

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.¹ But who were the *nomothetai* and how did they legislate?

During the last decade various approaches have been taken to these legislative procedures;² 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’,³ 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whether a new law was added to the law code, or a law in force was replaced by an amendment, or a law in force was repealed without further changes in the code.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-

¹ Cf. my two earlier articles, “*Nomos* and *Psephisma* in Fourth-Century Athens,” *GRBS* 19 (1978) 315–30, and “Did the Athenian *Ekklesia* Legislate after 403/2?” *GRBS* 20 (1979) 27–53, both reprinted with addenda in M. H. Hansen, *The Athenian Ecclesia* (Copenhagen 1983) 161–206.

² See D. M. MacDowell, “Law-making at Athens in the Fourth Century B.C.,” *JHS* 95 (1975) 62–74; M. H. Hansen, “Athenian *Nomothesia* in the Fourth Century B.C. and Demosthenes’ Speech against Leptines,” *CIMed* 32 (1980) 87–104; I. Calabi Limentani, “Demostene XX, 137: A proposito della *γραφὴ νόμων μὴ ἐπιτήδειον θεῖναι*,” *Studi in honore di Arnaldo Biscardi* I (Milan 1981) 357–68; and P. J. Rhodes, “*NOMOTHESIA* in Fourth-Century Athens,” *CQ* 35 (1985) 55–60.

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.

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 epite-deion 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.⁴ In my earlier article I argued, following Schöll,⁵ (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,⁶ but is

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

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 *nomothetai* (οἱ πρότερον νομοθέται, 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 ὁμωμοκόσιν, 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 (λύοντα τοὺς ἐναντίους, 93); (c) the proposer shall publish his bill in front of the monument to the eponymous heroes (ἐκθεῖναι 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 παραδοῦναι, τοῦτον δ’ ἐν ταῖς ἐκκλησίαις ἀναγιγνώσκειν, 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 δέ-clause, but not a single *nomos* of which the beginning is attested is opened in this way.⁷ 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 μέν-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 μέν-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 (*ἀντιπεῖν*, 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 (ἕτερον τιθέντι ἄνθ' ὅτου ἂν λύη, 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 nomon me epitedeion theinai* and jurors (ὁμωμοκότες) 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 nomon 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 ἐξεῖναι λύσαι μηδένα, εἰ μὴ ἐν νομοθέταις. τότε δ' ἐξεῖναι τῷ βουλομένῳ Ἀθηναίων λύειν, ἕτερον τιθέντι ἄνθ' ὅτου ἂν λύη . . . εἰ δὲ τις λύσας τινὰ τῶν νόμων τῶν κειμένων ἕτερον ἀντιθῆ μὴ ἐπιτήδειον τῷ δήμῳ τῷ Ἀθηναίων ἢ ἐναντίον τῶν κειμένων τῶν, τὰς γραφὰς εἶναι κατ' αὐτοῦ κατὰ τὸν νόμον ὃς κείται εἰ μὴ ἐπιτήδειον θῆ 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 inexpedient 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.⁸ 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 Dem. 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*.⁹ Combining this information with the law quoted in Dem. 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*.¹⁰ 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

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 τελευτῆσαι Βάθιππον τὸν τουτουὶ πατέρ' Ἀψεφίωτος, ὃς αὐτὸν ἔτ' ὄνθ' ὑπεύθυνον ἐγράψατο, ἐξῆλθον οἱ χρόνοι, καὶ νυνὶ περὶ αὐτοῦ τοῦ νόμου πᾶς ἐστ' ὁ λόγος, τούτῳ δ' οὐδεὶς ἐστὶ κίνδυνος; hyp. 2.3: νόμος γὰρ ἦν τὸν γράψαντα νόμον ἢ ψήφισμα μετὰ ἐνιαυτὸν μὴ εἶναι ὑπεύθυνον. For the *graphe paranomon* cf. Dem. 23.104: οἱ δὲ χρόνοι κατὰ τοῦ τὸ ψήφισμ' εἰπόντος τῆς γραφῆς ἐξεληλύθεισαν.*

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.¹¹ The case was reopened by new prosecutors,¹² bringing another *graphe nomon me epitedeion theinai* before the *thesmothetai*.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,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*.¹⁵ But the action was not brought against Leptines, only against his law;¹⁶ and, by analogy with the regular *nomothesia*, five *syndikoi* (Leptines himself and four others) were elected (in the *ekklesia*) to defend Leptines' law.¹⁷ Further, the prosecutors were allowed to append an alternative bill to their indictment.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 it¹⁹ and promise instead that the bill will be brought before the *nomothetai* at their next session.²⁰

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.

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).

¹³ That the action against Leptines' law was a *graphe nomon me epitedeion theinai* is apparent from 83: ὅτι νῦν οὐχ ὁ νόμος κρίνεται πότερον ἔστ' ἐπιτήδειος ἢ οὐ, ἀλλ' ὑμεῖς δοκιμάξεσθ' εἴτ' ἐπιτήδαιοι πάσχειν ἔστ' εὖ τὸν λοιπὸν χρόνον εἴτε μή; 88: ἀντι τοῦδε (τοῦ νόμου) ὃν οὐκ ἐπιτήδειον εἶναι φαμεν; 95: λαβέ καὶ λέγε πρῶτον μὲν ἅ τοῦ τούτου νόμου γεγράμμεθα . . . ΝΟΜΟΣ. ταῦτα μὲν ἔστ' ἅ τοῦ τούτου νόμου διώκομεν ὡς οὐκ ἐπιτήδεια; 96: ἔνοχον εἶναι τῇ γραφῇ, ἐὰν ἐναντίος ἢ τοῖς πρότερον κειμένους νόμοις. 153: τοὺς . . . διδάξαντας ὑμᾶς, ὡς ἐπιτήδειός ἐστιν (ὁ νόμος). Cf. 24.33. The action was brought before the *thesmothetai*: Dem. 20.98.

¹⁴ Cf. Dem. 20.98f.

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

¹⁶ Dem. 20.144 (quoted *supra* n.9).

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).

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

¹⁹ Dem. 20.99: ἐγὼ δ', ὅτι μὲν τῇ ὑμετέρα ψήφῳ τοῦ τούτου νόμου λυθέντος τὸν παρεισενχθέντα κύριον εἶναι σαφῶς ὁ παλαιὸς κελεύει νόμος, καθ' ὃν οἱ θεσμοθέται τοῦτον ὑμῖν παρέγραψαν, ἐάσω, ἵνα μὴ περὶ τούτου τις ἀντιλέγη μοι . . .

²⁰ Dem. 20.137: γράφεσθαι κατὰ τὸν νόμον ὃν παρεισφέρομεν νῦν ἡμεῖς, ἢ θέντων ἡμῶν, ὥσπερ ἐγγνώμεθα καὶ φαμὲν θήσειν, ἢ θέντας αὐτούς, ὅταν πρῶτον γένωνται νομοθέται.

In conclusion, the identification of *ὁ παλαιὸς 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 nomon 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 *epicheirotonia 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.²⁵ Likewise, any citizen could bring an *eisangelia*²⁶ or a *graphe doron*.²⁷ Finally, the charge could be brought at the end of the year in connection with the *euthynai*.²⁸ 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*

²⁵ Arist. *Ath.Pol.* 45.2.

²⁶ Hyp. 3.1f; Arist. *Ath.Pol.* 45.2.

²⁷ Dem. 46.26.

²⁸ Arist. *Ath.Pol.* 54.2.

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*,²⁹ but in all the other cases the principle *μηδὲν ἀπροβούλευτον* must have applied.³⁰ Consequently, in all three procedures appointment of *nomothetai* must have been debated in the *boule* and prepared by various *probouleumata*. 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 τούτων γ' ἐπέταξεν ἐκθεῖναι πρόσθε τῶν ἐπωνύμων καὶ τῶ*

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 Athenaion Politeia* (Oxford 1981) 523.

³⁰ Arist. *Ath. Pol.* 45.4.

γραμματεῖ παραδοῦναι, τούτον δ' ἐν ταῖς ἐκκλησίαις ἀναγιγνώσκειν . . . (20.94). 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: *προσέταξαν τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους πρόσθεν τῶν ἐπωνύμων, ἵν' ὁ βουλόμενος σκέψηται, κἂν ἀσύμφορον ὑμῖν κατίδη τι, φράση καὶ κατὰ σχολὴν ἀντίπη* (24.25). A similar statement is found among Demosthenes' comments on the Repeal Law: *ἐκτιθέναι κελεύει τοῦ προειδέναι πάντας· τάχ' ἂν, εἰ τύχοι, τοὺς μὲν ἀντιπόντας ἂν εἰ προαίσθωντο, λάθοι, οἱ δ' οὐδὲν προσέχοντες ἀναγνοῖεν ἂν* (24.36). Both passages show that the right to make objections (*ἀντιπεῖν*) 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 ἐπιγράψαντας 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 *rhetoires* 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:

τοσοῦτοι μὲν οἱ ἐναντίοι σφίσιν αὐτοῖς εἰσὶ νόμοι, ὥστε χειροτονεῖθ' ὑμεῖς τοὺς διαλέξοντας τοὺς ἐναντίους ἐπὶ πάμπολυν ἤδη χρόνον, καὶ τὸ πρᾶγμα οὐδὲν 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* 335–330.³² 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);³³ but the people’s power in general to regulate *nomothesia* by *nomo-*

tion. 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 ἐπιγραφίσαντας νομοθέταις* (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 τούτοις τοῖς νομοθέταις μὴ θῆσθε νόμον μηδένα (εἰσὶ γὰρ ὑμῖν ἱκανοί), ἀλλὰ τοὺς εἰς τὸ παρὸν βλάπτοντας ὑμᾶς λύσατε (3.10) . . . *καὶ λύειν γ', ὧ ἄνδρες Ἀθηναῖοι, τοὺς νόμους δεῖ τούτους τοὺς αὐτοὺς ἀξιοῦν οἵπερ καὶ τεθήκασιν* (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 *hoi 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 I³ 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.³⁷ 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 *βουλευτικοὶ 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 ἐπ' ἀνδρί*.

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*.³⁸ 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 ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις, ἐὰν μὴ ἑξακισχιλίοις δόξῃ κρύβδην ψηφίζομένοις (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 προδανεῖσαι τὸν ταμίαν τοῦ δήμου· ἐν δὲ τοῖς πρώτοις νομοθέταις προσνομοθετῆσαι τῷ ταμίᾳ (*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

³⁹ Cf. *IG* II² 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.³ 298 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[σαι τὸ ἀρ]γύριον τ[ο]ῦτο μερίζειν τ[οὺς ἀποδ]έκτας τῶι ταμίαι τοῦ δήμου εἰς τὸν ἐνιαυτὸν ἕκαστον (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 *Nomothetai*?

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 παλαιὸς 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 παλαιὸς 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 εἶναι ἐκ τῶν ὁμωμοκότων τὸν ἡλιαστικὸν ὄρκον* (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 παλαιὸς νόμος* Demosthenes says that laws were passed *παρ' ὑμῶν, ἐν τοῖς ὁμωμοκόσιν, παρ' οἷσπερ καὶ τᾶλλα κυροῦνται* (20.93). Leptines has not respected the requirements of *ὁ παλαιὸς 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' ὑμῶν* is an explicit reference to the *dikastai παρ' οἷσπερ καὶ τᾶλλα κυροῦνται*. 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 πρότερον νομοθέται, 92) = jurors (ἐν τοῖς ὁμωμοκόσιν, 93) = the *dikastai* (παρ' ὑμῖν παρ' οἷσπερ καὶ τᾶλλα κυροῦνται, 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 *omomokotes*," is twisted by Demosthenes into the erroneous assertion: "the *dikastai* are *nomothetai* since both boards are *omomokotes*." The only thing we know is that they were not *dikastai*.⁴⁴ (4) Epicrates' decree on the appointment of jurors to hear Timocrates' bill includes the following provision: τοὺς δὲ νομοθέτας εἶναι ἓνα καὶ χιλίους ἐκ τῶν ὁμωμοκότων, συννομοθετεῖν 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 ἓνα καὶ χιλίους ἐκ τῶν ὁμωμοκότων 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.

⁴⁵ Cf. M. H. Hansen, "οἱ πρόδεροι τῶν νομοθετῶν. A Note on IG II² 222, 41-52," *ZPE* 30 (1978) 154-57. On the *proedroi*, however, I prefer to follow the view of MacDowell and Rhodes; cf. Hansen (*supra* n.2) 103 n.17.

nian 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).⁴⁶ 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*.⁴⁷

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 *cheirotomia*:

διαχειροτονίαν δὲ ποιεῖν τοὺς προέδρους περὶ τούτων τῶν νόμων,
πρῶτον μὲν περὶ τοῦ κειμένου, εἰ δοκεῖ ἐπιτήδειος εἶναι τῷ δήμῳ
τῷ Ἀθηναίων ἢ οὐ, ἔπειτα περὶ τοῦ τιθεμένου. ὁπότερον δ’ ἂν
χειροτονήσωσιν οἱ νομοθέται, τούτου κύριον εἶναι.

MacDowell (*supra* n.2: 70) comments, “I know of no instance of *χειροτονεῖν* used of voting not carried out by *χείρες*: 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 *ἢ οὐ* are probably a reference to those who do not raise their hands in a *cheirotomia*. 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,

⁴⁶ Cf. J. H. Kroll, *Athenian Bronze Allotment Plates* (Cambridge [Mass.] 1972) 56 (meaning of the stamped seals), 62ff (chronological termini).

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.

750 do not). 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 στρατηγούς τοὺς τῇ ναυμαχία νικῶντας συνέβη κριθῆναι μᾶ χειροτονία πάντας*; and 41.3: *πολλὰ σοφιζομένων τῶν πρυτάνεων, ὅπως προσιστῆται 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 χειροτονία* 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 *ἢ οὐ* and *πρῶτον . . . ἔπειτα* 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.

⁴⁹ Cf. M. H. Hansen, *Die athenische Volksversammlung im Zeitalter des Demosthenes* (Konstanz 1984) 127 n.92.

⁵⁰ Cf. Xen. *Hell.* 1.7.2 (eight generals put on trial) and 34 (the vote on Callixenus’ *psephisma*).

psephoi, voted on whether *or not* (ἢ οὐ) to accept the law in force and *then* (ἔπειτα), 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 *cheirotomia* 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 ἓνα καὶ χιλίους ἐκ τῶν ὁμωμοκότων, συννομοθετεῖν δὲ καὶ τὴν βουλήν (Dem. 24.27). When the *nomothetai* voted by *cheirotomia*, 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 *diacheirotomia* 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 *cheirotomia*, 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 *cheirotomia* 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.

⁵² Cf. M. H. Hansen, "How Did the Athenian *Ecclesia* Vote?" *GRBS* 18 (1977) 137 (= *The Athenian Ecclesia* 117, with addendum 119).

⁵³ References in M. H. Hansen, *Eisangelia* (Odense 1975) 10 n.14.

To summarize: in the Repeal Law, and presumably in the Inspection Law as well,⁵⁴ the vote taken by the *nomothetai* is called *διαχειροτονία*, and the detailed description of the procedure given in the Repeal Law proves that the *diacheirotomia* was by show of hands, not by ballot. The number of *nomothetai* prescribed by Epicrates' decree (1,001) indicates, however, that if the *diacheirotomia* 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 παλαιὸς 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*⁵⁵ or by a panel of *nomothetai*?⁵⁶

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 τῶ δήμῳ (Aeschin. 3.39) as a gloss. A possible alternative is to assume a change of subject after τῶ 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).

98f). The verb used is *λύσαι*; 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 *λύσαι* 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 *probouleuma*, i.e., a provisional decree not yet passed by the *ekklesia*.

Another verb often used regarding Leptines' law is *θεῖναι*. 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 *τέθεικεν* 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 ὑμεῖς ποτ' ἐπίσθητε, ὡς ἐγὼ νομίζω, θέσθαι τὸν νόμον*. To whom *ὑμεῖς* may refer is not clear from the passage itself and at present I suspend judgment; but *ἐπίσθητε 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: *πάνθ' ὅσα Λεπτίνης ἐρεῖ περὶ τοῦ νόμου διδάσκων ὑμᾶς ὡς καλῶς κείται*; and by 35: *εἴθ' ὑμεῖς ἔτι σκοπεῖτ' εἰ χρῆ τοῦτον ἐξαλείψαι, καὶ οὐ πάλαι βεβούλευσθε*. In 134 *κείται* 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 ποιῆσαι 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 ψῆφον ᾧ 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 *nomothetai* 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 dissociated 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 *psephismata* 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: οὐδὲ γὰρ ἂν ὑμεῖς ποτ' ἐπεισθητε, ὡς ἐγὼ νομίζω, θέσθαι τὸν νόμον. Admittedly ὑμεῖς 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 τιθέναι 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

ἐκκλησίαν, καὶ οὐδ' ἐν ταύτῃ τιθέναι δεδώκασιν, ἀλλὰ σκέψασθαι καθ' ὃ τι τοὺς νομοθέτας καθιέιτε (Dem. 24.25). This passage shows that it was unconstitutional to “propose a law” (νόμον τιθέναι) 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 πρότερον 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 epitedeion 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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