Initiative and Decision: the Separation of Powers in Fourth-Century Athens

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In this paper I shall argue that a basic form of separation of powers in fourth-century Athenian democracy consists in a separation of initiative and decision: a decision-making body of government is not allowed to take an initiative, and, conversely, a body of government empowered to take an initiative is never allowed to make a decision on any important issue.

I begin with a short discussion of what a body of government is, and an inventory of the bodies of government to be found in fourth-century Athens. By way of introduction, I shall give a survey of the accepted opinion about the Athenian bodies of government. Leaving aside the Council of the Areopagus, which was in fact a relic of the aristocratic state, all scholars seem to assume a basic four-fold division of the Athenian bodies of government, into the ecclesia, the boule, the archai, and the dicasteria. The problem is never discussed, but historians habitually organize their account of the Athenian political structure into four chapters or sections, each dealing with one of these four agencies. As typical and prominent examples I refer to Busolt-Swoboda, Glotz, Ehrenberg, Gomme, Andrewes, Will, Mossé, and Ernst Meyer.2 There is

1 The Athenians had of course no developed theory about any 'separation of powers' in our sense. And so the observations offered here concern the working of the institutions rather than the ideology. The numerous constitutional reforms in fourth-century Athens are sufficient proof that there must have been a constant and lively political debate about constitutional principles, but it is lost to us apart from some important remarks made especially in forensic speeches delivered in connection with the graphe paranomon or the graphe nomon me epitdeion theinai. This lack of information is borne out by a survey of the relevant sources—inscriptions, forensic speeches, the 'essays' by Isocrates, Aristotle's Politics and Ath.Pol. Constitutional analysis cannot be found in inscriptions, and only scraps of the law-code are preserved. The orators care for political theory only when it suits their purpose. So we must turn to Aristotle's Politics, which deals with democracy in general and pays very little attention to the particular form of democracy practised in fourth-century Athens. The Ath.Pol. is a curious accumulation of facts about details without any attempt to analyse the information given; and Isocrates has some analysis, but is hopelessly vague. There must have been an important debate about the interaction of the bodies of government, but it is lost and we can see only the results of the debate reflected in the constitutional reforms and in the working of the institutions.

2 G. Busolt and H. Swoboda, Griechische Staatskunde II (Munich 1926) 986–1168: Die
only one source (never quoted) which directly supports this analysis, Demosthenes' first speech Against Aristogeiton 20: εἰ γάρ τις υμῶν ἐξετάσαι βούλεται τί ποτ' ἔστι τὸ αἰτίον καὶ τὸ ποιοῦν τὴν βουλὴν συλλέγεσθαι, τὸν δήμον εἰς τὴν ἐκκλησίαν ἀναβαίνειν, τὰ δικαστήρια πληροῦσθαι, τὰς ἕνας ἀρχὰς ταῖς νέαις ἔκοσάς ὑπεξίναι, καὶ πάντα δι' ὧν ἡ πόλις οἰκεῖται καὶ σώζεται γίγνεσθαι, τοὺς νόμους εὐφησει ... (compare Arist. Pol. 1317b36–37).

This 'quartering of the bodies' in classical Athens—to use a metaphor from criminal law—is commonly accepted a priori, and I know of no work about Athenian political structure entitled "How many bodies of government—and of what kind—did the Athenians have?" This traditional four-fold division of the agencies is unsatisfactory, and in its place I shall suggest the following analysis of the political structure in fourth-century Athens:

<table>
<thead>
<tr>
<th>Citizen Group</th>
<th>Agency</th>
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<tbody>
<tr>
<td>οἱ δημοκρατεῖς (6000)</td>
<td>οἱ νομοθέται τὰ δικαστήρια</td>
</tr>
<tr>
<td>οἱ υπὲρ τῆς γεγονότες</td>
<td>αἱ ἀρχαι</td>
</tr>
<tr>
<td>οἱ βουλόμενοι οὶ ἐξετῖν</td>
<td>οἱ ἡμιτρες</td>
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</tbody>
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This arrangement differs in several important respects from the traditional one, and I shall emphasize the following five points:

1. The demos is embodied only in the ecclesia and never in the dicasteria.³ (2) The nomothetai are recorded as a separate body of

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government and a very important one, since the nomothetai, after 403/2, were entrusted with the passing of all general standing rules, all nomoi. Following most scholars I accept the thirty-year age-limit for all archai, and not only for the boule. The ρητορές, of course, do not form a ‘body of government’ as they have no official position and no authority. Nevertheless they are recognized in our sources as a specific agency in the political process, and ὁ βουλόμενος τῶν Ἀθηναίων οίς ἤξεστιν, frequently mentioned as originator in laws and decrees, is perhaps the protagonist of Athenian democracy. Taken together, οἱ βουλόμενοι were (in theory) identical with ὁ δῆμος, but in reality there was a gulf between the Athenian people and the small number of active Athenian citizens. And apart from sheer numbers there is a fundamental difference between hoi boulomenoi and the people: ὁ δῆμος is a collective body composed of anonymous and irresponsible citizens (Thuc. 3.43.4–5, 8.1.1). οἱ βουλόμενοι form a group composed of individual citizens each responsible for the initiative he takes (cf. infra 362f). I shall return to this problem below. (5) the boule is classified as an archē, side by side with the other boards of magistrates. This is a new point, which must be substantiated before we discuss the separation of powers itself.

I. Classification of the Boule as an Arche

In modern accounts of the political structure in democratic Athens it is assumed that there was a fairly sharp distinction between the boule and the archai, which are always treated separately. Admittedly discussions of the boule regularly begin with the statement that the councillors were—strictly speaking—officers of state and subject to the same rules of appointment etc. as other archai. But no one has drawn the conclusion from this concession and organized an account of the Athenian democracy into sections about the ecclesia, the dicasteria, and the archai (including the council of five hundred). First, however, we must es-

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6 For the meaning and use of this term the evidence is collected in the Appendix.

establish that the council both structurally and functionally was a board of magistrates, an archе in the technical sense of the word.\(^8\)

Of the relevant sources the most important are perhaps the Ath.Pol. and the Politics of Aristotle. The second part of the Constitution of Athens is organized into three parts: a short section about citizen rights and the training of the ephebi (42); a long chapter about archai, elected or selected by lot (43–62); and a somewhat shorter chapter about the organization of the dicasteria and the selection of jurors (63–69).\(^9\) The chapter about magistrates is subdivided into four sections: first a very short section about elected archai in the civil service (43.1); then a long section about archai selected by lot (43.2–60); then, a short section about elected military archai (61); and finally a general chapter about allotment procedures and about payments to archai (62). In the section about archai selected by lot (43.2–60) the first and by far the longest part is about the council of five hundred, and the introduction of the boule in 43.2 (\(\betaουλή \ δὲ κληρούται \ φ\)) is placed on the same footing as all the following entries: κληρούνται δὲ καὶ ἱερῶν ἑπίσκεψαι, δέκα ἄνδρες (50.1), κληρούνται δὲ καὶ ἀγορανόμοι (51.1), etc. Apart from the basic structure of the treatise, several passages show that the boule was an archе.\(^10\)

Similarly, in the Politics the boule is invariably discussed in the sections about archai, and we hear repeatedly that the boule in a democracy is the most important of the archai. I quote the principal passages:

1299b30–32: \(\text{οὐ μὴν ἀλλā καὶ ἰδία τινες (ἄρχαι) εἰσίν, οἷον ἢ τῶν προβουλῶν αὐτῆ γὰρ οὐ δημοκρατικῆ. βουλὴ δὲ δημοτικόν.}\)

1317b30–31: \(\text{τῶν δ᾽ ἀρχῶν δημοτικώτατον βουλὴ...}\)

1322b12–17: \(\text{παρὰ πάσας δὲ ταύτας τὰς ἀρχὰς ἡ μάλιστα κυρία πάντων εἶστιν ἣ γὰρ αὐτῆ πολλάκις ἐξεῖ τὸ τέλος καὶ τὴν εἰσφορὰν ἢ προκάθηται τοῦ πλήθους, ὅπου κύριος ἔστιν ὁ δήμος. δὲὶ γὰρ εἴναι τὸ συνάγον τὸ κύριον τῆς πολιτείας, καλεῖται δὲ ἐνθα μὲν προβουλοῦν διὰ τὸ προβουλεύειν, ὅποιον δὲ πλῆθος ἔστι, βουλή μάλλον.}\)

\(^8\) That the archai collectively were treated as one body of government is apparent from several laws and decrees—e.g. Teisamenos' decree which includes the following provision: ἐπιμελεῖσθω ἢ βουλὴ ἢ έξ Ἀρείου πάγου τῶν νόμων, ὅπως ἢ αἱ ἄρχαι τοῖς κατέμνεις νόμοις χρωνται (Andoc. 1.84); and the law then quoted by Andocides (1.87): ἀγάφω δὲ νόμω τὰς ἄρχας μὴ χρήσκει μὴδὲ περὶ ἐνός. For a definition of archе and an inventory of archai see Hansen (supra n.5) 155–62.

\(^9\) This is a correction of the view I stated in The Sovereignty of the People's Court in Athens in the Fourth Century B.C. (Odense 1974) 10.

\(^10\) 31.3: τῶν δ᾽ ἄλλων ἀρχῶν πλῆν τῆς βουλῆς καὶ τῶν στρατηγῶν μὴ ἔξεινα κτλ. 47.1: συνδιοικεῖ δὲ (ἡ βουλή) καὶ ταῖς ἄλλαις ἄρχαις τὰ πλείστα (cf. 49.5). 62.1: καὶ τούτας (τὰς ἄρχας) ἐκ τῆς φυλῆς δής κληρονοί πλὴν βουλεύτων καὶ φρουρῶν. 62.3: ἀρχεῖν δὲ τάς μὲν κατὰ πόλεμον ἄρχας ἔξεστι πλεονάκις, τῶν δ᾽ ἄλλων οὐδεμία πλὴν βουλεύεσθαι δέ.
Aristotle’s analysis both in the Ath. Pol. and in the Politics is confirmed by the orators’ usage in the forensic speeches. Aeschines refers to the boule as one of the κληροται ἀρχαί (1.106, 109). Demosthenes mentions selection by lot of archai, such as the thesmothetai or the boule (39.10), and the passage shows that the same bronze pinakion was used for the sortition of councillors and of other magistrates.¹¹ Socrates emphasizes that he never served on any board of archai, except the boule (Pl. Ap. 32A–B). Furthermore, in several laws and decrees the boule, or a committee of the boule, is described as an arche. In the so-called charter of the democracy (IG I³ 105) we read in the fragmentary line 45: τὴν πεντακοσίαν πριν παύσεσθαι τὰς ἀρχὲς. The meaning is, probably, that the five hundred bouleutai before they resign their arche shall do something, we do no longer know what.¹² In other laws committees of the boule are described as archontes. In the recently discovered law about silver coinage (Hesperia 43 [1974] 157–88) oi archontes in lines 24–25 refers back to three boards of archai mentioned previously: the σιτοφύλακες (19), the συλλογεῖς τοῦ δήμου (20), and the ἐπιμεληταὶ τοῦ ἐμπορίου (21–22). Of these three boards of archai the second is in fact a committee of the boule, manned by thirty bouleutai: IG II² 1749.75–79 (Agora XV 38.78–82). Similarly, in the law quoted in Dem. 24.54, the main provision is μὴ εἰσάχθειν περὶ τούτων εἰς τὸ δίκαιηρον μηδ' ἐπιηθείσειν τῶν ἀρχῶντων μηδένα. Now the only officials empowered to put a proposal to the vote were the proedroi, who were bouleutai, and so τῶν ἀρχῶντων μηδεῖς must be a comprehensive term for the proedroi (who put proposals to the vote) and the magistrates with ἡγεμονία δικαστηρίου (who bring a case before the court).

All these sources point to a classification of the boule as a board of magistrates, an arche in the technical sense of the word. On the other hand, there are some passages where, presumably, a distinction is made between the boule and the archai. One source is Dem. 25.20 (quoted supra 346), others are:

¹¹ Cf. Hansen (supra n.5) 169.
Thuc. 5.47.9: ὁμοῦντων δὲ Ἀθηναίας μὲν ἡ βουλὴ καὶ αἱ ἐνδημοὶ ἄρχαι, ἐξορκοῦντων δὲ οἱ πρῶταις.\(^{13}\) Dem. 24.20 (law): ... ἐπιχειροτονίαν ποιεῖν τῶν νόμων, πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εὔτα οἱ κεῖνται τοῖς ἐννέας ἄρχουσιν, εὔτα τῶν ἄλλων ἄρχων. Lys. 25.14: οὐδεὶς με ἀποδείξει οὔτε βουλεύσαντα οὔτε ἄρχην οὐδεμιᾶν ἄρξαντα.\(^{14}\) Xen. Vect. 6.1: ἦρεύσι δὲ καὶ βουλή καὶ ἄρχας καὶ ἵππεύσι τὰ πάτρια ἀποδόσομεν. Arist. Ath. Pol. 24.3: ... βουλή δὲ πεντακόσιου, καὶ φρουροὶ νεωρίων πεντακόσιοι, καὶ πρὸς τούτοις ἐν τῇ πάλει φρουροὶ ν, ἄρχαι δ' ἐνδημοὶ μὲν εἰς ἐπτακοσίους ἄνδρας, ὑπερόροι δ' εἰς ἐπτακοσίους.

This evidence indicates that the *boule* was an exceptional board of magistrates and might sometimes be set off against *archai* in general, but, in my opinion, there is no contradiction between these sources indicating a distinction between *boule* and *archai* and those adduced above to show that the *boule* was an *arche*. A parallel will illustrate: among all the citizens subject to *atimia* by far the most important group was the debtors to the state, *οἱ ὁϕειλόντες τῷ δημοσίῳ*. They are usually described as a group of *atimoi*,\(^{15}\) but in some passages we meet an opposition between *atimoi* and *opheilontes*.


These sources show that the *opheilontes* formed a peculiar group of *atimoi*, but it would be a serious mistake to infer that the *opheilontes* were not *atimoi*. Similarly, it would be misleading to infer from the passages contrasting *boule* and *archai* that the *boule* was not an *arche*.\(^{16}\) The conclusion seems to be that the Athenians

\(^{13}\) In *IG II²* 230.12–13 [την βουλὴν καὶ τάς ἄρχ[ας] is probably a reference to the officials in Eretria and not in Athens (pace the restorations printed by Kirchner).

\(^{14}\) Same phrase in Lysias’ *For Eryximachus*, P.Ryl. 489.112–13.

\(^{15}\) Andoc. 1.73; Isae. 10.17; Dem. 21.99, 22.32; 24.200–01, 26.1, 27.67, 43.58, 59.1, etc.

\(^{16}\) The law quoted in Dem. 24.20 establishes a tripartition into the *boule*, the nine archons, and the other *archai*, and so there is no real distinction between *boule* and *archai*. 
regarded the boule as a peculiar board of archai but nevertheless classified the boule as an arche. And this conclusion is strengthened by an examination of the conditions for being a bouleutes. Like all other archai the bouleutai had to pass a dokimasia, to swear an oath, to wear a crown, and to submit to euthynai on expiration of their office. Furthermore, the bouleutai had to be thirty years of age or more, like other archai. The functional similarity between the boule and the other archai must be addressed next.

### II. The Separation of Initiative and Decision

According to Aristotle's Politics one of the characteristics of a democracy, and especially of a radical democracy, is the fundamental distinction between the demos, who makes all important decisions, and the archai, who make no decisions except on routine matters but are empowered to prepare the decisions to be made by the people. The principal passage is in the chapters about the μόρια τῆς πολιτείας (4.14–16), but Aristotle emphasizes the view in several other passages:

1298a28–32: τέταρτος δὲ τρόπος τὸ πάντας περὶ πάντων βουλεύεσθαι συνιόντας, τὰς δ’ ἄρχας περὶ μηθενός κρίνειν ἀλλὰ μόνον προανακρίνειν, ὅπερ ἡ τελευταία δημοκρατία τῶν διοικεῖται τρό­πον.

1317b28–31: τοῦ τὴν ἐκκλησίαν κυρίαν εἶναι πάντων ἢ τῶν με­γίστων ἄρχην δὲ μηθενός ἢ δὲ ὁλιγίστων κυρίαν τῶν δ’ ἀρχῶν δημοτικότατον ἢ βουλή.

1299b38–40: καταλύεται δὲ καὶ τῆς βουλῆς ἡ δύναμις ἐν ταῖς

The passage from Xen. Vect. deals with misthos, and since, in the fourth century, the boule received misthos, whereas the other archai were probably amisthoi, the distinction made in this respect is necessary (cf. M. H. Hansen, "Misthos for Magistrates in Classical Athens," SymbOslo 54 [1979] 5–22). The passage in Ath. Pol. carries little weight for the same reason: in the fifth century, both the boule and the archai received misthos, but probably at different rates.

17 The principal differences between the boule and the other archai can be summed up as follows: (1) The boule prepares the decisions to be made by the ecclesia and the nomothetai, the other archai prepare the decisions to be made by the dicasteria (cf. 356 infra). (2) Archai do not regularly act as hoi boulomenoi, but the bouleutai do in so far as all probouleumatic decrees are probably moved by councillors (cf. 363 infra). (3) The boule supervises the other boards of archai (Ath. Pol. 45.2). (4) The boule is a board of 500 meeting daily, and not a board of ten perhaps even practising some form of division of labour (cf. 367 infra). (5) The councillors are allowed to serve twice and they receive misthos, cf. Hansen (supra n. 16) 19.

18 Cf. Rhodes (supra n.7) 12–15, 194ff.

19 Cf. Hansen (supra n.5).
Aristotle’s description of democratic archai as preparatory boards with no power to make decisions is a generalization about democracy in all Greek poleis, and in the age of Aristotle there were several hundred democracies in Greece. Accordingly the first question to ask is whether Aristotle’s general statement in the Politics about the separation of powers in democracies applies to fourth-century Athens. In my opinion it is valid for the Athenian democracy if we make two modifications concerning the bodies of government involved, one about the decision-making body and one about the archai who prepare the decisions.

In fourth-century Athens the right to make important decisions was no longer reserved for the demos in the ecclesia. In 403/2 the ecclesia was deprived of the right to pass nomoi and all legislation in the proper sense of the word was transferred to the nomothetai (supra 347 with n.4). Similarly, in the 350s the ecclesia was deprived of the right to act as a law-court, and judicial authority, even in political cases, was transferred to the dicasteria. So the right to make decisions on important issues was divided between three separate bodies of government: (1) the ecclesia passing psephis mata, (2) the nomothetai passing nomoi, and (3) the dicasteria pronouncing kriseis. Second, the council of five hundred was admittedly an arche, but a peculiar arche, and it is in conformity with the sources (supra 348) to subdivide the archai into the boule and the other archai. So we have three agencies making decisions (ecclesia, nomothetai, and dicasteria) whereas the initiatives are taken by some 1200 archai, bisected into the council of five hundred and about 700 other archai, usually organized into boards of ten.

Accepting these two modifications, we can apply Aristotle’s analysis to Athens and make the following statements about the separation of powers: (1) a decision-making body is not empow-

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21 M. H. Hansen, “How Often Did the Ecclesia Meet?” GRBS 18 (1977) 68–69 with further references.

22 For the number of archai cf. Hansen (supra n.5).
ered to take any initiative; (2) the archai, taking initiatives, are not empowered to make any important decision. The validity of these two statements can be tested by a brief survey of the powers of the various bodies of government.

(1) The demos cannot assemble spontaneously. The ecclesia has to be summoned by the prytaneis (Arist. Ath. Pol. 43.3) and presided over by the proedroi (44.2–3). The agenda are drawn up by the prytaneis (43.3) and no decision can be made without a previous discussion in the boule (45.4). But the ecclesia has to discuss and to vote on all important issues within its competence.

(2) The nomothetai are summoned by the prytaneis (Dem. 24.27) and presided over by a board of proedroi, the composition of which is unknown.23 Probably all bills are brought before the nomothetai through the boule (Dem. 24.47–48). The nomothetai have one duty only, viz. to vote.

(3) The dicasteria are convened by the thesmothetai (Ath. Pol. 59.1). The selection of jurors is supervised by the archons (63.1). The court is presided over by the board of archai which is competent in the case (Aeschin. 3.14, 29–30). The dicastai have one duty only, viz. to vote.

(4) The boule is empowered to pass psephismata in routine matters only24 and to impose minor fines of up to 500 drachmas.25 The great majority of the decisions made by the boule take the form of probouleumata, provisional decrees to be voted on by the


24 Decrees of the boule preserved on stone are listed by Rhodes (supra n.7) 271–72. Cf. further IG II² 1623.210–12, 1629.272, 1014–15, 1672.302. Decrees preserved in literary sources are : Hell. Oxy. 6.1; Dem. 47.33, 36; Aeschin. 3.66–67; Dem. 19.129–30 cf. 124; Dem. 19.154; Dem. 18.28; Aeschin. 2.17; 2.55, 110; 3.76; Ath. 171E. A few important decisions of the 390s (394/3) are believed by some scholars to be decrees of the boule passed without reference to the demos, cf. e.g. W. R. Connor, “The Athenian Council. Method and Focus in Some Recent Scholarship,” C J 70 (1974) 37–38. The decrees in question are IG II² 16 (alliance with Eretria), 17 (honorary decree for Storios of Thasos), 18 (honorary decree for Dionysius of Syracuse), Hell. Oxy. 6.1 (decree about Demaenetus). But the date of IG II² 16 is not certain and the alliance has recently been dated 404/3 by P. Krentz, AJP 100 (1979) 398–400; the traditional date, however, is maintained by D. Knoepfier, AJP 101 (1980) 462–69. Next, I follow Rhodes (82–85) in believing that IG II² 17 may be a republication of a decree of the people and that 18 probably is a decree of the people with an unusual formula. Finally, in Hell. Oxy. 6.1 we are told that the boule was overstepping its powers and had its decision overruled by the demos. We know that the ecclesia might delegate some of its powers to the boule (cf. IG II² 127.34–35, 204.85–86, 435.7–9, 1629.264–69; SEG XIV 47B.3); but usually the powers delegated to the boule were confined to making minor additions to the decrees passed in the ecclesia by the demos. Cf. Rhodes 82. For an exceptional situation cf. Dem. 19.154 and Hansen (supra n.21) 44–45.

25 IG I² 105.32 (?); Dem. 47.43; Hesperia 43 (1974) 158.36 (as restored by Stroud).
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demos in the ecclesia. Similarly, the boule has to refer to the nomothetai the bills drawn up and handed in by individual citizens. Finally, in ἐσαγγελιαι εἷς τὴν βουλήν, the council passes only a preliminary verdict (κατάγνωσις), leaving the principal hearing of the case to the dicasteria.

(5) The other archai—perhaps some seven hundred—have no powers to pronounce a judgement except in minor cases in which the matter at issue is less than ten drachmas. Similarly, the archai are empowered to impose only minor fines without reference to the dicasterion. But the archai prepare the trials (διάκρισις), bring the cases before the jurors (ἐισάγειν εἷς τὸ δικαστήριον), and preside over the court (ἡγεμονία δικαστήριον).

This, I believe, describes the essential powers of the fourth-century Athenian bodies of government. It is, of course, a simplification, since Athenian democracy, like all other political systems, permitted of exceptions to the rules. In some cases a board of magistrates was empowered to make an important decision without reference to a decision-making body, viz. the dicasterion, and conversely a decision-making body, viz. the ecclesia, was sometimes empowered to take an initiative. These are the principal exceptions:

(1) Occasionally a board of magistrates was empowered to inflict capital punishment on a criminal without referring the case to a dicasterion. The two most important instances of this exception to the principle μὴ δὲν ἀκριτών ἀποκτέιναι are the power of the boule and of οἱ ἕνδεκα to order instant execution without trial. In both cases capital punishment was probably applied only to criminals who could be classified as outlaws (πολέμιοι) or exiles (φεύγωντες) or 'malefactors' (κακοίρων) in the technical sense.

(2) In some procedures the initiative was a result of a collabora-

26 Cf. Rhodes (supra n.7) 52–81.
27 Dem. 24.47–48. Cf. M. H. Hansen, "οἱ πρῶτοι τῶν νομοθετῶν. A Note on IG II2 222.41–53," ZPE 30 (1978) 155–57, where I argue that the council's role in the nomothesia procedure was restricted to the preparation of the bills. I do not agree with MacDowell's suggestion in JHS 95 (1975) 69 that Epicrates in his decree (Dem. 24.27) prescribes that Timocrates' law was to be passed by 1001 nomothetai and the boule.
29 Arist. Ath.Pol. 52.3 (οἱ ἀποδέκται), 53.2 (οἱ τεταράκτατα); Hesperia 43 (1974) 158.23–25 (οἱ στοιχεῖας, οἱ συλλογικὲς τῶν δήμων, οἱ ἐκμισθητοὶ τῶν ἐφορίων).
33 Cf. Hansen (supra n.32) 17 (with n.3), 18, 114, 119.
tion between the ecclesia and a board of archai, and in other procedures the initiative was even reserved for the ecclesia.

(a) The ecclesia was empowered to instruct the prytaneis to call a special meeting of the assembly, an ἐκκλησία σύγκλητος, or instruct the boule to place some matter on the agenda for the next meeting of the assembly (IG II² 125.6–9, 193.4–8, 360.46–50).

(b) The ecclesia had the exclusive right to decree that the nomothetai be convened; the prytaneis were not empowered to summon the nomothetai without a decree passed by the people.

(c) The ecclesia had the exclusive right to reject or accept an ἐλογισμὸς ἐξ τῶν δήμων. In case of acceptance, the eisangelia was invariably (after ca 355) referred to a dicasterion and heard by the jurors (Dem. 8.28–29; Philoch. FGrHist 328f149; Dem. 19.277–79; Aeschin. 3.224; cf. supra n.21).

(d) The ecclesia was empowered to suspend an arche for misconduct in office; the case was referred to the dicasteria and heard by the jurors.

If we allow for these exceptions, the bodies of government in fourth-century Athens were bisected into archai (which according to Aristotle were κύριαι μηθενός ἢ ὀλγιστῶν) and κύριοι (who made all important decisions when summoned and presided over by the archai).

κύριοι

{ ἐκκλησία

νομοθέται

δικαστήρια


35 Dem. 24.26–27, cf. 21; Aeschin. 3.39; Dem. 3.10, 18.102–07 (on which see Hansen, "Nomos" (supra n.4) 327–29).


37 It is important to note that kyrions is used in two related but different senses: (a) 'sovereign' or 'decision-making' and (b) 'competent' or 'entitled to'. In the Politics (1317b29–30, quoted supra 351) Aristotle states that the archai, in a democracy, are never or hardly ever kyrions. On the other hand, we read in Ath.Pol. 59.1 that the thesmothetai are kyrions to summon the dicasteria. There is, however, no contradiction if we realize that kyrions is used in sense (b) in the second passage but in sense (a) in the first. Similarly, when Aristotle in the Politics asks the question, 'who is kyrion in this type of constitution?', he uses kyrions in sense (a). It is of course only in sense (a) that there is, in democracies, an opposition between kyriones and archai.

38 Kyrion is applied to the people in assembly in e.g. Dem. 13.31, 20.107, 59.4; Xen. Hell. 1.7.12; IG II² 140.10–12.

39 There is no passage where the adjective kyrion is explicitly applied to the nomothetai, but cf. Dem. 20.93 (τοὺς νόμους ... τιθέναι ... παρ' ὁμίν, ἐν τοῖς διωμοκόσισιν, παρ' ὀσπερ καὶ τάλλα κυροῦται) and the nomos quoted in Dem. 24.33 (τῶν δὲ νόμων τῶν κειμένων μὴ ἔξειναι λίσσα μηθένα, ἀλλ' ἐν μη νομοθέταις). Cf. furthermore the enactment formula in the preserved nomoi: διδόσθαι ἐκδόσεί τοῖς νομοθέταις.

40 For a list of passages where the dikastai are called κύριοι (πάντων) cf. Hansen (supra n.9) 17–18, 47–48.
Concerning the relationship between the two bodies of *archai* and the three bodies of *kyrioi*, we can make the following two observations:

(1) The *boule* and its committees—the *prytaneis*, the *proedroi*, etc.—had the sole and exclusive right to summon and preside over the *ecclesia* and to summon the *nomothetai*, whereas there seems only a single example of a committee of the *boule* presiding over a *dicasterion*: in the law about silver coinage the *αι διλετοι στρατηγοί* are entrusted with *ἡγεμονία δικαστηρίων* in *phaseis* brought for offences committed in the agora or elsewhere in the city, except for offences committed in the grain-market (*Hesperia* 43 [1974] 158.18–26). To the best of my knowledge, this provision is unparalleled and, if we take into account how many sources we have for procedure in public actions, there can be little doubt that the provision is exceptional. Even in *eidaggelía* εἰς τὴν *boule* the right to summon the *dicasterion* and to preside over the jurors rested with the *thesmothetai* or the Eleven, but never with the *boule* (Dem. 24.63, Plut. Mor. 833F); and similarly in *euthynai*, the *euthynoi* never preside over a *dicasterion*, but pass on the cases they accept either to the Forty (private actions) or to the *thesmothetai* (public actions) (Arist. Ath. Pol. 48.3–4).

(2) Conversely, the other magistrates, who had *ἡγεμονία δικαστηρίων*, had no right to summon and to preside over the *ecclesia* or the *nomothetai*. Admittedly, the *strategoi* may have been empowered to have an *ecclesia* summoned, but if so, the procedure was that the *strategoi* applied to the *boule* and asked it to summon the *ecclesia*. Similarly, the *thesmothetai* might demand that a revision of the law-code be referred to the *nomothetai*, but again the *thesmothetai* had to apply to the *boule* and to leave the summoning of the *nomothetai* to the *prytaneis* (Aeschin. 3.38–40).

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41 For the prerogative of the *strategoi* to convene an assembly see Thuc. 2.59.3 and Plut. *Phoc.* 15.1. For the *boule* and the *prytaneis* as intermediaries between the *strategoi* and the *ecclesia* see Thuc. 4.118.14; IG II² 897, 911, 954; SEG XXI 440, XXIV 134; restored at IG I² 98.20 (not at I² 93). We have two fifth-century decrees moved by the board of *strategoi*, IG I² 89.55 and 92.5. For *ecclesia* convened by orders of the *boule* (and not by the *prytaneis* on their own initiative) see *Hell.Oxy.* 6.2; *Xen. Hell.* 6.5.33; *Hesperia* 7 (1938) 476–79 no. 31. The Hellenistic decrees are discussed in Hansen (supra n.34) 151–52, and a survey of the powers of the *strategoi* vis-à-vis the *ecclesia* can be found in Rhodes (supra n.7) 44–46.
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To sum up, the boule acted as originator when a decision had to be made by the ecclesia or by the nomothetai, whereas the other archai had the exclusive right to be originators towards the dicas­teria. This statement can be illustrated by a figure:

| Initiative: | boule | αι άλλαι ἀρχαι |
|            |       |                |
| Decision:  | ἐκκλησία | νομοθέται | δικαστήρια |

III. The Combination of Initiative and Implementation

Apart from the right to summon and to preside over the kyrioi, who made the decisions, the archai had another important function, viz. the administration of those decisions. In his chapter about archai in Politics 6.8 Aristotle distinguishes (1322b12–17, quoted supra 348) between εἰσαγωγή (initiative) and τέλος (implementation). Earlier in the same chapter he emphasizes that judicial decisions have no effect if there are no archai to enforce them: οὐδὲν ὑπερλογὸς γίνεσθαι μὲν δίκαις περὶ τῶν δικαίων, ταύτας δὲ μὴ λαμβάνειν τέλος (1322a5–6). Accordingly, Aristotle states in the other central chapter about archai (4.15) that the essential duty of an arche is to issue orders: μάλιστα δ’ ὅς ἀπλώς εἶπεν ἀρχὰς λεκτέον ταύτας δόσις ἀποδέδοται βουλεύσασθαι τῇ περὶ τινῶν καὶ κρίναι καὶ ἐπιτάξαι, καὶ μάλιστα τούτῳ τὸ γὰρ ἐπιτάξειν ἀρχικώ­τερόν ἐστίν (1299a25–28).42

Again, Aristotle’s general analysis of the powers and duties of the archai is confirmed by an inspection of the Athenian sources. In nomoi and psephismata preserved on stone or quoted in the forensic speeches, many of the provisions are instructions to the archai that the decisions be carried into effect, and in all public actions the archai are responsible for the execution of the judgement. Exempli gratia I adduce three examples—a nomos, a psephisma, and a krisis.

42 Cf. also Xen. Mem. 3.9.11 and the ephebic oath (Tod II 204), which included a promise to obey the authorities.
(1) In the nomos about silver coinage (Hesperia 43 [1974] 157–59) the main provision is that two dokimastai, one in Athens and one in the Peiraeus, shall examine all the silver coins submitted to them, in order to enforce the acceptance of genuine Athenian silver coins. The law includes an injunction to the tradesmen to accept the decision made by the dokimastes, but most of the law consists of detailed instructions to the archai about the carrying into effect of the main provision. No less than seven different boards of archai are mentioned in the law. 43

(2) In 325/4 the ecclesia passed a decree about the foundation of a naval station in the Adriatic. In consequence of this colonization decree the ecclesia passed a decree about the despatch of a squadron. This decree is preserved (IG II² 1629.165–271), and it consists of instructions to the archai and to the trierarchs.

(3) If a krisis pronounced by a dicasterion entailed the confiscation of property, the carrying into effect of the confiscation rested with the Eleven and the poletai. In the accounts of the poletai for the year 367/6 we hear inter alia that a certain Theosebes had been convicted of hierosylia, and that his property had been confiscated by the Eleven and sold at an auction arranged by the poletai (Hesperia 10 [1941] 15–27 no. 1.1–39).

In order to enforce all the decisions made by the nomothetai, the ecclesia, and the dicasteria, the archai were invested with special authority. The outward sign of the authority was a crown worn by all archai on duty, and the authority was guaranteed by special protection and special powers. Assault and battery was punished more severely if the victim was an arche on duty. 44 If any person refused to comply with an order issued by an arche, the magistrate in question was empowered to inflict a fine of up to fifty drachmas, and the boule was even empowered to inflict fines of up to 500. 45

Summing up, the dual function of the archai in relation to the kyrioi can be illustrated in this figure:

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44 Dem. 21.32: the penalty for having insulted or assaulted an arche on duty was total and permanent atimia, and the offender was to be prosecuted by a special type of public action, whereas the same offence was actionable by a δίκη κακηγορίας or a γραφή ἐβρεως if committed against an ordinary citizen.

45 See supra nn.25 and 30.
A simplified model is: \( \text{ἀρχαί} \rightarrow \text{κύριοι} \rightarrow \text{ἀρχαί} \). The powers of the archai consist in initiative and implementation, but the archai, including the boule, never make any important decision.

### IV. The Relationship between \( \text{αἱ ἀρχαί} \) and \( \text{oἱ βουλόμενοι} \)

It remains to deal with the function of \( \text{oἱ βουλόμενοι} \) (see 347 supra) and to give a more precise description of what initiative consists in. The archai had the exclusive right to prepare the decisions, to convene the decision-making bodies, and to preside over them. But who devised and proposed the decisions to be made? Regularly, the initiative, here meaning the very first step in the procedure, was taken neither by the kyrioi, nor by the archai, but by ordinary citizens who had no specific authority and served as originators on their own responsibility. When acting in this capacity, an Athenian citizen is called \( \text{Ἀθηναῖων ὁ βουλόμενος ὃς ἔξεστιν} \). This phrase, either in its full form or abbreviated,\\(^{46}\\) oc-

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\(^{46}\\) Αθηναῖων ὁ βουλόμενος ὃς ἔξεστιν: Hesperia 43 (1974) 158.34; 49 (1980) 263.25; Dem. 24.63; 59.16; Aeschin. 1.32. Ἀθηναῖων ὁ βουλόμενος: IG II² 204.22, 40–41; 244.41; 337.22–23; 365.19. Hesperia 49 (1980) 263.28; 264.41; Lys. fr. 233.2; Dem. 24.23, 33; 59.90; Aeschin. 1.23; Arist. Ath.Pol. 39.1. ὁ βουλόμενος ὃς ἔξεστιν: Dem. 24.105. ὁ βουλόμενος: IG I² 14.8; 41.61; 64.6; 84.26; 133.11; Andoc. 1.23, 26, 83–84; Lys. 25.14; Dem. 13.11; 18.138; 19.117; 21.45; 23.28; 24.18, 25, 105; 43.54; Prooem. 10.1, 17.1; Aeschin. 2.65; 3.220; Hyp. 2 fr. 3; fr. 24; Lycurg. 1.121; Ath.Pol. 9.1; 29.2; 43.4, 6. ὃς ἔξεστιν: Dem. 59.52; Ath.Pol. 63.3. τῶν πολιτῶν ὁ βουλόμενος: Ps.-Xen. Ath.Pol. 1.2; Isoc. 20.2; Dem. 58.14; Aeschin. 3.2, 23; Hyp. 3.11. ἱδιωτίς: Andoc. 1.84; Dem. 43.71.
curs in numerous nomoi and psephismata. It denotes any Athenian adult male citizen who is epitimos. Like δήμος and ἄρεις, it is used as a constitutional technical term, referring to ‘the active citizen’, and the sources justify, in my opinion, the inclusion in the figure on page 346 of οἱ βουλόμενοι side by side with δήμος and οἱ δυσμοκότες which denote regular bodies of government.

Δ βουλόμενος is frequently regarded as the protagonist in Athenian democracy, and Aeschines, for example, emphasizes that one of the principal differences between an oligarchy and a democracy is that, in a democracy, it is ho boulomenos who addresses the people whereas the right to speak, in an oligarchy, is restricted to those in power. What Aeschines has in mind is the official invitation in the ecclesia to address the people: the formula used by the keryx was τίς ἄρεις βουλεύσαι; In this formula, βουλεύσαι is not an auxiliary with no meaning of its own. Comparison with Ἀθηναῖον ὥς βουλόμενος οἷς ἤξεστιν indicates that the verb has a precise meaning, viz. to take it upon oneself to be promoter. In support of this interpretation is the witty dialogue in Aristophanes’ Plutus between an honest man and a sycophant. The honest man asks the sycophant who he is and the sycophant states that he is in charge of all public and private affairs. τί μαθὼν; asks the honest man. βουλομαι is the laconic reply; and a few lines later the sycophant forces the honest man to admit the importance of ho boulomenos for the administration of justice: Λ.: οὐκούν δικαστὰς ἤξεπτηθες ἡ πόλις ἀρχεῖν καθίστησιν; Συ.: κατηγορεῖ δὲ τίς; Λ.: ὁ βουλόμενος. Συ.: οὐκούν ἄκεινος εἰμ’ ἐγώ, ὡς’ εἰς ἐμ’ ἥκει τῆς πόλεως τὰ πράγματα (907–19).

Ho boulomenos is the dominating promoter in relation to the jurors (οἱ δυσμοκότες) acting as δικασταὶ or as νομοθέται, whereas, in the ecclesia, ho boulomenos has to share the initiative with the boule. The relationship between ho boulomenos and the three decision-making bodies of government may be summarized as follows:

47 IG II2 244.41; Hesperia 43 (1974) 158.34; 49 (1980) 263.25, 28; 264.41; Dem. 23.28; 24.23, 33, 63, 105; 43.54, 71; 59.16, 52; Hyp. fr. 24.
48 IG I1 14.8; 41.61; 64.46; 84.26; 133.11; IG II2 204.22, 40–41; 337.22–23; 365.19; Andoc. 1.83–84; Arist. Ath.Pol. 29.2.
49 Αθηναῖοι ὁ τῶν πολιτῶν indicates that δ βουλόμενος has to be a citizen, and οἷς ἤξεστιν indicates that he must be epitimos, cf. Arist. Ath.Pol. 63.3, where οἷς μὴ ἤξεστιν are atimos liable to endeixis.
50 Aeschin. 3.220: ἐν μὲν γὰρ ταῖς ὀλιγαρχίαις οὐχ ὁ βουλόμενος, ἀλλ’ ὁ δυναστεύων δημη­

(1) Both public and private actions were brought before the diacasteria by a private citizen who applied to the competent magistrature for a trial to be held. The arche in question supervised the preparations for the trial, and via the thesmothetai he had a diacasterion convened over which he presided. In principle, an arche never prosecuted.\textsuperscript{52} Prosecution in private actions rested with the wronged person,\textsuperscript{53} but in public actions the initiative was left to ho boulomenos on behalf of the wronged person and, especially in political trials, on behalf of the polis.\textsuperscript{54} Lycurgus (1.4) admits expressly that laws and law-courts are worthless if there are no private citizens who will take it upon themselves to be prosecutor: οὐδ’ ὁ νόμος οὐδ’ ἡ τῶν δικαστῶν ψήφος ἀνευ τοῦ παραδώσαντος αὐτοῖς τούς ἀδικοῦντας ἰσχύει. The citizen’s right and obligation to prosecute in public actions is ascribed to Solon and praised as one of his most democratic reforms: δοκεῖ δὲ τῆς Σώλωνος πολιτείας τρία ταῦτ’ εἶνα τα δημοτικώτατα . . . ἐπείτα τὸ δὲξεῖν τῷ βουλομένῳ τιμωρεῖν ὑπὲρ τῶν ἀδικομένων (Arist. Ath. Pol. 9.1). And in conformity with this general principle, ho boulomenos is explicitly mentioned as the prospective prosecutor in almost all the preserved nomoi which deal with the administration of justice in public actions.\textsuperscript{55} So the initiative rests exclusively with ὁ βουλόμενος, ἡ

\textsuperscript{52} There are, however, exceptions to this rule: the boule had an obligation to impeach other archai for misconduct in office (Arist. Ath. Pol. 45.2) and so a bouleutes might ex officio act as prosecutor. Known examples are: the trial of the poristai, the praktores, and the poletai of 419/8 (?) (cf. Hansen [supra n.28] Cat. no. 134); the trials of Antiphon, Archepoltemus, and Onomaces, where synegoroi elected from among the bouleutai collaborate with the board of generals (Cat. no. 135–37); the trial resulting from the citizenship decree for Apollodoros, one of the murderers of Phrynichus (Cat. no. 138); and the trial of Cleophon (Cat. no. 139). Furthermore, we have one example of an apografe brought ex officio by a bouleutes, IG II\textsuperscript{2} 1631.350–403; cf. M. H. Hansen, “Perquisites for Magistrates in Fourth-Century Athens,” CI Med 32 (1980) 117–19. As regards the other archai I refer to the law quoted in Dem. 43.75 instructing the archon to take the initiative if he learns about any case of kakosis. Cf. Lys. 14.21 and D. M. MacDowell, The Law in Classical Athens (London 1978) 237.


\textsuperscript{54} Any public action is brought by ho boulomenos: Arist. Ath. Pol. 9.1, quoted infra. Ho boulomenos as synegoros for the prosecutor, Hyp. 2 fr. 3; for the defendant, Hyp. 3.11. Prostimesis proposed by ho boulomenos: nomos in Dem. 24.105. Cf. Lipsius (supra n.31) 238ff.

αρχή is intermediary, and the decision is reserved for οἱ δικασταί who are κύριοι.

(2) All laws were passed by the nomothetai, but they were proposed by an ordinary citizen, ho boulomenos, who published his proposal before the eponymous heroes and handed it in to the boule to be read out to the people in the ecclesia.56 The role of ho boulomenos is apparent from the two laws extant about nomothesia, both quoted in Demosthenes' speech Against Timocrates.

(3) All psephismata were passed by the demos in the ecclesia and a decree was either a ratification of a specific probouleuma, or a counterproposal to a specific probouleuma, or a proposal in response to an open probouleuma.57 In the first case the originator was a bouleutes, viz. the member of the boule who proposed and carried the specific probouleuma. In the other two cases the originator was a private citizen, one of οἱ βουλόμενοι,58 and it is significant that ho boulomenos is explicitly mentioned in one of the few preserved open probouleumata: γνώμην δὲ ξυνβάλλεσθαι τῆς βουλῆς εἰς τὸν δήμον ὁτι δοκεῖ τῇ βουλῇ ἀκούσαντα τὸν δήμον τῶν Κιτίεων περὶ τῆς ἰδρύσεως τοῦ ἱεροῦ καὶ ἄλλου Ἀθηναίων τοῦ βουλομένου βουλεύσασθαι ὅτι ἀν αὐτῷ δοκεῖ ἀριστον εἶναι (IG II² 337.17–25).

In all three cases ho boulomenos acted on his own responsibility and under penalty of the law. In a public action the prosecutor ran the risk of having a προβολή or a γραφὴ συνκοφάντιας brought against him, and he was fined 1000 drachmas and punished with partial atimia59 if he did not obtain one fifth of the votes of the jurors. A citizen proposing a new nomos or psephisma was liable to prosecution by a γραφὴ νόμον μὴ ἐπιτήδειον θέιαι or a γραφὴ παρανόμων.60 These public actions were brought primarily against proposers of nomoi or psephismata which conflicted with the laws in force, but it was a sufficient reason for an indictment that the nomos or psephisma was considered contrary to the interests of

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57 Cf. Rhodes (infra n.7) 64–68.
58 Cf. Rhodes (infra n.7) 69–71. For the role of ho boulomenos in the debate in the ecclesia compare the herald's invitation to speak (τῆς δοξῆς bouleías; supra n.51) with references to ho boulomenos in the speeches (Dem. 13.11; 18.138; Prooem. 10.1, 17.1; Aeschin. 2.65; 3.2, 220). For eisangelia and epangelia raised in the ecclesia by ho boulomenos see supra n.55. For ἑκτιηπίας submitted in the ecclesia by ho boulomenos cf. Arist. Ath. Pol. 43.6
59 See Hansen (infra n.28) 29 and (infra n.32) 63–65.
60 Cf. Hansen “Nomos” (infra n.4) 325–29 for the first, (infra n.9) for the second.
the Athenian people. To perform the task of _ho boulomenos_ was often a risky business. In a public action he might be fined simply because he was a less successful orator than his opponent, and by a _γραφή νόμον μὴ ἐπιτῆδειν θεῖαι_ or a _γραφή παρανόμων_ the proposer of a _nomos_ or a _psephisma_ might be heavily fined or even sentenced to death, even if his proposal had been passed unanimously by the _nomothetai_ or the _ecclesia._

Describing the relation between _ho boulomenos_ and the three decision-making bodies, I have emphasized the essential similarities. In two important aspects, however, the relation between _ho boulomenos_ and the _ecclesia_ is different from that between _ho boulomenos_ and the jurors (acting either as _dikastai_ or as _νομοθέται_):

1. When addressing the jurors, _ho boulomenos_ was an outsider who did not take part in the decision made about his proposal, as he was not a member of the assembly he addressed and was not entitled to vote. In the _ecclesia_, however, _ho boulomenos_ was at the same time an _ἐκκλησιαστὴς_. He had a double function since he was undoubtedly allowed to vote for his own proposal.

2. The _archai_ had virtually no possibility of being originators in relation to the _nomothetai_ and the _dikastai_, whereas the _boule_ had a considerable share in the initiative towards the _demos_ in the _ecclesia_. About half of all known decrees of the fourth century are in fact ratifications of specific _probouleumata_ proposed and carried in the _boule_ by _bouleutai_.

It is unclear, however, whether the proposer of a specific _probouleuma_ acted _ex officio_ or rather was regarded as a citizen acting on his own responsibility. In the preambles of the fourth-century _psephismata_ the proposer is always referred to by his full name ( _onoma, patronymikon, demotikon_), but in _probouleumatic_ decrees it is never recorded that he was a _bouleutes_ responsible for a specific _probouleuma_. As regards the proposer, there is no difference between _probouleumatic_ and _nonprobouleumatic_ decrees. That all specific _probouleumata_ must have been moved by members of the council is a (probably correct) deduction made by

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61 This is commonly accepted for the _γραφή νόμον μὴ ἐπιτῆδειν θεῖαι_. For the _γραφή παρανόμων_ cf. Hansen ( _supra_ n.3) 145 n.40.
62 Cf., e.g., Dem. 59.5–7; Aeschin. 3.16. For the penalties in a _γραφή παρανόμων_ see Hansen ( _supra_ n.9) 53. All proposers (and not only state officials) could be punished for their proposals; cf. Hansen ( _supra_ n.9) e.g. Cat. nos. 17 and 29. I shall return to this problem in a future article.
63 Cf. Rhodes ( _supra_ n.7) 79.
modern historians. The Athenians seem to have lumped all proposers together no matter whether they were bouleutai or bouleumenoi in the strict sense.

To sum up, the relationship between originators, intermediaries, and decision-makers can be illustrated by this figure:

\[ \begin{align*}
\delta \betaουλόμενος & \quad \rightarrow \quad \text{οἱ κύριοι} \\
\text{αἱ αρχαί} & \quad = \quad \begin{cases} 
\text{ἐκκλησία} \\
\text{νομοθέται} \\
\text{δικαστήρια}
\end{cases}
\end{align*} \]

If we turn from initiative to implementation, we find a reversed interaction between ordinary citizens and archai. Laws, decrees, and judgements are partly injunctions to all citizens and partly instructions to the archai to carry out the decisions. But this is done by the archai issuing orders to the citizens or rather to the entire population. Again I adduce three examples, a nomos, a psephisma, and a krisis:

1. The law about silver coinage (supra 358) is partly an injunction to all tradesmen to respect the decisions made by the δοκιμαστῆς, and partly instructions to seven different boards of archai to see that the provisions of the law are carried into effect.
2. A mobilization order passed by the ecclesia as a psephisma can be an injunction to all citizens to report with their weapons on a fixed day, and it can be an instruction to the competent archai to call up so many citizens by drawing up conscription registers.
3. A verdict in a public action is partly an injunction to the convicted person and partly an instruction to the competent archē to carry out the decision.

The entire political process in fourth-century Athens can be illustrated by the following figure:

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64 Cf. Rhodes (supra n.7) 63 with n.3. Note further that we have two fifth-century examples of decrees moved by the board of strategoi (supra n.41).
65 For an example of a mobilization decree which takes the form of instructions to the trierarchs, the councillors, and the demarchs, see Dem. 50.4–6; for a decree mobilizing the citizens, Dem. 3.4 and Arist. Ath.Pol. 53.7.
66 Cf. Lipsius (supra n.31) 942–52.
I shall immediately make one reservation: the diagonal symmetry indicated in the figure is valid for the archai, but not without an important modification for the citizens, both acting as boulomenoi and subject to the decisions made by the kyrioi. The political initiative rested in fact with a very small group of adult male citizens, amounting to no more than a few hundred, who acted as hoi boulomenoi; whereas the population subject to the decisions made by the kyrioi and carried out by the archai comprised all adult male citizens, citizen women and children, and metics and slaves, a total of several hundred thousand human beings.

V. Enumerations of Bodies of Government in the Sources

I have suggested that the bodies of government in fourth-century Athens comprised: ecclesia, nomothetai, dicasteria, and archai (including the boule). Abundant evidence justifies the inclusion of each of these agencies, establishes ecclesia, nomothetai, and dicasteria as three separate bodies, and supports the classification of the boule as an arche. Nevertheless, no one source mentions these four (or five) agencies side by side in a survey of how Athens was governed. On the other hand, in the forensic speeches there are half a dozen passages where the ecclesia, the boule, and the dicasteria are enumerated side by side, in addition to Demosthenes 25.20

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68 Dem. 20.100; 23.97; 24.9, 50, 99; 57.56: quoted in Hansen (supra n.3) 132–33.
(quoted *supra* 346) mentioning the *archai* as a fourth agency. Similar enumerations can be found in Aristotle. So the sources often juxtapose *ecclesia, boule,* and *dicasterion:* but why are the *nomothetai* and the other *archai* passed over in silence?

The reason for mentioning the *boule* to the exclusion of other *archai* is probably that the *boule* was by far the largest and most important board of magistrates. The other *archai* were regularly grouped in boards of ten only, and very few boards were on duty daily. Probably most *archai* practised a division of labour so that each magistrate could discharge his duties in a few days every month. Admittedly, instead of mentioning single boards of *archai,* an author might include, in his enumeration of bodies of government, a reference to *archai* in general. This is what we find in Demosthenes 25.20, and it is a curious fact that most of the other enumerations of *demos, boule,* and *dicasterion* occur in a context where a reference to the other *archai* would be out of place.

I believe that the *nomothetai* are passed over in silence for a different reason. The Athenians did not like the idea that laws were moved by private citizens and passed by a body of government, almost as *psephismata* were proposed and carried in the *ecclesia.* They clung to the old idea that *nomoi* were permanent and not subject to change. After the restoration of democracy in 403/2 the Athenians instituted a body of *nomothetai* and formal procedures for an annual revision of all laws and for the passing of new *nomoi.* Nevertheless, the Athenians maintained that the true sovereign was not the *nomothetai,* but the *nomoi,* and even new *nomoi* were regularly ascribed to Solon, although they were in fact proposed by contemporary politicians and passed by the *nomothetai.* By this device the fiction of an ancient body of laws was
maintained; and similarly, instead of juxtaposing *demos, nomothetai*, and *dicasteria*, the orators preferred to juxtapose *nomoi, psephismata*, and *krisis* (Aeschin. 1.177–78), or to mention *nomoi* side by side with *ecclesia* and *boule* (Aeschin. 3.2; Dem. 25.20). Whenever possible, the decision made, the *nomos*, is cunningly substituted for the decision-making body, the *nomothetai*. Here we have a clash between ideology and reality, and the recovery of an increasing number of fourth-century *nomoi* passed by the *nomothetai*, combined with study of decisions made by the Athenians in the period 403–322, reveals a gap between the ideal constitution and the working of the democracy.

So it causes no surprise that the only board of magistrates mentioned in enumerations of bodies of government is the council, and that the *nomothetai* are passed over in silence. Furthermore, the *ecclesia, boule*, and *dicasteria* were the traditional three agencies and the most conspicuous. The people's assembly on the Pnyx attracted 6000 or more citizens and forty *ecclesiae* were held in a year.\(^73\) The *boule* numbered 500 and was convened more than 250 times every year.\(^74\) *Dicasteria* were formed on 150–200 court days,\(^75\) and on an ordinary court day some 1500–2000 dicasts were selected by lot.\(^76\) On the other hand, the *nomothetai* held on average one session in a month, according to Demosthenes, who is probably even exaggerating.\(^77\) And, compared with the *boule*, other boards of *archai* were extremely small. Although they performed an indispensable and important task, small bodies of ten

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\(^73\) For 6000 as a regular attendance in the fourth century see M. H. Hansen, "How Many Athenians attended the *Ecclesia*?" *GRBS* 17 (1976) 115–34. For exactly forty *ecclesiae* in a year see Hansen (*supra* n.21) 44–45.

\(^74\) The *boule* did not meet on *ημέραι ἁρκής* (Arist. *Ath.Pol.* 43.3) comprising annual festival days and probably *ημέραι ἀποφράξ* as well. Cf. J. D. Mikalson, *The Sacred and Civil Calendar of the Athenian Year* (Princeton 1975), and "ἡμέρα ἀποφράς," *AJF* 96 (1975) 26–27. On the other hand, the *boule* was regularly convened on monthly festival days (cf. Mikalson, *Calendar* 196–97) and on assembly days (Aeschin. 1.112; Dem. 19.70; Andoc. 1.36). Cf. M. H. Hansen, "The Duration of a Meeting of the Athenian *Ecclesia*," *CP* 74 (1979) 46. The implication is that the *boule* was convened on some 265 days in a year.


\(^76\) In *Ath.Pol.* 63–66 Aristotle describes the procedure for the sortition of jurors in major private actions or in ordinary public actions heard by panels of 401 or 501 *dikastai* each; cf. H. Hommel, *Heliaia* (Leipzig 1927) 72, 77. It is apparent from 66.1 that on a regular court day at least four and presumably even more *dicasteria* were formed. Hence the number of jurors selected by lot on an ordinary court day must be at least 1600–2000.

\(^77\) Dem. 24.142; cf. Dem. 20.91; Isoc. 8.50; 12.144; 15.82. Cf. Hansen (*supra* n.4) 49–52.
could easily be forgotten in a sweeping statement emphasizing the ecclesia, boule, and dicasteria as the principal bodies of government. With these modifications and reservations the tripartition of the agencies is not untrue, and not incompatible with the fact that the powers of the boule, as of other archai, were confined to eisphora and telos, the preparation and implementation of decisions made by the sovereign bodies, comprising the ecclesia, nomothetai, and dicasteria.

VI. Conclusion

The principles argued in this article can be summed up in five statements: (1) In fourth-century Athens all important decisions were made by three different bodies of government—the ecclesia, the nomothetai, and the dicasteria. (2) The boule was an arche doing in relation to the ecclesia and the nomothetai what the other archai did in relation to the dicasteria. (3) Three different agents were involved in the decision-making process: the originators (ol boulomevoi), the intermediaries (ai dρχαι), and the decision-makers (ol κύριοι). (4) In the Athenian democracy a basic separation of powers consisted in a division of initiative and decision: the archai took initiatives but made no decisions, and the kyrioi made decisions but took no initiatives. (5) The archai had a dual function in the political process: they prepared the decisions to be made by the kyrioi, and they carried into effect the decisions made by the kyrioi.78

APPENDIX: THE ATHENIAN ‘POLITICIAN’

It will be convenient here to collect the Athenian usages for ‘politician’. An examination of the extant speeches shows that rhetor and strategos

78 I apologize for the numerous references to my own earlier publications. This article is in some respects a synthesis of views stated sporadically in my previous writings, where references and full acknowledgements to the work of other scholars can be found. A version of this paper was delivered at the meeting of the American Philological Association held in New Orleans in December 1980. I am most grateful for the invitation to join the seminar on “Athenian Law and Law Courts,” and I should like to thank the other participants, Prof. Victor Bers (moderator), Prof. Michael Gagarin, Dr. Brook Manville, Prof. Martin Ostwald, and Prof. Lionel Pearson. I am grateful for the comments made on that occasion by Prof. Ernst Badian, Prof. Raphael Sealey, and the other members of the panel. Finally I should like to express my gratitude to the Danish Research Council for the Humanities for its travel subvention.
are the two most common and characteristic terms to describe ‘a politician’, and they are often mentioned side by side: Isoc. 5.81; 15.30; Dem. 2.29 = 13.20; 18.170, 205; 22.66 = 24.173; 23.184; Ep. 1.8; Aeschin. 3.7; Din. 1.71, 90, 112; 2.26; 3.19; Hyp. 1.24.7, 12; 3.27; Lykurg. fr. 24; cf. Xen. Mem. 2.6.15; Arist. Rh. 1388b18; Ar. Eccl. 244–47. The close relationship between rhetores and strategoi is furthermore discussed in: Isoc. 5.81; 15.30; Dem. 18.212, 246; Din. 1.76; Arist. Pol. 1305a7ff; Plut. Phoc. 7.5; Mor. 486D. The strategos was a magistrate while the rhetor had no official status, but in a political context the word is no less well defined than strategos. It is used unambiguously in the Brea decree (IG 3 46.25), in the eisangeltic law (Hyp. 3.8), in the law about dokimasia ton rhetoron (Aeschin. 1.28, cf. Lys. fr. 86–87), and probably in the law about graphe paranomon (Harp. and Lex. Cant. s.v. ῥητορική γραφή). Rhetor denotes a citizen who moves a psephisma in the ecclesia (Lys. 13.72; Dem. 3.22; 18.219; 18.217; 23.201; 59.43, 105; Aeschin. 1.188; 3.16, 31, 55, 203–04; Pl. Grg. 456A; Arist. Pol. 1255a8) or in the boule (Lys. 22.2) or a nomos before the nomothetai (Dem. 24.123–24, 142) or brings a public action before the dicasteria (Dem. 58.62; 59.43; Aeschin. 1.34; Din. 1.100; Lycurg. 1.31; Isoc. 8.129; Ar. Ach. 680). In a wider sense rhetor signifies a speaker addressing the ecclesia (Lys. 12.72; Dem. 12.14; 18.170; 19.23; Prooem. 53.1; Ep. 2.10; Aeschin. 1.28, 30, 186; 2.74, 161; 3.2, 4; Hyp. 3.1, 4, 8, 9, 29; Isoc. 14.4, 15.138; Thuc. 3.40.3; 6.29.3; 8.1.1; Pl. Ap. 32B; Alc. II 144E; Ar. Ach. 38; Eq. 1350; Thesm. 292, 382; Eccl. 195, 244) or addressing the boule (Lys. 30.22; Dem. 22.37; 24.147; 51.2) or a synegoros addressing the court (Isae. 1.7; Dem. 20.74; 21.190; 48.36; Din. 1.112; Lycurg. 1.43). Other sources in which rhetor is used in the sense ‘politician’ are: Lys. 18.16; 31.27; Dem. 11.18; 18.94, 130, 212, 226, 246, 278, 280, 282, 308–09, 318–19; 21.189; 23.147, 185; 25.38, 40, 62, 97; 32.31; Ep. 1.4; Aeschin. 1.7, 171; 2.79, 176; 3.20, 33, 73, 130, 148, 231, 233, 249; Din. 1.4, 38, 86, 98, 102; fr. 6.1; Hyp. 1.12, 21; 3.22, 30, 36; fr. 84, 97; Andoc. 3.1; Isoc. 5.2; 7.14; 8.5, 26, 124; 12.15; 13.9; 14.38; 15.105, 234; Democrites fr. 1; Pl. Cri. 50b; Grg. 465c, 466A; Symp. 215ε; Ar. Eq. 325, 358, 425, 880; Plut. 30, 379. Rhetor in the ecclesia (proposer or speaker): Dem. 18.272; 48.24; Aeschin. 3.9; Lycurg. fr. 24; Isoc. 12.12, 14.3–4; 15.231; Arist. Rh. 1418a30; Pl. Grg. 502ε, Alc. I 114D; Theophr. Char. 7.7; Ar. Eq. 60; in the boule: Aeschin. 1.112, 3.9; Xen. Hipparch. 1.8; before the dicasteria (prosecutor or synegoros): Dem. 19.217; Pl. Ap. 18A, Euthyd. 305b, Thet. 172c, 201A. For the official status of rhetores cf. furthermore: M. I. Finley, “Athenian Demagogues,” Past and Present 21 (1962) 19, and S. Perlman (supra n.67) 353–55. Often other words are used synonymously with rhetor, such as δομοποιόν (Dem. 18.94, 278; Isoc. 15.231) referring to a speaker in the ecclesia (Dem. 8.32), in the boule (Dem. 22.36), before the nomothetai (Dem. 20.91) or the dicasteria (Dem. 23.4). Rhetor = σύμβουλος (Dem. 18.94, 212; 21.189; 58.62). σύμβουλοι καὶ στρατηγοί
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= ῥήτορες καὶ στρατηγοί (Din. 1.76). Rhetor = δημηγόρος (Xen. Mem. 2.6.15), = ὁ γράφων (Dem. 18.219), = ὁ λέγων (Dem. 58.62). Unlike rhetor, the words πολιτευόμενος, σύμβουλος, and δημηγόρος are not used in laws and decrees as legal technical terms.

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