

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

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**I**N THIS PAPER I shall argue that a basic form of separation of powers in fourth-century Athenian democracy<sup>1</sup> consists in a separation of initiative and decision: a decision-making body of government is not allowed to take an initiative, and, conversely, a body of government empowered to take an initiative is never allowed to make a decision on any important issue.

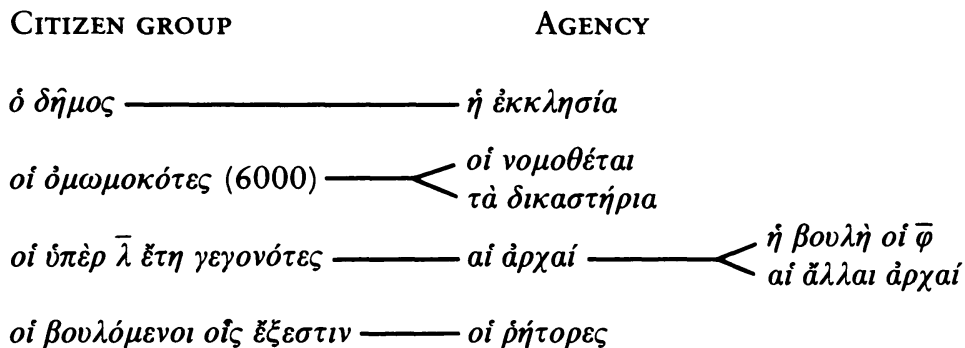
I begin with a short discussion of what a body of government is, and an inventory of the bodies of government to be found in fourth-century Athens. By way of introduction, I shall give a survey of the accepted opinion about the Athenian bodies of government. Leaving aside the Council of the Areopagus,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

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

<sup>2</sup> G. Busolt and H. Swoboda, *Griechische Staatskunde* II (Munich 1926) 986–1168: Die

only one source (never quoted) which directly supports this analysis, Demosthenes' first speech *Against Aristogeiton* 20: εἰ γάρ τις ὑμῶν ἐξετάσαι βούλεται τί ποτ' ἐστὶ τὸ αἴτιον καὶ τὸ ποιοῦν τὴν βουλὴν συλλέγεσθαι, τὸν δῆμον εἰς τὴν ἐκκλησίαν ἀναβαίνειν, τὰ δικαστήρια πληροῦσθαι, τὰς ἕνας ἀρχὰς ταῖς νέαις ἐκούσας ὑπεξιέναι, καὶ πάντα δι' ὧν ἡ πόλις οἰκεῖται καὶ σώζεται γίνεσθαι, τοὺς νόμους εὐρήσει . . . (compare Arist. *Pol.* 1317b36–37).

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



This arrangement differs in several important respects from the traditional one, and I shall emphasize the following five points: (1) The *demos* is embodied only in the *ecclesia* and never in the *dicasteria*.<sup>3</sup> (2) The *nomothetai* are recorded as a separate body of

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Gemeindeversammlung - Der Rat der Fünfhundert und der Rat vom Areiopag - Die Beamten - Das Geschworenengericht. G. Glotz, *The Greek City* (London 1929) 152–262: The Assembly of the People - The Council - The Magistrates - Justice (the people's court and homicide courts). V. Ehrenberg, *The Greek State* (Oxford 1960) 52–74: The Assembly of Citizens - The Council - The Officials - The Popular Courts. A. W. Gomme, “The Working of the Athenian Democracy,” in *More Essays in Greek History and Literature* (Oxford 1962) 177–93: the assembly - the council - the officers of state - the dicasteries. A. Andrewes, *The Greeks* (London 1967) 167–83: the assembly - the council - the magistrates - the administration of justice (the body of jurors). E. Will, *Le monde grec et l'Orient* I (Paris 1972) 448–58: l'Ecclèsia - la Boulè - les arkhai - l'Héliée. Cl. Mossé, *Le monde grec et l'Orient* II (Paris 1974) 133–50: l'Ecclèsia - la Boulè - les magistrats - l'organisation judiciaire (l'Héliée, l'Aréopage). E. Meyer, *Einführung in die antike Staatskunde* (Darmstadt 1968) 88–97: Volksversammlung - Der Rat - Die Beamten - Volksgerecht.

<sup>3</sup> Cf. M. H. Hansen, “*Demos, Ecclesia and Dicasterion* in Classical Athens,” *GRBS* 19 (1978) 127–46.

government and a very important one, since the *nomothetai*, after 403/2, were entrusted with the passing of all general standing rules, all *nomoi*.<sup>4</sup> (3) Following most scholars I accept the thirty-year age-limit for all *archai*, and not only for the *boule*.<sup>5</sup> (4) The *ρήτορες*,<sup>6</sup> of course, do not form a 'body of government' as they have no official position and no authority. Nevertheless they are recognized in our sources as a specific agency in the political process, and *ὁ βουλόμενος τῶν Ἀθηναίων οἷς ἔξεστιν*, frequently mentioned as originator in laws and decrees, is perhaps the protagonist of Athenian democracy. Taken together, *οἱ βουλόμενοι* were (in theory) identical with *ὁ δῆμος*, but in reality there was a gulf between the Athenian people and the small number of active Athenian citizens. And apart from sheer numbers there is a fundamental difference between *hoi boulomenoi* and the people: *ὁ δῆμος* is a collective body composed of anonymous and irresponsible citizens (Thuc. 3.43.4–5, 8.1.1). *οἱ βουλόμενοι* form a group composed of individual citizens each responsible for the initiative he takes (*cf. infra* 362f). I shall return to this problem below. (5) the *boule* is classified as an *arche*, side by side with the other boards of magistrates. This is a new point, which must be substantiated before we discuss the separation of powers itself.

## I. Classification of the *Boule* as an *Arche*

In modern accounts of the political structure in democratic Athens it is assumed that there was a fairly sharp distinction between the *boule* and the *archai*, which are always treated separately. Admittedly discussions of the *boule* regularly begin with the statement that the councillors were—strictly speaking—officers of state and subject to the same rules of appointment etc. as other *archai*.<sup>7</sup> But no one has drawn the conclusion from this concession and organized an account of the Athenian democracy into sections about the *ecclesia*, the *dicasteria*, and the *archai* (including the council of five hundred). First, however, we must es-

<sup>4</sup> Cf. M. H. Hansen, "Nomos and Psephisma in Fourth-Century Athens," GRBS 19 (1978) 315–30, and "Did the Athenian Ecclesia Legislate after 403/2 B.C.?" GRBS 20 (1979) 27–53, with further references.

<sup>5</sup> Cf. M. H. Hansen, "Seven Hundred Archai in Classical Athens," GRBS 21 (1980) 167–69 (Appendix I: The Minimum Age for Archai).

<sup>6</sup> For the meaning and use of this term the evidence is collected in the Appendix.

<sup>7</sup> E.g. P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 13ff.

tablish that the council both structurally and functionally was a board of magistrates, an *arche* in the technical sense of the word.<sup>8</sup>

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

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

1299b30–32: οὐ μὴν ἀλλὰ καὶ ἰδιαί τινες (ἄρχαι) εἰσίν, οἷον ἡ τῶν προβούλων· αὕτη γὰρ οὐ δημοκρατική· βουλή δὲ δημοτικόν.  
1317b30–31: τῶν δ' ἀρχῶν δημοτικώτατον βουλή, . . .  
1322b12–17: παρὰ πάσας δὲ ταύτας τὰς ἀρχὰς ἡ μάλιστα κυρία πάντων ἐστίν· ἡ γὰρ αὕτη πολλάκις ἔχει τὸ τέλος καὶ τὴν εἰσφορὰν ἢ προκάθεται τοῦ πλήθους, ὅπου κύριός ἐστιν ὁ δῆμος· δεῖ γὰρ εἶναι τὸ συνάγον τὸ κύριον τῆς πολιτείας· καλεῖται δὲ ἔνθα μὲν πρόβουλοι διὰ τὸ προβουλεύειν, ὅπου δὲ πλήθός ἐστι, βουλή μᾶλλον.

<sup>8</sup> That the *archai* collectively were treated as one body of government is apparent from several laws and decrees—e.g. Teisamenos' decree which includes the following provision: ἐπιμελείσθω ἡ βουλή ἢ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρώνται (Andoc. 1.84); and the law then quoted by Andocides (1.87): ἀγράφω δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περι ἑνός. For a definition of *arche* and an inventory of *archai* see Hansen (*supra* n.5) 155–62.

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

<sup>10</sup> 31.3: τῶν δ' ἄλλων ἀρχῶν πλὴν τῆς βουλῆς καὶ τῶν στρατηγῶν μὴ ἐξεῖναι κτλ. 47.1: συνδιοικεῖ δὲ (ἡ βουλή) καὶ ταῖς ἄλλαις ἀρχαῖς τὰ πλείστα (cf. 49.5). 62.1: καὶ ταύτας (τὰς ἀρχὰς) ἐκ τῆς φυλῆς ὅλης κληροῦσι πλὴν βουλευτῶν καὶ φρουρῶν. 62.3: ἄρχειν δὲ τὰς μὲν κατὰ πόλεμον ἀρχὰς ἔξεστι πλεονάκις, τῶν δ' ἄλλων οὐδεμίαν πλὴν βουλεύσαι δίς.

1323a6–9: τριῶν δ' οὐσῶν ἀρχῶν καθ' ἃς αἰροῦνται τινες ἀρχὰς τὰς κυρίου, νομοφυλάκων προβούλων βουλῆς, οἱ μὲν νομοφύλακες ἀριστοκρατικόν, ὀλιγαρχικόν δ' οἱ πρόβουλοι, βουλή δὲ δημοτικόν. περὶ μὲν οὖν τῶν ἀρχῶν, ὡς ἐν τύπῳ, σχεδὸν εἴρηται περὶ πασῶν.

Aristotle's analysis both in the *Ath. Pol.* and in the *Politics* is confirmed by the orators' usage in the forensic speeches. Aeschines refers to the *boule* as one of the *κληρωταὶ ἀρχαί* (1.106, 109). Demosthenes mentions selection by lot of *archai*, such as the *thesmothetai* or the *boule* (39.10), and the passage shows that the same bronze *pinakion* was used for the sortition of councillors and of other magistrates.<sup>11</sup> Socrates emphasizes that he never served on any board of *archai*, except the *boule* (Pl. *Ap.* 32A–B). Furthermore, in several laws and decrees the *boule*, or a committee of the *boule*, is described as an *arche*. In the so-called charter of the democracy (IG I<sup>3</sup> 105) we read in the fragmentary line 45: τ]ὸς πεντακοσίος πρὶν παύεσθαι τῆς ἀρχῆ[ς]. The meaning is, probably, that the five hundred *bouleutai* before they resign their *arche* shall do something, we do no longer know what.<sup>12</sup> In other laws committees of the *boule* are described as *archontes*. In the recently discovered law about silver coinage (*Hesperia* 43 [1974] 157–88) οἱ ἀρχοντες in lines 24–25 refers back to three boards of *archai* mentioned previously: the *σιτοφύλακες* (19), the *συλλογεῖς τοῦ δήμου* (20), and the *ἐπιμεληταὶ τοῦ ἐμπορίου* (21–22). Of these three boards of *archai* the second is in fact a committee of the *boule*, manned by thirty *bouleutai*: IG II<sup>2</sup> 1749.75–79 (*Agora* XV 38.78–82). Similarly, in the law quoted in Dem. 24.54, the main provision is μὴ εἰσάγειν περὶ τούτων εἰς τὸ δικαστήριον μηδ' ἐπιψηφίζειν τῶν ἀρχόντων μηδένα. Now the only officials empowered to put a proposal to the vote were the *proedroi*, who were *bouleutai*, and so τῶν ἀρχόντων μηδεῖς must be a comprehensive term for the *proedroi* (who put proposals to the vote) and the magistrates with ἡγεμονία δικαστηρίου (who bring a case before the court).

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

<sup>11</sup> Cf. Hansen (*supra* n.5) 169.

<sup>12</sup> Cf. H. T. Wade-Gery, "Studies in Attic Inscriptions of the Fifth Century B.C.," *BSA* 33 (1932–33) 117–22.

Thuc. 5.47.9: ὀμνύντων δὲ Ἀθήνησι μὲν ἡ βουλή καὶ αἱ ἔνδημοι ἀρχαί, ἐξορκούντων δὲ οἱ πρυτάνεις.<sup>13</sup>

Dem. 24.20 (law): . . . ἐπιχειροτονίαν ποιεῖν τῶν νόμων, πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εἶτα οἱ κείνται τοῖς ἐννέα ἀρχουσιν, εἶτα τῶν ἄλλων ἀρχῶν.

Lys. 25.14: οὐδεὶς με ἀποδείξει οὔτε βουλευσάντα οὔτε ἀρχὴν οὐδεμίαν ἀρξάντα.<sup>14</sup>

Xen. Vect. 6.1: ἱερεῦσι δὲ καὶ βουλή καὶ ἀρχαῖς καὶ ἱππεῦσι τὰ πάτρια ἀποδώσομεν.

Arist. Ath.Pol. 24.3: . . . βουλή δὲ πεντακόσιοι, καὶ φρουροὶ νεωρίων πεντακόσιοι, καὶ πρὸς τούτοις ἐν τῇ πόλει φρουροὶ ἄρχαί δ' ἔνδημοι μὲν εἰς ἑπτακοσίουσ ἀνδρας, ὑπερόριοι δ' εἰς ἑπτακοσίουσ.

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

Dem. 24.45 (law): μηδὲ περὶ τῶν ἀτίμων, ὅπως χρῆ ἐπιτίμους αὐτοὺς εἶναι, μηδὲ περὶ τῶν ὀφειλόντων τοῖς θεοῖς ἢ τῷ δημοσίῳ τῷ Ἀθηναίων . . . .

Dem. 25.30: εἴ τις . . . εἴποι τοῖς βιαζομένοις ἐξεῖναι λέγειν ἢ τοῖς ἐκ τοῦ δεσμοτηρίου . . . ἢ τοῖς ὀφείλουσι τῷ δημοσίῳ, ἢ τοῖς καθάπαξ ἀτίμοις . . . .

Arist. Ath.Pol. 63.3: δικάζειν δ' ἔξεστιν τοῖς ὑπὲρ ἄ ἔτη γεγονόσιν, ὅσοι αὐτῶν μὴ ὀφείλουσιν τῷ δημοσίῳ ἢ ἀτιμοὶ εἰσιν.

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

<sup>13</sup> In IG II<sup>2</sup> 230.12–13 [τὴν β]ουλὴν καὶ τὰς ἀρχ[ὰς] is probably a reference to the officials in Eretria and not in Athens (*pace* the restorations printed by Kirchner).

<sup>14</sup> Same phrase in Lysias' *For Eryximachus*, P.Ryl. 489.112–13.

<sup>15</sup> Andoc. 1.73; Isae. 10.17; Dem. 21.99, 22.34; 24.200–01, 26.1, 27.67, 43.58, 59.1, etc.

<sup>16</sup> The law quoted in Dem. 24.20 establishes a tripartition into the *boule*, the nine archons, and the other *archai*, and so there is no real distinction between *boule* and *archai*.

regarded the *boule* as a peculiar board of *archai* but nevertheless classified the *boule* as an *arche*.<sup>17</sup> And this conclusion is strengthened by an examination of the conditions for being a *bouleutes*. Like all other *archai* the *bouleutai* had to pass a *dokimasia*, to swear an oath, to wear a crown, and to submit to *euthynai* on expiration of their office.<sup>18</sup> Furthermore, the *bouleutai* had to be thirty years of age or more, like other *archai*.<sup>19</sup> The functional similarity between the *boule* and the other *archai* must be addressed next.

## II. The Separation of Initiative and Decision

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

1298a28–32: τέταρτος δὲ τρόπος τὸ πάντας περὶ πάντων βουλευέσθαι συνιόντας, τὰς δ' ἀρχὰς περὶ μηθενὸς κρίνειν ἀλλὰ μόνον προανακρίνειν, ὄνπερ ἡ τελευταία δημοκρατία νῦν διοικεῖται τρόπον.

1317b28–31: τὸ τὴν ἐκκλησίαν κυρίαν εἶναι πάντων ἢ τῶν μεγίστων ἀρχὴν δὲ μηδεμίαν μηθενὸς ἢ ὅτι ὀλιγίστων κυρίαν τῶν δ' ἀρχῶν δημοτικώτατον ἢ βουλή.

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

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

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

<sup>18</sup> Cf. Rhodes (*supra* n.7) 12–15, 194ff.

<sup>19</sup> Cf. Hansen (*supra* n.5).

τοιαύταις δημοκρατίαις ἐν αἷς αὐτὸς συνιῶν ὁ δῆμος χρηματίζει  
περὶ πάντων.

1292a28–30: ἔτι δὲ οἱ ταῖς ἀρχαῖς ἐγκαλοῦντες τὸν δῆμόν φασι  
δεῖν κρίνειν, ὁ δὲ ἀσμένως δέχεται τὴν πρόκλησιν· ὥστε κατα-  
λύονται πᾶσαι αἱ ἀρχαί.

Aristotle's description of democratic *archai* as preparatory boards with no power to make decisions is a generalization about democracy in all Greek *poleis*, and in the age of Aristotle there were several hundred democracies in Greece.<sup>20</sup> Accordingly the first question to ask is whether Aristotle's general statement in the *Politics* about the separation of powers in democracies applies to fourth-century Athens. In my opinion it is valid for the Athenian democracy if we make two modifications concerning the bodies of government involved, one about the decision-making body and one about the *archai* who prepare the decisions.

In fourth-century Athens the right to make important decisions was no longer reserved for the *demos* in the *ecclesia*. In 403/2 the *ecclesia* was deprived of the right to pass *nomoi* and all legislation in the proper sense of the word was transferred to the *nomothetai* (*supra* 347 with n.4). Similarly, in the 350s the *ecclesia* was deprived of the right to act as a law-court, and judicial authority, even in political cases, was transferred to the *dicasteria*.<sup>21</sup> So the right to make decisions on important issues was divided between three separate bodies of government: (1) the *ecclesia* passing *psephismata*, (2) the *nomothetai* passing *nomoi*, and (3) the *dicasteria* pronouncing *kriseis*. Second, the council of five hundred was admittedly an *arche*, but a peculiar *arche*, and it is in conformity with the sources (*supra* 348) to subdivide the *archai* into the *boule* and the other *archai*. So we have three agencies making decisions (*ecclesia*, *nomothetai*, and *dicasteria*) whereas the initiatives are taken by some 1200 *archai*, bisected into the council of five hundred and about 700 other *archai*, usually organized into boards of ten.<sup>22</sup>

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

<sup>20</sup> On the number of *poleis* in Greece cf. E. Ruschenbusch, *Untersuchungen zu Staat und Politik in Griechenland vom 7. - 4. Jh. v. Chr.* (Bamberg 1978) 3–17. In the fourth century most of the *poleis* were democracies, cf. Arist. *Pol.* 1286b20–22, 1291b7–13, 1296a22–23, 1301b39–40.

<sup>21</sup> M. H. Hansen, "How Often Did the *Ecclesia* Meet?" *GRBS* 18 (1977) 68–69 with further references.

<sup>22</sup> For the number of *archai* cf. Hansen (*supra* n.5).



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

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

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

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

(4) The *boule* is empowered to pass *psephismata* in routine matters only<sup>24</sup> and to impose minor fines of up to 500 drachmas.<sup>25</sup> The great majority of the decisions made by the *boule* take the form of *probouleumata*, provisional decrees to be voted on by the

<sup>23</sup> Cf. M. H. Hansen, "Athenian *Nomothesia* in the Fourth Century B.C. and Demosthenes' Speech against Leptines," *CIMed* 32 (1980) 103 with n.17.

<sup>24</sup> Decrees of the *boule* preserved on stone are listed by Rhodes (*supra* n.7) 271–72. Cf. further *IG II<sup>2</sup>* 1623.210–12, 1629.272, 1014–15, 1672.302. Decrees preserved in literary sources are: *Hell. Oxy.* 6.1; Dem. 47.33, 36; Aeschin. 3.66–67; Dem. 19.129–30 cf. 124; Dem. 19.154; Dem. 18.28; Aeschin. 2.17; 2.55, 110; 3.76; Ath. 171E. A few important decisions of the 390s (394/3) are believed by some scholars to be decrees of the *boule* passed without reference to the *demos*, cf. e.g. W. R. Connor, "The Athenian Council. Method and Focus in Some Recent Scholarship," *CJ* 70 (1974) 37–38. The decrees in question are *IG II<sup>2</sup>* 16 (alliance with Eretria), 17 (honorary decree for Sthorys of Thasos), 18 (honorary decree for Dionysius of Syracuse), *Hell. Oxy.* 6.1 (decree about Demaenetus). But the date of *IG II<sup>2</sup>* 16 is not certain and the alliance has recently been dated 404/3 by P. Krentz, *AJP* 100 (1979) 398–400; the traditional date, however, is maintained by D. Knoepfler, *AJP* 101 (1980) 462–69. Next, I follow Rhodes (82–85) in believing that *IG II<sup>2</sup>* 17 may be a republication of a decree of the people and that 18 probably is a decree of the people with an unusual formula. Finally, in *Hell. Oxy.* 6.1 we are told that the *boule* was overstepping its powers and had its decision overruled by the *demos*. We know that the *ecclesia* might delegate some of its powers to the *boule* (cf. *IG II<sup>2</sup>* 127.34–35, 204.85–86, 435.7–9, 1629.264–69; *SEG XIV* 47B.3); but usually the powers delegated to the *boule* were confined to making minor additions to the decrees passed in the *ecclesia* by the *demos*. Cf. Rhodes 82. For an exceptional situation cf. Dem. 19.154 and Hansen (*supra* n.21) 44–45.

<sup>25</sup> *IG I<sup>3</sup>* 105.32 (?); Dem. 47.43; *Hesperia* 43 (1974) 158.36 (as restored by Stroud).

*demos* in the *ecclesia*.<sup>26</sup> Similarly, the *boule* has to refer to the *nomothetai* the bills drawn up and handed in by individual citizens.<sup>27</sup> Finally, in *εἰσαγγελίαι εἰς τὴν βουλήν*, the council passes only a preliminary verdict (*κατάγνωσις*), leaving the principal hearing of the case to the *dicasteria*.<sup>28</sup>

(5) The other *archai*—perhaps some seven hundred—have no powers to pronounce a judgement except in minor cases in which the matter at issue is less than ten drachmas.<sup>29</sup> Similarly, the *archai* are empowered to impose only minor fines without reference to the *dicasteria*.<sup>30</sup> But the *archai* prepare the trials (*ἀνάκρισις*), bring the cases before the jurors (*εἰσάγειν εἰς τὸ δικαστήριον*), and preside over the court (*ἡγεμονία δικαστηρίου*).<sup>31</sup>

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

(1) Occasionally a board of magistrates was empowered to inflict capital punishment on a criminal without referring the case to a *dicasterion*. The two most important instances of this exception to the principle *μηδένα ἄκριτον ἀποκτεῖναι* are the power of the *boule*<sup>32</sup> and of *οἱ ἔνδεκα*<sup>33</sup> to order instant execution without trial. In both cases capital punishment was probably applied only to criminals who could be classified as outlaws (*πολέμιοι*) or exiles (*φεύγοντες*) or ‘malefactors’ (*κακούργοι*) in the technical sense.

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

<sup>26</sup> Cf. Rhodes (*supra* n.7) 52–81.

<sup>27</sup> Dem. 24.47–48. Cf. M. H. Hansen, “οἱ πρόεδροι τῶν νομοθετῶν. A Note on IG II<sup>2</sup> 222.41–53,” *ZPE* 30 (1978) 155–57, where I argue that the council’s role in the *nomothesia* procedure was restricted to the preparation of the bills. I do not agree with MacDowell’s suggestion in *JHS* 95 (1975) 69 that Epicrates in his decree (Dem. 24.27) prescribes that Timocrates’ law was to be passed by 1001 *nomothetai* and the *boule*.

<sup>28</sup> Arist. *Ath. Pol.* 45.2, 46.2, 59.4; Dem. 24.63; cf. M. H. Hansen, *Eisangelia* (Odense 1975) 22–23.

<sup>29</sup> Arist. *Ath. Pol.* 52.3 (*οἱ ἀποδέκται*), 53.2 (*οἱ τετταράκοντα*); *Hesperia* 43 (1974) 158.23–25 (*οἱ σιτοφύλακες, οἱ συλλογεῖς τοῦ δήμου, οἱ ἐπιμεληταὶ τοῦ ἐμπορίου*).

<sup>30</sup> Cf. A. R. W. Harrison, *The Law of Athens* II (Oxford 1971) 4 with n.1.

<sup>31</sup> Cf. J. H. Lipsius, *Das attische Recht und Rechtsverfahren* I–III (Leipzig 1905–15) 54–56.

<sup>32</sup> Cf. M. H. Hansen, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 30–35, esp. 34–35.

<sup>33</sup> Cf. Hansen (*supra* n.32) 17 (with n.3), 18, 114, 119.

tion between the *ecclesia* and a board of *archai*, and in other procedures the initiative was even reserved for the *ecclesia*.

(a) The *ecclesia* was empowered to instruct the *prytaneis* to call a special meeting of the assembly, an *ἐκκλησία σύγκλητος*,<sup>34</sup> or instruct the *boule* to place some matter on the agenda for the next meeting of the assembly (IG II<sup>2</sup> 125.6–9, 193.4–8, 360.46–50).

(b) The *ecclesia* had the exclusive right to decree that the *nomothetai* be convened; the *prytaneis* were not empowered to summon the *nomothetai* without a decree passed by the people.<sup>35</sup>

(c) The *ecclesia* had the exclusive right to reject or accept an *εἰσαγγελία εἰς τὸν δῆμον*. In case of acceptance, the *eisangelia* was invariably (after ca 355) referred to a *dicasterion* and heard by the jurors (Dem. 8.28–29; Philoch. *FGrHist* 328F149; Dem. 19.277–79; Aeschin. 3.224; cf. *supra* n.21).

(d) The *ecclesia* was empowered to suspend an *arche* for misconduct in office; the case was referred to the *dicasteria* and heard by the jurors.<sup>36</sup>

If we allow for these exceptions, the bodies of government in fourth-century Athens were bisected into *archai* (which according to Aristotle were *κύριαι μηθενὸς ἢ ὀλιγίστων*) and *κύριοι* (who made all important decisions when summoned and presided over by the *archai*).<sup>37</sup>

κύριοι	{	<i>ἐκκλησία</i> <sup>38</sup> <i>νομοθέται</i> <sup>39</sup> <i>δικαστήρια</i> <sup>40</sup>
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<sup>34</sup> Aeschin. 2.61. Cf. Hansen (*supra* n.21) 48, 55, and “*ἐκκλησία σύγκλητος* in Hellenistic Athens,” *GRBS* 20 (1979) 151.

<sup>35</sup> Dem. 24.26–27, cf. 21; Aeschin. 3.39; Dem. 3.10, 18.102–07 (on which see Hansen, “*Nomos*” [*supra* n.4] 327–29).

<sup>36</sup> Arist. *Ath.Pol.* 43.4, 61.2. Cf. Hansen (*supra* n.28) 41–44.

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

<sup>38</sup> *Kyrios* is applied to the people in assembly in e.g. Dem. 13.31, 20.107, 59.4; Xen. *Hell.* 1.7.12; IG II<sup>2</sup> 140.10–12.

<sup>39</sup> There is no passage where the adjective *kyrios* is explicitly applied to the *nomothetai*, but cf. Dem. 20.93 (τοῦς νόμους . . . τίθεναι . . . παρ’ ὑμῖν, ἐν τοῖς ὀμωμοκόσιν, παρ’ ὁσπερ καὶ τᾶλλα κυροῦνται) and the *nomos* quoted in Dem. 24.33 (τῶν δὲ νόμων τῶν κειμένων μὴ ἐξεῖναι λύσαι μηδένα, εἰ μὴ ἐν νομοθέταις). Cf. furthermore the enactment formula in the preserved *nomoi*: δεδόχθαι ἔδοξε τοῖς νομοθέταις.

<sup>40</sup> For a list of passages where the *dikastai* are called *κύριοι* (πάντων) cf. Hansen (*supra* n.9) 17–18, 47–48.

$\left. \begin{array}{l} \text{ἀρχαί} \\ \text{αἱ ἄλλαι ἀρχαί} \end{array} \right\} \begin{array}{l} \text{βουλή} \\ \text{αἱ ἄλλαι ἀρχαί} \end{array}$

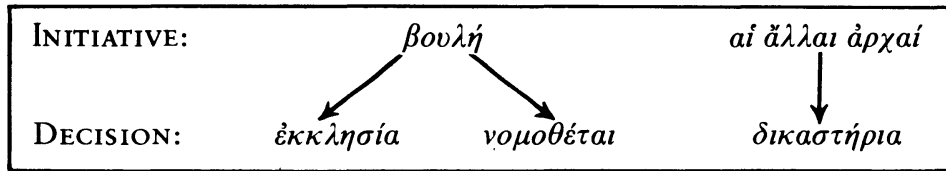
Concerning the relationship between the two bodies of *archai* and the three bodies of *kyrioi*, we can make the following two observations:

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

(2) Conversely, the other magistrates, who had *ἡγεμονία δικαστηρίου*, had no right to summon and to preside over the *ecclesia* or the *nomothetai*. Admittedly, the *strategoï* may have been empowered to have an *ecclesia* summoned, but if so, the procedure was that the *strategoï* applied to the *boule* and asked it to summon the *ecclesia*.<sup>41</sup> Similarly, the *thesmothetai* might demand that a revision of the law-code be referred to the *nomothetai*, but again the *thesmothetai* had to apply to the *boule* and to leave the summoning of the *nomothetai* to the *prytaneis* (Aeschin. 3.38–40).

<sup>41</sup> For the prerogative of the *strategoï* to convene an assembly see Thuc. 2.59.3 and Plut. *Phoc.* 15.1. For the *boule* and the *prytaneis* as intermediaries between the *strategoï* and the *ecclesia* see Thuc. 4.118.14; IG II<sup>2</sup> 897, 911, 954; SEG XXI 440, XXIV 134; restored at IG I<sup>2</sup> 98.20 (not at I<sup>3</sup> 93). We have two fifth-century decrees moved by the board of *strategoï*, IG I<sup>3</sup> 89.55 and 92.5. For *ecclesiai* convened by orders of the *boule* (and not by the *prytaneis* on their own initiative) see *Hell. Oxy.* 6.2; Xen. *Hell.* 6.5.33; *Hesperia* 7 (1938) 476–79 no. 31. The Hellenistic decrees are discussed in Hansen (*supra* n.34) 151–52, and a survey of the powers of the *strategoï* vis-à-vis the *ecclesia* can be found in Rhodes (*supra* n.7) 44–46.

To sum up, the *boule* acted as originator when a decision had to be made by the *ecclesia* or by the *nomothetai*, whereas the other *archai* had the exclusive right to be originators towards the *dicas-teria*. This statement can be illustrated by a figure:



### III. The Combination of Initiative and Implementation

Apart from the right to summon and to preside over the *kyrioi*, who made the decisions, the *archai* had another important function, *viz.* the administration of those decisions. In his chapter about *archai* in *Politics* 6.8 Aristotle distinguishes (1322b12–17, quoted *supra* 348) between *εἰσφορά* (initiative) and *τέλος* (implementation). Earlier in the same chapter he emphasizes that judicial decisions have no effect if there are no *archai* to enforce them: οὐδὲν ὄφελος γίνεσθαι μὲν δίκας περὶ τῶν δικαίων, ταύτας δὲ μὴ λαμβάνειν τέλος (1322a5–6). Accordingly, Aristotle states in the other central chapter about *archai* (4.15) that the essential duty of an *arche* is to issue orders: μάλιστα δ' ὡς ἀπλῶς εἰπεῖν ἀρχὰς λεκτέον ταύτας ὅσαις ἀποδέδοται βουλευσασθαί τε περὶ τινῶν καὶ κρῖναι καὶ ἐπιτάξαι, καὶ μάλιστα τοῦτο· τὸ γὰρ ἐπιτάττειν ἀρχικώτερόν ἐστιν (1299a25–28).<sup>42</sup>

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

<sup>42</sup> Cf. also Xen. *Mem.* 3.9.11 and the ephebic oath (Tod II 204), which included a promise to obey the authorities.

(1) In the *nomos* about silver coinage (*Hesperia* 43 [1974] 157–59) the main provision is that two *dokimastai*, one in Athens and one in the Peiraeus, shall examine all the silver coins submitted to them, in order to enforce the acceptance of genuine Athenian silver coins. The law includes an injunction to the tradesmen to accept the decision made by the *dokimastes*, but most of the law consists of detailed instructions to the *archai* about the carrying into effect of the main provision. No less than seven different boards of *archai* are mentioned in the law.<sup>43</sup>

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

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

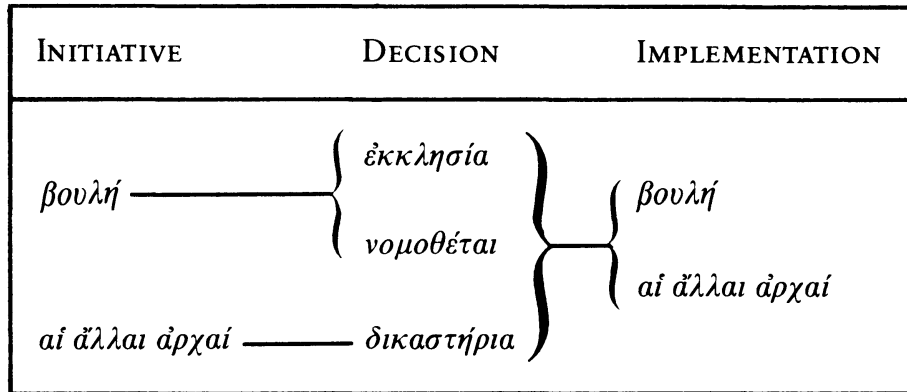
In order to enforce all the decisions made by the *nomothetai*, the *ecclesia*, and the *dicasteria*, the *archai* were invested with special authority. The outward sign of the authority was a crown worn by all *archai* on duty, and the authority was guaranteed by special protection and special powers.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

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

<sup>43</sup> ἡ βουλή: 13, 34, 36, 39, 49 (γραμματεὺς τῆς βουλῆς: 47–48, 56). οἱ τοῦ δήμου συλλογεῖς: 15, 20. οἱ σιτοφύλακες: 19, 23. οἱ ἐπιμεληταὶ τοῦ ἐμπορίου: 21–22. οἱ θεσμοθέται: 26. οἱ ἀποδέκται: 40, 52. οἱ ποληταί: 48–49.

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

<sup>45</sup> See *supra* nn.25 and 30.



A simplified model is: *ἀρχαί* → *κύριοι* → *ἀρχαί*. The powers of the *archai* consist in initiative and implementation, but the *archai*, including the *boule*, never make any important decision.

#### IV. The Relationship between *αἱ ἀρχαί* and *οἱ βουλόμενοι*

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

<sup>46</sup> *Ἀθηναίων ὁ βουλόμενος οἷς ἐξεστίν*: *Hesperia* 43 (1974) 158.34; 49 (1980) 263.25; Dem. 24.63; 59.16; Aeschin. 1.32. *Ἀθηναίων ὁ βουλόμενος*: IG II<sup>2</sup> 204.22, 40–41; 244.41; 337.22–23; 365.19; *Hesperia* 49 (1980) 263.28; 264.41; Lys. fr. 233.2; Dem. 24.23, 33; 59.90; Aeschin. 1.23; Arist. *Ath.Pol.* 39.1. *ὁ βουλόμενος οἷς ἐξεστίν*: Dem. 24.105. *ὁ βουλόμενος*: IG I<sup>3</sup> 14.8; 41.61; 64.6; 84.26; 133.11; Andoc. 1.23, 26, 83–84; Lys. 25.14; Dem. 13.11; 18.138; 19.117; 21.45; 23.28; 24.18, 25, 105; 43.54; *Prooem.* 10.1, 17.1; Aeschin. 2.65; 3.220; Hyp. 2 fr. 3; fr. 24; Lycurg. 1.121; *Ath.Pol.* 9.1; 29.2; 43.4, 6. *οἷς ἐξεστίν*: Dem. 59.52; *Ath.Pol.* 63.3. *τῶν πολιτῶν ὁ βουλόμενος*: Ps.-Xen. *Ath.Pol.* 1.2; Isoc. 20.2; Dem. 58.14; Aeschin. 3.2, 23; Hyp. 3.11. *ιδιώτης*: Andoc. 1.84; Dem. 43.71.

curs in numerous *nomoi*<sup>47</sup> and *psephismata*.<sup>48</sup> It denotes any Athenian adult male citizen who is *epitimos*.<sup>49</sup> Like *ὁ δῆμος* and *ἡ βουλὴ* it is used as a constitutional technical term, referring to 'the active citizen', and the sources justify, in my opinion, the inclusion in the figure on page 346 of *οἱ βουλόμενοι* side by side with *ὁ δῆμος* and *οἱ ὁμωμοκότες* which denote regular bodies of government.

*ὁ βουλόμενος* is frequently regarded as the protagonist in Athenian democracy, and Aeschines, for example, emphasizes that one of the principal differences between an oligarchy and a democracy is that, in a democracy, it is *ho boulomenos* who addresses the people whereas the right to speak, in an oligarchy, is restricted to those in power.<sup>50</sup> What Aeschines has in mind is the official invitation in the *ecclesia* to address the people: the formula used by the *keryx* was *τίς ἀγορεύειν βούλεται*;<sup>51</sup> In this formula, *βούλεσθαι* is not an auxiliary with no meaning of its own. Comparison with *Ἀθηναίων ὁ βουλόμενος οἷς ἔξεστιν* indicates that the verb has a precise meaning, *viz.* to take it upon oneself to be promoter. In support of this interpretation is the witty dialogue in Aristophanes' *Plutus* between an honest man and a sycophant. The honest man asks the sycophant who he is and the sycophant states that he is in charge of all public and private affairs. *τί μαθῶν*; asks the honest man. *βούλομαι* is the laconic reply; and a few lines later the sycophant forces the honest man to admit the importance of *ho boulomenos* for the administration of justice: *Δι.: οὐκ οὖν δικαστὰς ἐξεπίτηδες ἢ πόλις ἄρχειν καθίστησιν*; *Συ.: κατηγορεῖ δὲ τίς*; *Δι.: ὁ βουλόμενος*. *Συ.: οὐκ οὖν ἐκεῖνός εἰμ' ἐγώ, ὥστ' εἰς ἔμ' ἤκει τῆς πόλεως τὰ πράγματα* (907–19).

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

<sup>47</sup> IG II<sup>2</sup> 244.41; *Hesperia* 43 (1974) 158.34; 49 (1980) 263.25, 28; 264.41; Dem. 23.28; 24.23, 33, 63, 105; 43.54, 71; 59.16, 52; Hyp. fr. 24.

<sup>48</sup> IG I<sup>3</sup> 14.8; 41.61; 64.6; 84.26; 133.11; IG II<sup>2</sup> 204.22, 40–41; 337.22–23; 365.19; Andoc. 1.83–84; Arist. *Ath. Pol.* 29.2.

<sup>49</sup> *Ἀθηναίων* or *τῶν πολιτῶν* indicates that *ὁ βουλόμενος* has to be a citizen, and *οἷς ἔξεστιν* indicates that he must be *epitimos*, cf. Arist. *Ath. Pol.* 63.3, where *οἷς μὴ ἔξεστιν* are *atimoi* liable to *endeixis*.

<sup>50</sup> Aeschin. 3.220: *ἐν μὲν γὰρ ταῖς ὀλιγαρχίαις οὐχ ὁ βουλόμενος, ἀλλ' ὁ δυναστεύων δημηγορεῖ, ἐν δὲ ταῖς δημοκρατίαις ὁ βουλόμενος καὶ ὅταν αὐτῷ δοκῇ*.

<sup>51</sup> Ar. *Ach.* 45; Dem. 18.170, 191; Aeschin. 1.23; 3.4. Cf. G. T. Griffith, "Isegoria in the Assembly at Athens," *Ancient Society and Institutions* (Oxford 1966) 119; J. D. Lewis, "Isegoria at Athens," *Historia* 20 (1971) 134–35.



(1) Both public and private actions were brought before the *dicasteria* by a private citizen who applied to the competent magistrate for a trial to be held. The *arche* in question supervised the preparations for the trial, and *via* the *thesmothetai* he had a *dicasterton* convened over which he presided. In principle, an *arche* never prosecuted.<sup>52</sup> Prosecution in private actions rested with the wronged person,<sup>53</sup> but in public actions the initiative was left to *ho boulomenos* on behalf of the wronged person and, especially in political trials, on behalf of the *polis*.<sup>54</sup> Lycurgus (1.4) admits expressly that laws and law-courts are worthless if there are no private citizens who will take it upon themselves to be prosecutor: οὐθ' ὁ νόμος οὐθ' ἡ τῶν δικαστῶν ψῆφος ἄνευ τοῦ παραδώσοντος αὐτοῖς τοὺς ἀδικούντας ἰσχύει. The citizen's right and obligation to prosecute in public actions is ascribed to Solon and praised as one of his most democratic reforms: δοκεῖ δὲ τῆς Σόλωνος πολιτείας τρία ταῦτ' εἶναι τὰ δημοτικώτατα . . . ἔπειτα τὸ ἐξεῖναι τῷ βουλευμένῳ τιμωρεῖν ὑπὲρ τῶν ἀδικουμένων (Arist. *Ath.Pol.* 9.1). And in conformity with this general principle, *ho boulomenos* is explicitly mentioned as the prospective prosecutor in almost all the preserved *nomoi* which deal with the administration of justice in public actions.<sup>55</sup> So the initiative rests exclusively with ὁ βουλόμενος, ἡ

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

<sup>53</sup> Isoc. 20.2; cf. M. H. Hansen, "The Prosecution of Homicide in Athens: A Reply," *GRBS* 22 (1981) 11–13.

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

<sup>55</sup> *Απαγωγή*: *nomos* in Dem. 24.105, cf. Lycurg. 1.121. *ἀπογραφή*: *nomos* in Dem. 43.54. *εἰσαγγελία*: *Hesperia* 43 (1974) 158.34; *nomos* in Dem. 24.63, cf. Arist. *Ath.Pol.* 43.4; Plut. *Mor.* 833f. *ἐνδειξις*: Dem. 58.14. *ἐπαγγελία δοκιμασίας*: *nomos* in Aeschin. 1.32. *φάσις*: *Hesperia* 49 (1980) 263.28. *γραφὴ δωροξενίας*: *nomos* paraphrased in Hyp. fr. 24. *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι*: Dem. 24.18. *γραφὴ παρανόμων*: Dem. 59.90. *γραφὴ ὕβρεως*: Dem. 21.45; Isoc. 20.2. *γραφὴ* against an Athenian who gives in marriage a *xene* pretending that she is an *aste*: *nomos* in Dem. 59.52. *γραφὴ* against a *xenos* who lives with

ἀρχή is intermediary, and the decision is reserved for οἱ δικάσται who are κύριοι.

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

(3) All *psephismata* were passed by the *demos* in the *ecclesia* and a decree was either a ratification of a specific *probouleuma*, or a counterproposal to a specific *probouleuma*, or a proposal in response to an open *probouleuma*.<sup>57</sup> In the first case the originator was a *bouleutes*, viz. the member of the *boule* who proposed and carried the specific *probouleuma*. In the other two cases the originator was a private citizen, one of οἱ βουλόμενοι,<sup>58</sup> and it is significant that *ho boulomenos* is explicitly mentioned in one of the few preserved open *probouleumata*: γνώμην δὲ ξυμβάλλεσθαι τῆς βουλῆς εἰς τὸν δῆμον ὅτι δοκεῖ τῇ βουλεῖ ἀκούσαντα τὸν δῆμον τῶν Κιτιεῖων περὶ τῆς ἰδρύσειως τοῦ ἱεροῦ καὶ ἄλλου Ἀθηναίων τοῦ βουλομένου βουλευσασθαι ὅτι ἂν αὐτῶι δοκεῖ ἄριστον εἶναι (IG II<sup>2</sup> 337.17–25).

In all three cases *ho boulomenos* acted on his own responsibility and under penalty of the law. In a public action the prosecutor ran the risk of having a *προβολή* or a *γραφὴ συκοφαντίας* brought against him, and he was fined 1000 drachmas and punished with partial *atimia*<sup>59</sup> if he did not obtain one fifth of the votes of the jurors. A citizen proposing a new *nomos* or *psephisma* was liable to prosecution by a *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι* or a *γραφὴ παρανόμων*.<sup>60</sup> These public actions were brought primarily against proposers of *nomoi* or *psephismata* which conflicted with the laws in force, but it was a sufficient reason for an indictment that the *nomos* or *psephisma* was considered contrary to the interests of

an *aste*: *nomos* in Dem. 59.16. *γραφὴ* relating to the mysteries: *Hesperia* 49 (1980) 264.41. Public action against persons guilty of illegal self-help: *nomos* in Dem. 23.28.

<sup>56</sup> Dem. 24.23 and 33. Cf. Dem. 24.18, 25, and Andoc. 1.83–84.

<sup>57</sup> Cf. Rhodes (*supra* n.7) 64–68.

<sup>58</sup> Cf. Rhodes (*supra* n.7) 69–71. For the role of *ho boulomenos* in the debate in the *ecclesia* compare the herald's invitation to speak (τίς ἀγορεύειν βούλεται; *supra* n.51) with references to *ho boulomenos* in the speeches (Dem. 13.11; 18.138; *Prooem.* 10.1, 17.1; Aeschin. 2.65; 3.2, 220). For *eisangelia* and *epangelia* raised in the *ecclesia* by *ho boulomenos* see *supra* n.55. For *ἰκετηρίαί* submitted in the *ecclesia* by *ho boulomenos* cf. Arist. *Ath. Pol.* 43.6

<sup>59</sup> See Hansen (*supra* n.28) 29 and (*supra* n.32) 63–65.

<sup>60</sup> Cf. Hansen "Nomos" (*supra* n.4) 325–29 for the first, (*supra* n.9) for the second.

the Athenian people.<sup>61</sup> To perform the task of *ho boulomenos* was often a risky business. In a public action he might be fined simply because he was a less successful orator than his opponent, and by a *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι* or a *γραφὴ παρανόμων* the proposer of a *nomos* or a *psephisma* might be heavily fined or even sentenced to death, even if his proposal had been passed unanimously by the *nomothetai* or the *ecclesia*.<sup>62</sup>

Describing the relation between *ho boulomenos* and the three decision-making bodies, I have emphasized the essential similarities. In two important aspects, however, the relation between *ho boulomenos* and the *ecclesia* is different from that between *ho boulomenos* and the jurors (acting either as *δικασταί* or as *νομοθέται*):

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

(2) The *archai* had virtually no possibility of being originators in relation to the *nomothetai* and the *dikastai*, whereas the *boule* had a considerable share in the initiative towards the *demos* in the *ecclesia*. About half of all known decrees of the fourth century are in fact ratifications of specific *probouleumata* proposed and carried in the *boule* by *bouleutai*.<sup>63</sup>

It is unclear, however, whether the proposer of a specific *probouleuma* acted *ex officio* or rather was regarded as a citizen acting on his own responsibility. In the preambles of the fourth-century *psephismata* the proposer is always referred to by his full name (*onoma, patronymikon, demotikon*), but in probouleumatic decrees it is never recorded that he was a *bouleutes* responsible for a specific *probouleuma*. As regards the proposer, there is no difference between probouleumatic and nonprobouleumatic decrees. That all specific *probouleumata* must have been moved by members of the council is a (probably correct) deduction made by

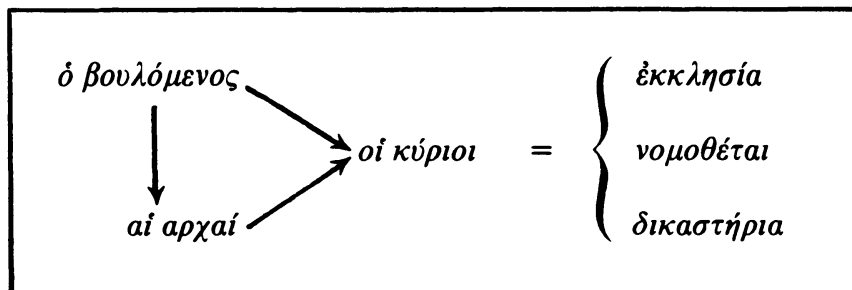
<sup>61</sup> This is commonly accepted for the *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι*. For the *γραφὴ παρανόμων* cf. Hansen (*supra* n.3) 145 n.40.

<sup>62</sup> Cf., e.g., Dem. 59.5–7; Aeschin. 3.16. For the penalties in a *γραφὴ παρανόμων* see Hansen (*supra* n.9) 53. All proposers (and not only state officials) could be punished for their proposals; cf. Hansen (*supra* n.9) e.g. Cat. nos. 17 and 29. I shall return to this problem in a future article.

<sup>63</sup> Cf. Rhodes (*supra* n.7) 79.

modern historians.<sup>64</sup> The Athenians seem to have lumped all proposers together no matter whether they were *bouleutai* or *boulomenoι* in the strict sense.

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



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

(1) The law about silver coinage (*supra* 358) is partly an injunction to all tradesmen to respect the decisions made by the *δοκιμαστής*, and partly instructions to seven different boards of *archai* to see that the provisions of the law are carried into effect.

(2) A mobilization order passed by the *ecclesia* as a *psephisma* can be an injunction to all citizens to report with their weapons on a fixed day, and it can be an instruction to the competent *archai* to call up so many citizens by drawing up conscription registers.<sup>65</sup>

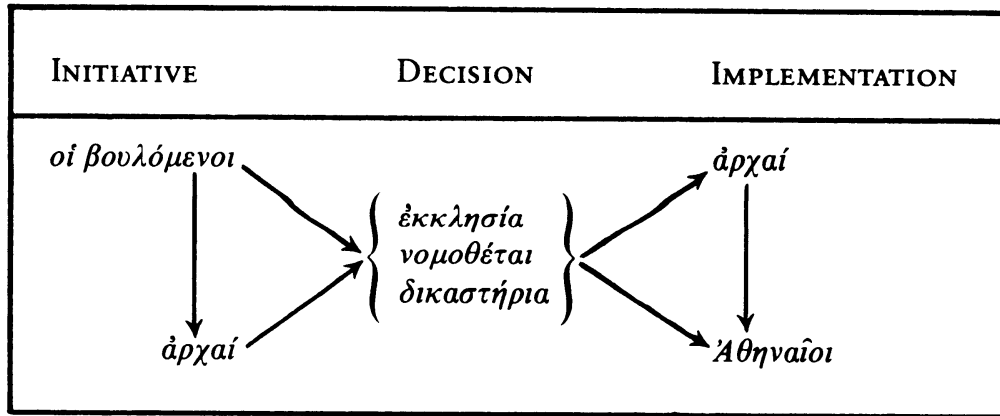
(3) A verdict in a public action is partly an injunction to the convicted person and partly an instruction to the competent *arche* to carry out the decision.<sup>66</sup>

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

<sup>64</sup> Cf. Rhodes (*supra* n.7) 63 with n.3. Note further that we have two fifth-century examples of decrees moved by the board of *strategoι* (*supra* n.41).

<sup>65</sup> For an example of a mobilization decree which takes the form of instructions to the trierarchs, the councillors, and the demarchs, see Dem. 50.4–6; for a decree mobilizing the citizens, Dem. 3.4 and Arist. *Ath. Pol.* 53.7.

<sup>66</sup> Cf. Lipsius (*supra* n.31) 942–52.



I shall immediately make one reservation: the diagonal symmetry indicated in the figure is valid for the *archai*, but not without an important modification for the citizens, both acting as *boulomenoi* and subject to the decisions made by the *kyrioi*. The political initiative rested in fact with a very small group of adult male citizens, amounting to no more than a few hundred, who acted as *hoi boulomenoi*;<sup>67</sup> whereas the population subject to the decisions made by the *kyrioi* and carried out by the *archai* comprised all adult male citizens, citizen women and children, and metics and slaves, a total of several hundred thousand human beings.

## V. Enumerations of Bodies of Government in the Sources

I have suggested that the bodies of government in fourth-century Athens comprised: *ecclesia*, *nomothetai*, *dicasteria*, and *archai* (including the *boule*). Abundant evidence justifies the inclusion of each of these agencies, establishes *ecclesia*, *nomothetai*, and *dicasteria* as three separate bodies, and supports the classification of the *boule* as an *arche*. Nevertheless, no one source mentions these four (or five) agencies side by side in a survey of how Athens was governed. On the other hand, in the forensic speeches there are half a dozen passages where the *ecclesia*, the *boule*, and the *dicasteria* are enumerated side by side,<sup>68</sup> in addition to Demosthenes 25.20

<sup>67</sup> Cf. S. Perlman, "The Politicians in the Athenian Democracy of the Fourth Century B.C.," *Athenaeum* 41 (1963) 327–55.

<sup>68</sup> Dem. 20.100; 23.97; 24.9, 50, 99; 57.56: quoted in Hansen (*supra* n.3) 132–33.

(quoted *supra* 346) mentioning the *archai* as a fourth agency. Similar enumerations can be found in Aristotle.<sup>69</sup> So the sources often juxtapose *ecclesia*, *boule*, and *dicasterion*: but why are the *nomothetai* and the other *archai* passed over in silence?

The reason for mentioning the *boule* to the exclusion of other *archai* is probably that the *boule* was by far the largest and most important board of magistrates. The other *archai* were regularly grouped in boards of ten only, and very few boards were on duty daily. Probably most *archai* practised a division of labour so that each magistrate could discharge his duties in a few days every month. Admittedly, instead of mentioning single boards of *archai*, an author might include, in his enumeration of bodies of government, a reference to *archai* in general. This is what we find in Demosthenes 25.20, and it is a curious fact that most of the other enumerations of *demos*, *boule*, and *dicasterion* occur in a context where a reference to the other *archai* would be out of place.<sup>70</sup>

I believe that the *nomothetai* are passed over in silence for a different reason. The Athenians did not like the idea that laws were moved by private citizens and passed by a body of government, almost as *psephismata* were proposed and carried in the *ecclesia*. They clung to the old idea that *nomoi* were permanent and not subject to change. After the restoration of democracy in 403/2 the Athenians instituted a body of *nomothetai* and formal procedures for an annual revision of all laws and for the passing of new *nomoi*. Nevertheless, the Athenians maintained that the true sovereign was not the *nomothetai*, but the *nomoi*,<sup>71</sup> and even new *nomoi* were regularly ascribed to Solon, although they were in fact proposed by contemporary politicians and passed by the *nomothetai*.<sup>72</sup> By this device the fiction of an ancient body of laws was

<sup>69</sup> *Pol.* 1282a34–37; *Ath. Pol.* 25.2; 41.2; quoted in Hansen (*supra* n.4) 139–40. Cf. *Pl. Ap.* 24E–25A; *Grg.* 452E.

<sup>70</sup> Since the other boards of *archai* did not regularly discuss and vote on proposals made by individual citizens, they are naturally left out at *Dem.* 20.100 and 23.97. The reason for the omission of *archai* at *Dem.* 24.99 is probably that most *archai* were *amisthoi* in the fourth century, cf. Hansen (*supra* n.16) 16–17.

<sup>71</sup> *Nomoi* as the true sovereign: *Dem.* 21.150, 188; 22.45–46; 23.73; 24.155–56, 212–14, 216; 26.8; *Aeschin.* 1.177–78; *Hyp.* 3.5. *Nomoi* necessary for the preservation of democracy: *Dem.* 24.5; 25.20–21; 26.10; *Aeschin.* 1.4–5; 3.6, 169, 196; *Lycurg. fr.* 63 (*Conomis*). Democracy characterized by the ‘rule of law’: *Dem.* 24.75–76; *Aeschin.* 1.5; 3.6.

<sup>72</sup> The observation that the term *Σόλωνος νόμοι* means little more than ‘the laws in force’ cannot obliterate the fact that the orators regularly assign a recent law to the historical Solon, who is explicitly described as (*e.g.*) *ὁ παλαιὸς νομοθέτης* and opposed to contemporary demagogues. The Athenians really believed (or wished to believe) that their democracy was introduced by Solon, cf. *e.g.* *Dem.* 20.89–93. I shall return to this problem in a future article.

maintained; and similarly, instead of juxtaposing *demos*, *nomothetai*, and *dicasteria*, the orators preferred to juxtapose *nomoi*, *psephismata*, and *kriseis* (Aeschin. 1.177–78), or to mention *nomoi* side by side with *ecclesia* and *boule* (Aeschin. 3.2; Dem. 25.20). Whenever possible, the decision made, the *nomos*, is cunningly substituted for the decision-making body, the *nomothetai*. Here we have a clash between ideology and reality, and the recovery of an increasing number of fourth-century *nomoi* passed by the *nomothetai*, combined with study of decisions made by the Athenians in the period 403–322, reveals a gap between the ideal constitution and the working of the democracy.

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

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

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

<sup>75</sup> Cf. M. H. Hansen, "How Often Did the Athenian *Dicasteria* Meet?" *GRBS* 20 (1979) 243–46.

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

<sup>77</sup> Dem. 24.142; cf. Dem. 20.91; Isoc. 8.50; 12.144; 15.82. Cf. Hansen (*supra* n.4) 49–52.

could easily be forgotten in a sweeping statement emphasizing the *ecclesia*, *boule*, and *dicasteria* as the principal bodies of government. With these modifications and reservations the tripartition of the agencies is not untrue, and not incompatible with the fact that the powers of the *boule*, as of other *archai*, were confined to *eisphora* and *telos*, the preparation and implementation of decisions made by the sovereign bodies, comprising the *ecclesia*, *nomothetai*, and *dicasteria*.

## VI. Conclusion

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

### APPENDIX: THE ATHENIAN ‘POLITICIAN’

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

<sup>78</sup> I apologize for the numerous references to my own earlier publications. This article is in some respects a synthesis of views stated sporadically in my previous writings, where references and full acknowledgements to the work of other scholars can be found. A version of this paper was delivered at the meeting of the American Philological Association held in New Orleans in December 1980. I am most grateful for the invitation to join the seminar on “Athenian Law and Law Courts,” and I should like to thank the other participants, Prof. Victor Bers (moderator), Prof. Michael Gagarin, Dr. Brook Manville, Prof. Martin Ostwald, and Prof. Lionel Pearson. I am grateful for the comments made on that occasion by Prof. Ernst Badian, Prof. Raphael Sealey, and the other members of the panel. Finally I should like to express my gratitude to the Danish Research Council for the Humanities for its travel subvention.



are the two most common and characteristic terms to describe ‘a politician’, and they are often mentioned side by side: Isoc. 5.81; 15.30; Dem. 2.29 = 13.20; 18.170, 205; 22.66 = 24.173; 23.184; *Ep.* 1.8; Aeschin. 3.7; Din. 1.71, 90, 112; 2.26; 3.19; Hyp. 1.24.7, 12; 3.27; Lycurg. fr. 24; *cf.* Xen. *Mem.* 2.6.15; Arist. *Rh.* 1388b18; Ar. *Eccl.* 244–47. The close relationship between *rhetoires* and *strategoī* is furthermore discussed in: Isoc. 8.54–55; Aeschin. 2.184; 3.146; Dem. 18.212, 246; Din. 1.76; Arist. *Pol.* 1305a7ff; Plut. *Phoc.* 7.5; *Mor.* 486D. The *strategos* was a magistrate while the *rhetor* had no official status, but in a political context the word is no less well defined than *strategos*. It is used unambiguously in the Brea decree (*IG I<sup>3</sup>* 46.25), in the eisangelitic law (Hyp. 3.8), in the law about *dokimasia ton rhetoron* (Aeschin. 1.28, *cf.* Lys. fr.86–87), and probably in the law about *graphe paranomon* (Harp. and *Lex. Cant. s.v. ῥητορικὴ γραφή*). *Rhetor* denotes a citizen who moves a *psephisma* in the *ecclesia* (Lys. 13.72; Dem. 3.22; 18.219; 22.70; 23.201; 59.43, 105; Aeschin. 1.188; 3.16, 31, 55, 203–04; Pl. *Grg.* 456A; Arist. *Pol.* 1255a8) or in the *boule* (Lys. 22.2) or a *nomos* before the *nomothetai* (Dem. 24.123–24, 142) or brings a public action before the *dicasteria* (Dem. 58.62; 59.43; Aeschin. 1.34; Din. 1.100; Lycurg. 1.31; Isoc. 8.129; Ar. *Ach.* 680). In a wider sense *rhetor* signifies a speaker addressing the *ecclesia* (Lys. 12.72; Dem. 12.14; 18.170; 19.23; *Prooem.* 53.1; *Ep.* 2.10; Aeschin. 1.28, 30, 186; 2.74, 161; 3.2, 4; Hyp. 3.1, 4, 8, 9, 29; Isoc. 14.4, 15.138; Thuc. 3.40.3; 6.29.3; 8.1.1; Pl. *Ap.* 32B; *Alc.* II 144E; Ar. *Ach.* 38; *Eq.* 1350; *Thesm.* 292, 382; *Eccl.* 195, 244) or addressing the *boule* (Lys. 30.22; Dem. 22.37; 24.147; 51.2) or a *synegoros* addressing the court (Isae. 1.7; Dem. 20.74; 21.190; 48.36; Din. 1.112; Lycurg. 1.43). Other sources in which *rhetor* is used in the sense ‘politician’ are: Lys. 18.16; 31.27; Dem. 11.18; 18.94, 130, 212, 226, 246, 278, 280, 282, 308–09, 318–19; 21.189; 23.147, 185; 25.38, 40, 62, 97; 32.31; *Ep.* 1.4; Aeschin. 1.7, 171; 2.79, 176; 3.20, 33, 73, 130, 148, 231, 233, 249; Din. 1.4, 38, 86, 98, 102; fr. 6.1; Hyp. 1.12, 21; 3.22, 30, 36; fr. 84, 97; Andoc. 3.1; Isoc. 5.2; 7.14; 8.5, 26, 124; 12.15; 13.9; 14.38; 15.105, 234; Democrates fr. 1; Pl. *Cri.* 50B; *Grg.* 465C, 466A; *Symp.* 215E; Ar. *Eq.* 325, 358, 425, 880; Plut. 30, 379. *Rhetor* in the *ecclesia* (proposer or speaker): Dem. 18.272; 48.24; Aeschin. 3.9; Lycurg. fr.24; Isoc. 12.12, 14.3–4; 15.231; Arist. *Rh.* 1418a30; Pl. *Grg.* 502eff, *Alc.* I 114D; Theophr. *Char.* 7.7; Ar. *Eq.* 60; in the *boule*: Aeschin. 1.112, 3.9; Xen. *Hipparch.* 1.8; before the *dicasteria* (prosecutor or *synegoros*): Dem. 19.217; Pl. *Ap.* 18A, *Euthyd.* 305B, *Th.* 172C, 201A. For the official status of *rhetoires cf.* furthermore: M. I. Finley, “Athenian Demagogues,” *Past and Present* 21 (1962) 19, and S. Perlman (*supra* n.67) 353–55. Often other words are used synonymously with *rhetor*, such as *ὁ πολιτευόμενος* (Dem. 18.94, 278; Isoc. 15.231) referring to a speaker in the *ecclesia* (Dem. 8.32), in the *boule* (Dem. 22.36), before the *nomothetai* (Dem. 20.91) or the *dicasteria* (Dem. 23.4). *Rhetor* = *σύμβουλος* (Dem. 18.94, 212; 21.189; 58.62). *σύμβουλοι καὶ στρατηγοί*

= *ρήτορες καὶ στρατηγοί* (Din. 1.76). *Rhetor* = *δημηγόρος* (Xen. *Mem.* 2.6.15), = *ὁ γράφων* (Dem. 18.219), = *ὁ λέγων* (Dem. 58.62). Unlike *rhetor*, the words *πολιτευόμενος*, *σύμβουλος*, and *δημηγόρος* are not used in laws and decrees as legal technical terms.

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