larger Assembly. The Athenians themselves realized this, according to Xenophon, who says: “And not long afterwards the Athenians repented, and they voted that complaints (προβολαί) be brought against any who had deceived the people, that they provide men to stand as guarantors until such time as they should be brought to trial, and that Callixeinus be included among them” (Xen. *Hell.* 1.7.35; “probolai” were complaints against someone who has allegedly harmed the state and were heard before the Assembly; see Dem. 21.193, Aeschin. 2.145, Isoc. 15.314, Aristot. *Ath. Pol.* 43.5, Aristot. *Ath. Pol.* 59.2). How did the trial of the generals continue after the epistates refused to allow the vote?

There are two possibilities, with no obvious reason to prefer one over the other. First, we might note that Xenophon's account of events includes several clear examples of improper procedure: the generals were not allowed to speak in their own defense for the proper amount of time (Xen. *Hell.* 1.7.5); Callixeinus is said to have been bribed to author the Council's proposal (Xen. *Hell.* 1.7.8–9); his proposal (γνώμη) was itself illegal (Xen. *Hell.* 1.7.9–10; Xen. *Hell.* 1.7.26); Euryptolemus and the others were intimidated into withdrawing their charge of "illegal proposal," rather than letting it come to a vote (Xen. *Hell.* 1.7.13). Given these irregularities, we could easily imagine that the Assembly simply went ahead with a vote on the guilt of the generals, without the sanction of Socrates the epistates.

The second possibility is this: Xenophon tells us at Xen. *Hell.* 1.7.15 that Socrates alone refused to accede to the Assembly's wishes. He then says (Xen. *Hell.* 1.7.16) that "after these things" (μετὰ δὲ ταῦτα) Euryptolemus gave a speech (which he quotes), and there was the vote. It is possible that Xenophon's phrase "after these things" is speaking of a delay from one day to the next. On the next day someone else would have been serving as Epistates, since each Epistates served for one day and one night (Aristot. *Ath. Pol.* 44.1).

The affair of the Arginousae Generals shows us why the Athenians gave the Council the authority it had over the Assembly – even though in this case the Council failed in that role. This affair also shows us an unfortunate side effect of the restoration of democracy after the oligarchic

coup of 411. During the proceedings against the generals, the Athenian people gathered in Assembly cried out “that it was a terrible thing is anyone should not let the People do whatever they wanted” (τὸ δὲ πλῆθος ἐβόα δεινὸν εἶναι εἰ μὴ τις ἐάσει τὸν δῆμον πράττειν ὃ ἂν βούληται) (Xen. *Hell.* 1.7.13). Reacting against the recent oligarchy, the newly restored democracy wanted no limits on its right to act. Only later, when it was too late, did the Athenians realize that they had been mistaken in assuming that an Assembly, acting without regard to the law and without the calming authority of a democratic Council, could ensure justice (see Xen. *Hell.* 1.7.35).

#### THE TYRANNY OF THE THIRTY

In 404 BCE, when Athens surrendered to Sparta, the government of the Thirty Tyrants, imposed on Athens by the Spartans, removed these published laws from the Stoa Basileios (Lys. 30.2–3). Nicomachus, the head of the “Law Publishers” was later put on trial, accused of manipulating the laws he published and helping the Thirty Tyrants consolidate their power (Lys. 30.1–3).

Like the Oligarchy of 411, the tyranny of the Thirty lasted only one year, and after it was overthrown and the city returned to democratic rule, Athens once again compiled and codified its old laws: “On the motion of Teisamenus the People decreed that Athens be governed as of old, in accordance with the laws of Solon, his weights and his



measures, and in accordance with the statutes of Draco, which we used in times past. Such further laws as may be necessary shall be inscribed upon tables by the Nomothetae elected by the Council and named hereafter, exposed before the Tribal Statutes for all to see, and handed over to the magistrates during the present month. The laws thus handed over, however, shall be submitted beforehand to the scrutiny of the Council and the five hundred Nomothetae elected by the Demes, when they have taken their oath. Further, any private citizen who so desires may come before the Council and suggest improvements in the laws. When the laws have been ratified, they shall be placed under the guardianship of the Council of the Areopagus, to the end that only such laws as have been ratified may be applied by magistrates. Those laws which are approved shall be inscribed upon the wall, where they were inscribed aforetime, for all to see” (Andoc. 1.83–84).

An inscription, *IG I<sup>3</sup> 105*, survives that records a law limiting the Council’s authority. After two anti-democratic revolutions, this law says that in matters of war and peace, death sentences, large fines, disenfranchisement (that is, loss of citizenship), the administration of public finances, and foreign policy the Council cannot act without the approval of the Assembly.

Even with these careful restrictions to its authority the Council was a central institution in the restoration of the government, as the Athenians reestablished their democracy following an oligarchic coup and a tyranny imposed

by a conquering state. We can see that the Council, by establishing lawmakers (νομόθεται), by supervising their work, and by ratifying their laws according to their oath, was the central institution in defining the democracy as it would exist in the 4th century BCE.



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