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ATHENIAN LAW AND THE WILL OF THE PEOPLE
IN THE FOURTH CENTURY BC

John Atkinson
University of Cape Town

ABSTRACT

The status of the nomoi was redefined in the aftermath of the oligarchic coup of 404/3, with the intention that the laws which survived the initial review would prevail, and could not easily be repealed or replaced. But Aristotle complained that there was a progressive shift from nomoi to psephismata, as the lower classes gradually asserted their power in the fourth century (Ath. Pol. 41.2). Evidence of abuse of the system can be found in the diminished role of probouleusis, misuse of the court of the Nomothetai, impeachments for unconstitutional proposals, and the blurring of the distinction between laws and decrees. Nevertheless, measures were progressively developed to offset weaknesses in the law relating to nomothesia.

In Aristotle’s view the process of law-making in Athens was badly corrupted in the fourth century BC, and the normative value of the laws was eroded.1 The people asserted their will through resolutions in the Assembly and as jurors in the courts. It is a matter of debate whether Aristotle, for all his elitist and conservative attitudes, was more sympathetic to democracy than

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1 The ideal is reflected in Lysias’ eulogistic reference to the rule of law and the laws as the embodiment of justice (Lysias 2.18-19). Aristotle did not think that laws were inherently just and beneficial, but recognised that they were only as just as the political order which brought them into existence (Politics 1282b11-13). Good order breaks down when democracy falls under the sway of demagogues (Politics 1292a4-37).
Thucydides, as Ober claims. Both understood the reality of self-interest as an issue for ordinary citizens, and both had good reason to avoid advocacy of oligarchy. As Aristotle encouraged the study of the mechanics of democracy, his complaint should not be brushed aside and there are aspects of the political history of the fourth century which help to explain the real, or perceived, corruption of Athenian law in the fourth century. But first it is necessary to sketch the ideal and how the laws were supposed to be protected.

A fundamental distinction was made between *nomoi* (laws) and *psephismata* (resolutions of the Assembly). But the hierarchic relationship between these two forms of legislation was only fully institutionalised after the restoration of democracy in 403. A *psephisma* might be characterised as an operational decision or an *ad hoc* resolution, such as a decision on the reimbursement of citizens sent on special missions, a resolution to establish a judicial enquiry or an agreement with another state. By contrast *nomoi* were the core laws governing the operation of the democracy (for example, one section of the *nomoi* applied to the constitution and operation of the Boule [Demosthenes 24.20]), and the courts, in what we might label the criminal and civil fields. Characteristics of the *nomoi* included the following elements: a *nomos* had to apply to all Athenians equally (Andocides 1.87; Dem. 24.18; 23.86); the *nomoi* collectively and individually were superior to *psephismata*, and other resolutions of the Boule and Assembly (Andoc. 1.87; Dem. 23.87).

The precedence of the *nomoi* seems to be indicated by the procedure for challenging decisions of the Assembly, the *graphe paranomon*, which was a charge that could be used to prosecute the proposer of a decree that was alleged to be in violation of existing laws. It is first attested in 415, when Speusippus was arraigned for his *psephisma* directing that those implicated in the profanation of the Mysteries be tried by the people’s court. But evidence that the laws (*nomoi*) were not hallowed in reality lies in the record that in 411 all it took to subvert the democratic constitution in favour of an oligarchy was a proposal brought to the Assembly that the law relating to

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3 Hansen 1983:161-77 and 179-206; Todd 1996:122-23. I do not consider it necessary here to justify the view that the democracy as re-established in 403 was different in many respects from the fifth-century model; Hansen (1999:300-01) lists some details.

4 This principle was also implied in the label which Cleisthenes is supposed to have given to his constitutional model, *isonomia*.

5 Andoc. 1.17.
the *graphe paranomon* should be repealed. After the restoration of democracy in 403 it was seen that the laws had to be better protected.

Another basic, and rather peculiar, feature of the Athenian legal system can be mentioned. Todd and Millett have noted that, while to the modern mind substantive law would seem to have a logical priority over procedural law, ‘in Athens, so far as we can tell, procedural law held both a chronologically and a logical priority.’ Certainly there are references to laws on offences such as murder, theft, maltreatment of parents and desertion, which emphasise procedures for arrest, trial routes and penalties. In the case of theft, although there were numerous relevant laws, there was still no cohesive, comprehensive treatment of this offence, and there was no underlying jurisprudential set of principles on ownership. Thus Saunders argues that Plato’s treatment of theft in the *Laws* exposes the inadequacy of Athenian legislation, and offers a critique that might assist a revision of the laws. The process of collection, selection and publication of laws that went on over the period 410 to 399 did not materially change the situation, and could not be described as a codification of the laws. The law of 403 setting up the review exercise, as quoted by Andocides 1.83-84, shows that the mandate of the Nomothetai was to determine how many laws, apart from the *thesmoi* of Draco and the *nomoi* of Solon, were needed (οι *nomoi* δ’ αν προσδεχθ’). The process of review is referred to by the term *dokimavzein* (82, 84 and 89), meaning ‘to test the suitability of’. Thus there is no suggestion that the council would make new laws, but would rather see which laws (nomoi) still served a purpose. There was little jurisprudential engagement with issues of substantive law, and so after 399, as before, cases might be brought for offences with the broadest of labels, such as doing wrong (adikia), outrageous behaviour (hybris) or impiety (asebeia), and, in the political field, producing inexpedient legislation.

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6 Thuc. 8.67.2; Todd 1996:126.
7 Todd & Millett 1990:5.
9 Saunders 1990. Aristot.. *Rhet.* 1374a deals with the more general problem of the lack of definition of offences.
10 The term review is further justified by Andocides’ expression *ejdokimavqhsan oIJ novmoi* (*On the Mysteries* 85).
12 *Hybris*. Dem. 21.47. *Asebeia*. Cohen 1991:203-17 supports the line that the offence was not limited to a wide range of actions, but also included unorthodox religious beliefs. Those who were accused of mutilating the Herms and burlesquing the Eleusinian Mysteries in 415 would have been tried for impiety, and impiety may have been the charge against Theoris of Lemnos, in which case the offence would have
This made for instability, and created scope for politicians to exploit the vagueness of the law.

Procedures for enactment and repeal

Much of our hard evidence about Athenian law-making comes from the fourth century, and, as has been indicated, there is every good reason to believe that the status of the nomoi was redefined in the aftermath of the oligarchic coups of 411 and more particularly of 404/3. It became imperative to protect the democratic constitution and to make it impossible to introduce discriminatory legislation. Furthermore, what worked for consensus politics in the fifth century was unsuited to management politics in the fourth, and agreed written rules were needed. In 403 it was decided that the review was to be conducted by a panel of Nomothetai elected by the Boule from the full council of 500 Nomothetai who had been elected (by a process of proportional representation) by the demes. The legislative committee had to submit its proposals to the Boule and the full council of 500 Nomothetai. After final ratification the laws were to be entrusted to the Areopagus for ensuring that the magistrates governed by them and the laws were to be published (Andocides, On the Mysteries 81-85). It appears that the new corpus of laws that had been reviewed was not to be ratified by the Assembly, but the process was democratic insofar as the full Council of Nomothetai was made up of representatives nominated (if not directly elected) by the demes; furthermore the proposals were publicly displayed and any citizen was entitled to make representations to the Boule. The work was probably essentially completed in the year 403/2, but publication – or rather promulgation – of the full text only took place in 400/399. Thus, too, the

been using magic with evil intent to cause deaths (a possibility considered by Collins 2001, on the case referred to at Dem. Against Aristogeiton 25 79-80). Harris (1997) argues that revenge lingered on as a permissible plea in defence of violence.

14 O’Neil (1995:89-92) characterises our period as one of ‘more efficient government’.
15 Ostwald 1986:516-17. The term codification has to be avoided, as there is no evidence that what was attempted was a systematic review of all laws, and no evidence that the outcome was a comprehensive, well-integrated code: Robertson 1990; Carawan 2002. The exercise was more one of weeding out redundant or obsolescent laws.
16 Rhodes 1981:441, citing Andoc. 1.85 and Lysias 30.4.
shift from a mix of written and unwritten laws to a system governed just by
written laws was completed by 399.\footnote{This is an overly-simplified summary of the argument elaborated by Rosalind Thomas 1996. After the restoration of democracy in 403, magistrates were obliged to govern according to written laws alone (Andoc. 1.85 and 87).}

The intention behind the review of the laws was that these laws would prevail, and could not easily be repealed or replaced. We glean something of the process of review beyond 399 from fourth-century sources.

(a) The role of the Nomothetai

Each year 6000 citizens were chosen to be eligible for selection as jurors, and they also apparently constituted the pool for the process of Nomothesia. If there was business for the Nomothetai, then a panel of the appropriate size would be chosen (probably by sortition) from the roll of Nomothetai. This panel would then work with the Boule to consider any proposal for modifying the laws. Demosthenes 24.27 cites a psophisma of 354/3 establishing a panel of 1001 Nomothetai.

(b) Confirmation of existing laws

Demosthenes 24.20 cites a law setting out the procedure for an annual review of the nomoi. On the eleventh day of the first prytany the Assembly is asked to indicate whether or not it supports the laws relating to the Boule, then the general laws, the laws relating to the 9 archons, and finally the laws relating to the other magistracies. A negative vote would result in referral of the matter to another meeting of the Assembly three weeks later. The Assembly might then vote to refer the issue to the court of the Nomothetai. The procedure thus described by Demosthenes may be adequate for a picture of what happened when no problem with the laws was anticipated, but from Aeschines (3.37-39) we have details of the preliminaries that would have been significant when a challenge loomed. According to Aeschines the sequence began with a public enquiry conducted by the Thesmothetai to identify any inconsistencies or redundancies in the laws. Any such cases were then to be publicly displayed, and the matter referred to the prytany council so that a panel of Nomothetai could be selected to consider the law(s) to be deleted.
(c) Repeal of existing laws

Demosthenes 24.23 *ad finem* cites the law relating to the procedure for repealing a *nomos*, and shows that in such a case the Assembly would elect a panel of five to plead as advocates in defence of the *nomos* in the court of the Nomothetai. Thus the constitution did not trust the panel of Nomothetai to come to a dispassionate decision on the proposal, but made specific provision for the case to be argued for the continuance of the *nomos* which was under threat.

(d) Introduction of new nomoi

Demosthenes further indicates that in the review process in the first prytany any citizen might initiate a proposal to have a new law considered by the Nomothetai. Since no citizen could directly initiate a new proposal in the Assembly, it is implied that such a proposal would first have to be scrutinised by the Boule, and it would be the Boule which had the item put on the agenda of the Assembly. The onus was on the proposer to ensure that the new law would not be in conflict with any existing law.

Although the process of registering and validating laws, which was begun in 403, was intended to bring stability and certainty to the political system, the very process of review and promulgation was not formulated firmly and clearly enough. Hence the action against Nicomachus initiated by Lysias, or possibly by a client for whom Lysias wrote the speech. Furthermore, it would seem that, whereas there was a clear rule about which laws would be enforceable after 403, there was no similar clarity as to whether earlier *psephismata* could be enforceable after 403 (*Andoc. 1.89*), if they were not already excluded by the Reconciliation Agreement.

The divergent accounts of the review process in the fourth century have stimulated a lively debate about the possibility that the law relating to the review of the laws and the introduction of new laws was itself modified several times during this period. The myth was sustained – for it surely was a myth – that the elaborate procedure for protecting the laws went back to Solon, and that in his system the Thesmothetai played a special role.18 In the

18 Dem. 2.90, 93 and 98-9. The term itself may indeed indicate that the magistracy went back at least to the time of Solon, that is, before the term *thesmos* gave way to the concept of *nomos*, cf. Rhodes 1981:102. But the magistracy was clearly reformed over time: their main functions in the fourth century were in the administration of
absence of any evidence before 403 of a formal annual review and confirmation of the laws, it would seem likely that that procedure was introduced at the conclusion of the review which took place between 403 and 399. There was presumably now a rationalised assemblage of laws which would have permitted an annual ratification of the list divided into sections as indicated by Demosthenes 24.20. The procedure was laid down in what MacDowell (1975:66) has conveniently labelled the ‘Review Law’. Theoretically any change in criminal or constitutional law would not have been so urgent that it could not wait until the annual review. But, as will be illustrated below, laws (nomoi) were frequently used for administrative, financial and political matters that were of greater urgency. Hence the need emerged for a procedure for sorting out real or potential conflicts in the law at any time of the year.\textsuperscript{19} Special commissions were set up to resolve the contradictions (Dem. 20.91), and this implies that sometime after 399 enabling legislation was passed to allow for a review hearing at any time outside the first prytany.

Rhodes (1984) argues that what is now called the ‘Repeal Law’, cited by Demosthenes 24.33, would have been adequate to allow for the Nomothetai to be convened at any time of the year. It might equally well be styled the ‘Substitution Law’, since it required the proposer of the repeal of any law to have an acceptable proposal for a substitute law. This law presupposes a procedure for challenging ‘unsuitable’ laws, and presupposes a constitutional law governing the appointment of Nomothetai. Thus this law was not itself a replacement for the substantive law on nomothesia, but an additional law. MacDowell (1975:65 and 71) argues that it was introduced ‘not later than about 370’.

But, as we shall see, it became common practice to attach to resolutions of the Assembly a clause calling on the Nomothetai to create legislation to cover the financing of the provisions of the resolution. These instructions to the Nomothetai were clearly not limited to the first prytany of the year, and did not necessarily involve the repeal of any existing law. This again implies that either the ‘Repeal Law’ was itself replaced by a more broadly defined enabling law, or a new law was added to permit the Nomothetai to be convened at any time in the year to consider proposals for new legislation.\textsuperscript{20}

justice (\textit{Ath. Pol.} 59), and they may only have been brought into the process of law review c. 350.

\textsuperscript{19} Dem. 20.91 makes the point that contradictions arose because politicians were introducing new laws at times of their choosing.

\textsuperscript{20} MacDowell (1975:65-66) argues from Dem. 20.91 that these changes were all covered by a single law, which he would style the New Legislation Law and date to before 370.
Assembly resolutions (psephismata) requiring the Nomothetai to create new laws refer to Prohedroi and the Epistates (Chairman) as the responsible officers. But when Aeschines in 330 described the procedure for the annual review of the laws, he showed that the procedure began with an investigation by the Thesmothetai, who were to produce, if it were necessary, an agenda for the Nomothetai, who would meet under the chairmanship of the Epistates of the Prohedroi. The concern was a rationalisation of the laws to ensure that no activity (praxis) was covered by more than one piece of legislation (Aeschines 3.38-39).

All this implies that by the 330s the relaxation in the rules governing nomothesia had worked against the maintenance of a unified and coherent corpus of laws. The large size of the court of Nomothetai militated against serious analytical study of new proposals. The Thesmothetai were then brought into the picture as a small, but reasonably representative body of citizens, who could function as a technical committee, and ensure that the court of the Nomothetai was not misused. That some Athenians struggled to achieve the right balance between democratic structures and effective technical systems may help to explain why Aristotle thought that the Athenian democratic system had been corrupted and was dysfunctional.

Political trends in the fourth century

Aristotle complains that there had been a shift from nomoi to psephismata, as the lower classes gradually asserted their power in the fourth century (Ath. Pol. 41.2). In Politics 4.1292a1-13 Aristotle distinguishes between the model of democracy where the law (nomos) rules, and that where the majority dominates and decrees (psephismata) prevail. A political order grounded on the laws will have the best citizens in government, says Aristotle, but where the masses rule through resolutions of the Assembly, the agents of government are the demagogues. A further point of difference between the ideal form of democracy and the debased form, as Aristotle saw it, was that in a true democracy each citizen exercised his right to vote with an individual sense of responsibility, whereas in the debased form the majority, which means the poorer citizens or citizens of lower status, would act as a collective (1292a7-13). Thus Aristotle clearly saw what happened in Athens in the first 70 years or so of the fourth century as a degeneration from constitutional democracy into something like mob rule.

Aristotle further links with the growing legislative power of the people the shift in the administration of justice from the Boule to the popular

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21 E.g. IG 2² 222, 41-50; with Dem. 24.33 and 39.
courts (*Ath. Pol.* 41.2). Thus he recognises three sources of authority: the laws (*nomoi*), resolutions of the popular assembly (*psephismata*) and decisions of the popular courts. Indeed, where offences were ill-defined in law, it was recognised that the jurors might effectively be asked to play the role of Nomothetai (Lysias 14.4). In the immediate passage Aristotle appears to commend the use of jury courts drawn from the citizenry as a whole, as opposed to the narrower group of the members of the Boule. In his view members of a popular jury court were less likely to be corrupted or seduced than the *bouleutai*. This positive comment may reflect approval of the elaborate mechanisms established to protect the selection of jurors and the conduct of the courts from corruption; and approval of the power of the people is limited to their function of adjudicating in cases before the courts. This has to be set against the more general point in Aristotle and in *Ath. Pol.* 27-28 that Athens sank because the *demos* asserted its power through the courts and the assembly at the expense of the laws. Of course, Aristotle is a hostile witness, in that while he was not unsympathetic to democracy, he saw the Athenian model of his day as a debased form of democracy, and Hansen, for one, challenges the negative view of Aristotle and similar negative sentiments in Demosthenes.22 Ober shifts the debate to a more sophisticated level, when he develops the proposition that ‘The hegemony of popular ideology and public discourse was the basis of the Athenian political order’ (1996:154), and elaborates on the significance of the formula used to introduce resolutions of the Assembly, εὐδοξεῖ τῷ δήμῳ (*it appeared right to the citizenry’, 150). Hegemonic discourse shaped democratic knowledge, which determined political action, and ‘democratic knowledge remained flexible and dialectical’ (Ober 1994:104). Ober is right, but at the same time it clearly would have been easy for politicians to argue that laws which conflicted with the will of the people were inimical to democracy, People’s Power; and to wander from the laws which defined the democratic system was threatening to democracy itself. Xenophon, writing in the fourth century, claims that, when in 406 Callixenus proposed action against the generals in the aftermath of the Arginusae debacle, but was blocked by a *graphe paranomon*, some reacted with horror that the people might be debarred from carrying any proposal which they wanted,23 but when it suited the people, especially on the issue of citizenship, the Assembly could be very conservative, and invoke the laws as being inviolable (Dem. 59.88).

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22 Especially *Against Leptines* (20), 92, on the flood of new laws, which were no better than *psephismata*. Hansen 1983:196-201.
The nature of nomoi in the fourth century: the confusion of laws and decrees

An approach to testing the validity of Aristotle’s complaint is obviously to examine examples of laws produced in the period about which he was writing. First, three laws known to us epigraphically, and then a law discussed by Demosthenes.

(a) The law concerning the certifier of Athenian silver coins of 375/4

The text gives priority to the issue of what constituted ‘legal tender’, but it may have been other elements in the law that required enactment as a law, rather than as a decree, and thus necessitated ratification by the Nomothetai. These elements included the establishment of a new post of tester of coins at the Peiraeus, the release of funds to cover the costs of the post, and the definition of procedures for legal and disciplinary actions.

It would not be coincidental that this law emerged relatively soon after the relaunching of the Athenian league in 378/7. Empire generated centripetal forces, not least in the commercial and financial spheres, and clarity was needed on the status of the Athenian currency. Athens had to give assurances that she would not repeat the excesses of the Athenian hegemony in the Delian League, and could not therefore reissue the Coinage Decree of c. 448, which terminated the operation of mints in allied cities. The law of 375/4 simply set the Athenian drachma as the standard for transactions in the Athenian agora and the Peiraeus, and this may mean that foreign imitations that met the standard had to be accepted.

26 Meiggs & Lewis 1969: no. 45.
27 A view not accepted by Shipton 1997.
28 Martin 1985:207-08. S. Alessandri (ASNP 14 [1984] 369-93, known to me through the summary in SEG 1984 [1987] 62) argues that the law was not about limiting trade to the use of only Athenian coins or imitations approved by the dokimastes, but about extending a previously established system for checking coins to the Peiraeus.
The text does not include any reference to a repeal of any previous law, but it does presuppose an earlier law establishing a tester of coins in the city (lines 4ff.), and an earlier determination of his salary (49-53). The two laws would have needed to be read together. Thus this is not a substitute/replacement law, but a supplementary act.  

But for the purposes of this paper one clause is of particular significance: ‘If there is any decree recorded anywhere on a stele contrary to this present law, let the Secretary of the Boule tear it down’ (lines 55-56). As Schwenk (1985:38) comments, this implies an almost casual attitude to the investigation of previous legislation that might need to be repealed or emended; it also shows that there was not a comprehensive central archive of decrees. Of course a law would always take precedence over a decree, but the drafters here felt the need to make a specific provision for the cancellation of any extant conflicting decree, which implies that any confusion between laws and decrees could be exploited. All this has a bearing on our understanding of the forces that drove the democracy in the fourth century.

(b) The grain-tax law of 374

This was first published with translation and full commentary by R.S. Stroud in 1998. It is securely identified as a nomos by its title (line 3), and although it reads like a psephisma in the administrative details it contains, it can rightly be seen as a nomos, as it does have the features of a constitutional law. The Boule is to approve the tenderer’s nominated guarantors; the Assembly is to elect a panel of ten officials to organise the sale of the grain in Athens; the Receivers are to handle the tax revenue. It is also significant that the law relates to grain grown on Lemnos, Scyros and Imbros, to which Athens laid special claim, and thus the law affirms that these islands were essential to the territorial integrity of the Athenian polis. Still, it was potentially dangerous to dictate a matter in the field of foreign affairs through a law, which by definition made the status of these islands a non-negotiable. Athenian control of these islands was recognised by exception in the King’s Peace of 387/6 (Xen. Hell. 5.1.31), and the Grain Tax Law of 374 by implication confirms that Athenian ownership of the islands was not in any way diminished by the decree of Aristoteles of 378/7, which set up the

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29 Stroud (1974:176-77) suggests that the original law was introduced in 398/7.
Second Athenian League, and otherwise guaranteed freedom and autonomy, and freedom from economic exploitation to Athens’ allies.\(^{32}\)

(c) *The law of Eucrates against tyranny, of 337/6 (Schwenk no. 6; SEG 12.87)*

The law, introduced in the ninth prytany of the year 337/6, essentially outlaws anyone who attempted to subvert the democracy and establish a tyranny. The context was the aftermath of the battle of Chaeronea, and there is evidence that Philip, and later Alexander, was ready to buy supporters in Athens to do his bidding. The law focuses in particular on the responsibilities of the Areopagus, and from that point of view might be seen as a constitutional law. It can be labelled a *nomos* because the preamble to the text refers to the resolution of the Nomothetai. It was then embedded in a decision of the Assembly, which had to make provision for the publication of the *nomos*. At one level the law was obviously a pre-emptive measure to protect democracy against the threat from Macedon, but it can also be seen as a retaliatory action by the Assembly to counter the Areopagus’ taking of the initiative after Chaeronea, when they blocked the appointment of the mercenary captain Charidemus to a special command, and promoted instead Phocion to a generalship with emergency powers,\(^{33}\) and when they instituted summary trials of those who had fled from Athens in 338.\(^{34}\) As Wallace notes, the Areopagus could not be accused of being pro-Macedonian, but could accused of trying to usurp the power of the Assembly. Wallace adds to the case against the Areopagus the possibility that Areopagites were behind the proposal to establish another emergency post, that of Treasurer in charge of management.\(^{35}\) Insofar as the law was a missile used in a political turf-war, it indicates that the consensus on which the democratic constitution rested was breaking down.

(d) *Timocrates’ law*

The trouble began in 355 when three Athenian envoys to the court of Mausolus of Caria intercepted an Egyptian merchant vessel off Alexandria, and confiscated goods to the value of 9 talents 30 minas. An Athenian court

\(^{32}\) IG 2\(^{2}\) 43; see Cargill 1981 for text and translation.


\(^{34}\) Lycurgus 1.52; Aeschines 3.252.

\(^{35}\) Wallace 1989:179-84. The Treasurership was apparently that created for Lycurgus: Plut. *Mem.* 841c. O’Neil (1995:90) notes Eucrates’ bill as a temporary aberration from the general trend of the fourth century for the demos to trust, and make greater use of, the Areopagus.
found that the seizure was lawful as the goods could be considered enemy property, but should be handed over to the Athenian state. Either because of some typical entrepreneurial oversight or because there was a dispute about the amount to be surrendered, the envoys held on to the property. In a clear bid to rescue the three men from imprisonment, a hefty financial penalty and possible disfranchisement, Timocrates in 353 introduced a proposal for a nomos which would allow those in debt to the treasury to defer payment until the ninth prytany. This concession would not apply to those who had defaulted on the terms of their tax-collection or similar contracts, but would have benefited those who had failed to pay fines or were obliged to return embezzled funds. Demosthenes went to town in attacking Timocrates, taking more than twenty lines of argument to establish the prosecution case that Timocrates had proposed an inexpedient law (novmon mh; ejpithvdeion). The manoeuvring of the envoys and their associates was perhaps less sleazy than Demosthenes suggests, but what he says about the introduction of Timocrates’ law is enough to demonstrate the vulnerability of the legislative process. Timocrates had the meeting to vote on his proposal moved to a festival day on which no meeting would normally be scheduled; due notice of the proposal was not given: he failed to post a written copy at the Eponymous Heroes; no attempt was made to repeal conflicting legislation; the Assembly was not given the chance to consider whether such a law was needed. Then at a technical level Demosthenes complains of ambiguities in the law, for example over the issue of what precisely had to be paid in the ninth prytany, as the wording of the law does not appear to differentiate between the basic amount to be paid, as fine or repayment, and the basic sum plus penalty. He also faults the law for not being applicable to all defaulters, and for having retrospective force, which was a departure from tradition and bound to subvert prior decisions of the courts. This story shows not that the people abused their power in the Assembly, as Aristotle complained, but that they could be duped by an unscrupulous politician.

The epigraphical records of laws introduced in the fourth century do not confirm the procedures set out in the law cited by Demosthenes (24.20ff.), but do support the idea that the procedures for nomothesia were progressively revised. Hence legislation was not concentrated in the first prytany, and so

37 Dem. 24.39-40 for the law; and for the categories of felons who might benefit 60, 63-65, 103, 105, 111-15.
38 Dem. 24, esp. 18, 24.
Eucrates’ law against tyranny and Lycurgus’ law on religious matters were ratified much later, in the ninth and tenth Prytanes respectively. Rhodes also points out that the prescripts of laws passed by the Nomothetai do not cohere with the supposed judicial mode of operation of their court. Timocrates seems to have made a mockery of the ideals of nomothesia.

Evidence from prosecutions for unconstitutional proposals

The proposer of a motion in the Assembly could be challenged in court on the grounds that the proposal was in violation of existing legislation or was inexpedient. As noted above the first attested case belongs to the year 415. The possibility of challenging a proposal on ‘legal’ grounds was not limited to the charge that the proposal was in conflict with some existing law, since an objection could be raised on procedural grounds. For example, it could be charged that the proposal was aprobouleutic, which means that it had not received prior approval by the Boule. A problem is suggested: if the decision-making process was blocked by the threat of a graphe paranomon before the motion was carried, and if the court then dismissed the charge, the effect of the acquittal may have been to enact the original motion. Hansen (1987:64-66) comes to this conclusion from the case brought against Ctesiphon in 330 for the proposal which he had introduced in 336 that Demosthenes should be honoured with a crown. Hansen notes that both parties in this case appear to assume that the acquittal of Ctesiphon would result in the ratification of the original proposal without further reference to the Assembly. Hansen is at pains to admit that the rhetoric may be misleading, and that a fatal objection emerges in Demosthenes 23.92, where it is explicitly stated that a proposal blocked by a challenge lapsed after one year, even if the arraignment for an illegal proposal failed. Nevertheless the implication of Demosthenes 23.92 is, as Hansen argues, that the jurors effectively acted for the Assembly. Arguably that would be a weakness in the system, if the court was solely concerned with the legal and constitutional issues, and was not required to give a political judgement on the substantive issue in the original motion.

39 Schwenk, nos. 6 and 21 (IG 2.333: Lycurgus’ law); Schwenk, p. 39 and Rhodes 1972:51.
40 Rhodes, loc. cit. Rhodes (2003) revisits the issue of the procedures followed by the Nomothetai, and suggests that they had similarities with both assemblies and the courts.
41 Cf. Yunis 1988:364 n. 12 for references to known cases; Aristot. Ath. Pol. 45.4 states the law.
42 Aeschin. 3.147, 232, 244 and 259, and less certainly Dem. 3.117 and 119.
The alternative charge of introducing an inexpedient motion obviously implies that the court might well be asked to put its mind to the political, as opposed to the technical, issues. But the title is misleading in that while the *graphe paranomon* related to *psephismata*, the charge of bringing an inexpedient proposal was intended to deal with the proposers of questionable *nomoi*. Nevertheless, while there were no doubt cases where the prosecution did not need to go beyond the purely technical grounds for finding a proposal in violation of one or more laws, yet in most cases political objections were inextricably bound up with legal objections. But the linkage was often a rhetorical device rather than a conclusion established by logic. This is regularly seen where the challenge to an honorific decree was that the recipient was unworthy or the given grounds were untrue. The combination of charges is well illustrated by Aeschines 3.8, where Ctesiphon is accused of introducing a proposal that was in conflict with the laws, based on untruths, and inexpedient for the city.

Hansen (1974:62) concludes, ‘The assertion that *graphe paranomon* was the safeguard of the laws and of democracy fades somewhat, and appears more tinted by party politics, when we consider the contents of the decrees which are attacked as unconstitutional.’ He claims that of the 39 known cases which he lists some 20 are honorific decrees, and the other 13 whose subject matter is known are the only ones to be directed against other subjects. Where the underlying motive was personal or ‘party’ rivalries, the target might have been the proposer or the honorand, whether the target was a high profile figure or not, as Hansen says. To imply that some 61% (20 out of 33) of known cases related to the relatively trivial issue of whether certain individuals should be honoured would be misleading. A rough analysis of the issues at stake indicates that, whether or not the immediate issue was an honorific decree, the substantive complaint might relate to foreign affairs (14 cases), finance (13), constitutional issues (5), citizenship (5) or crime (5). Demosthenes’ speeches against Timocrates and Leptines for unconstitutional proposals appear to illustrate the abuse by unscrupulous politicians of the Assembly’s right to legislate by *psephismata* and the subversion of the *nomoi*. So perhaps the *graphe paranomon* did in reality contribute to the protection of the democracy. It might even be seen as a tool similar to

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43 Wolff 1970:38-44 and 31 on Dem. 24.189; Hansen 1974:44-48, who notes, however, the problems attaching to the key source passages.
44 Yunis (1988) argues that the norm was for legal and political pleas to be presented together, but even where the political plea was compelling ‘the legal plea was also necessary’ (393).
45 This allows some double counting where neither the primary nor the secondary issue is to do with honours proposed.
ostracism, but far more sophisticated in design, which could be used to curb the influence of a political figure who was not otherwise restricted by the constitutional checks on elected officials. Nevertheless, with the sheer volume of proposals that were processed by the Assembly, and since even the mover of a rider to a decree could be arraigned for an illegal proposal, it is probable that the graphe paranomon was often used where the laws of the city were not materially threatened. Aristophon’s proud boast that he had survived 75 prosecutions for illegal proposals (Aeschin. 3.194) suggests a mix of abuse of the legislative process and of the courts.

The volume of laws and the trivialization of decrees

The welter of legislation in Athens is potentially understated by those who focus on the institutions at polis level, for to the activity of those institutions one has to add the volume of decisions taken by assemblies at the levels of the demes, tribes and phratries. Thus, for example, we have Euxitheos’ tale of a meeting of the assembly of the Halimus deme, attended by 73 demesmen, where Euxitheos complains that Eubulides wasted the whole day with demagogic oratory and resolution mongering.46 As judged by the volume of surviving records, deme activity intensified from the middle of the fourth century, falling off again sometime after the Lamian War,47 and Jones (1999:100-07) argues that the activity of deme assemblies probably varied directly with the distance from the city. Thus those less likely or able to participate in meetings in the city made up for this by making more use of their local assemblies.

The formulation of, and voting on, proposals was a major part of the Athenian way of life. This came about precisely because Athens was a full participatory democracy. Government by mass meeting can not function unless the assembly is presented with clear proposals for approval or rejection. The committee system to which most of us are accustomed tends to work by consensus, with relatively few formal votes on formal proposals: very often it is left to the Chairperson and committee scribe to concoct after the event a text to summarise the agreement. The prytany council and the committee of generals probably operated in this more informal committee manner, but in general the democratic assemblies of Athens should have naturally worked to a formal agenda requiring voting on prepared motions.

46 Dem. Against Eubulides (57) 9; Whitehead 1986:92-96.
47 Whitehead (1986:360) suggests that the creation of two additional tribes in 307/6 may have upset tribal affiliations and therefore deme activity; Jones (1999:146) sees no necessary connection. It may be enough to cite the changing geopolitical context.
In the *Athenaion politeia* (45.4) it is explicitly stated that it is not possible for the Assembly to vote on a matter that has not been through the probouleutic process and is not a motion formulated by the prytany council. If there was a measure of permissible informality in Assembly business, it may have been in the handling of what we might call the monthly reports of executive officers on the grain supply and defence (Aristot. *Ath. Pol.* 43.4). Furthermore, self-evidently the Assembly must have assumed the power to take motions requesting the Boule to formulate proposals on which it could then formally vote, as can be seen in *IG* 2\(^2\) 338 of 333/2 on honours for Pytheas for his management of the fountains. It was also possible for the Boule to ask the Assembly to discuss an issue and come to a resolution – what Rhodes calls an ‘open probouleuma’. The reality in the fourth century was a drift away from the ideal, as will be argued in the following section on probouleusis.

There is no shortage of epigraphic evidence that the lesser assemblies, of demes, tribes and phratries, operated in the more formal way when passing resolutions, but presumably the degree of formality decreased the smaller the unit. Thus it would have been easier for a character like Eubulides to dominate the proceedings and to churn out proposals. A variation in procedure is suggested by the inscriptions. A common formula is: It was resolved by ... X put the motion (the text follows with the action decisions in the infinitives). Another formula is illustrated by a deme decree from Halai Aixonides of c. 360: Astyphilos proposed: ‘On the matter discussed by Nicomenes, it is resolved by the demesmen that … so that nothing like this should happen in the deme again.’ This case suggests that an ordinary demesman has taken the initiative in formulating a motion *ad hoc*, in the context of the exposure of some scandal. Thus the first mode of heading may have been the regular formula for a prepared motion introduced by the demarch or deme official. It would be reasonable to assume that increasing informality in the Assembly was matched, or influenced, by growing informality in the lower order assemblies.

Surviving decrees on stone from the fourth century tend to support the notion that the legislative process was corrupted by the sheer volume of seemingly trivial issues, since the inscriptions include a very high percentage of honorific motions, and very often these include the clause that the

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49 E.g. *IG* 2\(^2\) 336, with Rhodes 1972:68; cf. *IG* 2\(^2\) 337.
50 E.g. *IG* 2\(^2\) 1172, 1202 and 1237 (a phratry decree of 396/5).
51 *IG* 2\(^2\) 1175; others simply have: X proposed that it has been resolved by the demesmen (or whoever): e.g. *IG* 2\(^2\) 1174, 1178, 1180 and 1187.
honorand is to be invited to dinner at the Prytaneion the next day, although
the inscription would have been carved and erected long after the event. Of
course, it may be that a higher proportion of honorific inscriptions survives,
because there was less need to erase them than there would have been for
regulations and agreements that were superseded by later decrees. It must
also be recognised that a large number of surviving honorific decrees record
honours, privileges and commitments given to foreigners or other states,
and these decrees may have served to articulate ‘foreign policy’. But the
volume of honorific resolutions for Athenian citizens is striking and calls for
explanation. The Athenian democracy was not based on parties, and
political figures and officials therefore lacked the measure of support which
disciplined parties can give, and the system of audit (euthyne) at the end of
each official’s term of office would have encouraged those holding offices
or commands or serving on councils to seek formal recognition and
approval from their fellow citizens at the end of their term of duty, whether
or not they had held a position subject to the formal audit.

The production of resolutions was an essential element of the political
and cultic ritual on which the institutions of the Athenian polis depended.
But government by formal resolutions at every level required a degree of
discipline that was not sustainable. One might expect that after the effort
that was required to relaunch democracy in 403, the return to strict forma-
listism was cyclical and linked to political crises. This would explain why the
process of nomothesia established in 403 appears to have changed several
times over the following seventy years.

Riders

Discussion of Athenian legislation often appears to avoid a clear distinction
between amendments and riders. For the purposes of this paper I propose
to treat as riders clauses which are appended to the text of a resolution and
are introduced by a formula on the lines, ‘The rest as proposed by …’, as in
IG 22 141. Amendments, as opposed to riders, may be indicated in, but not
limited to, texts of resolutions where the clauses appear in an illogical
sequence.53 A confused order might arise if amendments were recorded as
they were put to the vote, and Assembly procedure did not require a final
vote on the original motion as amended.

A significant source of assembly resolutions lay in riders to motions
formally presented to the Assembly by the Boule. Two sets of variables are

53 A thought inspired by Osborne’s comment on a much earlier text, IG 13 35 of
about 448 (1999:344).
worth consideration: first, the identity of the proposers of the riders, and secondly, the degree to which the individual rider was contentious. Since a high percentage of epigraphic attestations of riders is to be found in honorific decrees, there might be a justification for handling honorific and other riders as two separate categories, but honorific proposals were so often politically contentious that it might be misleading to give the impression that serious politics attached more to non-honorific motions; furthermore, as noted above, many honorific decrees may have had more to do with Athens’ relations with other states than the merits of those honoured.

In some cases the proposer of a rider was the same as the proposer of the original motion prepared for the Assembly by the Boule, as, for example, Hierocleides who presented an honorific proposal for the Boule, and then introduced a rider in his own name, adding a number of trivial clauses. This is innocent stuff, and presumably happened all the time, as the need for supplementary clauses became apparent. In other cases, where the rider was proposed by someone other than the mover of the original proposal, and the issue was unimportant, there must surely have been times when the speaker was doing little more than seeking attention, perhaps as a young associate of a prominent figure or simply as an individual who needed to be seen to be active (polypragmon, as in Lysias 24.24). Self-advertisement would also explain cases where the mover of a rider named himself as an honorand, as in IG 22 107, concerning honours paid to the Mytileneans and the Athenian envoys who had been sent to Lesbos. Here Autolycus’ rider appears to add nothing to the original motion except for the names of the three envoys sent to Lesbos, Timonothon, Aristopeides and one Autolycus.

While many riders provided necessary supplementary detail or innocuous extensions, there were clearly cases where political figures slipped in contentious clauses. For example, in 387/6 an honorific motion handed in by the Boule was subverted in demagogic fashion by Cephalus who proposed a rider that Phanocritos of Parium be made a proxenos, which was innocent enough, but Cephalus added as justification of the honour, that

54 IG 22 206; cf. 109 (of 363/2). In IG 22 226 of 343/2 the name of the proposer of the rider is not given, which may suggest that he was the presenter of the original probouleuma.

55 Thus in 346 Polyeuctus son of Timocrates introduced the name of a third son to be honoured along with the princes of Bosporus, Spartocus and Paerisades: IG 22 212.

56 Perhaps the orator known from Aeschines 1.81 and Lycurgus, In Leocratem 53. The structure of the inscription is discussed by Billheimer 1938:474.
Phanocritus had offered information which, if the generals had listened to him, would have led to the capture of enemy ships. In this way he slipped in an indictment of the generals.\textsuperscript{57}

The decree of 346/5 relating to an appeal from Dioscorides of Abdera provides an example of the use of a rider to add a new dimension to the original motion. Dioscorides made legitimate requests to the Boule, which proposed that he and his sons and their families be given legal protection against any wrongful action in all Athenian cities, be suitably honoured, and be invited to the Prytaneion for a meal the next day.\textsuperscript{58} The motion was apparently enacted by the Assembly, but then Diopeithes of Sphettus proposed a rider, which clearly was intended to restrict the privileges accorded to Dioscorides. He and his sons and their families were to enjoy metic status, until they returned to their own city\textsuperscript{59} (and the implied sense is, but only until they could return); they would be liable for the wealth tax \textit{(eisphora)}; and they would be liable for military service.\textsuperscript{60} De Laix’s impression of this document is that ‘the overall picture is one of a smoothly functioning process’,\textsuperscript{61} but the historical context suggests that there was more to the rider than the simple provision of supplementary detail. The peace treaty signed between Philip of Macedon and Athens in 346 BC left Athens’ friends in Thrace vulnerable,\textsuperscript{62} which may explain Dioscorides’ appeal for protection. The motion adopted by the Boule presumably reflected some admiration for the Abderitans’ hostility to Philip, but there were clearly those who were unwilling to antagonise Philip. If the rider to the motion was introduced to somewhat limit the privileges granted to Dioscorides, then the motive might have been to placate Philip, but Diopeithes’ subsequent record does not suggest that he belonged to the group of political leaders who favoured a conciliatory line towards Macedon.\textsuperscript{63} For in 343 he led a party of settlers to the Chersonese, and held

\textsuperscript{57} \textit{IG} 2\textsuperscript{2} 29, the context being provided by Xen. \textit{Hell.} 5.1.25-28. On Cephalus’ demagogic nature, see Aeschin. 3.194.

\textsuperscript{58} \textit{IG} 2\textsuperscript{2} 218.

\textsuperscript{59} The formula was probably not unusual: cf. \textit{IG} 2\textsuperscript{2} 222, 36-37, in the decree of 344/3 honouring Pisithides of Delos.

\textsuperscript{60} Cf. \textit{IG} 2\textsuperscript{2} 360, lines 19-21, a decree of 325/4.


\textsuperscript{62} Dem. 8.64; 9.15; Aeschin. 2.90.

\textsuperscript{63} Hypereides, in his speech for Euxenippus, tells us that, while he defended many individuals, he prosecuted only three: Aristophon, Diopeithes and Philocrates (4.29). The fragments of Hypereides’ speeches show that he took a hostile line towards Philip and Alexander, and that he attacked Philocrates for selling his services to
a command in Thrace in 341, and engaged in actions that antagonised Philip. Thus the rider was hardly intended to placate Philip, but it may have been necessary to make the concessions more acceptable to Athenians who were jealous of the privileges of citizenship and hawk-eyed in enforcing the principle of ‘from each according to his means’. The proposers of the original motion wanted to head off opposition by inserting into the preamble that Dioscorides’ requests were allowable in law (ἐν ἐνομίᾳ), for, if the Assembly endorsed the clause that the requests were within the limits of the law, then the motion could not be challenged as being in violation of the laws. The rider was hawkish in intent with regard to Philip, but an act of compromise with regard to the internal politics of Athens.

A decree recording honours to Arrybas, the exiled king of the Molossians, now best dated to 350, includes an Assembly rider to the probouleuma, introducing the serious proposal that the generals should take steps to assist Arrybas and his children to recover his ancestral kingdom. That clause went way beyond what lay in the probouleuma, and the issue arises whether it should have been referred back to the Boule for consideration before a vote in the Assembly. In Athenian law the rule was that no decree could be enacted by the Assembly unless it had been discussed in advance by the Boule. But there is no evidence that amendments introduced in the Assembly would have to be referred back to the Boule for consideration and formulation as a probouleuma. Furthermore, Rhodes has argued that in the fourth century, down to 322/1, almost as many decrees of the Assembly were non-probouleumatic as were probouleumatic.

The shrinking role of probouleusis

Quantification of the scale of the passage of aprobouleutic resolutions is problematic: Rhodes (1972:52-81) finds that almost half of the Assembly’s resolutions in the period 403/2 to 322/1 were non-probouleumatic. This is to take the strictest view of what counted for a probouleuma, but even if the percentage were reduced, the conclusion would remain that the Boule tended to act as the Assembly required. A probouleutic system was almost

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64 Dem. 8.2f.; 9.15.
65 Cf. IG 22 337 of 333/2, line 40.
66 IG 22 226. The date of the decree is argued by Heskel 1988; the structure of the decree is discussed by Billheimer 1938:460-61.
67 Aristot. Ath Pol. 45.4.
68 Cf. Rhodes 1972, where the statistics are summarised on p. 79.
essential for assemblies that allowed participation by all full citizens, but a probouleutic council of 500 was still too large for meaningful debate. Some consider that even the prytany council of 50 was too big to function as a drafting committee. Another problem was that while members of the Boule held office for only a year, the prytany council was in control for the extremely short period of about 36 days. Thus the Boule and its constituent prytanies were not depositories of superior experience and expertise. The political heavy-weights made their views plain in the Assembly. The diagnosis of the Boule’s worsening asthenia in the fourth century may then be that the Boule found itself second-guessing what the political leaders in the Assembly would say, and erring on the side of caution. Thus the Boule took a more conservative line, while the Assembly became more assertive as the problems mounted. In support of this proposition one may cite the honorific decrees where the grant of citizenship69 or metic status appears in a rider rather than in the motion presented by the Boule, or the cases relating to foreign states, where again the more aggressive stance emerges in riders.

**Injunctions to the Nomothetai on financial matters**

As we have seen, the law on the certifiers of silver coins and the Grain-Tax Law appear at first sight to concern matters that might have been handled by simple resolutions of the Assembly, since they relate to administrative detail and financial policy. But in each case they also concern the appointment of officials, the allocation of responsibilities, and procedures for judicial action in the event of allegations of criminal conduct or appeals against decisions. Thus there was some reason for these resolutions to have the status of laws. But the trend was towards greater use of laws to govern the disbursement of public funds, and indeed it made sense to have laws which empowered the Boule and Assembly to take decisions on routine matters, as in the case of the law of 353/2 BC, giving the Assembly the power to manage the collection and disbursement of the First-fruits at Eleusis,70 and likewise the law of 337/6 relating to the repair of the walls of Eetioneia and Munychia.71 In both cases the Nomothetai may have been required to pronounce on the relative functions of the Boule and

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69 As for the Rhodian honoured in 394/3: IG 22 19; cf. IG 22 17, with Billheimer 1938:459-460; IG 22 109 of 363/2, where the proposal of citizenship for Astycrates comes in a rider; IG 22 337, where Lycurgus proposes the right of enktesis for Citian merchants to build a temple of Aphrodite.
70 IG 22 140.
71 IG 22 244; Schwenk 1985: no. 3, with discussion of the date on pp. 24-26.
Assembly. There seems to have been less justification for the law ratified sometime in the period 336-334, which mandated the Boule to arrange the leasing out of the New Land and the collection of the 2% tax on it, the proceeds to be reserved for the Lesser Panathenaia. The land concerned was clearly valuable and productive, but only enough to constitute two farms, thus the intent may have had rather more to do with provision for the festival. Funding for festivals was a contentious issue with a long history, and a case of immediate relevance would be the financial crisis of 354, when Eucrates proposed that a court of the Nomothetai should be convened to provide a way to make up the deficit in the funds available for the Panathenaia festival. Demosthenes explicitly states that the court was not, in fact, asked to consider any legislative proposal that would have been relevant to the stated crisis (29). His claim is that the court was hijacked by Timocrates, who introduced proposals that fell outside the court’s immediate brief. This is obviously a biased interpretation, and, as Lewis suggests, the effect of Timocrates’ bill may have been to guarantee the collection of funds in the ninth prytany, which would have ensured the availability of moneys for festival needs in the first prytany of the ensuing year. Nevertheless, Demosthenes goes to great lengths to show that Timocrates had a less innocent agenda, and his main proposal had more to do with making life easier for corrupt officials liable for repayments and penalties. Even if we allow that Timocrates may have offered a persuasive defence, there is enough in Demosthenes’ speech to show how the process of nomothesia could be abused. Eucrates’ mandate to the Nomothetai almost invited what the Romans labelled contaminatio, the inappropriate linkage of unrelated issues or the smuggling into a readily acceptable proposal of a contentious clause with no necessary linkage with the main proposal (or vice versa).

The misuse, or trivialisation, of nomothesia appears more obvious in cases where the Nomothetes were called on to legislate in support of honours or privileges granted to individuals. For example, in about 344/3 the Athenians gave asylum to Pisithides of Delos, and voted him a subsistence allowance. In the court of the Nomothetai the presiding officials and the chairman (epistates) were to put the motion for a law (prosnomoge`tsai) that the Receivers of Revenue (Apodektai) were to release the necessary funds to the Treasurer of the People each year. If the presiding officials failed to put the

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73 SEG 18, 13 = IG 22 334, with Lewis 1959.
75 Lewis 1959.
motion they were to be fined 1000 drachms each.\textsuperscript{76} De Laix registers the oddity of this clause, and suggests that a \textit{nomos} was required because the disbursements extended beyond a single year.\textsuperscript{77} Somewhat similar is a resolution of the Assembly of 335/4 to honour the priest of the Boule and Ecclesia, Phyleus, with a golden crown. The Proedroi were instructed to refer the matter to the Nomothetai and to assist them in the formulation of a law to guarantee the release of necessary funds. The immediate issue appears to be the organisation of the crown for Phyleus, but the decree includes an ‘hortatory intention’ (introduced in lines 20-23) which may imply that the Nomothetes were to produce an enabling law to provide for similar honours to future incumbents of the priesthood who ‘conducted their duties according to the laws and were useful to the Athenian demos.’\textsuperscript{78} An earlier resolution recorded in a linked inscription was to honour Phyleus and two other members of the college of priests, all three being from the same deme, Oinoe, and therefore tribe. Phyleus is honoured for his excellence and justice, and the other two for acting justly and in accordance with the laws. The three had made a report to the Assembly (line 52). What lay behind this honour, if it was more than routine, is not clear, but in the aftermath of Philip's assassination and in the context of Alexander's sack of Thebes, it is natural to surmise that the honour emerged from some political crisis. It is not clear why a law was necessary, since it apparently only required a resolution of the Assembly to oblige the Treasurer to release funds for the crown from the account reserved for covering resolutions of the people (lines 15-18). It is possible, but less likely, that the novelty lay in the office that could be rewarded or the quantum of the award, but the text itself indicates that the law served to ensure that the Treasurer would receive the necessary funds to disburse. This implies that the perceived problem was either that the proposed line item might be disallowed by a previous determination on financial priorities, or that the Receivers might decline to release the funds to the Treasurer (see especially lines 41-46). Either way this use of the court of the Nomothetai to strengthen a resolution of the Assembly appears to be close to an abuse of the legislative process to achieve a relatively trivial purpose.

\textsuperscript{76} IG 2\textsuperscript{2} 222, esp. lines 41-52.
\textsuperscript{77} De Laix 1973:41-52.
\textsuperscript{78} IG 2\textsuperscript{2} 330. This inscription appears not to be included in the range of cases covered by Henry 1996.
Conclusion

It appears that Aristotle had some justification for complaining that much had changed, and not for the better, in the c. 70 years after the restoration of democracy in 403. The rule of law, or rather the sovereignty of the laws, was vulnerable because so many laws, especially in the field of criminal law, were ill-defined and invited creative interpretation, and jurors might be exhorted to accommodate the law to the goals and values of the democracy: thus the laws were not autonomous. They were vulnerable to the demagogic appeal to the will of the people. This led to some abdication of responsibility by the Boule, as the Council of the 500, grew wary of second-guessing what the Assembly might decide. The probouleutic system was weakened by the power given to members of the Assembly to initiate instructions to the Boule and the Nomothetes, to emend probouleumata, and to extend probouleutic psephismata by riders. There were politicians who exploited weaknesses in the system, and to some extent they were guilty of subverting the democracy as constituted in 403. But equally, problems arose because of flaws in the constitutional laws. The provision for an annual review of the laws made a great deal of sense in the period immediately after 399, but it was too inflexible to be a lasting model. Nomothesia was set up with an adversarial process of judicial hearing, which was laudable in its concern to have the case heard for the retention of any law which was challenged. But a hearing before a panel of perhaps 1001 was ill suited to sustained, detailed study of the laws. Procedures were progressively developed to offset weaknesses in the law relating to nomothesia. Aristotle chose to castigate those who subverted the democracy, but one might consider an appreciation of what those who sought to protect democracy achieved.

Bibliography


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