Athenian *Nomothesia*

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Shortly after the restoration of the democracy in 403/2, and probably in connection with the revision of the law code, the Athenians introduced a distinction both in form and in substance between *nomoi* and *psephismata*. In future, any permanent general rule had to be passed as a *nomos* by the *nomothetai*, while the powers of the *ekklesia* were restricted to foreign policy and, in domestic policy, to the passing of individual rules and/or rules with a limited period of validity. But who were the *nomothetai* and how did they legislate?

During the last decade various approaches have been taken to these legislative procedures; in the present paper I argue the following points: (1) The alleged Solonian law on *nomothesia* discussed by Demosthenes in the Leptines speech and quoted after §92 is probably identical with the ‘Repeal Law’, of which a part is quoted in the Timocrates speech at §33. (2) The differences between the various legislative procedures lie in the opening phase, describing how the legislation was initiated and by whom. Once the procedure was begun, it was essentially the same in all forms of legislation, no matter whether a new law was added to the law code, or a law in force was replaced by an amendment, or a law in force was repealed without further changes in the code. (3) The Review Law and the Repeal Law are probably not two different laws, but rather two sections of legislation regulating the replacement of a law in force by an alterna-

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3 I adopt the convenient nomenclature introduced by MacDowell; thus, the ‘Review Law’ is the law quoted by Demosthenes at 24.20–23, the ‘Repeal Law’ is the law quoted at 24.33, and the ‘Inspection Law’ is the law paraphrased by Aeschines at 3.38–40.

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tive bill. (4) In addition to general rules, the nomothetai were empowered to pass a nomos ep' andri if permission was given in the ekklesia by a quorum of 6,000 voting by ballot. (5) Our evidence indicates that the nomothetai were invariably appointed from among the panel of 6,000 jurors. (6) The nomothetai voted by a show of hands and not by ballot. (7) Leptines' law on ateleia had been passed by the nomothetai before it was blocked by a graphe nomon me epitedeion theinai.

I. ὁ παλαιὸς νόμος and the Repeal Law

How many laws on legislation were in effect in fourth-century Athens? We have explicit evidence for three laws and procedures: (a) the Review Law (Dem. 24.20–23), regulating nomothesia initiated in the ekklesia in consequence of the annual epicheirotonia ton nomon; (b) the Repeal Law (Dem. 24.33), regulating nomothesia initiated by a citizen (ho boulomenos) who proposed to have one law in the law code replaced by another; and (c) the Inspection Law (Aeschin. 3.38–40), regulating nomothesia initiated by the thesmothetai, who were responsible for preventing inconsistencies in the law code by having one of two conflicting laws abrogated.

In a new interpretation of the Leptines speech, however, MacDowell has reconstructed two more laws and procedures: the Old Legislation Law (ὁ παλαιὸς νόμος, invoked by Demosthenes at 20.92), abrogated ca 370 and replaced by the New Legislation Law, warranting the procedure used both by Leptines for his bill on ateleia and by Epicrates and Timocrates for their bill concerning debtors to the state. In my earlier article I argued, following Schöll, (1) that ὁ παλαιὸς νόμος quoted by Demosthenes at 20.92 is probably identical with the Repeal Law quoted at 24.33, and (2) that there is no need to reconstruct a special law (MacDowell's "New Legislation Law") to provide a basis for the procedure used by Leptines and Timocrates.

In his recent treatment of the problem, Rhodes accepts my rejection of the Old Legislation Law and the New Legislation Law, but is

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4 Cf. MacDowell (supra n.2) 63–66.
5 Cf. Hansen (supra n.2) 92f; R. Schöll, "Ueber attische Gesetzgebung," SitzMünchen (1886) 111.
6 Cf. Rhodes (supra n.2) 56: "I am reluctant to believe with MacDowell that the New Legislation Law and the unamended Review Law were in force simultaneously. However, I agree with him that in Lept. Demosthenes is not simply conjuring up a phantasy but is trying to impose on the jurors a genuine legislation law." But the "genuine legislation law" is not the Old Legislation Law (reconstructed by MacDowell), but
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not satisfied with my view that ὁ παλαιὸς νόμος can be identified with the Repeal Law: “the Repeal Law does not cover all Demosthenes’ objections to the procedure followed by Leptines, so it is better to think that (as in Tim.) Demosthenes cited the Review Law and the Repeal Law” (56f). Rhodes’ position is not far from mine and he may be right, but I continue to prefer the identification of the Old Legislation Law with the Repeal Law and will resume the discussion by adducing some new arguments in support of my view.

The Old Legislation Law is paraphrased by Demosthenes in the Leptines speech at 89–94. The legislative body is described as nomo-thetai (οἱ πρότερον νομοθεταί, 92), and Demosthenes has the law read out to the jurors at 92f. The text is lost, but in commenting on the law Demosthenes charges Leptines with failing to observe the procedure prescribed by it in several important respects. From Demosthenes’ account we can infer that the Solonian law must have included the following four provisions: (a) laws are passed by the jurors (ἐν τοῖς ὅμωμοκόστιν, 93), whose decision seems to be final; (b) the proposal of a bill must be linked with a proposal to repeal all laws in force that are in conflict with the bill (λύουτα τοῖς ἐναντίον, 93); (c) the proposer shall publish his bill in front of the monument to the eponymous heroes (ἐκθείναι πρόσθε τῶν ἐπωνύμων, 94); (d) the proposer shall hand over the bill to the secretary and have it read out to the people in the assembly (τῷ γραμματεῖ παραδώναι, τοῦ τον δ’ ἐν ταῖς ἐκκλησίαις ἀναγγελώσκειν, 94). Now, how many of these four requirements are attested in the Repeal Law, which Demosthenes quotes at 24.33 and discusses in the following sections (24.34–36)?

It is important to establish, first of all, whether at 24.33 Demosthenes is quoting a complete law or only a section of one. Both MacDowell and Rhodes assume that the Repeal Law is quoted in extenso. But there can be no doubt that the text read out to the jurors is only a part of a law: it is introduced with a δὲ-clause, but not a single νόμος of which the beginning is attested is opened in this way. Thus we must assume that at least one section of the law preceded the

the Review Law and the Repeal Law combined (Rhodes 56f). Rhodes therefore rejects both the Old Legislation Law and the New Legislation Law and in his conclusion (60) mentions only the Review Law, the Repeal Law, and the Inspection Law.

7 Cf. IG II² 140.8 (a μὲν-clause is convincingly restored), 244.6; Hesperia 21 (1952) 355–59 no. 5.7 (SEG 12.87) and 43 (1974) 158.3 (SEG 26.72); Agora I 7495, line 4 (unpublished law of 354/3); Scientific American 208 (1963) 118, line 1 (unpublished law of ca 280); Dem. 20.127, 24.39, 42, 63. In Hesperia 28 (1959) 239–47, line 8 (SEG 18.13), the μὲν-clause suggested by Lewis is probably the best possible restoration.
quotation at 24.33. With this in mind we may turn to a comparison between the Old Legislation Law and the Repeal Law with regard to the four provisions mentioned above.

(a) That nomothetai are jurors is not mentioned in the Repeal Law but may well have been mentioned in a section not quoted by Demosthenes. In the Review Law (Dem. 24.20–23) the requirement that nomothetai must be jurors is stated in connection with the appointment of nomothetai by the ekklesia (24.21); and since all regulations of this kind are missing from the quotation at 24.33, the inference is that they must have been recorded in another part of the law. In any case, there is no support for MacDowell's view that the nomothetai under the Repeal Law were not jurors (cf. infra).

(b) That the proposal of a new law is closely linked with the repeal of one or more laws in force is emphasized both in Demosthenes' paraphrase of the Old Legislation Law and in the surviving quotation of the Repeal Law.

(c) As Rhodes (56f) points out, one of the characteristics of the Old Legislation Law not covered by the Repeal Law as quoted by Demosthenes is advance publicity of the bill before the eponymoi. But Demosthenes does mention this prior notice in his comments on the Repeal Law (ἐκτιθέναι κελεύει τοῦ προειδέναι πάντας, 24.36), and it is therefore reasonable to assume that this requirement was mentioned in a section of the Repeal Law not quoted by Demosthenes.

(d) The Old Legislation Law prescribes the reading of a proposal to the people in at least two ekklesiai before the bill is referred to the nomothetai for a final hearing. No such requirement is mentioned in the quotation of the Repeal Law at 24.33. But again, in commenting on the law, Demosthenes emphasizes that any citizen who so wishes has the opportunity to state publicly his objections to the bill (ἀντεύπελν, 36). What Demosthenes has in mind must be a debate in the ekklesia, as I shall argue in greater detail (354f infra).

Thus, of the four provisions specified in Demosthenes' paraphrase of the Old Legislation Law, one reappears in the section of the Repeal Law quoted at 24.33, and two more in Demosthenes' discussion of the law in 34–36. Since the rules regulating the appointment of nomothetai are missing from the quotation we have, nothing can be said about the remaining provision, i.e., that nomothetai must be jurors.

Let us turn to the alleged differences between the Old Legislation Law and the Repeal Law. MacDowell (70, E 4) lists four: (a) the Old Legislation Law is a procedure for making new laws, the Repeal Law for annulling existing laws; (b) according to the Repeal Law the nomothetai vote by a show of hands, whereas the dikastai (=the
nomothetai of the Old Legislation Law) seem invariably to have voted with pebbles; (c) the Repeal Law does not specify that the nomothetai must be jurors; and (d) it has no provision for public exhibition of proposals.

I have already dealt with (c) and (d) in arguing above that the Repeal Law must have prescribed public exhibition of proposals and may have prescribed that the nomothetai had to be jurors. My objections to (a) and (b) are the following:

(a) I find MacDowell’s comparison between the Old Legislation Law and the Repeal Law (70, E 4) slightly misleading, and much prefer his account of the Old Legislation Law (64, B 2). In describing the Old Legislation Law Demosthenes emphasizes (20.93) that conflicting laws must be abrogated, and in the quotation of the Repeal Law it is stated that a law in force can only be annulled by the nomothetai if it is replaced by a new law (ἐτερον τιθέντι ἄνθ' ὀτου ἀν λύῃ, 24.33). Thus both laws have the same purpose: to regulate how a law in force can be replaced by a new law. I shall return to this problem (357f infra).

(b) MacDowell’s argument on the respective methods of voting is based on the assumption that Demosthenes is right when, in some passages of the Leptines speech, he identifies the nomothetai with the dikastai. But in other parts of the same speech (98–100, 136f), Demosthenes openly admits that nomothetai must be distinguished from dikastai. Further, on MacDowell’s own interpretation of γράφεσθαι in 20.89 and 96 (64, B 2) we must distinguish between dikastai hearing a graphe nonon me epitedeion theinai and jurors (δημοκρίτους) appointed under the Old Legislation Law to act as nomothetai. We know that the dikastai always voted by ballot, but—accepting MacDowell’s assertion that the nomothetai were not dikastai hearing a graphe nonon me epitedeion theinai—we have no explicit evidence for how the nomothetai voted under the Old Legislation Law; they may well have voted by a show of hands, as attested in the Repeal Law.

Finally, a closer study of the Repeal Law supports its identification with the Old Legislation Law, i.e., ὁ παλαιὸς νόμος of Dem. 20.92. In the Repeal Law, as quoted by Demosthenes at 24.33, there is an apparent contradiction between the first and the last section:

τῶν δὲ νόμων τῶν κειμένων μὴ ἔξειναι λύσαι μηδένα, ἐὰν μὴ ἐν νομοθέταις. τότε δ’ ἔξειναι τῷ βουλομένῳ Ἀθηναίῳ λύειν, ἐτερον τιθέντι ἄνθ' ὀτου ἀν λύῃ . . . ἐὰν δὲ τις λύσας τινὰ τῶν νόμων τῶν κειμένων ἔτερον ἀντιθῆ μὴ ἐπιτίθειν τῷ δήμῳ τῷ Ἀθηναίῳ ἦν ἐναντίον τῶν κειμένων τῷ, τὰς γράφας εἶναι κατ' αὐτὸν κατὰ τὸν νόμον ὃς κείται ἐὰν τις μὴ ἐπιτίθειν θῇ νόμον.
In the first section it is stated that the only governmental body empowered to repeal a law in force is a panel of nomothetai. But the last section prescribes that a citizen who had proposed and carried an expedient law could be brought before a dikasterion by a graphe nomon me epitedeion theinai. On the analogy of the graphe paranomon, we must assume that conviction of the proposer in a graphe nomon me epitedeion theinai entailed, as an automatic corollary, the repeal of the law he had proposed and carried. But since the law had already been passed it was now one of the laws in force which, according to the first section, could be abrogated only by the nomothetai and not by a dikasterion.

This contradiction may be resolved if we assume that a law, immediately after it had been passed, had an intermediate status and was, during a short period, subject to a graphe nomon me epitedeion theinai brought against the proposer and heard by a dikasterion. But after this initial period had expired, the law became an integral part of the law code and could thereafter be repealed only by an act of legislation passed by the nomothetai.

This assumption, which we are forced to make on the basis of the law quoted at Oem. 24.33, is supported by indications in the Leptines speech that a citizen who had proposed and carried a nomos was no longer responsible for his bill after the lapse of a year or more, and could no longer be brought to trial by a graphe nomon me epitedeion theinai. Combining this information with the law quoted in Oem. 24.33, we can infer that while a nomos could be indicted by a graphe nomon me epitedeion theinai brought against the proposer during the first year after its passage, it became part of the law code when a year had elapsed and could now be repealed only by a board of nomothetai, and then only if an alternative bill was proposed.

In this light let us re-examine Demosthenes 20. In 356/5 Leptines had proposed and carried a law prohibiting any grant of ateleia. The law and its proposer were immediately indicted by a graphe nomon me epitedeion theinai, but, because of the death of one of the prosecutors, the statutory year had lapsed before the case could be tried by a

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8 Conviction in a graphe paranomon results not only in a penalty imposed on the proposer but also in the abrogation of his psephisma: cf. e.g. Dem. 59.5, 91.

9 Dem. 20.144: διὰ γὰρ τὸ τελευτῆται Βάθηππος τὸν τοῦτον πατέρ' Ἀψεφώνος, δὲ αὐτὸν ἐξ ἔνθι ὑπεύθυνον ἐγράψατο, ἔξηλθον οἱ χρόνοι, καὶ νυνὶ περὶ αὐτοῦ τοῦ νόμου πάς ἐσθ' ὁ λόγος, τοῦτον δ' οὐδεὶς ἔστι κύκλος; ὑπ. 2.3: νόμος γὰρ ἦν τὸν γράφαντα νόμον ἤ ψήφοςα μετὰ ἕναντον μὴ εἶναι ὑπεύθυνον. For the graphe paranomon cf. Dem. 23.104: οὶ δὲ χρόνοι κατὰ τοῦ τὸ ψήφασμα εἰπόντος τῆς γραφῆς ἐξεληλύθεσαν.

10 Pace Calabi Limentani (supra n.2), I uphold the view that Leptines had not only proposed but also carried his law when the graphe nomon me epitedeion theinai was brought. For detailed discussion see 368–71 infra.
dikasterion.\textsuperscript{11} The case was reopened by new prosecutors,\textsuperscript{12} bringing another graphe nomon me epitedeion theinai before the thesmothetai.\textsuperscript{13} According to the letter of the law Leptines was no longer responsible, and the proper forum for a reconsideration of his law was now the nomothetai rather than the dikastai. Perhaps persuaded by the prosecutors, and in spite of the protests raised by Leptines,\textsuperscript{14} the thesmothetai arranged a compromise: they allowed the case to be brought as a graphe nomon me epitedeion theinai to be heard by a dikasterion.\textsuperscript{15} But the action was not brought against Leptines, only against his law;\textsuperscript{16} and, by analogy with the regular nomothesia, five syndikoi (Leptines himself and four others) were elected (in the ekklesia) to defend Leptines’ law.\textsuperscript{17} Further, the prosecutors were allowed to append an alternative bill to their indictment.\textsuperscript{18} The status of this bill is not entirely clear: the prosecutors make an attempt to claim that it will automatically take effect if the dikastai vote against Leptines’ law, but they have to acknowledge that the dikastai are not empowered to pass it\textsuperscript{19} and promise instead that the bill will be brought before the nomothetai at their next session.\textsuperscript{20}

\textsuperscript{11} Dem. 20.144f. No less than four actions were brought: the first three against Leptines while he was still responsible, the fourth against his law when the statutory year had lapsed.

\textsuperscript{12} Apsephion (Dem. 20.144) and Phormion (Dem. 20.51, 159; Din. 1.111); Demosthenes addressed the jurors as synegoroi (Dem. 20.1) on behalf of Ctesippus (Din. 1.111), the infant son of the late general Chabrias (Dem. 20.82).

\textsuperscript{13} That the action against Leptines’ law was a graphe nomon me epitedeion theinai is apparent from 83:  "ό ἢ ὁ νόμος κρίνεται πότερον ἐστ' ἐπιτήδειον ἢ οὐ, ἀλλ' ὑμεῖς δοκιμάζεσθ' ἀστ' ἐπιτήδειον πάγχεν ἐστ' εἰ τὸν λοιπὸν χρόνον εἶτε μη'; 88: ἀντὶ τοῦτο (τὸν νόμον) δὴ οὐκ ἐπιτήδειον εἶναι φαίνει, 95: λαβεῖ καὶ λέγει πρῶτον μὲν ἄ τοῦ τούτου νόμου γεγράμμεθα ... ΝΟΜΟΣ. ταῦτα μὲν ἦσθ' ἄ τοῦ τούτου νόμου διώκομεν ὡς οὐκ ἐπιτήδειοι. 96: ἐν' χάριν εἶναι τῇ γραφῇ, εἰσ' ἐναντίον ἦ τοις πρῶτοι κεμένους νόμων. 153: τοῖς ... διδάσκαντος ὑμᾶς, ὡς ἐπιτήδειος ἦστε (ὁ νόμος). Cf. 24.33. The action was brought before the thesmothetai: Dem. 20.98.

\textsuperscript{14} Cf. Dem. 20.98f.

\textsuperscript{15} Demosthenes addresses an audience composed of dikastai (Dem. 20.1 et passim) and the action is heard by a dikasterion (20.165).

\textsuperscript{16} Dem. 20.144 (quoted supra n.9).

\textsuperscript{17} Elected syndikoi: Dem. 20.146, 152f. Since the action was not brought against Leptines, but only against his law, he is probably addressing the court as one of the syndikoi (20.1, 165, et passim). The four other syndikoi are Leodamas of Acharnae, Aristophon of Azenia, Cephisodotus of Kerameis, and Deinias of Erchia (20.146-51).

\textsuperscript{18} Dem. 20.88, 94f, 97, 99–101, 137, 164. The alternative bill is read to the jurors after 97.

\textsuperscript{19} Dem. 20.99: ἐγὼ δ', ὅτι μὲν τῇ ὑμετέρᾳ ψήφῳ τοῦ τούτου νόμου λειτύντος τοὺς παρειστεκθέντας κύριον εἶναι σαφῶς ὃ παλαιὸς κελεύει νόμος, καθ' ὧν οἱ θεσμοθετῶν τούτοις ὑμῖν παρέχομεν, ἐστ' ὡς μή χρή τούτοις τις ἀντιλέγη μοι ...\textsuperscript{20} Dem. 20.137: γράφεσθαι κατὰ τὸν νόμον δὴ παρεισφέρομεν τὸν ἵμασιν, ἦ βέντων ἕμων, ὡσπερ ἐγγυώμεθα καὶ φαίμεν θέσειν, ἦ βέντας αὐτούς, ὡσπερ πρῶτον γεννηταί νομοθετᾶται.
In conclusion, the identification of δ' παλαίως νόμος discussed in the Leptines speech with the Repeal Law quoted in the Timocrates speech is not only supported by parallel passages and individual pieces of information: it provides us with a clue to the peculiar procedure adopted in the trial of Leptines’ law. A real problem had been created by the unusual and probably unprecedented lapse of the statutory year between the presentation of a graphe nonon me epitedeion theinai and its hearing by a dikasterion.21 We can now understand why the thesmothetai had to compromise and why no pains were spared by Demosthenes and the prosecutors to minimize the difference between dikastai and nomothetai.22 They could only win the case if they could persuade the jurors that they, in this case, had to act as nomothetai as well. In the Leptines speech Demosthenes paraphrased the Repeal Law and had it read out to the jurors. The document once inserted between 92 and 93 must have included parts of the Repeal Law not quoted by Demosthenes at 24.33. According to Rhodes (56f), the document also included (parts of) the Review Law; this view raises the question of the relationship between the Review Law (Dem. 24.20–23) and the Repeal Law (24.33), as well as that between these two laws and the Inspection Law (Aeschin. 3.38–40).

II. The Plurality of Legislative Procedures

Historians have been puzzled by the fact that the Athenians had several different legislative procedures, each regulated by a specific law. To explain this phenomenon most historians assume that these procedures must have been used for different purposes or at different periods.23 Consequently there has been much speculation on the specific purpose of each procedure and its place in a chronological sequence. In my view many of the problems disappear when we reflect that in many areas of Athenian public administration a plurality of procedures, all serving the same purpose, was allowed to exist side-by-side. Let me adduce an example from the administration of justice. A magistrate suspected of corruption could, in any ekklesia kyria, be suspended by an epicheironia ton archon, after which the case was referred to a dikasterion.24 On the other hand, the council of five hundred could raise the case ex officio and have the suspect

21 Correctly pointed out by Calabi Limentani (supra n.2) 361.
22 Cf. Hansen (supra n.2) 90, 104; and 364 infra.
23 Cf. e.g. MacDowell 62, Rhodes 60 (supra n.2).
24 Arist. Ath.Pol. 43.4, 61.2.
prosecuted. Likewise, any citizen could bring an *eisangelia* or a *graphe doron*. Finally, the charge could be brought at the end of the year in connection with the *euthynai*. All these procedures existed side by side, and in most cases there was a free choice between them. Some, of course, were restricted to special occasions, e.g. an *ekklesia kyria* or the annual *euthynai*. But there is no evidence that they served different purposes or that, for example, the *eisangelia* replaced the *graphe doron* or vice versa. Still, why so many procedures?

First, it is noteworthy that all the differences between them lie in the opening of the case. After the indictment, all public actions against corrupt magistrates were handled in the same way: they resulted in a trial before a *dikasterion* manned with a minimum of 501 jurors selected by lot that same morning and presided over by the *thesmothetai*. Two sets of speeches were delivered: one by the prosecutor (and his *synegoroi*), the other by the defendant (and his *synegoroi*); then the jurors voted by ballot, first on the question of guilt, and second on the fixing of the sentence (if the verdict was ‘guilty’ and there was no penalty fixed by law). But each action was inaugurated in a different way. If we ask who prosecuted and how, we can distinguish between several possible ways of bringing the action: (1) the case is opened in the *ekklesia* in the *epicheirotonia ton archon*; (2) a board of magistrates opens the case *ex officio*; (3) *ho boulomenos* opens the case either by an *eisangelia* or by a *graphe doron*; (4) the case is brought up at the *euthynai* when the magistrate has resigned.

One should note that all the technical terms designating public actions focus on the way the action is brought: *apagoge*, *apographe*, *eisangelia*, *endeixis*, *graphe*, *phasis*, etc. These procedures are very different when we consider only the way in which the action was initiated or which magistrate was empowered to handle it, but when it came to the hearing before a *dikasterion* there is little or no procedural difference between an *apographe* and a *phasis*, between an *apagoge* and an *endeixis*, between a *graphe katalyseos tou demou* and an *eisangelia* for the same offence.

With this in mind, let us return to the three laws on *nomothesia* by *nomothetai*. They differ most obviously in the various ways in which legislation could be initiated. In the Review Law, the first step was the obligatory *epicheirotonia ton nomon* at the *ekklesia* held on 11 Hekatombaion. In the Inspection Law, *nomothesia* was initiated ex

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26 Hyp. 3.1f; Arist. *Ath. Pol.* 45.2.
27 Dem. 46.26.
officio by the board of thesmothetai in consequence of their examination of the laws in force. According to the Repeal Law, the initiative rested with any citizen who so wished (ho boulomenos), and the first step was probably to demand an audience of the boule (cf. infra). Thus we have three different ways of initiating nomothesia; but after the opening phase, the procedures are in several respects remarkably similar.

(1) The Council of Five Hundred must have been involved in all three procedures. According to the Review Law, if the epicheirotonia results in rejection of one or more nomoi, the prytaneis are instructed to place “revision of the law code” on the agenda of the third and last ekklesia of the first prytany (Dem. 24.21). In the Inspection Law, the thesmothetai are instructed to ask the prytaneis to summon an ekklesia (Aeschin. 3.39). In the section of the Repeal Law quoted by Demosthenes there is no information about how ho boulomenos can have nomothetai appointed to debate his bill, but in the comments on the law Demosthenes mentions that the law attacked by ho boulomenos was defended by popularly-elected advocates (24.36). Thus in this procedure, too, an ekklesia (summoned by the prytaneis) must have seen to the appointment of nomothetai. Now, the epicheirotonia itself was probably an obligatory item on the agenda of the ekklesia held on 11 Hekatombaion and may not have required a special probouleuma, but in all the other cases the principle μη δέν ἀπροβούλευτον must have applied. Consequently, in all three procedures appointment of nomothetai must have been debated in the boule and prepared by various probouleuma. Corroboration of this view can be found both in Epicrates’ decree (Dem. 24.27) prescribing that the boule shall assist the nomothetai (cf. 364 infra) and in Demosthenes’ remark (24.48) that Timocrates, if he had acted constitutionally, would have opened his nomothesia by demanding an audience of the boule.

(2) Advance publication of all bills before the Eponymoi is another requirement common to all three procedures. It is explicitly described in the Review Law (Dem. 24.23) and the Inspection Law (Aeschin. 3.39), and is mentioned by Demosthenes both in his comments on the Repeal law (24.36) and in his paraphrase of the old Solonian law on nomothesia (20.94).

(3) Again, a preliminary debate in the ekklesia seems to have been practised in all forms of nomothesia, no matter how the procedure was initiated. According to Demosthenes’ paraphrase in the Leptines speech, proposed amendments were read out to the people in at least two sessions of the ekklesia: καὶ πρὸ τοῦτων γ’ ἐπέταξεν ἐκβέναι πρὸς θεν τῶν ἐπωνύμων καὶ τῶ

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29 Cf. P. J. Rhodes, The Athenian Boule (Oxford 1972) 55f. Rhodes mentions only eisangeliai, probolai, and hiketeriai, but the epicheirotonia ton archon and ton nomon should be added to his list of business that could be initiated in the ekklesia without a probouleuma of the boule; cf. P. J. Rhodes, A Commentary on the Aristotelian Athenaios Politeia (Oxford 1981) 523.


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In the Timocrates speech Demosthenes is less explicit, but his comments on the laws he quotes confirm that both the Review Law and the Repeal Law must have provided for an initial debate in the *ekklesia* before the proposed amendment was referred to the *nomothetai*. Paraphrasing the Review Law, Demosthenes explains the purpose of advance publication in the following way: ἐκτιθέναι τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους προςθέν τῶν ἐπωνύμων, ἵν' ὁ βουλόμενος σκέψηται, κἂν ἀνόμοιον ὑμῖν κατίδῃ τί, φράσῃ καὶ κατὰ σχολὴν ἀντείπῃ (24.25). A similar statement is found among Demosthenes’ comments on the Repeal Law: ἐκτιθέναι κελεύει τοῦ προειδόνει πάντας· τὰς· ἓν, εἰ τύχων, τοὺς μὲν ἀντείποντας· ἕν· εἰ προαίσθοιν, λάθοι, οἱ δ’ οὐδέν προσέχοντες· ἀναγνώσει ἓν (24.36). Both passages show that the right to make objections (ἀντείπειν) is open to anyone who so wishes (ὁ βουλόμενος) and is not restricted to the advocates elected to attack the proposed amendment before the *nomothetai*. Thus the forum for objections to the amendment can only be the *ekklesia*, probably during a debate following the recitation of proposals submitted to the secretary. Finally, the Inspection Law instructs the *prytaneis* to summon an *ekklesia* ἐπηγάγαντας νομοθέταις (Aeschin. 3.39). The conflicting laws discovered by the *thesmothetai* were no doubt debated during this session of the people. So in all three forms of *nomothesia* the session of the *nomothetai* seems to have been preceded by a debate in the *ekklesia*, and we need not be surprised or sceptical when Dinarchus tells us that Demosthenes’ *nomos* reforming the *trierarchia* had been debated and redrafted in several *ekklesiai* (Din. 1.42).

(4) Advocates elected by the people to defend the laws in force were probably used in all forms of *nomothesia*. The Review Law prescribes the election of five advocates to defend the laws voted down in the *epicheirotonia ton nomon* (Dem. 24.23). In his comments on the Repeal Law Demosthenes refers to *synegoroi* elected by a show of hands to speak against proposed amendments—i.e., for the laws in force (24.36). In Aeschines’ paraphrase of the Inspection Law (3.38–40) there is nothing about elected advocates, but their existence can be assumed from what we know about the procedure. The *thesmothetai* were responsible for having *nomothetai* appointed if they discovered that the law code contained conflicting laws. The *nomothetai* decided by a show of hands which of these laws was to be upheld and which repealed. Undoubtedly the vote was taken after speeches had been delivered in which the merits and flaws of each law had been pointed out to the *nomothetai*. Who delivered these speeches? Probably not the *thesmothetai*. Athenian magistrates were often responsible for having procedures initiated, but from what we know about the administration of justice, magistrates did not regularly act as *rhetores* addressing the juries.31 Again, the Inspection Law did

31 The archon, for example, was responsible for the prosecution of any person who violated the rights of an orphan or an heiress (Dem. 43.75); but since he himself presided over the court, he must have persuaded another man to speak for the prosecu-
not imply the involvement of *ho boulomenos* to initiate legislation and address the *nomothetai*. On the analogy of the Review Law and the Repeal Law, I find it reasonable to assume that the (conflicting) laws in force were explained to the *nomothetai* by advocates who were elected in the *ekklesia* arranged by the *thesmothetai*.

In addition to these *a priori* arguments, an enigmatic passage in the Leptines speech may support my reconstruction of the *nomothesia* procedure laid down by the Inspection Law:

> τοσούτων μὲν οἱ ἑναντίον σφάζων αὐτῶς εἰσὶ νόμοι, ὡστε χειροτονεῖθ' ὑμεῖς τοὺς διαλέξοντας τοὺς ἑναντίους ἐπὶ πάμπολων ἡδη χρόνον, καὶ τὸ πρᾶγμα ὅθεν μᾶλλον δύναται πέρας ἔχειν (Dem. 20.91).

Who are “the persons elected to discover conflicting laws”? According to the Inspection Law this task was the duty of the *thesmothetai*, but they were selected by lot and cannot be identified with the commissioners elected by the people. Both MacDowell and Rhodes assume that Demosthenes is referring to *ad hoc* commissions that were later superseded by the *thesmothetai* after the introduction of the Inspection Law ca 335–330. On this interpretation the elected commissioners are completely dissociated from the *thesmothetai*. This is indeed possible, but it is worth noting that Demosthenes is speaking about *repeated* election of commissioners, which may well point to some kind of regular procedure. It seems reasonable to connect these commissioners with the Inspection Law and to assume that they collaborated with the *thesmothetai*. When the *thesmothetai* had discovered conflicting laws in the code, they reported to the *ekklesia*, as prescribed by the Inspection Law. Here the people, if they were persuaded by the report of the *thesmothetai*, elected advocates to assist the *thesmothetai* and to act as *rhetores* before the *nomothetai*. What Demosthenes is complaining about at 20.91 is that a procedure that ought to result only occasionally in the election of advocates (and appointment of *nomothetai*) is now being used almost every year. If, as I believe, the *thesmothetai* only initiated the procedure, and left it to the advocates to investigate the matter and deliver the speeches before the *nomothetai*, it is not surprising that in the Leptines speech Demosthenes prefers to focus on the elected advocates rather than on the *thesmothetai*.

(5) Finally, it was invariably the *ekklesia* that ordered, by decree, the appointment of *nomothetai*. The only case attested is the decree proposed and carried by Epicrates in the *ekklesia* held on 11 Hekatombaion 353/2 (Dem. 24.27);” but the people’s power in general to regulate *nomothesia* by *nomotion. Perhaps he instructed one of his *paredroi*, or perhaps called on an ordinary citizen to volunteer (acting as *ho boulomenos*). I am not satisfied with MacDowell’s view that the Athenians may have allowed a magistrate to be both chairman and prosecutor (*The Law in Classical Athens* [London 1978] 237).

32 MacDowell 72, Rhodes 60 (supra n.2).

33 Another example is Dem. 18.105, according to the interpretation offered by Hansen, “Nomos and Psephisma” (supra n.1) 327–29 (= *The Athenian Ecclesia* 173–75).
"thetai is explicitly mentioned in the Review Law (24.21) and can be deduced from Aeschines' paraphrase of the Inspection Law: τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπίγραφάντας νομοθέτας (3.39). In the portion of the Repeal Law quoted at Dem. 24.33 nothing is said about how the nomothetai were appointed, but in Demosthenes' Third Olynthiac there is an illuminating passage:


νομοθέτας καθίσατε. ἐν δὲ τούτων τοὺς νομοθέτας μὴ θησαυροῦν νόμον μηδένα (εἰσὶ γὰρ ὡμοί ἰκανοὶ), ἀλλὰ τοὺς εἰς τὸ παρόν βλάπτουντας ύμᾶς λύσατε (3.10) ... καὶ λύειν γ', ὁ ἀνδρές Ἀθηναῖοι, τοὺς νόμους δεῖ τούτους τοὺς αὐτοὺς ἄξων ύπερ καὶ πεθήκασιν (3.12).

The speech was delivered in the autumn (349/8) and it is therefore implausible that Demosthenes is thinking of the Review Law, which concerned only nomothesia introduced in Hekatombaion. Again, Demosthenes suggests that the responsibility for having the detrimental laws abrogated should be placed with those who had, in the first place, proposed and carried the laws in question. So the initiative rested with persons who had to act as hoí boulomenoi in accordance with the Repeal Law, and not with the thesmothetai, who might have resorted to the Inspection Law. Consequently a comparison of Dem. 3.10–13 and Dem. 24.33 indicates that nomothetai, according to the Repeal Law, were appointed by the ekklesia.

The scanty sources do not allow us to adduce further parallels between the three procedures, but the similarities already pointed out are, in my opinion, a sufficient basis for assuming that other such rules mentioned only in connection with one procedure probably applied to the others as well. Among these would be the rule that the nomothetai be appointed from among the panel of 6,000 jurors (cf. 363–65 infra), the rule that the nomothetai be summoned by the prytaneis (Dem. 24.27), the rule that the nomothetai be presided over by a board of proedroi (Dem. 24.33, Aeschin. 3.39, IG II² 222.49f), the rule that a session of the nomothetai last only one day (Dem. 24.29), the rule that the nomothetai vote by a show of hands (cf. 365–68 infra), and the rule that the jurors be paid for acting as nomothetai (Dem. 24.21).

In sum, instead of accepting a plurality of very different legislative procedures, I suggest that the three attested forms of nomothesia differed only in the way the procedure was opened, and were remarkably similar once nomothesia had been initiated either by epicheirotonia ton nomon, by ho boulomenos, or by the thesmothetai.

When we turn from procedure to purpose, I take the same view, i.e., that actual differences have been needlessly exaggerated. First, a law code can be changed in one of three ways: (a) by the addition of a new law without further changes; (b) by the proposal of a new (or
amended) law to replace a law in force; and (c) by the repeal of a law in force (without further changes). The Inspection Law prescribed how one of two opposed laws could be repealed (c); its use is unlikely in the case of (a) or (b). The Review Law and the Repeal Law both regulate the replacement of a law in force by an alternative bill (b); neither law as preserved to us has anything to say about (a) and (c). We know, however, that a law in force could be repealed in other ways than by resorting to the Inspection Law. In the Third Olynthiac, cited above, Demosthenes recommends the repeal of several laws without further changes of the law code. But the form of nomothesia he has in mind is obviously not the revision of the law code by the thesmothetai, but rather the procedure outlined in the Repeal Law. 34 Similarly, the Repeal Law may also have applied to the proposal of new laws (case 'a'). As argued above (347), the text read out at Dem. 24.33 is only a section of a law, not a complete law. At least one section (and probably several) must have preceded the quotation we have, and from the opening phrase τῶν δὲ νόμων τῶν κειμένων we may infer that the omitted part of the Repeal Law contained provisions relating to the passing of a new law without the repeal of a law in force. 35 Admittedly, both the Review Law and the Repeal Law presuppose that a law in force is invariably contrasted with an alternative bill, but this requirement can easily be adapted to cover a simple repeal of a law in force or a simple addition of a new law to existing legislation. The Athenians had a law code, not just a collection of individual laws. Further, the concept nomos covered everything from a clause of one line to an entire set of rules running for perhaps a hundred lines. Thus new legislation could take the form: "in nomos A (quoted) I propose an addition between x and y to give the text (quoted)," and the repeal of a law in force could take the form: "in nomos A (quoted) delete from x to y to give the text (quoted)."

To recapitulate: whereas the Inspection Law was probably restricted to the repeal of a law in force, both the Review Law and the Repeal Law may have been used in all three cases: to have a new law passed, to have a law in force replaced by another law, and to have a law in force repealed. Since there seems to have been a considerable overlap between the various forms of nomothesia, it is worthwhile to reconsider the relation between the three attested laws on legislation.

34 Demosthenes describes his proposal as παράδοξον (3.10). What is paradoxical is not, however, the idea of repealing a law without further changes of the law code, but rather to suggest the appointment of nomothetai when the political situation calls for immediate action.

35 Cf. Hansen (supra n.2) 102.
III. The Relation between the Three Laws

MacDowell and Rhodes believe that the Review Law, the Repeal Law, and the Inspection Law are different laws serving different purposes and introduced at different times: the Review Law ca 400, the Repeal Law before 355, and the Inspection Law sometime between 355 and 330. But if we assume, as suggested above, that the elected commissioners whom Demosthenes mentions in the Leptines speech (20.91) were not replaced by the thesmothetai, but cooperated with the thesmothetai whenever the Inspection Law led to appointment of nomothetai, there is no longer any basis for the third date. The Inspection Law may have been one of the legislative procedures introduced ca 400 or in the period 400–355: there is no evidence and I suspend judgment. Again, how do we know that the quotations in Dem. 24.20–23 (the Review Law) and 24.33 (the Repeal Law) come from two different laws and are not simply sections of a single law, introduced as a whole ca 400?36 Admittedly, in the Timocrates speech Demosthenes states explicitly that he is quoting a new nomos, different from that quoted earlier (24.20–23). But as we have seen, nomos can mean anything from one line of a law to complete legislation. Let me adduce an example from the Aristocrates speech: two of the regulations that Demosthenes quotes as different nomoi (23.37 and 60) are in fact to be read, only ten lines apart, on the stele inscribed with Dracon’s law on homicide (IG I5 104.26–29, 37f); some of Demosthenes’ other quotations of the homicide law are probably derived from the lost part of the stele. Both in a graphe paranomon (Dem. 23) and in a graphe nomon me epitedeion theinai (Dem. 24) the prosecutor had an interest in persuading the jurors that the defendant had violated the greatest possible number of laws; and since nomos could denote even a line of a law, the orator could produce the desired effect without distortion of terminology or of fact. Thus the laws quoted by Demosthenes at 24.20–23 and 33 may well have been two sections of the same law.

Further, most of the arguments adduced by MacDowell and Rhodes to establish the essential difference between the Review Law and the Repeal Law are based on the observations that some procedural rules

36 Following MacDowell (supra n.2) 66–71, Rhodes tends to emphasize the differences between the Review Law and the Repeal Law (supra n.2: 56f); he accepts the view that the Repeal Law was considerably later than the Review Law (57, 60), but also suggests (57) that “the Repeal Law was enacted as a rider to the Review Law.” I am much in sympathy with this view, provided that the similarities between the two laws are given more emphasis and that the late dating of the Repeal Law is given up as unproved.
stated in the Review Law are omitted from the Repeal Law and vice versa. Such arguments are cogent only if Demosthenes quoted both laws in extenso. Both MacDowell and Rhodes reconstruct the legislative procedures as if the laws printed in our texts were complete. But there can be no doubt, as we have pointed out, that in both cases Demosthenes quotes only a part of the law: since both laws are introduced with a δέ clause, both laws must have been preceded by other sections not quoted (and may have been followed by other sections also omitted by Demosthenes). Finally, according to both the Review Law and the Repeal Law, the responsibility for having nomothetai appointed must have rested, in the last resort, with the prytaneis and the boule. If we accept the magisterial organization of the Athenian law code, it follows that both laws belonged in the section βουλευτικοί νόμοι (Dem. 24.20). The Inspection Law, however, is another matter and must have been grouped with the laws for which the thesmothetai were responsible. It served a more restricted purpose and may well have been a different law.

In conclusion, neither the Review Law (Dem. 24.20–23) nor the Repeal Law (24.33) is a complete statute; both are probably sections of one major law regulating nomothesia by nomothetai and recorded among the bouleutikoi nomoi. The so-called Old Legislation Law, paraphrased by Demosthenes at 20.92–94 is essentially identical with the Repeal Law (comprising the quotation at Dem. 24.33 plus the further comments in 34–36). The lost text of the law read out to the jurors at 20.92f was undoubtedly longer than the quotation we have at 24.33. Whether or not it also included (some) sections of the Review Law as quoted at 24.20–23 is a minor point on which I suspend judgment.

IV. The Nomothetai and νόμοι ἐπὶ ἄνδρί.

In fourth-century Athens most public expenses were defrayed by giving the various boards of magistrates an annual allowance which they could spend without interference from other bodies of government. The system was regulated by a μερισμός fixing the allocations given to each board. Rhodes and I agree that the merismos was based on a law passed by the nomothetai. But while the merismos lay out-

37 Rhodes admits (supra n.2: 57) that the original law on nomothesia may have contained more than is quoted at Dem. 24.20–23, but this correct observation is neither substantiated nor elaborated in what follows.

38 On the merismos cf. Rhodes (supra n.29) 99ff; Hansen, “Did the Athenian Ecclesia Legislate” (supra n.1) 39ff (= The Athenian Ecclesia 192ff).
side the powers of the *demos* in the *ekklesia*, three preserved decrees of the people nevertheless include a decision that *nomothetai* should serve to ratify the grant of an honorarium.\(^{39}\) Again, Rhodes and I agree that the people's decision to commission a *nomos* is connected with a revision of the *merismos*.\(^{40}\) Since a *nomos* could be changed only by a new *nomos*, not by a *psephisma*, any revision of the *merismos* must have been referred to the *nomothetai*. In my earlier article I combined the revision of the *merismos* attested in the three decrees with a *nomos* quoted in Andocides' speech *On the Mysteries*: μηδὲ ἔπ’ ἀνδρὶ νόμον ἔξειναι θεῖναι ἕάν μὴ τὸν αὐτὸν ἐπὶ πάσιν Ἀθηναίοις, ἕάν μὴ ἔξαιστηλιος δόξῃ κρύβῃν ψηφιζομένους (1.87). The provision for a νόμος ἐπ’ ἀνδρὶ is added to the law as an exemption clause. On the analogy of the law quoted at Dem. 24.45 I suggested that the 6,000 who have to vote on a νόμος ἐπ’ ἀνδρὶ do not pass the law. They merely permit the proposal of a νόμος ἐπ’ ἀνδρὶ. Now, the *nomothesia* itself was invariably conducted by the *nomothetai*, but it was always initiated in the assembly. So we may assume that a νόμος ἐπ’ ἀνδρὶ might be passed if a quorum of 6,000 voting by ballot in the assembly decreed that *nomothetai* be appointed with the purpose of making a decision on the proposal. Rhodes, however, questions my view (a) that the three commissioned *nomoi* revising the *merismos* were νόμοι ἐπ’ ἀνδρὶ, and (b) that the quorum of 6,000 required for a νόμος ἐπ’ ἀνδρὶ was connected with the decision to appoint *nomothetai*. He prefers to believe that the quorum applied to a ratification by the *ekklesia* of a νόμος ἐπ’ ἀνδρὶ passed by the *nomothetai*.

On (a) Rhodes comments, “what the nomothetae are asked in the three decrees to do is not ratify the decrees but simply revise the *merismos*, and I see no reason to believe that these revisions would count as νόμοι ἐπ’ ἀνδρὶ” (59). I have two objections: First, in all three *psephismata*, the people decree that the expense in question be (provisionally) defrayed by the *tamias tou demou* and that the annual appropriation to the *tamias* be increased accordingly. The revision of the *merismos* is part of the decree: τὸ δὲ ἀργύριον τὸ εἰς τὴν θυσίαν προδανέσθαι τὸν ταμίαν τοῦ δήμου ἐν δὲ τοὺς πρώτους νομοθέτας προσνομοθέτησαι τῶν ταμία (Syll.\(^{3}\) 298.37–41). In this text there is no difference between the order issued to the *tamias* and that issued to the *nomothetai*. Thus it is correct to say that the *nomothetai*, when asked to revise the *merismos*, are being asked to ratify the decision already made by the people. Second, I retain my view that these

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\(^{39}\) Cf. IG II\(^{3}\) 222.41–46; 330.15–23; Syll.\(^{3}\) 298.35–41.

\(^{40}\) Cf. Rhodes (supra n.2) 50; Hansen (supra n.38) 41–43 (=193–95).
revisions of the *merismos* took the form of νόμοι ἐπ’ ἀνδρί. To be on the safe side, I omit *IG II²* 330, the text of which is partly restored. I am also prepared to grant Rhodes that the *nomos* commissioned in *Syll.²* 298 may have been phrased generally without specific reference to the person honoured, e.g. “let the treasurer of the people have a supplementary grant of 100 drachmas.” But in *IG II²* 222 the money is earmarked for the pension to be paid out to Peisitheides: 

προσνομοθετή[σαν] τὸ ἀρ[χραι] τῇ[ρο] μερίζειν τῇ[ν οὐς ἀποδέκται τὸι ταμίαι τοῦ δήμου εἰς τὸ]ν ἕναντὸν ἐκαστὸν (43-46). In this case the supplementary estimates to be voted on by the *nomothetai* must, in order to be identifiable, have included a reference to Peisitheides; accordingly, the revision of the *merismos* is not simply a *nomos*, but more specifically a νόμος ἐπ’ ἀνδρί.

Regarding (b): the quorum of 6,000 voting by ballot is attested in three different laws: (1) the law on naturalization of foreigners (Dem. 59.89f), (2) the law concerning *adeia* (Dem. 24.45), and (3) the law on νόμοι ἐπ’ ἀνδρί (Andoc. 1.87, quoted above). In (1) the ballot is a *ratification* of a previous decision made in the *ekklesia* by a show of hands. In (2) the ballot grants permission to bring a supplication before the people. In (3) the text is ambiguous: *prima facie* the ballot can be viewed either as permission for the subsequent proposal (i.e., in the next session of the *nomothetai*) of a νόμος ἐπ’ ἀνδρί, or a ratification of a νόμος ἐπ’ ἀνδρί already passed by the *nomothetai*. Now, there is no evidence whatever that any *nomos* passed by the *nomothetai* had to be referred to the *ekklesia* for ratification. Quite the contrary: all decisions made by the *nomothetai* seem to have been final.41 On the other hand, we know that *all nomoi* had to be initiated in the *ekklesia* by a *psephisma* prescribing appointment of *nomothetai*. So for the ballot connected with the passage of a νόμος ἐπ’ ἀνδρί, the proper analogy seems to be the *adeia*-procedure (2) rather than the procedure applied in naturalizations (1). The most likely reconstruction of the procedure is the following: (a) A citizen announces in the *ekklesia* that he will propose a νόμος ἐπ’ ἀνδρί (or that the *psephisma* he has proposed will necessitate the subsequent passing of a νόμος ἐπ’ ἀνδρί). (b) The people vote (by a show of hands) whether or not they will appoint *nomothetai* to debate and make a decision on the νόμος ἐπ’ ἀνδρί. (c) If the people vote for appointment of *nomothetai*, this *psephisma* must subsequently be ratified by a quorum of 6,000 voting by ballot. (d) After the ratification, *nomothetai* are appointed to hear and vote on the proposed νόμος.

41 *Cf.* MacDowell (*supra* n.2) 63.
V. Who Served as Nomothai?

According to MacDowell, recruitment of the nomothetai constituted one of the principal differences between the New Legislation Law (introduced ca 370 and warranting the procedure used by Leptines in 356/5 and by Timokrates in 353/2) and the earlier laws on nomothesia (the Review Law and ὁ παλαίως νόμος quoted by Demosthenes at 20.92). The new nomothetai were no longer (invariably) jurors but were regularly appointed by lot from among all Athenian citizens who volunteered.42

Rhodes accepts my rejection of the New Legislation Law, but prefers to believe that ὁ παλαίως νόμος was not, as I assume, the Repeal Law, but rather the Review Law and the Repeal Law combined, whereas the procedure used by Leptines and Timocrates was based on the Repeal Law without due respect for the further restrictions imposed by the Review Law. One of the restrictions disregarded by Leptines was that the nomothetai had to be appointed from the panel of 6,000 jurors. Thus Rhodes follows MacDowell in believing that the nomothetai regularly used by the Athenians in the 350’s were no longer jurors.43

What is the evidence? (1) The Review Law explicitly prescribes that nomothetai be appointed from the panel of jurors: τοὺς δὲ νομοθέτας ἐσθαί ἐκ τῶν ὀμομοιοκότων τῶν ἡλιαστικῶν ὤρκον (Dem. 24.21). (2) The section of the Repeal Law quoted at Dem. 24.33 and the Inspection Law, as paraphrased by Aeschines at 3.38–40, have nothing to say about how nomothetai were recruited. (3) Commenting on ὁ παλαίως νόμος Demosthenes says that laws were passed παρ’ υμῖν, ἐν τοῖς ὀμομοιοκόσιν, παρ’ ὀδήσπερ καὶ τάλλα κυροῦται (20.93). Leptines has not respected the requirements of ὁ παλαίως νόμος (20.94). MacDowell (65), followed by Rhodes (57), infers that the nomothetai who passed Leptines’ law were not jurors. But the argument e contrario is not cogent: Demosthenes is addressing the dikastai (20.1 et passim), and παρ’ υμῖν is an explicit reference to the dikastai παρ’ ὀδήσπερ καὶ τάλλα κυροῦται. The nomothetai performed only one task: to vote on nomoi, and the relative clause proves that Demosthenes has the dikastai in mind in attempting to identify dikastai with nomo-

42 Cf. MacDowell (supra n.2) 65 (C 2) for the New Legislation Law, 64 (B 1) for the Old Legislation Law, 67f (D 5) for the Review Law. On MacDowell’s view that the nomothetai under the New Legislation Law and the Inspection Law were selected by lot from among all Athenians cf. Hansen (supra n.2) 100.
43 Rhodes (supra n.2) 57 and (by implication) 58f.
thetai. He wishes to persuade his audience to believe that, according to the old law, they are not only dikastai, but also nomothetai, and thus empowered both to repeal Leptines’ law and to pass the alternative bill proposed by Demosthenes and his colleagues and added to the indictment. The argument is: the nomothetai prescribed by the old law (οἱ πρῶτοι νομοθέται, 92) = jurors (ἐν τοῖς ὀμωμοκόστοιν, 93) = the dikastai (παρ’ ύμιν παρ’ ὀδόπερ καὶ τάλλα κυροῦται, 93). Demosthenes’ complaint is that Leptines has not had his law passed by the dikastai as he should have done according to the old law. The correct statement: “both dikastai and nomothetai are ommomokotes,” is twisted by Demosthenes into the erroneous assertion: “the dikastai are nomothetai since both boards are ommomokotes.” The only thing we know is that they were not dikastai.44

Epicrates’ decree on the appointment of jurors to hear Timocrates’ bill includes the following provision: τοὺς δὲ νομοθέτας εἶναι ἐνα καὶ χιλίοις ἐκ τῶν ὀμωμοκόστων, συνομοθετεῖν δὲ καὶ τὴν βουλήν (Dem. 24.27). MacDowell (69) takes this to mean that the nomothetai are to be 1,001 of the jurors for the year plus the 500 members of the boule. But then we should have expected the provision to be: τοὺς δὲ νομοθέτας εἶναι ἐνα καὶ χιλίοις ἐκ τῶν ὀμωμοκόστων καὶ τὴν βουλήν. As the text stands the bouleutai are not nomothetai: they are expressly distinguished from the nomothetai and instructed only to assist them in the nomothesia, probably by preparing the agenda for the session of the nomothetai.45

Thus there is no evidence that the nomothetai who passed the laws proposed by Leptines and Timocrates were selected by lot from all Athenians, whereas we know explicitly that the nomothetai who passed Timocrates’ law were in fact jurors. To this survey of the evidence I may add several a priori considerations: I cannot believe that the Athenians in the 350’s regularly used a procedure in which the nomothetai were sometimes appointed from all Athenians who volunteered and sometimes from the panel of jurors. Furthermore, I cannot believe that the Athenians had one law on nomothesia prescribing that nomothetai must be jurors (the Review Law) and another law (the Repeal Law) prescribing that they did not have to be jurors. Finally, let us assume, for the sake of argument, that the nomothetai, from 370 on, were at least sometimes selected by lot from all Athenians who volunteered. A consequence is that all Athe-

44 Cf. Hansen (supra n.2) 90f, 103f.
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Greek citizens older than 18 (or perhaps 20) were issued some kind of identification to be used in the sortition. But in this period (ca 370–350) bronze pinakia were used both for sortition of magistrates (from among citizens above 30) and for sortition of dikastai (from among the panel of 6,000 jurors). On MacDowell’s interpretation we should expect all Athenians above 18 or 20 to have been issued a third type of bronze pinakia used for sortition of nomothetai. On the analogy of the preserved dikastic and non-dikastic types, we should expect such pinakia to have survived in some numbers; but of the preserved examples, none can be identified with the nomothetic type we should expect to have as a consequence of MacDowell’s assumption. In view of these considerations, as well as our sources themselves, it seems reasonable to conclude that Athenian nomothetai were invariably appointed from the panel of 6,000 jurors, and that dikastic pinakia (the owl-type) were used in the daily sortition of both dikastai and nomothetai.

VI. How Did the Nomothetai Vote?

The only direct information we have is the law quoted by Demosthenes at 24.33, where we learn that the nomothetai voted by cheirotonia:

διαχειρισμOIDενδεποιείντούσεπροέδρουςπερίτοιτωντῶννόμων,
πρῶτονμὲνπερὶτούκειμένου,εἰδοκεὶἐπετίθειοςεἶναιτὸδήμω
τῷΑθηναῖῳνῦννῦν,ἐπείταπερὶτοῦπιθεμένου.δόποτερονδὲἀν
χειροτονήσωσινοἱνομοθεταί,τούτωνκύρωνεἶναι.

MacDowell (supra n.2: 70) comments, “I know of no instance of χειροτονεῖν used of voting not carried out by χεῖρες: this verb and its derivatives are not applied to the proceedings of juries.” I agree and suggest the following reconstruction of the procedure: ὁπότερον indicates that the nomothetai had to make a simple choice between a law in force and an alternative bill. The words ἕνοϲ are probably a reference to those who do not raise their hands in a cheirotonia. Accordingly, the vote was conducted in the following way: the proedros puts the question: “Anyone who finds that the law in force is satisfactory shall raise his hand” (of 1,000 nomothetai some 250 raise their hands,

47 Kroll cautiously suggests (56–58) that some of the secondary seals found only on dikastic pinakia may have been stamped on the pinakia of nomothetai. I prefer to suspend judgment.
Then the second question is put: “Anyone who finds that the bill is satisfactory shall raise his hand” (ca 500 raise their hands, ca 500 remain passive). All our evidence of voting by show of hands indicates that a *diacheirotonia* was always conducted in two stages only and that the number of abstentions was never assessed. Thus the two important figures are ca 250 versus ca 500, and the result is, in this case, that the bill is passed.48

Rhodes, however, takes a different view (supra n.2: 58). Since the nomothetai in question were jurors (omomokotes), he believes that they must have voted by ballot as in the dikasteria. Consequently the terms διαχειροτονία and χειροτονεῖν in the law at Dem. 24.33 should be taken to mean ‘vote’ in a general sense, rather than specifying a show of hands (58f). In support he adduces two passages from the *Ath. Pol.*, viz. 34.1: τοὺς δέκα στρατηγοὺς τοὺς τῇ ναυμαχίᾳ νικῶντας συνέβη κρίθηναι μᾶ ὑπεροικονία πάντας; and 41.3: πολλὰ σοφιζόμενοι τῶν πρυτάνεων, ὅπως προστάτηκα τὸ πλήθος πρὸς τὴν ἐπικύρωσιν τῆς χειροτονίας. I am not persuaded by these examples. In 41.3 the reference is probably to a ratification (by a quorum of 6,000 voting with *psephoi*) of a vote taken by a show of hands.49 We are left with 34.1; but this cannot be an accurate description of the trial of the generals. First, Aristotle states that all ten generals were sentenced to death, but in fact, only eight of the ten were put on trial. Next, according to Xenophon’s detailed account, the crucial phase of the trial was not the actual death-sentence (conducted tribe by tribe and with *psephoi*) but the passage (by a repeated show of hands) of Callixenus’ *psephisma* prescribing the collective verdict.50 Thus μᾶ ὑπεροικονία may well be an (inaccurate) reference to the decisive vote on the *psephisma* (by a show of hands), and not to the subsequent verdict (by ballot). I conclude that there is still a good case for MacDowell’s statement that *cheirotonia* always implies a vote by show of hands, not just a vote.

More important, if we follow Rhodes in believing that the nomothetai invariably voted by ballot, we cannot provide a satisfactory explanation of ἡ οὖ and πρῶτον ... ἐπείτα in the law Demosthenes cites at 24.33. If the vote is by show of hands, the whole procedure is over in a two-fold *cheirotonia* as described above. But if the vote was by ballot, we are asked to believe that the nomothetai, with one set of

48 Repeated (with minor changes) from Hansen (supra n.2) 93f.
50 Cf. Xen. *Hell.* 1.7.2 (eight generals put on trial) and 34 (the vote on Callixenus’ *psephisma*).
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psephoi, voted on whether or not (ἡ οὔ) to accept the law in force and then (ἐπείρα), with another set of psephoi, voted on the alternative bill. First, this is a waste of time, since the vote could be taken with one set of psephoi as a simple choice between the law in force and the bill. Second, the double ballot might place the Athenians in the impossible position of having rejected both the law in force and the alternative bill.51

Thus in Dem. 24.33 cheirotonia means cheiro-tonia. But there is another source, not yet discussed, which strongly suggests that the nomothetai might vote by ballot, viz., Epicrates’ decree of 11 Hekatombaion 353/2 ordering the appointment of nomothetai: τοὺς δὲ νομοθέτας εἶναι ἑνα καὶ χλίους ἐκ τῶν ὀμομοκτῶν, συννομοθετεῖν δὲ καὶ τὴν βουλήν (Dem. 24.27). When the nomothetai voted by cheirotonia, the hands were not counted, but only roughly assessed by the presiding proedroi. But the purpose of having 1,001 nomothetai instead of 1,000 must have been to avoid a tie, which points to voting by ballot and a count of the psephoi cast. So the nomothetai must at least occasionally have voted by ballot. But this inference from Epicrates’ decree is not necessarily in conflict with the view that diacheirotonia in the law quoted at Dem. 24.33 must refer to a show of hands. It is probable that the first vote taken by the nomothetai was normally by a show of hands; but in cases of doubt, when the proedroi did not agree on the outcome of the vote even after a repeated cheirotonia, the Athenians may have resorted to psephophoria.52 Consequently, for all sessions of the nomothetai, the presiding proedroi must have had a sufficient number of psephoi at hand and an uneven number of nomothetai appointed, in case the cheirotonia resulted in a tie.

There is an alternative explanation, which, however, I find less likely. The appointment of nomothetai was probably modelled on the appointment of dikastai. In major political public actions the jury often numbered not one dikasterion of 501 jurors, but either two dikasteria (=1,001 jurors), three dikasteria (=1,501 jurors), or even more.53 The selection by lot of nomothetai from among the omomokotes may well have been an exact copy of the system used for appointment of dikastai in public actions, in which case the supernumerary juror may, conventionally, have been appointed to the board of nomothetai although he had no real function.

51 Cf. Schöll (supra n.5) 112.
To summarize: in the Repeal Law, and presumably in the Inspection Law as well, the vote taken by the nomothetai is called διαχειροτονία, and the detailed description of the procedure given in the Repeal Law proves that the diacheirotonia was by show of hands, not by ballot. The number of nomothetai prescribed by Epicrates’ decree (1,001) indicates, however, that if the diacheirotonia resulted in a tie, the nomothetai resorted to voting by ballot.

VII. Did the Nomothetai Pass Leptines’ Law?

In all studies of Athenian nomothesia a major difficulty is how to interpret the Leptines speech and the action brought against Leptines’ law. The problems concerning the Solonian law on nomothesia (ὁ παλαιός νόμος) have been discussed above (346–52); here I shall focus on a new interpretation of the legislative procedure leading up to the graphe nomon me epitedeion theinai brought against Leptines’ law. Most historians (including myself) assume that Leptines’ law on ateleia had been passed by the nomothetai before a graphe nomon me epitedeion theinai was brought against it. Calabi Limentani, however, suggests a different reconstruction of the course of events (supra n.2). Leptines’ law had been debated in the ekklesia and accepted by the people—i.e., the demos had decreed that the bill be referred to the nomothetai for a final hearing. After the vote in the ekklesia but before the session of the nomothetai, however, the bill was blocked by a succession of graphai nomon me epitedeion theinai, the last of which is the occasion for Demosthenes’ speech against Leptines. In this action a verdict against the bill will end the matter, but if the court finds that the bill is expedient and constitutional, it will be heard by a panel of nomothetai and either passed or rejected by them.

To get to the heart of the matter it is important to realise that we are faced with two problems, not just one: (1) Was Leptines’ law passed or was it indicted and blocked before its final ratification? (2) If it was passed, was the final hearing conducted by the people in the ekklesia or by a panel of nomothetai?

Regarding (1): In numerous passages Demosthenes asks the jurors to abrogate Leptines’ law on ateleia (20.1, 6, 12, 14, 28, 49, 58, 87, 54 That is, if we follow Blass and others in deleting τῷ δήμῳ (Aeschin. 3.39) as a gloss. A possible alternative is to assume a change of subject after τῷ δήμῳ; cf. MacDowell (supra n.2) 71. 55 Assumed e.g. by J. H. Lipsius, Das attisches Recht und Rechtsverfahren (Leipzig 1905–15) 386f with n.43. 56 Assumed e.g. by Navarre and Orsini in the Budé edition (44f).
The verb used is λῦσαι; one is tempted at first sight to infer that Leptines’ law must have been passed. Calabi Limentani is right, however, in pointing out (supra n.2: 365 n.26) that both Aeschines in his speech against Ctesiphon (3.8) and Demosthenes in his speech against Aristocrates (23.94) use the verb λῦσαι in exhortations to the jurors to abrogate the psephismata proposed by Ctesiphon and Aristocrates; in both cases we know that the proposal was only a proboulleuma, i.e., a provisional decree not yet passed by the ekklesia.

Another verb often used regarding Leptines’ law is θείναι. In the active, the subject is Leptines and the object his law. It is found once in the present tense (101)—which may indicate a proposal—but more often in the aorist (e.g. 13, 98), and once in the perfect (99). Here there are no obvious parallels in other speeches, and the impression is that Leptines proposed and carried his law on ateleia. I admit, however, that we cannot exclude the possibility that νόμον ἔθηκε or τέθηκεν means no more than that he has proposed his law.

In the middle, θέσθαι refers to those who have voted (or will vote) on Leptines’ law. A phrase in 94 is, in my opinion, crucial here: οὐδὲ γὰρ ἂν ύμεις ποτ’ ἐπείσθητε, ώς ἐγὼ νομίζω, θέσθαι τὸν νόμον. To whom ύμεις may refer is not clear from the passage itself and at present I suspend judgment; but ἐπείσθητε θέσθαι τὸν νόμον cannot, in my opinion, mean “you were persuaded to make a provisional decision on,” but rather “you were persuaded to pass the law.” This interpretation is strengthened by 134: σάνθ’ ὁπα Λεπτίνης ἔρει περὶ τοῦ νόμου διδάσκων ὑμᾶς ὡς καλῶς κεῖται; and by 35: εἰθ’ ύμεις ἐπὶ σκοπεῖτ’ εἰ χρή τοῦτον ἐξαλείψῃ, καὶ οὐ πάλαι βεβούλευνθε. In 134 κεῖται strongly indicates that the law had been passed, and in 35 ἐξαλείψαι means ‘erase’, which indicates that the law had been inscribed (cf. Andoc. 1.79).

Next, in several passages Demosthenes envisages—sometimes with disgust and contempt—the possibility that Leptines’ law will take effect: e.g. κύριον ποιήσαι τοιοῦτον νόμον (11) and κύριον γενέσθαι τὸν νόμον (134). He is occasionally even more explicit, claiming that the law will come into force automatically if the graphe nomon me epitedeion theinai fails: περὶ νόμον μέλλει φέρειν τὴν ψήφον ὧ μὴ λυθέντι δεήσει χρῆσθαι (49); εἰ . . . τὸν νόμον ποιήσετε κύριον (139). Neither passage leaves any doubt that the present hearing before the dikastai is the last possible means of repealing the law; there is no indication in the speech that an acquittal of Leptines’ law by the dikastai will entail an obligatory hearing and ratification by the nomo-thetai before the nomos will become a part of the Athenian law code. I cannot, of course, exclude the possibility that Demosthenes is
deliberately misleading his audience; but the straightforward interpretation fits the other evidence and is in my opinion to be preferred.

In addition to the language used by Demosthenes in the Leptines speech, I may adduce two a priori arguments. First, if Leptines’ law was still pending when the graphe was brought, and had to be ratified by the nomothetai after the trial, Leptines would still have been responsible for his proposal. The fact that he is now completely disassociated from it (144) suggests that there is no longer a responsible proposer to bring the bill before the nomothetai if the jurors in the graphe vote for the bill. Second, the rule that the proposer of a nomos or a psephisma could no longer be held responsible for his proposal after a year is closely connected with the rule that a proposal that had not been ratified lapsed after a year. This rule is attested for psephis mata only (Dem. 23.92), but probably applied to nomoi as well. The inference is that Leptines’ law, if it had been a proposal, would have lapsed after a year; there would have been no reason whatever for bringing the graphe nomon me epitedeion theinai. Leptines was no longer responsible, his proposal had lapsed and would no longer take effect.

I conclude that Leptines’ law had been passed before the graphe nomon me epitedeion theinai was brought. It was only suspended by the action, and it would automatically become effective if the jurors voted for the law and not for the prosecutors. A further session of the nomothetai would take place only if the jurors hearing the graphe should repeal Leptines’ law and thereby oblige Demosthenes and his colleagues to fulfill their promise, directly or indirectly, to have their alternative proposal heard by the nomothetai in their next session (137).

On (2): the view that Leptines’ law had been passed before the bringing of the graphe nomon me epitedeion theinai leads to the question: who passed the law? Again, the crucial passage is Dem. 20.94: ούδε γὰρ ἂν ύμεῖς ποτ’ ἐπείσθητε, ως ἐγὼ νομίζω, θέσθαι τὸν νόμον. Admittedly ύμεῖς is ambiguous, and the second person plural may refer to a previous session of the dikastai or the nomothetai or the demos in the ekklesia. We are reduced to focusing on the phrase νόμον θέσθαι. Calabi Limentani (supra n.2: 363–65) believes that the reference is to the ekklesia; in support, she adduces some passages from the Timocrates speech in which the active νόμον πράττειν is, allegedly, used for a proposal made in the ekklesia. Most of her examples, however, do not refer to the ekklesia (Dem. 24.18, 59, 62, 64, 109), and the only passage with explicit reference to the ekklesia seems to disprove her interpretation: ἀλλὰ τὴν τρίτην ἀπέδειξαν
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ἐκκλησίαν, καὶ οὐδ’ ἐν ταύτῃ τίθέναι δεδώκασιν, ἀλλὰ σκέψασθαι καθ’ ὅ τι τοὺς νομοθέτας καθείπτε (Dem. 24.25). This passage shows that it was unconstitutional to “propose a law” (νόμον τίθεναι) in the ekklesia. Thus if Leptines’ law had been passed by the demos, it would have been passed unconstitutionally, and I have no doubt that Demosthenes would have pointed this out to the jurors. But in the Leptines speech Demosthenes’ only complaint concerning the ekklesia is that Leptines did not have his bill read out to the people (92); there is no hint that the bill had been passed by the people unconstitutionally. On the contrary, οἱ πρῶτοι νομοθέται in 92 implies as its opposite οἱ νῦν νομοθέται. In 93 Demosthenes attempts to argue that the nomothetai, according to the old law, ought to have been dikastai (cf. 364). He never claims that they were in fact the people in the ekklesia rather than a panel of sworn nomothetai.

I therefore conclude (1) that Leptines’ Law had been passed before the bringing of the graphe nomon me epitedeon theinai and (2) that it had been passed by a panel of nomothetai, not simply by the ekklesia. As argued above (363–65), these nomothetai were probably, as prescribed by ὁ παλαιὸς νόμος, selected by lot from among the panel of 6,000 jurors who had taken the heliastic oath.

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