

Did the Athenian *Ecclesia* Legislate after 403/2 B.C.?

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IN AN EARLIER ARTICLE¹ I argued that *nomoi* were passed by the *nomothetai*, that *nomoi* superseded *psephismata* and that the *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι* was introduced as a special type of public action against unconstitutional *nomoi*, whereas the *γραφὴ παρανόμων* henceforth could be brought only against *psephismata*. But these distinctions are purely formal. I shall now turn to the crucial question: was there any difference in substance between *nomoi* and *psephismata*? and if so, was the distinction respected by the Athenians?²

As is well known the essential difference between *nomoi* and *psephismata* is reflected in Greek legal thought and expressed by the philosophers.

ARIST. *Eth.Nic.* 1137b13–14 and 27–29: . . . ὁ μὲν νόμος καθόλου πᾶς, περὶ ἐνίων δ' οὐχ οἷόν τε ὀρθῶς εἰπεῖν καθόλου. 27–29: τοῦτο γὰρ αἴτιον καὶ τοῦ μὴ πάντα κατὰ νόμον εἶναι, ὅτι περὶ ἐνίων ἀδύνατον θέσθαι νόμον, ὥστε ψηφίσματος δεῖ.

ARIST. *Pol.* 1292a4–7: ἕτερον δὲ εἶδος δημοκρατίας τᾶλλα μὲν εἶναι ταυτά, κύριον δ' εἶναι τὸ πλῆθος καὶ μὴ τὸν νόμον. τοῦτο δὲ γίνεται ὅταν τὰ ψηφίσματα κύρια ᾖ ἀλλὰ μὴ ὁ νόμος. 32–37: ὅπου γὰρ μὴ νόμοι ἄρχουσιν, οὐκ ἔστι πολιτεία. δεῖ γὰρ τὸν μὲν νόμον ἄρχειν πάντων <τῶν καθόλου>, τῶν δὲ καθ' ἕκαστα τὰ ἀρχάς, καὶ ταύτην πολιτείαν κρίνειν. ὥστ' εἴπερ ἔστι δημοκρατία μία τῶν πολιτειῶν, φανερόν ὡς ἡ τοιαύτη κατάστασις ἐν ᾗ ψηφίσμασι πάντα διοικεῖται,

¹ “*Nomos and Psephisma* in Fourth-Century Athens,” *GRBS* 19 (1978) 315–30 [hereafter, HANSEN].

² Most scholars argue that the distinction was acknowledged in theory by the Athenians after the democratic restoration in 403/2 but that in practice it had largely broken down in the course of the first decades of the fourth century. Cf. G. Busolt, *Griechische Staatskunde* I (München 1920) 458; U. Kahrstedt, “Untersuchungen zu athenischen Behörden II. Die Nomotheten und die Legislative in Athen,” *Klio* 31 (1938) 12–18; A. R. W. Harrison, “Law-making at Athens at the End of the Fifth Century B.C.,” *JHS* 75 (1955) 26–35; V. Ehrenberg, *The Greek State* (Oxford 1960) 57; M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford 1969) 2; F. Quass, *Nomos und Psephisma* (München 1971) 71; J. de Romilly, *La loi dans la pensée grecque* (Paris 1971) 209; P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 50–52.

οὐδὲ δημοκρατία κυρίως· οὐθὲν γὰρ ἐνδέχεται ψήφισμα εἶναι καθόλου. (ed. Ross *OCT*).

[Pl.] *Def.* 415B: ΝΟΜΟΣ δόγμα πλήθους πολιτικὸν οὐκ εἷς τινα χρόνον ἀφωρισμένον. ΨΗΦΙΣΜΑ δόγμα πολιτικὸν εἷς τινα χρόνον ἀφωρισμένον.

From this evidence it is apparent that a *nomos* is a general and permanent rule whereas a *psephisma* is an individual rule or a rule with a limited period of validity. But the definitions found in Aristotle and the *Corpus Platonicum* are made without reference to Athens. Was the same distinction between *nomos* and *psephisma* applied by the Athenians after the restoration of the democracy in 403/2? This question can, I suggest, be answered in the affirmative. (1) The revised law code of 403–399 included a *nomos* defining or at least delimiting *nomos* as a general rule. (2) The preserved *nomoi* and *psephismata* of the period 403/2–322/1 show that the concept of *nomos* introduced in 403/2 was, with a few exceptions, consistently applied by the Athenians.

I

The law delimiting the concept of law is quoted by Andocides in his speech *On the Mysteries* 87: ΝΟΜΟΙ· ἀγράφω δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἑνός. ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι. μηδὲ ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις, ἐὰν μὴ ἑξακισχιλίοις δόξῃ κρύβδην ψηφίζομένοις. That this law was fundamental for the restored democracy is proved by the frequency with which it is quoted or paraphrased by the orators.³ By defining a *nomos* as a rule binding on all Athenians, a distinction is introduced between general rules (passed as *nomoi*) and individual rules (passed as *psephismata*). Admittedly, the law quoted by Andocides is vague and obscure like most Athenian *nomoi*, but its provisions can be interpreted in the light of actual *nomoi* and *psephismata* passed by the Athenians in the fourth century. An individual rule is primarily a rule relating to a person or a group of persons mentioned by name. A rule relating to a group of unnamed persons or even to a single unnamed person is often a general rule falling within the scope of *nomos*.⁴ The Athenian law code included, for example, a

³ Prohibition against *ad hominem* legislation: Dem. 23.86, 218; 24.18, 59, 116, 159, 188; 35.45, 46.12. Laws supersede decrees: Dem. 23.87, 218; 24.30; Hyperid. 5.22.

⁴ In the speech *Against Midias* (Dem. 21.31–32) Demosthenes emphasizes the importance of distinguishing between an office and the individual who holds the office. The passage is concluded with the phrase: ὁ γὰρ θεσμοθέτης οὐδενὸς ἀνθρώπων ἐστ' ὄνομα ἀλλὰ τῆς πόλεως.

nomos allowing ἔμποροι and ναύκληροι to bring a δίκη ἐμπορική⁵ and a *nomos* instructing the archon to take care of orphans and heiresses (Dem. 43.75). Conversely, a rule binding on all Athenians is not a general rule if it regulates a particular case. In 352/1, for example, the Athenians passed a *psephisma* prescribing that forty triremes be launched, that all classes up to the age of forty-five be called up to man the ships and that an *eisphora* of 60 talents be imposed (Dem. 3.4). Such a *psephisma* is binding on all Athenians, but it is not a permanent rule since it will become a dead letter when it has been carried out and those who do not turn up have been duly punished.⁶

Now the law defining *nomos* refers, as quoted by Andocides, only to individual persons and not to individual cases, but Andocides quotes only a few lines of the law, and the revision of the code in 403–399 is in itself an indication that the new concept of *nomos* was given the wider interpretation suggested above. The purpose of the revision of the code was to make order in the welter of *thesmoi*, *nomoi* and *psephismata* transmitted since Draco and Solon⁷ and to make those rules which were valid available to the Athenians by inscribing the revised code on a stele set up in the Stoa Basileios.⁸ Since no clear

⁵ Dem. 32.1, 33.1. Cf. S. Isager and M. H. Hansen, *Aspects of Athenian Society* (Odense 1975) 86. A man becomes ἔμπορος or ναύκληρος simply by exercising the profession. There was, of course, no trace of a juridically defined ‘commercial class’ in Athens: cf. E. E. Cohen, *Ancient Athenian Maritime Courts* (Princeton 1973) 114ff.

⁶ It is, of course, impossible to fix any period of limitation after which a *psephisma* was a dead letter. The levying of *eisphora*, for example, was always warranted by a *psephisma* τοῦ δήμου. In Dem. 22.42–68=Dem. 24.160–75 we hear that the Athenians in 356/5 appointed an extraordinary commission to collect arrears of *eisphora*, some of them dating back to the archonship of Nausinicus (378/7). So a *psephisma* might be enforced more than twenty years after it had been passed. We must, however, bear in mind that the arrears of *eisphora* were currently recorded by the *practores* and that the collection of money was based on the official list of state-debtors and only indirectly warranted by the original *psephisma*.

⁷ Cf. D. M. MacDowell, *Andocides On the Mysteries* (Oxford 1962) 194–99. For a full bibliography cf. S. Dow in *Historia* 9 (1960) 292–93 supplemented with A. Fingarette in *Hesperia* 40 (1971) 330ff.

⁸ Andoc. 1.84–85. Cf. H. A. Thompson and R. E. Wycherley, *The Agora of Athens* (Princeton 1972) 88–90. It may seem surprising that apart from Andocides’ reference we have no other mention of the law code inscribed in the Stoa Basileios. Scores of *nomoi* are quoted in the forensic speeches, but when an orator occasionally states where he has read the law, the reference is either to a stele (Lys. 1.30; Dem. 47.71, 59.75–76) or to the Record Office in the Metroon (Dem. 25.99; Lycurg. 1.66; Harp. s.v. *Metroon*). A reasonable explanation of the silence of our sources about the code in the Stoa Basileios is that the new code was upheld in its unrevised form for only a short period and the revisions soon proved to be so extensive that the idea of a comprehensive publication inscribed on the

distinction between types of rule existed before 403, it must have been an important and difficult task to decide which of all the enactments still valid in 403/2 were to be included among the *nomoi*. The code inscribed on stone presupposed a distinction both between general and individual rules and between permanent and temporary rules; I suggest that the conceptual difference between *nomos* and *psephisma* was developed and refined precisely in connection with the revision of this code.⁹ Although we know very little about the revision, we can safely assume that rules relating to individual persons such as honorary decrees and citizenship decrees were excluded. But similarly, decrees prescribing despatches of troops, declarations of war, levying of *eisphora* etc. must have been excluded, although they were binding on all Athenians. In this case the criterion for the exclusion must have been that the enactment related to an individual case and was of temporary validity.

On the basis of the law in Andoc. 1.87 as interpreted above the distinction between *nomoi* and *psephismata* can be schematized and illustrated with Athenian enactments of the fourth century:

	TEMPORARY	PERMANENT
GENERAL	<i>Psephisma</i> that forty triremes be launched, that all classes up to the age of forty-five be called up to man the ships and that an <i>eisphora</i> of 60 talents be imposed (Dem. 3.4).	<i>Nomos eisangeltikos</i> against anyone who attempts to overthrow the democracy or to betray the Athenian armed forces or to speak to the people after taking bribes (Hyperid. 3.7–8).
INDIVIDUAL	<i>Psephisma</i> that Demosthenes be crowned with a golden crown to be awarded in the theatre at the Greater Dionysia (Aeschin. 3.49).	<i>Psephisma</i> bestowing citizen rights on Dionysius I of Syracuse and all his descendants and granting permanent right of <i>prosodos</i> to the people and to the council (IG II ² 103).

wall had to be abandoned. Around 380, for example, the presidency of the *ecclesia* and of the *boule* was transferred from the *prytaneis* to the *proedroi* (cf. W. K. Pritchett in *CSCA* 5 [1972] 164–69 no.2). This reform alone must have entailed innumerable revisions in the code, and it was probably impossible to erase the passages in question and insert the corrections in the text on the wall (cf. the law quoted in Dem. 24.20–23, which has been subject to at least three corrections ca 380). Perhaps as early as in the 390's the idea of a law code cut in stone was abolished as impracticable, and henceforth *nomoi* were probably published on some more perishable material and a *nomos* was inscribed on stone only when the *nomothetai* so decided.

⁹ Cf. MacDowell, *op.cit.* (*supra* n.7) 127, and Harrison, *op.cit.* (*supra* n.2) 27.

In this model, *nomos* is defined as a general and permanent rule, *psephisma* as an individual rule and/or a rule with a limited period of validity. The model is in agreement with the definitions of *nomos* and *psephisma* offered by the philosophers; it was, I suggest, applied by the Athenians in the revision of the law-code in 403/2–399, but the important problem is: was it respected by the Athenians during the eighty years of democratic government from 403/2–322? The problem is complex and can be split into two questions: (a) are there any examples of general and permanent rules passed as *psephismata*? and (b) are there any examples of individual or temporary rules taking the form of a *nomos*?

II

I shall begin with the *psephismata* and ask whether the preserved decrees of the people include examples of general and permanent rules which ought by their contents to have been given as *nomoi*.

(a) Alliances, conclusions of peace and similar enactments invariably take the form of a *psephisma*,¹⁰ although a treaty is regularly a general permanent rule. In 375, for example, the Athenians and the Corcyreans concluded a *συμμαχία εἰς τὸν αἰὲ χρόνον* (*IG II² 97* = Bengtson 263). The provisions are, of course, binding on all Athenians, and it is difficult to imagine a more permanent rule than an alliance for all time to come. Nevertheless there is no example of a treaty taking the form of a *nomos*. Now a contemporary jurist will undoubtedly object that treaties come within the law of nations and cannot be classified as legislation in the proper sense. A law is a rule binding on the citizens within a state whereas a treaty is an agreement between two or more states.¹¹ But did the Athenians acknowledge the same difference between treaties and laws? The evidence is scarce but in my opinion sufficient. In a central passage of the *Politics* (1298a3–7) Aristotle distinguishes between four different

¹⁰ Cf. e.g. *IG II² 98* (=Bengtson 267) Alliance between Athens and Kephallenia, lines 6–7 [τῶι ψ]ηφίσματι τ[ῶιδε, and lines 23–25 [τὸ δὲ ψήφ]ισμα ὁ γραμμα[τεὺς ἀναγραφάτω... Xen. *Hell.* 3.5.16 (=Bengtson 223) Alliance between Athens and Boiotia, πάντες δ' ἐψηφίσαντο βοηθεῖν αὐτοῖς. Θρασύβουλος δὲ ἀποκρινάμενος τὸ ψήφισμα καὶ τοῦτο ἐνεδείκνυτο, ὅτι...

¹¹ The dualist view of the relationship between international law and state law. Cf. J. G. Starke, *An Introduction to International Law* (London 1947) 40ff, and G. Schwarzenberger, *A Manual of International Law* (London 1947) 19ff.

types of decision belonging to τὸ βουλευόμενον and made by the sovereign body of government. The first type is enactments *περὶ πολέμου καὶ εἰρήνης καὶ συμμαχίας καὶ διαλύσεως*. The second type is enactments *περὶ νόμων*. A similar distinction between laws and treaties is made in the *Rhet. ad Alex.* 1423a21ff. Admittedly, neither Aristotle nor the author of the *Rhet. ad Alex.* writes about Athens, but since *all* Athenian treaties in the fourth century are passed as *psēphismata* and not a single one as a *nomos*, it must be admissible to conclude that the Athenians did in fact distinguish between legislation in the proper sense (*nomoi*) and agreements between states passed as *psēphismata*.

(b) Apart from treaties there are indeed very few examples of general and permanent *psēphismata*. The epigraphical evidence comprises 482 decrees of the people.¹² Among these I have found no more than ten examples of enactments which may have been general permanent rules passed by the *ecclesia* in the form of a *psēphisma*.

1. *Hesperia* 40 (1971) 280–301 no.7. Theozotides' *psēphisma* (*nomos*?) about state aid to orphans (403/2 or shortly afterwards). Since the decree ends with a list of the names of the orphans it is primarily an individual rule. On the other hand, I have previously argued¹³ that the decree, in order to provide the necessary money for the rearing of the orphans, may have included the proposal discussed in the speech *Against Theozotides*, *viz.* that the daily allowance to men serving in the cavalry be reduced from one drachma to four obols, while the daily allowance to *ἵπποτοξόται* be increased from two obols to eight.¹⁴ If so, there can be no doubt that the enactment was in part a general permanent rule.

2. *IG II*² 45. *Lex fiscalis* (378/7). Enactment concerning debtors to the

¹² Cf. Hansen 317 n.6. A rough classification of the decrees according to their contents gives the following result: 100 *decrees of unknown contents*; 282 *citizenship decrees and honorary decrees* (28 citizenship decrees, 32 honorary decrees for Athenians, 191 honorary decrees for metics and *xenoi*, 31 honorary decrees for either Athenians or metics/*xenoi*); 67 *decrees relating to foreign policy* (40 alliances, 6 *symbolai* and *symbola*, 7 decrees relating to envoys, 8 decrees relating to the relations between Athens and another named city, 2 decrees about *syntaxis*, 2 decrees about cleruchies, 2 decrees relating to naval expeditions); 21 *decrees relating to cult*; 5 *decrees relating to the administration of justice*; 7 *decrees of various contents*.

¹³ *The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals* (Odense 1974) 45–46. Cf. Hansen 320 n.18.

¹⁴ In 431 Athens had 1000 *ἵππεῖς* and 200 *ἵπποτοξόται*. We do not know the numbers for the years around 400, but if we accept the same proportion (5:1) the state must, by accepting Theozotides' proposal, have saved four obols in the case of each group of five *ἵππεῖς* and one *ἵπποτοξότης*.

state. Neither the preamble nor the publication-formula is preserved and it is impossible to decide whether the fragment is part of a *nomos* or a *psephisma*. Accepting the restorations in lines 5–6 we must infer that the enactment included a catalogue of names of state-debtors. Lines 7–15 contain instructions to the *practores* (who were responsible for the collection of debts and the recording of the names of the debtors). Nothing prevents us from classifying the enactment as a *psephisma*, in which case it should be recorded as a *decretum fiscale* and not as a *lex fiscalis*.

3. *Hesperia* 32 (1963) 2 no.2 = *SEG XXI* 255. *De mysteriis* (s.IV p. prior). Enactment concerning the mysteries. Too little is preserved to decide whether the provisions are general permanent rules or individual regulations for a specific occasion. So the enactment may be either a *nomos* or a *psephisma*.

4. *Hesperia* 26 (1957) 52–53 no.9 = *SEG XVI* 50. *Decretum de mysteriis* (ca med. s. IV); cf. *SEG XVII* 21, *XXI* 257. A fragment inscribed with regulations for sending out heralds for the truce for the mysteries. A large unpublished fragment of the same stele contains instructions to the *basileus*, the *thesmothetai*, the *Eumolpidai* and the *Kerykes*. The regulations are permanent general rules, and the type of enactment ought to be a *nomos*. Neither the introduction nor the conclusion is preserved, and so the enactment may be a *nomos* passed by the *nomothetai*. The title should be changed to *lex de mysteriis*.

5. *Hesperia* 7 (1938) 294–96 no.20 = *SEG XVI* 55. *De ludis* (*Eleusine?*) *instituendis decretum* 330/29(?). Enactment regulating a festival. In this case too there can be no doubt that the provisions preserved are general permanent rules which ought to have been passed by the *nomothetai* as a *nomos*. But again there is no indication of whether the fragment is a decision made by the *nomothetai* or by the *ecclesia*. In *BSA* 51 (1956) 3–5 A. M. Woodward proposed the following restoration of line 3: δεδόχθαι τῶι δήμῳ, ἀναγράψασθαι παρὰ τ]ήν κτήλην. . . I would prefer e.g. ἔδοξε τοῖς νομοθέταις ἀναγράψαι παρὰ τ]ήν κτήλην. . . and the title *De ludis instituendis lex*.

6. *Hesperia* 37 (1968) 267–68 no.3 = *SEG XXV* 82. *Lex sacra de Dipoliis et Bouphoniis* (s. IV). General provisions regulating the *Dipolieia* and the *Bouphonia*. In *Hesperia* the decision is described as “a decree,” but since neither the preamble nor the publication-formula is preserved, the enactment can be either a *nomos* made by the *nomothetai* or a *psephisma* passed by the *ecclesia*.

7. *IG II*² 125 = *Tod* 154 (357/6). Decree ordering a trial of those who joined in the campaign against Eretria; and a provision that any Athenian or ally who in future joins in a campaign against Eretria or another allied city shall be punished with death and the confiscation of property. Furthermore, it is decreed that any allied city which infringes these provisions be

liable to a fine to be paid to the *koinon*. The decree is concluded with some honours bestowed upon those who came to the aid of the Athenians. This enactment is a *psephisma* introduced with [ἔδοξεν τῶι δήμῳ]. It contains first an individual temporary rule, but then follows a general provision binding on all Athenians. The third provision is an order issued to the allies, and the fourth is an honorary decree. Although the decree deals with foreign policy, it may be argued that the second provision ought to have been passed as a *nomos* and not merely included in a *psephisma*. We must, however, bear in mind that the prohibition is binding both on the Athenians and the allies, and so a *nomos* (binding on the Athenians only) would not be a proper form of enactment.

8. *IG II*² 204 (*cf.* *JHS* 49 [1929] 185, 72 [1952] 31; *SEG XXV* 64). *De cippis terminalibus* (352/1). Lines 1–5(?). Lines 5–16: election of ten private Athenians and five councillors empowered to pass judgement about the boundary line of the *ἱερὰ ὄργα*. Lines 16–23: provision that the *ἱερὰ ὄργα* and all other sanctuaries in future be supervised by the council of the Areopagus and various other officials in addition to those mentioned by the law in each individual case. Lines 23–54: the Delphic oracle is to be consulted as to whether the *ἱερὰ ὄργα* shall be leased or left untilled; the procedure for the consultation is described in detail. Lines 54–65: regulations concerning the publication of the decree in question and of a previous decree; grant of a *per diem* to the envoys to Delphi and to the board of judges empowered to delimit the boundary line of the *ἱερὰ ὄργα*. Lines 65–73: the *πωληταί* are instructed to provide the *ὄροι* marking the boundary of the *ἱερὰ ὄργα*. Lines 74–84: list of the envoys and the judges appointed by the assembly. Lines 85–86: delegation of power to the council to make amendments and additions to the decree. This enactment is explicitly described as a *psephisma* (line 85) and most of its provisions are indeed individual decisions of temporary validity. But the *psephisma* includes among its provisions in lines 16–23 a general permanent rule which undoubtedly ought to have been passed by the *nomothetai* as a *nomos*: ἐπιμελείσθαι [δ]ὲ τῆς ἱερᾶς ὄργαδος καὶ τῶν ἄλλων [ἱερῶν ἀπάντ]ων τῶν Ἀθηνησιν ἀπὸ τῆςδε τῆς ἡμέρας εἰς τὸν [ἀεὶ χρόνον οὔ]τε οὐ νόμος κελεύει περὶ ἐκάστου αὐτῶν καὶ τ[ὴν βουλὴν τὴν] ἐ[ξ] Ἀρείου πάγου καὶ τὸν στρατηγὸν τὸν ἐπὶ τῆ[ν φυλ]ακῆ[ν τῆς χ]ώρας κεχειροτονημένον καὶ τοὺς περιπολά[ρχ]ους καὶ τοὺς [δη]μάρχους καὶ τὴν βουλὴν τὴν ἀεὶ βουλευού[σαν] καὶ τῶν ἄλλων Ἀθηναίων τὸμ βουλόμενον τρόπῳ ὅτῳ ἂν [ἐπ]ίττω[ν]ται.

9 *IG II*² 334 (*cf.* *Syll.*³ 271; *SEG XVIII* 13, *XXI* 269, *XXV* 65). Decree relating to the Lesser Panathenaea (336–34). The motion-formula ἐψηφίσθαι τῶι δήμῳ (line 7) shows that the enactment is a decree of the people. It contains instructions to a board of *ἱεροποιοί* about the sacrifices at the Lesser Panathenaea. There can be no doubt about the permanent

nature of the regulations, but the decree is inscribed on the lower part of a stele. The top of the stele was found in 1938 and contains an enactment of the *nomothetai* relating to the financing of the Lesser Panathenaea (*SEG XVIII 13*; see p.39).

10. *IG II² 412. Legis formula (post a. 336/5)*. Enactment relating to the administration of justice, probably a law regulating the *phasis* procedure (*cf.* lines 7–8). Neither the introduction nor the conclusion is preserved, and the enactment may be a *nomos* passed by the *nomothetai*.

Of these ten enactments Theozotides' decree (1) was presumably passed before the introduction of *nomothesia* by *nomothetai*.¹⁵ (2) and (3) may have been individual decisions, and nothing is known about the form of enactment. (4), (5), (6) and (10) are general permanent rules to be passed by the *nomothetai*. They are usually classified as *psephismata* but without sufficient evidence. In all four cases a new fragment may turn up inscribed with the formula *δεδόχθαι τοῖς νομοθέταις*. (7) is a debatable example since it deals with foreign policy and since the general rule laid down is binding not only on the Athenians but also on the allies, and so we are left with (8) and (9) as the only unquestionable examples of general permanent rules passed as *psephismata*. In (8) the permanent rule is only one provision among several which correctly take the form of a *psephisma*, and in (9) there is a gap of several lines (?) between the preserved part of the *nomos* (*SEG XVIII 13*) and the *psephisma* passed by the people (*IG II² 334*). It may be suggested that the *psephisma* was inscribed below the *nomos* because the enactment of the *demos* was referred to the *nomothetai* and ratified by them.

(c) The literary sources provide us with some 220 examples of *psephismata* passed by the *ecclesia* in the period 403/2–322/1. The vast majority are individual and/or temporary decisions,¹⁶ but I have

¹⁵ We do not know when the regular *nomothesia* was introduced. The *terminus post quem* is Tisamenus' decree (*Andoc.* 1.83–84) passed late in 403. The *terminus ante quem* is the law quoted in *Andoc.* 1.87, in which *nomoi* are opposed to *psephismata* of the people and of the council. The distinction between *nomoi* and enactments of the *demos* indicates that *nomoi* were no longer passed by the *demos* but by the *nomothetai* (*cf.* Hansen 322). The law quoted in *Andoc.* 1.87 cannot be dated more precisely than prior to the trial of Andocides, which took place in the autumn of 400 (*cf.* MacDowell, *op.cit.* [*supra* n.7] 204–05). The revision of the code was not completed until 399 (*cf.* Dow, *op.cit.* [*supra* n.7] 272 and 291), and so the law about *nomothesia* was probably included in the code inscribed on stone.

¹⁶ *Cf.* Hansen 319 n.15. A rough classification of the decrees according to their contents gives the following result: 3 *decrees of unknown contents*; 60 *citizenship decrees and honorary decrees* (24 citizenship decrees, 25 honorary decrees for Athenians, 11 honorary decrees for

collected eleven instances of general permanent rules enacted by the *ecclesia* in the form of a *psephisma* and not by the *nomothetai* as a *nomos*.

1. Decree prescribing that all *δίκαι* and *δίκαιται* adjudged during the democracy be valid and that the laws be enforced from the archonship of Euclides on (Andoc. 1.87, 93). The decree must be connected with the amnesty and dated 403/2.

2. Decree renewing a Solonian law by which all *xenoi* are debarred from keeping a shop in the Agora (Dem. 57.31) unless they pay a special tax, the *ξενικόν* (Dem. 57.34). The decree is proposed and carried by Aristophon of Azenia and may be dated 403/2 (*cf.* Hansen 320 n.17).

3. Decree prescribing exemption from punishment if anybody kills a person who attempts to establish a tyranny, or to betray the city, or to overthrow the democracy (Lycurg. 1.124–25). The decree must be dated 403/2 or shortly afterwards.¹⁷

4. Amendment of the *δοκιμασία τῶν ἀρχῶν* (Lys. 26.9, 20; *cf.* Hansen 319). The exact content of the decree is unknown, but it is apparent from Lysias' speech that former oligarchs through the amendment could be

metics or *xenoi*); 106 decrees relating to foreign policy (14 alliances, 12 declarations of war and conclusions of peace, 14 decrees ordering the despatch of an embassy, 5 decrees relating to oaths and to envoys from other cities, 10 decrees relating to mobilization of the army and the navy, 22 decrees ordering the despatch or the recall of armed forces, 8 decrees concerning the defence of the country, 4 decrees relating to the vindication of a claim against another city, 5 decrees relating to the Naval Confederacy, 2 decrees relating to cleruchies, 10 decrees of unknown contents relating to foreign policy); 11 decrees relating to public finances (5 decrees ordering the collection of a debt to the state, 2 decrees relating to the payment of a debt, 3 decrees concerning the Theoric and the Stratiotic Funds, 1 decree imposing an *eisphora*); 15 decrees relating to the administration of justice (3 decrees initiating an *eisangelia*, 4 decrees initiating an *ἀπόφασις*, 1 decree resulting from an *ἀποχειροτονία*, 2 decrees ordering instant execution, 1 decree ordering imprisonment, 3 decrees relating to amnesty or pardon, 1 decree ordering the revision of the rolls of citizens); 4 decrees relating to procedure (2 decrees appointing a board of *nomothetai*, 2 decrees ordering the *prytaneis* to summon an *ecclesia*); 5 decrees relating to public works and/or the cult; 4 decrees of various contents (3 decrees relating to the border district of Attica, 1 decree of unknown content relating to *εὐκέβεια*). On Tisamenus' and Phormisius' decrees *cf.* n.26. Decrees preserved on stone and decrees quoted or referred to in the literary sources rarely overlap. There are only six instances of decrees known from both types of source, *viz.* Theozotides' decree 403/2 (Lys. fr.6=*Hesperia* 40 [1971] 280–301); Alliance between Athens and Boiotia 395/4 (Xen. *Hell.* 3.5.16=*IG II*² 14); Honorary decree for exiled Thasians *ca* 385 (Dem. 20.59–63=*IG II*² 33); Alliance between Athens and Thebes 378/7 (Diod. 15.29.7=*IG II*² 40); Alliance between Athens and the Thracian princes 357/6 (Dem. 23.173=*IG II*² 126); Citizenship decree for Alcimachus 337/6 (Harp. *s.v.* *Alcimachus*=*IG II*² 239?).

¹⁷ "After the Thirty" (Lycurg. 1.124). The decree referred to by Lycurgus may be a republication of Demophantus' decree passed in 410/9 and quoted by Andocides (1.96–98). Demophantus' name is mentioned by Lycurgus in 127.

debarred from holding office. The decree must be dated 403/2 or shortly afterwards.¹⁸

5. Decree providing that any poor or disabled citizen be entitled to a daily pension of one obol.¹⁹ The decree must be dated 403/2 or shortly afterwards (*cf.* Hansen 319 n.16).

6. Decree providing for state aid for the rearing of children of Athenian citizens who died under the oligarchy while fighting for democracy. The subsidy amounts to one obol a day to each orphan. Furthermore it is presumably decreed, in order to provide the necessary money, that the daily allowance to men serving in the cavalry be reduced from one drachma to four obols, while the daily allowance to *ἵπποτοξόται* be increased from two obols to eight (*cf.* Hansen 320 and *supra* p.32). The decree is proposed and carried by Theozotides of Kikynna. It is indicted as unconstitutional but is upheld by the court (*cf.* Hansen 327). The decree must be dated 403/2 or shortly afterwards (*cf.* Hansen 320).

7. Decree prohibiting on pain of death exportation of weapons and shipbuilding supplies to Philip of Macedon during the war (Dem. 19.286–87). The decree is proposed and carried by Timarchus of Sphettus as a member of the Council and must be dated 347/6.²⁰

8. Decree concerning the Athenian participation in the meetings of the Amphictyonic *synedrion*. It is decreed for all time that the *ἱερομνήμων* and the *πυλαγόροι* shall attend only the regular meetings of the *synedrion* in accordance with the ancestral customs (*viz.* the spring and autumn

¹⁸ It is most unlikely that in 403 any kind of *atimia* was imposed on any Athenian except the Thirty, the Ten, the Ten in the Piraeus, and the Eleven (Lys. 26.2–3; *cf.* M. H. Hansen, *Atimistrafen i Athen i Klassisk Tid* [Odense 1973] 8–9 and 130–31). So the law/decree referred to by Lysias must have contained a provision by which it was possible to reject a candidate without maintaining that he was *formally* debarred from holding office. Now in the *Ath.Pol.* 55.4 Aristotle describes a reform of the *dokimasia* which must have had precisely this effect: . . . ἐὰν δὲ μηδεὶς βούληται κατηγορεῖν, εὐθὺς δίδωσι τὴν ψῆφον. καὶ πρότερον μὲν εἰς ἐνέβαλλε τὴν ψῆφον, νῦν δ' ἀνάγκη πάντας ἐπεὶ διαψηφίζεσθαι περὶ αὐτῶν, ἵνα, ἂν τις πονηρὸς ὢν ἀπαλλάξῃ τοὺς κατηγοροῦς, ἐπὶ τοῖς δικασταῖς γένηται τοῦτον ἀποδοκιμάσαι. The amendment referred to by Lysias may be identical with the reform described by Aristotle. The decree was passed after the restoration of the democracy (Lys. 26.9) and probably shortly afterwards.

¹⁹ The main source is Lysias' speech *For the Invalid*, delivered before the council and probably in connection with the *δοκιμασία τῶν ἀδυνάτων* (Arist. *Ath.Pol.* 49.4). From some casual remarks in Lysias' speech we can infer that the disabled citizens were granted the pension individually by a *psēphisma* of the *boule* (13) and that the *dokimasia* was repeated and the *psēphisma* renewed each and every year (26, *cf.* 7). The pension scheme, however, was warranted by an act which in the beginning of the fourth century took the form of a *psēphisma* of the *demos* (Lys. 24.22 *cf.* Hansen 319–20).

²⁰ Timarchus was a member of the council in 361/0 (Aeschin. 1.109) and again in 347/6 (Aeschin. 1.80). Since the decree explicitly refers to Philip of Macedon, 347/6 is the only possible date.

meetings). Furthermore it is decreed that the *ἱερομνήμων* and the *πυλαγόροι* in office shall take no part in the extraordinary meeting stipulated at the spring meeting of 340/39 (Aeschin. 3.126–27). The decree is in substance proposed and carried by Demosthenes of Paeania and must be dated 340|39.²¹

9. Decree prescribing that all revenue be transferred to the Stratiotic Fund (Philoch. *FGrHist* 328 F 56a). The decree is proposed and carried by Demosthenes of Paeania in 339/38.²²

10. Decree empowering the council of the Areopagus to punish any offender in accordance with the ancestral laws. The Areopagus is authorized to inflict even the extreme penalty of the law, and the decision is final. A man sentenced to death by the Areopagus can be executed immediately.²³ The decree is proposed and carried by Demosthenes of Paeania and must be dated 338/37. It is probably passed immediately after the defeat at Chaeronea.²⁴

11. Decree prescribing that those leaving the country in times of danger be liable to a charge of treason (Lycurg. 1.53). The decree must be dated 338/37 and is probably passed immediately after the defeat at Chaeronea.²⁵

Eleven examples constitute a small but not inconsiderable part of 219 *psephismata*. But in our analysis the date of the decrees must be taken into account. 1–6 are passed in 403/2 or shortly afterwards. Consequently, all six decrees are probably earlier than the *nomothesia* by *nomothetai* and the distinction between *nomoi* and *psephismata*.²⁶ 8–11 are passed by the *ecclesia* during the final war against Philip of

²¹ The *terminus post quem* is the spring meeting of the *synedrion* held in March(?) 339, the *terminus ante quem* is the extraordinary summer meeting held in May/June(?) 339.

²² In the archonship of Lysimachides but, according to Philochorus, before Philip's capture of Elatea in Nov.(?) 339.

²³ Din. 1.62, 82–83, *cf.* 9 and 112. Trials heard by the Areopagus and warranted by this decree are recorded in Din 1.62, Aeschin. 3.252, Lycurg. 1.52.

²⁴ We know from Dem. 59.80 that the Areopagus was not authorized to inflict any punishment except minor fines. So the *terminus post quem* is *ca* 340, and the *terminus ante quem* is the period after the battle of Chaeronea when the assembly passed the decree that those leaving the country in times of danger be liable to a charge of treason (*infra* no.11). The Areopagus passed several sentences of death in accordance with this decree (Lycurg. 1.52, Aeschin. 3.252), and the two decrees are probably contemporaneous. The public action warranted by Demosthenes' decree must not be confused with the *ἀπόφασις* introduced *ca* 350 B.C. *Cf.* M. H. Hansen, *Eisangelia* (Odense 1975) 39–40.

²⁵ *Cf. supra* n.24.

²⁶ Consequently I have omitted Tisamenus' decree regulating the revision of the law code (Andoc. 1.83–84) and Phormisius' decree that citizen rights be reserved for those who owned landed property (Lys. 34). Phormisius' decree was probably proposed and rejected before the archonship of Euclides (*cf.* Arist. *Ath.Pol.* 41.1).

Macedon, and at least two of them (10–11) are decisions made immediately after the defeat at Chaeronea when the Athenians were panic-stricken and probably took no notice of constitutional formalities that may have caused delay. The conclusion is that, apart from a short period of crisis in 339–38, there is in the literary sources only one example of the *ecclesia* having legislated by *psephisma* in the fourth century, *viz.* Timarchus' ban on export of weapons to Philip of Macedon.

III

In the preceding section I hope to have demonstrated that the Athenians in the fourth century did not legislate through *psephismata*. I shall now turn to an examination of the opposite problem: do the *nomoi* preserved on stone or paraphrased in the speeches include individual rules of temporary validity which ought to have been enacted by the *ecclesia* as *psephismata*? Among the more than one hundred *nomoi* quoted or discussed by the orators, I have not found one single instance of this. All *nomoi* are what they should be: general standing rules binding on all Athenians for an unlimited period. The epigraphical evidence, on the other hand, is more controversial and must be discussed in some detail.

Of the six *nomoi* preserved on stone five are general permanent rules, *viz.* the law on silver coinage (*Hesperia* 43 [1974] 157–88), the law on Eleusinian first-fruits (*IG II²* 140), the tyranny law (*SEG XII* 87), the law on the Panathenaea (*SEG XVIII* 13) and the complex religious law on some offerings (*IG II²* 333). The sixth *nomos*, however, deals with a particular case, *viz.* the rebuilding of the walls around the Piraeus; and moreover three honorary decrees include a provision that the *psephisma* be referred to the *nomothetai* for ratification (*IG II²* 222.41–52; *IG II²* 330.18–23; *Syll.*³ 298.35–41).

The law on the rebuilding of the walls and the three references in honorary decrees to the *nomothetai* have one thing in common: the *nomothetai* are requested to pass a finance bill. At this point let us remember that in the fourth century the Athenian financial administration was based on an annual *merismos*. I shall quote a passage from Rhodes, *op.cit.* (*supra* n.2) 103: “In the fourth century, with its *μερισμός*, we reach a more advanced level of financial organization. Whereas previously, so far as we can tell, every payment from the

public treasury was earmarked for a particular purpose, various *ἀρχαί* were now given an annual allowance for their ordinary expenses, which presumably was theirs to spend without further interference, so long as they could satisfy the boards of logistae in the check made every prytany, and in the final examination after their year of office. A few of the allocations are known: in 357/6 Midias as treasurer of the Paralus had 12 talents to spend; in the 320s the *ἱερῶν ἐπισκευασταί* received $\frac{1}{2}$ a talent a year and the epimeletae of the Great Dionysia $1\frac{2}{3}$ talents. . .” The important question is, who was responsible for the *merismos*? Although it was undoubtedly subject to frequent revisions, it was by nature a general permanent rule. The *merismos* was in practice annual because the appropriations ran for one year at a time, but that does not imply that the *merismos* itself had to be renewed every year. Many boards of officials seem to have received the same amount year after year.²⁷ The *merismos* was in principle permanent, and so it ought to be a *nomos* passed by the *nomothetai*.²⁸ This inference is confirmed by several sources. Both the Stratiotic and the Theoric Funds were regulated through *nomoi*,²⁹ and I have previously argued that both funds were financed through annual appropriations.³⁰ Demosthenes states in the *Third Olynthiac* that any transference of money from the Theoric Fund can be made only through a *nomos* passed by the *nomothetai*.³¹ And the assumption that all appropriations were based on a *nomos* finds some support from various decrees preserved on stone.³² Now both the rebuilding of the walls and the three honorary decrees referred to the *nomothetai* for ratification relate to revisions of or additions to the *merismos*.

²⁷ E.g. the *ἱερῶν ἐπισκευασταί* receiving thirty *minae* a year (Arist. *Ath.Pol.* 50.1) and the *epimeletai* of the Greater Dionysia receiving 100 *minae* (Arist. *Ath.Pol.* 56.4). Cf. Rhodes, *op.cit.* (*supra* n.2) 103.

²⁸ This is also the position of Rhodes, *op.cit.* (*supra* n.2) 101. According to A. H. M. Jones, *Athenian Democracy* (Oxford 1957) 102, the sums were allocated either by law or by decree of the people.

²⁹ The Stratiotic Fund: Dem. 59.4; the Theoric Fund: Dem. 3.11. Similarly a *nomos* had to be passed by the *nomothetai* in order to provide money for the Lesser Panathenaea first in 353/2 (Dem. 24.26–29) and again in 336–34 (SEG XVIII 13). Cf. D. M. Lewis, “Law on the Lesser Panathenaea,” *Hesperia* 28 (1959) 245–47.

³⁰ M. H. Hansen, “The Theoric Fund and the *graphe paranomon* against Apollodorus,” *GRBS* 17 (1976) 241ff.

³¹ Dem. 3.10. Cf. Hansen, *op.cit.* (*supra* n.30) 236–37 with n.10.

³² *IG* II² 29.18–22, *IG* II² 354.30–31.

1. *IG II² 244* is a *nomos* passed by the *nomothetai*. It is presumably not a decision to rebuild the walls; it deals primarily with the financing of the rebuilding and the administration of the money set off for the purpose.³³ On the analogy of the *Stratiotika* and the *Theorika* the Athenians have introduced a special appropriation τὰ τειχοποιϊκά (lines 18, 21, 31, 37, 40, 44). The rebuilding is expected to last several years, and the *nomos* includes a reference to a previous *nomos* (line 13) probably dealing with the same subject. The *nomos* does not refer to any named person. On the other hand it relates to a particular case,³⁴ and it cannot be described as a general, permanent rule.

The three *psephismata* ratified by the *nomothetai* are undoubtedly individual decisions since they all relate to named persons.

2. *IG II² 222* is a citizenship decree for Pisithides of Delos. Among the honours bestowed is a pension to be paid out to Pisithides until he returns to Delos. The ταμίαις τοῦ δήμου is instructed to pay out a daily allowance of one drachma, and the πρόεδροι of the next session of the *nomothetai* are instructed to propose a supplementary appropriation to the effect that the ἀποδέκται shall transfer the amount to the ταμίαις each and every year: ἐν δὲ τοῖς νομοθέται[ς] τ[οὺς προέδρ]ους οἱ ἂν προεδρεύωσιν [καὶ τὸν ἐ]π[ις]-τάτην προσνομοθετῆ[σαι τὸ ἀρ]γύριον τ[ο]ῦτο μερίζειν τ[οὺς ἀποδ]έκτας τῶι ταμίαι τοῦ δήμ[ου εἰς τὸ]ν ἐνιαυτὸν ἕκαστον (41–46). The ratification by the *nomothetai* is a general measure in so far as it results in a revision of the annual *merismos* for an unlimited period of time. On the other hand, it relates to a particular case since the money is to be paid out to a named person.

3. *IG II² 330* is an honorary decree for Phyleus the ἱεροποιός who is awarded a golden crown worth 1000 drs. The ταμίαις τοῦ δήμου is instructed to lay out the money, but in order that he can have the 1000 drs. refunded the πρόεδροι of the next session of the *nomothetai* are instructed to propose supplementary estimates: ὅπως δ' ἂν ὁ τ[α]μίαις ἀπολάβ[ῃ] τὸ ἀργύριον τὸ εἰρημένον τ]οὺς προέδρους, οἱ ἂν λάχωσι[ν] πρῶτον προεδρεύειν εἰς τοῦ]ς νομοθέτας προσνομοθετῆ[σαι περὶ τοῦ ἀναλώματος ὅπως ἄ]ν καὶ οἱ ἄλλοι οἱ καθιστάμε[νοι ἱεροποιοὶ φιλοτιμῶντα]ι πρὸς τε τὴν βουλήν καὶ τὸν δ[ῆμον ἄρχειν κατὰ τοὺς νόμου]ς καὶ εἶναι χρήσιμοι τῶι δήμ[ωι τῶι Ἀθηναίων] (18–23). The purpose of this act is to exhort future ἱεροποιοί to merit the gratitude of the people, but the act itself seems to have been no more than an individual decision to grant the ταμίαις τοῦ δήμου a supplementary appropriation of 1000 drs. to be paid out only once.

³³ Cf. F. G. Maier, *Griechische Mauerbauinschriften I* (Heidelberg 1959) 36–48.

³⁴ Both in 395–91 and in 307/6 the decision to rebuild the walls took the form of a *psephisma*. Cf. Philoch. *FGrHist* 328 F 40 and Maier, *op.cit.* (*supra* n.33) 21–36 (the rebuilding in 395–91); *IG II² 463* and Maier 48–67 (the rebuilding in 307/6).

4. *Syll.*³ 298 (=IG VII 4254) is an honorary decree for a board of *epimeletai* (whose names are recorded). Among the honours bestowed is a grant of 100 drs. for a sacrifice and a votive offering. The *ταμίαις τοῦ δήμου* is instructed to lay out the money to the sacrifice, but at the next session of the *nomothetai* (the *πρόεδροι*) are instructed to propose a ratification of the expense: *δοῦναι δὲ αὐτοῖς καὶ εἰς θυσίαν καὶ ἀνάθημα Ἡ δραχμάς· τὸ δὲ ἀργύριον τ[ὸ] εἰς τὴν θυσίαν προδανείσαι τὸν ταμίαν τοῦ δήμου· ἐν δὲ τοῖς πρώτοις νομοθέταις προσνομοθετῆσαι τῶι ταμ[ί]αι (35–41).*³⁵ The sum may seem ridiculously small, but nevertheless the aorist *δοῦναι* in opposition to the present *διδόναι* in line 44 indicates that the *nomothetai* are asked to vote for an once-for-all appropriation of max. 100 drs.

How can the ratification by the *nomothetai* of a *psephisma* be reconciled with the principle that a *nomos* ought to be a general permanent rule? Admittedly, since a *nomos* could be changed only through a new *nomos* and not through a *psephisma*,³⁶ any revision of the *merismos* must be referred to the *nomothetai*. Nevertheless it remains a disquieting fact that the *nomothetai*, when ratifying honours bestowed on named persons, resorted to *ad hominem* legislation, which is in conflict with the principle that a *nomos* must be a general rule binding on all Athenians. The clash of principles is insurmountable, but the Athenians seem to have foreseen the problem and taken their precautions. In the law delimiting the concept of *nomos* there is an additional provision which has troubled many scholars and has not yet been satisfactorily explained: *μηδὲ ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι, εἰ μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις, εἰ μὴ ἐξακιςχιλίοις δόξῃ κρύβδην ψηφίζομενοι* (Andoc. 1.87). The clause *εἰ μὴ ἐξακιςχιλίοις δόξῃ κρύβδην ψηφίζομενοι* is usually rejected as nonsense since it contradicts the principle that a *nomos* must apply to all Athenians, and the phrase *νόμος ἐπ' ἀνδρὶ* is sometimes even changed into the term *ψήφισμα ἐπ' ἀνδρὶ*.³⁷ I shall argue, however, that the text of the law is sound and can be understood without difficulty.

The provision for a *νόμος ἐπ' ἀνδρὶ* is added to the law as an *exemption clause*, and it is in perfect harmony with another exemption clause quoted in Dem. 24.45: No *ἄτιμος* is allowed to apply for a

³⁵ Against Dittenberger's interpretation Rhodes has pointed out (*op.cit.* [*supra* n.2] 276) that the clause to be referred to the *nomothetai* is contained in lines 35–41 and not in lines 39–45.

³⁶ Cf. Hansen 324–25.

³⁷ E.g. G. Busolt and H. Swoboda, *Griechische Staatskunde* II (München 1926) 885, 995, 1000. Quass, *op.cit.* (*supra* n.2) 20 with n.108.

reduction of his sentence except when he has obtained an *ἄδεια* passed by a quorum of 6000 voting by ballot. It is important to notice that the 6000 Athenians do not make any decision on the reduction of the sentence; they merely permit that the application be made.³⁸ Similarly we must suppose that the 6000 who have to vote on a *νόμος ἐπ' ἀνδρί* do not pass the law. They merely permit that a *νόμος ἐπ' ἀνδρί* be proposed. Now the *nomothesia* itself was invariably conducted by the *nomothetai*, but it was always initiated in the assembly.³⁹ So we may assume that a *νόμος ἐπ' ἀνδρί* might be passed if a quorum of 6000 voting by ballot in the assembly decreed that *nomothetai* be appointed with the purpose of making a decision on the proposal.

This seems to be exactly what happened in those three cases where the *ecclesia* decreed that the grant of a sum of money to a person honoured be submitted to the *nomothetai* for ratification. The money is paid out to a named person, but a decision made by the *nomothetai* is a *nomos*. Consequently the ratification must be a *νόμος ἐπ' ἀνδρί*.

My combination of the law in Andoc. 1.87 with the three honorary decrees rests upon the assumption that the decision to submit the honorary decrees to the *nomothetai* was passed by a quorum of 6000 voting by ballot. This assumption can be proved in one case, *viz.* the decree for Pisithides. Among the honours bestowed on Pisithides is Athenian citizenship (lines 16–18), and we know from Dem. 59.89 that a citizenship decree had to be ratified by a quorum of 6000 voting by ballot. Thus the required quorum must have been present in the assembly and must have voted not only for the citizenship grant but also for the provision that the decree be submitted to the *nomothetai* for ratification. It can now be assumed, although not proved, that the other two honorary decrees as well were passed by the required quorum voting by ballot.

Summing up: all the known exceptions to the principle that a *nomos* ought to be a general permanent rule can be explained as revisions of a *nomos* (the *merismos*) which ought to take the form of a *nomos*, and moreover as exemptions foreseen by the Athenians in the clause describing the conditions for passing a *νόμος ἐπ' ἀνδρί*.

³⁸ Andoc. 1.77, *ἐπειδὴ ἐψηφίσαντο Ἀθηναῖοι τὴν ἄδειαν περὶ <τῶν ἀτίμων καὶ> τῶν ὀφειλόντων ὥστε λέγειν ἐξείναι καὶ ἐπιψηφίζειν, ψηφίσασθαι τὸν δῆμον...*

³⁹ Dem. 3.10–13, 24.20–23; Aeschin. 3.38–39.

IV

These conclusions are in conflict with the accepted view according to which there was little or no difference in substance between *nomoi* and *psephismata*, since general permanent rules were frequently passed as *psephismata* whereas individual decisions sometimes were made by the *nomothetai*. The foundation of the traditional view is the general description of radical democracy in the *Politics* of Aristotle combined with one passage in the *Ath.Pol.* and one in Demosthenes' speech *Against Leptines* (*cf.* the references *supra* n.2).

1. Aristotle states in the *Politics* that the sovereignty of the *demos* in a radical democracy supersedes the sovereignty of the *nomos* so that all decisions are made as *psephismata* by the *ecclesia*.⁴⁰

2. Since the fourth-century Athenian constitution is classified by Aristotle as a radical democracy,⁴¹ it is *a priori* probable that Aristotle's general description of *psephismata* in a radical democracy applies to Athens.

3. This inference is confirmed by Aristotle's description of Athens' eleventh constitution, in which πάντα διοικεῖται ψηφίσμασιν καὶ δικαστηρίοις (*Arist. Ath.Pol.* 41.2), and by Demosthenes' scornful remark in the *Leptines* speech that ψηφισμάτων . . . οὐδ' ὅτιοῦν διαφέρουσιν οἱ νόμοι (*Dem.* 20.92).

Apparently this is a reasonable line of argument, but it is based on *Arist. Ath.Pol.* 41.2 and *Dem.* 20.91, and neither source is straightforward and uncontroversial. In *Ath.Pol.* 41.2 it is worth noticing that *nomoi* (and *nomothetai*) are passed over in silence and the distinction made is between a type of enactment (*psephismata*) and a body of government (*dicasteria*). Since both the *nomothetai* (making the laws) and the *dicastai* (manning the courts) were appointed from among the 6000 jurors, we cannot preclude the possibility that Aristotle draws a distinction between the *ecclesia* (passing *psephismata*) and the *dicasteria* (pronouncing judgements and making *nomoi*). Moreover, Aristotle is highly critical of democracy, and I find it hazardous to trust, without further evidence, what is said about radical democracy by a man who detests that form of constitution.

Dem. 20.92 is an even more controversial passage. First, Demosthenes' discussion of *nomothesia* in the *Leptines* speech is deliberately blurred, and most scholars agree that he attempts to deceive the

⁴⁰ *Arist. Pol.* 1292a5–7, 24, 35; 1293a9–10; 1298b13–15; 1305a32; 1310a3–4; 1317b28–30.

⁴¹ *Arist. Pol.* 1274a7–11; 1319b21; *Ath.Pol.* 41.2.

court by a fallacious interpretation of the legislative procedure.⁴² Second, even if we take Demosthenes' statements at their face value, they do not constitute any evidence that the Athenian *ecclesia* legislated through *psephismata*. Demosthenes criticizes some politicians for having introduced (unconstitutionally?) a new and debased form of *nomothesia* by which it is easier to propose and carry a *nomos*. The result has been a greater number of *nomoi*, sometimes even conflicting *nomoi* and, worst of all, *nomoi* are frequently passed after the *psephismata* although the *psephismata* ought to be warranted by the *nomoi*. On the other hand, the politicians are accused neither of having abolished *nomothesia* by the *nomothetai* nor again of having allowed the *ecclesia* to arrogate to itself legislative powers by passing general permanent rules as *psephismata*.

In short, neither Arist. *Ath. Pol.* 41.2 nor Dem. 20.92 can be adduced in support of the statement that the *ecclesia* legislated through *psephismata*, and furthermore, in opposition to the two passages discussed, we have a greater number of sources showing that the Athenians themselves respected the *nomoi* as the foundation of the democracy⁴³ and regarded the *nomoi* and not the *ecclesia* as the sovereign proper:⁴⁴ διὰ τί οἴεσθε, ὦ ἄνδρες, τοὺς μὲν νόμους καλῶς κείσθαι, τὰ δὲ ψηφίσματα εἶναι τῆς πόλεως καταδεέστερα, καὶ τὰς κρίσεις ἐνίοτε τὰς ἐν τοῖς δικαστηρίοις ἔχειν ἐπιπλήξεις; ἐγὼ τὰς τούτων αἰτίας ἐπιδείξω. ὅτι τοὺς μὲν νόμους τίθεσθε ἐπὶ πᾶσι δικαίοις. . . ἐν δὲ ταῖς ἐκκλησίαις καὶ τοῖς δικαστηρίοις πολλάκις ἀφέμενοι τῶν εἰς αὐτὸ τὸ πρᾶγμα λόγων, ὑπὸ τῆς ἀπάτης καὶ τῶν ἀλαζονευμάτων ὑπάγεσθε, . . . (Aeschin. 1.177–78).

These reservations considerably reduce the evidential value of the two passages usually adduced in support of the assumption that Aristotle has Athens in mind when he writes about *nomos* and

⁴² Cf. M. H. Hansen, "Athenian *Nomothesia* in the Fourth Century B.C. and Demosthenes' Speech *Against Leptines*," paper delivered in Chantilly in June 1977 and to be published in *Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte*. Cf. H. J. Wolff, "'Normenkontrolle' und Gesetzesbegriff in der attischen Demokratie," *SBHeidell.* Abh.2 (1970) 35–37, *pace* D. M. MacDowell, "Law-making at Athens in the Fourth Century B.C.," *JHS* 95 (1975) 62–74, who reconstructs the Athenian *nomothesia* on the assumption that Demosthenes' description of the 'Solonian' *nomothesia* is basically to be trusted as a correct account of the lawmaking procedure in the first decades of the fourth century.

⁴³ Dem. 24.5, 25.20–21, 26.10; Aeschin 1.4–5, 3.6, 169, 196; Lycurg. fr.70. Democracy is the constitution characterized by the sovereignty of the laws in contrast to oligarchy and tyranny: Dem. 24.75–76; Aeschin. 1.5, 3.6.

⁴⁴ Dem. 21.150, 188; 22.45–46; 23.73; 24.155–56, 212–14, 216; 26.8. Hyperid. 3.5.

psephisma in a radical democracy. Instead of relying on generalizations in two debatable sources, scholars ought in my opinion to concentrate on the decisions actually made by the Athenians in the period 403–322. From the inscriptions and the literary sources we know about the contents of some six hundred *psephismata* and more than one hundred *nomoi*. For students of ancient history this is an enormous amount of evidence. If scholars are right in assuming that the distinction between *nomoi* and *psephismata* was disregarded by the Athenians, we should have no difficulty in finding scores of examples of general permanent rules passed as *psephismata* and individual temporary rules taking the form of *nomoi*. Nevertheless the examples adduced by those who discuss the question are astonishingly few and most of them must be questioned. On the other hand, it is a curious fact that historians hardly ever refer to any of the few unquestionable examples of legislation through *psephismata* discussed above on pp.36–38 and dated within the periods 403–402 and 339–338. Harrison, Ehrenberg, Ostwald and de Romilly give no examples at all. Rhodes and Quass refer in their notes to a few sources, and Kahrstedt has a short discussion in the text. An examination of the evidence adduced by Kahrstedt, Quass and Rhodes (*opp.citt. supra* n.2) gives the following result.

1. Kahrstedt bases his discussion on the Heliastic Oath: “Neben der behandelten Art der Nomothese setzt aber das 4. Jahrh. auch eine Gesetzgebung durch das Volk voraus. . . Der Richtereid des 4. Jahrh. verpflichtet die Heliasten auf die *Nomoi* und die *Psephismen* von Rat und Volk, d.h. auf die normal mit *Probouleuma* zustande gekommenen Volksbeschlüsse. Die populäre Begriffsbestimmung von [Plat.] *ὄροι* 415B, nach der *Nomoi* dauernde, *Psephismen* einmalige Anordnungen sind, versagt hier völlig, die letzteren müssten dann für den betr. Prozess erlassen sein und das Urteil präjudizieren, das ist die einzige Art von *Psephismen*, die in Athen absolut unmöglich ist” (12–13). Kahrstedt’s interpretation of the Heliastic Oath is one of his major fallacies and is disproved by, *e.g.*, Dem. 47, where a trierarch addresses the jurors and invokes both the *nomoi* (regulating the naval administration in general) and several *psephismata* (dealing with the fitting out of the squadron in question).⁴⁵

⁴⁵ Either two or three decrees concerning the recovering of naval equipment from former trierarchs. (A) The recently appointed trierarchs are entrusted with the collection of the equipment, and the *ἐπιμεληταὶ τῶν νεωρίων* are instructed to perform a sortition by

Similarly, most of the other sources adduced by Kahrstedt are in perfect agreement with the definitions given in [Pl.] *Def.* 415B, according to which *nomoi* are permanent and *psephismata* temporary enactments. The only passages cited which may support Kahrstedt's assertion are Dem. 57.30, οὐ μόνον παρὰ τὰ ψηφίσματα⁴⁶ τὰ περὶ τὴν ἀγορὰν διέβαλλεν ἡμᾶς Εὐβουλίδης, ἀλλὰ καὶ παρὰ τοὺς νόμους. . . , and Dem. 44.38, τὸν δὲ παρὰ τὸ ψήφισμα τὸ ὑμέτερον ἀξιοῦντα τὸ θεωρικὸν λαμβάνειν, πρὶν ἐγγραφήναι εἰς τοὺς Ὀτρυνέας, ὄντα ἐξ ἑτέρου δήμου, τοῦτον οὐκ οἶεσθε τοῦ κλήρου παρὰ τοὺς νόμους ἀμφισβητεῖν; In Dem. 57.30 τὰ ψηφίσματα τὰ περὶ τὴν ἀγορὰν may have been general standing rules regulating the trade in the Agora, but they may as well have been individual and temporary enactments. We do not know. The same objection applies to the *psephisma* in Dem. 44.38. There is some evidence that the amount paid out as *theorica* varied from festival to festival.⁴⁷ If so, the rate and method of payment must have been fixed in every individual case through a *psephisma* τοῦ δήμου, and any illegal attempt to obtain *theorica* would be an infringement of the *psephisma* in question. So there is no reason to assume that the *psephisma* regulating the theoric payment at the Panathenaea in one of the years around 330 is one of the general standing rules for the Theoric Fund referred to by Demosthenes in 3.10–11 as οἱ περὶ τῶν θεωρικῶν νόμοι.

2. According to Quass (*op.cit.* 71) “konnte. . . die Volksversamm-

which the former trierarchs owing equipment are distributed among the trierarchs in office and the *epimeletai* of the symmories. (B) Decree regulating the distribution of former trierarchs owing naval equipment among the trierarchs in office. (C) Decree prescribing confiscation of property if anybody in possession of naval equipment belonging to the state refuses to give it up or if anybody owning naval equipment refuses to sell it. All decrees must be dated 357/6 (Dem. 47.44). (A) is described in §21 and read out to the jurors after §20. (B) is described as ἕτερον ψήφισμα δήμου in §21 and is read out after §24. (C) is paraphrased by §44 and is read out after §44. (C) may be a part of either (A) or (B). (A) and (B) are referred to in the plural in §§22, 25, 29, 30, 37 and 80 and are read out to the jurors after §40.

⁴⁶ τὰ ψηφίσματα *codd.*: τὸ ψήφισμα Blass coll. §7. If we adopt the correction proposed by Blass (as most editors do), the reference is to Demophilus' *psephisma* about the revision of the citizen rolls and not to some *psephismata* concerning the Agora (the passage is mistranslated by Gernet in the Budé edition). The decree is erroneously described as a *nomos* by Dion.Hal. *Isaeus* 16 p.617 and in *hyp.* Dem. 57.

⁴⁷ Hyperid. 1.26 and Din. 1.56. I follow J. Van Ooteghem (*EtCl* 1 [1932] 406) and J. J. Buchanan (*Theorika* [New York 1962] 85) in assuming that the five drachmae are a one-lump-handout and not a sum “Conon may well have drawn over several years” (Jones, *op.cit.* [*supra* n.28] 33).

lung Beschlüsse mit dem sachlichen Gehalt von Gesetzen fassen.” But he adduces only two examples, *viz.* the charter of the Second Athenian Confederacy (*IG II² 43.35ff*)⁴⁸ and the regulations of the lesser Panathenaea (*SEG XVIII 13+ IG II² 334*). In n.114, however, Quass admits himself that neither example is valid, and this cautious remark is much nearer the truth. *IG II² 43.35ff* is a provision that no Athenian citizen may acquire landed property in the territory of the allies. It is a general standing rule, but it deals with foreign policy and is not an Athenian *nomos* in the proper sense (*cf. supra* p.31). Consequently it is laid down that any infringement of the provision be referred to the *synedrion* of the allies (and not to an Athenian *dicasterion*). On *IG II² 334* and *SEG XVIII 13 cf. supra* p.34.

3. Rhodes states that “*νομοθεσία* was presumably regarded as more solemn and binding than the enactment of *ψηφίσματα*, but the measures which have survived suggest that the Athenians failed to live up to this ideal (49–50). Whenever it was possible, the Athenians continued to express their will in *ψηφίσματα* . . . (52).” In illustration of how the Athenians disregarded the distinction between *nomoi* and *psephismata* Rhodes cites three *psephismata* concerning the Theoric Fund: the *psephisma* referred to in Dem. 44.38, Apollodorus’ *psephisma* of 348 concerning the surplus of the administration (Dem. 59.4) and Demosthenes’ *psephisma* of 339 that all money be transferred from the Theoric to the Stratiotic Fund (Philoch. *FGrHist* 328 F 56a). The *psephisma* in Dem. 44.38 is adduced also by Kahrstedt and is discussed above on p.47. Apollodorus’ decree is commonly believed to be a permanent *psephisma* transferring money from the Theoric to the Stratiotic Fund. In a previous article,⁴⁹ however, I have argued that it is no more than a provision that the *ecclesia*, on one particular occasion, shall take the vote on whether the surplus (*τὰ περιόντα*) be used as *Theorica* or as *Stratiotica*. If I am right in my interpretation, the distinction between general *nomoi* and individual *psephismata* is respected by Apollodorus. His decree is probably *paranomomn*, but it is not a permanent provision passed as a *psephisma*. Demosthenes’ decree, on the other hand, is indeed a permanent rule which ought to have been enacted by the *nomothetai*. It has been discussed above on p.38 as one of the four *psephismata* unconstitutionally passed by the

⁴⁸ Adduced also by Busolt, *op.cit.* (*supra* n.2) 458 n.5.

⁴⁹ *Op.cit.* (*supra* n.30) 244–45.

ecclesia during the final war against Philip of Macedon. Summing up: the assumption that the Athenians in the fourth century legislated through *psephismata* passed by the *ecclesia* is unfounded and contradicted by the sources.

V

My conclusion will, undoubtedly, be countered by the question: is it believable that all legislation rested with the *nomothetai* when references to *nomothesia* in our sources are so scarce and scattered? I shall round off my investigation with an answer to this question, or rather with three answers, since we have three different types of source material: (a) enactments of the Athenians preserved on stone, (b) enactments quoted or referred to in the forensic speeches and (c) a systematic description of the Athenian fourth-century constitution in Arist. *Ath. Pol.* 42–69.

(a) The epigraphical evidence comprises some 480 *psephismata* as against only 6 *nomoi* passed by the *nomothetai*. But in any society individual temporary decisions are made much more frequently than general permanent rules, and so it is only natural that the number of preserved *nomoi* is much smaller than the number of *psephismata*. The *ecclesia* met forty times every year⁵⁰ and passed, say, ten *psephismata* during a single session.⁵¹ In the speech *Against Timocrates* 142, Demosthenes criticizes the Athenians for making new *nomoi* almost every month.⁵² Demosthenes is probably exaggerating, but even if we take his statement at face value, we arrive at a total of say, twenty-five *nomoi* per annum as against some four hundred *psephismata*.

On the other hand we know of more than one hundred *nomoi* quoted or referred to in the forensic speeches. Of these only the homicide law is preserved on stone. The survey of *psephismata* (*supra* n.12) shows that the epigraphical evidence is stereotyped and gives a distorted picture of the decisions made by the Athenians. Conversely, the few unquestionable examples of general permanent rules cut in stone are either demonstrably enactments of the *nomothetai* or fragmentary enactments which may prove to be decisions made by

⁵⁰ Cf. M. H. Hansen, "How Often Did the *Ecclesia* Meet?" *GRBS* 18 (1977) 67ff.

⁵¹ Cf. M. H. Hansen, "How Did the Athenian *Ecclesia* Vote?" *GRBS* 18 (1977) 127–28.

⁵² Cf. also Dem. 20.91; Isoc. 8.50, 12.144, 15.82.

the *nomothetai* if a new fragment turns up inscribed with the enactment-formula or the publication-formula.⁵³

So the epigraphical evidence, for what it is worth, supports and does not contradict the assumption that the *ecclesia* did not legislate in fourth-century Athens. The proper question is not, why are so few enactments of the *nomothetai* preserved on stone, but rather, why are so few general permanent rules preserved on stone? I suggest two possible answers to this question. (1) Both *nomoi* and *psephismata* were frequently cut in stone, but the *nomoi* were published in such a way or set up in such a place that most of them are lost, whereas accidentally a higher proportion of *psephismata* has been preserved. (2) The idea of a law code cut in stone had to be abandoned a few years after the democratic restoration, and henceforth *nomoi* were published on some more perishable material and kept in the Metroon (*cf. supra* n.7).

A *psephisma* would eventually become a dead letter but did not need any revision while in force. A *nomos* was a permanent rule but subject to revision that could only with difficulty be executed on a stone. Publication of *nomoi* on stone may have been the exception rather than the rule. Lycurgus, for example, assumes in his speech *Against Leocrates* that, regularly, the only text of a law was the original which was kept in the Metroon (Lycurg. 1.66).

(b) In the forensic speeches there are hundreds of references to the *demos*=the *ecclesia* as against only a few scattered accounts of *nomothesia* by *nomothetai*. The orators, however, frequently quote or paraphrase a *nomos*, but it is always the content of the *nomos* that is discussed, and the orators show little or no interest in the questions how and by whom the *nomos* was made.⁵⁴ But the *psephismata* dis-

⁵³ *Cf. supra* pp.33–35 nos. 4–6 and 10.

⁵⁴ For references in the speeches to the *nomothetai cf.* Hansen 321 n.22. For references to the jurors *cf. ibidem* n.23. Apart from the *nomothetai* or the jurors (= the audience), when an orator mentions the legislator, the reference is either to Draco (Andoc. 1.81ff; Dem. 20.158; 23.25, 27, 29, 51, 62; 24.211; 47.71; Aeschin. 1.6ff) or to Solon (Andoc. 1.81ff, 95, 111; Lys. 10.15; 30.2, 26, 28; Dem. 18.6; 20.90, 93, 102–04; 22.25, 30; 24.103, 106, 113, 142, 148, 211; 26.23; 36.27; 42.1; 43.62, 66–67, 78; 44.67–68; 48.56–57; 57.31–32; Aeschin. 1.6ff, 13ff, 183; 3.2, 175–76, 257; Hyperid. 5.22) or to some named or unnamed politician. The politicians named as legislators are Tisamenus and Nicomachus (Lys. 30.28), Aristophon (Dem. 57.32), Demosthenes (Dem. 18.102ff, 320; Aeschin. 3.222; Hyperid. fr.160), Leptines (Dem. 20.3 *et passim*), Midias (Dem. 21.173), Timocrates (Dem. 24.1 *et passim*), Eudemus (Dem. 24.138), Philippus (Dem. 24.138), Periandrus (Dem. 47.21). Frequently the reference is to some unnamed politician (*ὁ νομοθέτης, ὁ τὸν νόμον θεῖς* or *τιθεῖς* etc.). In some of these passages the orator probably has Solon in mind:

cussed usually relate to foreign policy, and there is hardly any evidence of general permanent rules which ought to have been passed as *nomoi*. So the question, why are references to the *nomothetai* so scarce? must be countered by the questions, why are references to those who made the *nomoi* so scarce and why is it impossible in several thousand pages to find no more than five unquestionable examples of general permanent rules enacted by the *ecclesia* in the form of a *psephisma*?⁵⁵

A plausible explanation may be that the passing of a *nomos* (binding on the Athenians and relating to domestic policy) was usually a much less controversial issue than the passing of a *psephisma* (frequently relating to foreign policy). It is worth noticing that we have preserved thirty-nine examples of *γραφὴ παρανόμων* (against *psephismata*) whereas there are only six known instances of the *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι* (against *nomoi*).⁵⁶ *Psephismata* passed by the *ecclesia* seem to have been questioned far more frequently than the few *nomoi* passed by the *nomothetai*; and a *psephisma*, especially a *psephisma* relating to foreign policy, was often the result of a violent struggle between opposing politicians, so that the orators tend to discuss the enactment as well as the content of a *psephisma*. Aeschines may be right in his assertion⁵⁷ that the passing of *nomoi* caused much less trouble than the enactment of *psephismata* in the *ecclesia* and the administration of justice in the *dicasteria*. Complaints of the legislative procedure are concentrated in speeches delivered in a *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι* (Dem. 20 and 24) where it is almost impossible to decide to what extent the criticism of the legislation is rhetorical exaggeration.

(c) In Aristotle's *Constitution of Athens* the *nomothetai* are passed over in silence. Does that mean that *nomothesia* had been abolished after 329/8⁵⁸ or stopped being of any importance? Certainly not. *Argumenta e silentio* of this kind based on the *Constitution of Athens* are of no value whatsoever. Two simple observations can be adduced in

Lys. 1.33, 26.9; Is. 2.13; 11.3, 12; Dem. 19.7, 239; 20.91, 22.11, 23.86; 24.51, 114, 116, 119, 142; 36.25; 44.49, 58; 47.3, 58.11; Aeschin. 1.160, 165; 3.11, 14, 16–18, 20–21, 26, 31, 33–34, 47; Hyperid. 5.16; Din. fr.60.2. (The references given in this note are fairly exhaustive but not complete.)

⁵⁵ Cf. *supra* pp.37–38 nos. 7–11.

⁵⁶ Cf. Hansen, *op.cit.* (*supra* n.13) 46–47.

⁵⁷ Aeschin. 1.177–78 quoted above on p.45.

⁵⁸ The last references to the *nomothetai* are Aeschin. 3.38–40 (from 330/29, cf. Dion.Hal. *Ad Amm.* 12, Plut. *Dem.* 24) and *Syll.*³ 298.35–41 (from 329/28).

support of this assertion. First, the *ecclesia* receives no independent treatment in Aristotle's systematic description of the Athenian constitution but is merely described in three notes in the section dealing with the *boule*.⁵⁹ If the relative importance of the bodies of government in fourth-century Athens had to be assessed on the basis of the *Ath.Pol.*, the conclusion would be that the *ecclesia* was much inferior to the *boule*, the *archai* and the *dicasteria*. Second, apart from three scattered remarks,⁶⁰ the council of the Areopagus is not dealt with in the systematic part of the *Ath.Pol.*, and this in spite of the fact that the powers of the Areopagus were considerably extended during the fourth century, especially in the period after 338.⁶¹ So it is impossible to deduce anything from Aristotle's silence about the *nomothetai*.

VI

In conclusion: 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 general permanent rule had to be passed by the *nomothetai* as a *nomos*, whereas the powers of the *ecclesia* were restricted to foreign policy and, in domestic policy, to the passing of individual rules and/or rules with a limited period of validity. The extensive source material of the period 403/2–322/1 shows that the distinction was, by and large, respected by the Athenians. We have no examples of the *ecclesia* having passed a *nomos*, or of the *nomothetai* having enacted a *psephisma*. In the literary sources we have a few examples of general permanent rules taking the form of a *psephisma* passed by the *ecclesia*. But these examples must be dated within the period when the Athenians were engaged in the final war with Philip of Macedon. Conversely, there are, among the *nomoi* preserved on stone, a few examples of individual rules passed as *nomoi*, but all are in conformity with an exemption clause according to which a *νόμος ἐπ' ἀνδρῶν* may be passed (by the *nomothetai*) if the *ecclesia* gives its permission to *ad hominem* legislation by a vote requiring a quorum of 6000 voting by ballot. So the distinction between *nomos*

⁵⁹ Arist. *Ath.Pol.* 43.4–6, 44.2–4, 45.4.

⁶⁰ Arist. *Ath.Pol.* 57.3–4, 59.6, 60.2.

⁶¹ Cf. Busolt, *op.cit.* (*supra* n.2) 926.

and *psephisma* was not disregarded by the Athenians, and the inference is that the *ecclesia*, in the fourth century, had no legislative powers in the proper sense. Its influence was restricted to initiating legislation by voting that *nomothetai* be appointed for the purpose of passing or rejecting a bill proposed by a private citizen on his own initiative.⁶²

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⁶² After this article was accepted for publication I have seen D. M. MacDowell, *The Law in Classical Athens* (London 1978). I am much in sympathy with his brief remarks on p.49 about legislation by *nomothetai*. I should like to thank Dr Rhodes for reading and commenting on a draft of this paper. His notes have been most helpful, and he has saved me from two errors. Furthermore, I should like to express my gratitude to Statens Humanistiske Forskningsråd for defraying the costs of a visit to Cambridge.