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## **NOMOTHEsia IN CLASSICAL ATHENS: WHAT SOURCES SHOULD WE BELIEVE?**

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The Classical Quarterly / Volume 63 / Issue 01 / May 2013, pp 139 - 160

DOI: 10.1017/S0009838812000560, Published online: 24 April 2013

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### **How to cite this article:**

Mirko Canevaro (2013). *NOMOTHEsia* IN CLASSICAL ATHENS: WHAT SOURCES SHOULD WE BELIEVE?. The Classical Quarterly, 63, pp 139-160 doi:10.1017/S0009838812000560

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## NOMOTHESIA IN CLASSICAL ATHENS: WHAT SOURCES SHOULD WE BELIEVE?

### I. SOURCES (AND PROBLEMS) ABOUT NOMOTHESIA

In the fifth century B.C.E. the Athenians did not make any distinction between laws (*nomoi*) and decrees (*psêphismata*). The Assembly passed both kinds of measures in the same way, and both general enactments and short-term provisions held the same legal status. At the end of the fifth century, however, the Athenians decided to make a distinction between the two kinds of measures and created the rule that no decree would be superior to a law (Andoc. 1.86; Dem. 23.86, 218; 24.18, 59, 116, 188; 46.2).<sup>1</sup> The Assembly continued to pass decrees in the same way, but a new body of *nomothetai* was created to ratify laws (*nomoi*). There were also two separate procedures for rescinding the two kinds of measures: one could bring a *graphê paranomôn* (a public action against an illegal decree) against a *psêphisma* and a *graphê 'nomon mê epitêdeion theinai'* (a public action against an inexpedient law) against a *nomos*. This much is clear; scholars do not agree however about the procedure for passing a new law (*nomothesia*) in fourth-century Athens.

The main evidence for the procedure of *nomothesia* is found in two speeches preserved in the Demosthenic corpus, *Against Leptines* (20) and *Against Timocrates* (24). A passage from Aeschines' *Against Ctesiphon* (3.38–40) discusses the procedure to be followed for ensuring that there are no contradictions among the laws, but this evidence is not pertinent to the topic of this essay.<sup>2</sup> Contemporary inscriptions provide the following evidence about the procedure of *nomothesia*.<sup>3</sup> First, the motion and the

<sup>1</sup> For the difference between laws and decrees in the fourth century see M.H. Hansen, 'Nomos and psephisma in fourth-century Athens', *GRBS* 19 (1978), 315–30; id., 'Did the Athenian *Ecclesia* legislate after 403/2 B.C.?', *GRBS* 20 (1979), 27–53. See also id., *The Athenian Democracy in the Age of Demosthenes: Structure, Principles, and Ideology* (Oxford, 1991), 161–77, 256–7; P.J. Rhodes, 'Nomothesia in Classical Athens', in *L'educazione giuridica* 5/2 (1987), 5–26; R. Sealey, *The Athenian Republic: Democracy or the Rule of Law?* (Philadelphia and London, 1987), 41–5. Note however that the documents quoted at Andoc. 1.87 (cf. M. Canevaro and E.M. Harris, 'The documents in Andocides' *On the Mysteries*', *CQ* 62 [2012], 98–129) and Dem. 24.59 are forgeries.

<sup>2</sup> What is not clear is the relationship between this passage and the *ad hoc* commissioners elected by the people to remove contradictory laws mentioned in Dem. 20.91. D.M. MacDowell, 'Law-making at Athens in the fourth century B.C.', *JHS* 95 (1975), 62–74, at 72 and P.J. Rhodes, 'Nomothesia in fourth-century Athens', *CQ* 35 (1984), 55–60, at 60 think that the *thesmothetai* at some point were put in charge of the procedure instead of the commissioners. M.H. Hansen, 'Athenian nomothesia', *GRBS* 26 (1985), 345–71, at 356 thinks that *thesmothetai* and commissioners worked together.

<sup>3</sup> In chronological order *SEG* 26.72; R.S. Stroud, *The Athenian Grain-Tax Law of 374/3 B.C. Hesperia* Supplement 29 (Princeton, 1998); Agora Excavations, inv. no. I 7495 (unpublished); *JG* II<sup>2</sup> 140; *JG* II<sup>2</sup> 244; *SEG* 12.87; *JG* II<sup>2</sup> 334 + *SEG* 18.13; *JG* II<sup>2</sup> 333; *SEG* 35.83. Cf. also the regulations for the Mysteries at Eleusis in a fourth-century inscription (K. Clinton, *Eleusis: The Inscriptions on Stone. Documents of the Sanctuary of the Two Goddesses and Public Documents of the Deme*. Vol. IA: *Text* [Athens, 2005], no. 138 and Vol. II: *Commentary* [Athens, 2008], at 116).

enactment formulas for a law are usually ‘be it resolved by the *nomothetai*’ and ‘the *nomothetai* have resolved’ (δεδοχθαι τοῖς νομοθέταις or ἔδοξε τοῖς νομοθέταις)<sup>4</sup> and does not mention the Council or the Assembly.<sup>5</sup> Decisions of the Council subsequently passed by the Assembly mention both (δεδοχθαι τῆ βουλῆ καὶ τῶ δήμῳ, or a probouleumatic formula requiring that the proposal be submitted to the Assembly). The formula δεδοχθαι τῆ βουλῆ is consistently used for decisions of the Council that do not need any further approval by the Assembly.<sup>6</sup> By analogy, the decisions of the *nomothetai*, since the Assembly is never mentioned, must be final.<sup>7</sup> Second, the prescripts of the *nomoi* preserved in contemporary inscriptions indicate that they were passed not at one time of the year but at different dates throughout the year.<sup>8</sup> Sessions of the *nomothetai* could therefore be summoned at any time during the year, and laws could be passed in any prytany. Third, three decrees of the Assembly order that a proposal be submitted to the *nomothetai*.<sup>9</sup> One of them, *IG* VII 4254 (lines 39–40), employs the expression ἐν τοῖς πρώτοις νομοθέταις, which implies that minor legislation did not require a session of specially appointed *nomothetai*, but could wait for the first one available.

This essay examines the information concerning *nomothesia* found in the Demosthenic speeches *Against Leptines* and *Against Timocrates*, which were delivered between 355 and 353<sup>10</sup> at trials involving the public action against inexpedient laws (γραφαὶ νόμον μὴ ἐπιτήδειον θεῖναι). The speakers in each case discuss the laws about *nomothesia* and ask the clerk to read the relevant statutes to the court. In *Against Leptines* Demosthenes (20.92) asks for a single law about *nomothesia* to be read out, then discusses its contents, which concern the procedure for enacting new laws. The manuscripts of the speech do not however preserve a text of this law. In *Against Timocrates* there is a discussion of the procedures for enacting new laws (Dem. 24.18–36), and two documents are inserted into the text at Dem. 24.20–3 and 33. The information about *nomothesia* found in *Against Leptines* does not however agree with the provisions contained in the documents preserved in *Against Timocrates*. As a result, there has been much debate about the procedure in the past

<sup>4</sup> δεδοχθαι τοῖς νομοθέταις is found in Agora Inv. 7495 (unpublished, see S. Alessandri, ‘Alcune osservazioni sui segretari ateniesi nel IV sec. a.C.’, *AnnPisa* 12 [1982], 7–70, at 7–11), *IG* II<sup>2</sup> 140, *IG* II<sup>2</sup> 244, *SEG* 12.87, *SEG* 35.83, *IG* II<sup>2</sup> 334 + *SEG* 18.13. *SEG* 26.72 has ἔδοξε τοῖς νομοθέταις.

<sup>5</sup> The only exception is Stroud (n. 3), which mentions neither the *nomothetai* nor the Assembly nor the Council. Also, in *IG* II<sup>2</sup> 333 νομο[θετῶν ἔδρα] has been restored by Foucart, but S. Lambert, ‘Athenian state laws and decrees, 352/1–322/1: II. Religious regulations’, *ZPE* 154 (2005), 125–59, at 140 restores νόμο[ς περὶ τῆς ἐξετάσεως τῶν, which is likely to be correct.

<sup>6</sup> Cf. P.J. Rhodes, *The Athenian Boule* (Oxford, 1972), 82–7, 271–5.

<sup>7</sup> Cf. MacDowell (n. 2), 63. Pace K.M.T. Atkinson, ‘Athenian legislative procedure and revision of laws’, *Bulletin of the John Rylands Library* 23 (1939), 107–150, at 113.

<sup>8</sup> *IG* II<sup>2</sup> 333 is enacted on Skirophorion 8, *SEG* 12.87 in the ninth prytany, *IG* II<sup>2</sup> 140 in the fifth, the seventh or the tenth prytany.

<sup>9</sup> *IG* II<sup>2</sup> 222, *IG* II<sup>2</sup> 330 and *IG* VII 4254.

<sup>10</sup> Cf. Dion. Hal. *Amm.* 1.4. The reliability of Dionysius’ dates is not beyond suspicion and there has been some debate about the exact dates of these two trials. Cf. R. Sealey, ‘Dionysius of Halicarnassus and some Demosthenic dates’, *REG* 68 (1955), 77–120; G. Cawkwell, ‘Notes on the Social War’, *C&M* 23 (1962), 34–40: they accept Dionysius’ dates. D.M. Lewis, ‘Notes on Attic inscriptions (XIII)’, *BSA* 49 (1954), 17–50 at 32, 43–7 and *Selected Papers in Greek and Near Eastern History*, ed. P.J. Rhodes (Cambridge, 1997), 230–51 (and R. Lane Fox, ‘Demosthenes, Dionysius and the dating of six early speeches’, *C&M* 48 [1997], 167–203, who does not however analyse the dates of these speeches) are more sceptical about Dionysius’ reliability. Exact dating is not however necessary here, and the internal evidence of the speeches confirms that Dionysius’ dates are approximately right.

thirty-five years, and several scholars have offered different reconstructions of the procedure and its evolution.

MacDowell<sup>11</sup> has identified no fewer than five different procedures. One of these procedures was concerned with enacting new laws (Dem. 20.92) and replaced an older procedure (Dem. 20.89–91, 93–4). The other procedures are described in Aeschines' *Against Ctesiphon* (3.38–40) and in the two documents of Demosthenes' *Against Timocrates* (24.20–3 and 33), the second being again a procedure laid down later in the fourth century. His reconstruction encounters several objections. In particular, Demosthenes at 20.91–2 does not seem to discuss an actual law; he is only describing how bad politicians break the law. More importantly, if MacDowell were correct in his chronology of the different procedures, there would have simultaneously been two different panels of *nomothetai* in the middle of the fourth century, one, attested by the document at Dem. 24.20–3, appointed from those who had sworn the Heliastic Oath and another panel appointed from all Athenians (Dem. 20.92), both performing exactly the same functions. One of the two sources must be mistaken.<sup>12</sup> Furthermore, if MacDowell's chronology is right, Demosthenes (20.92) would be claiming that a law which had been repealed many years before was still valid.

Rhodes followed MacDowell in his belief that *nomothesia* went through several stages in the early fourth century but offered a different reconstruction.<sup>13</sup> Rhodes believes that Dem. 20.89–94 refers to the procedures found in documents inserted at Dem. 24.20–3 and 33. The latter was originally a rider to the former but gradually became an independent statute. During this time the law at Dem. 24.20–3, which required that new legislation could only be enacted in Hekatombaion, was forgotten. As a result, politicians started enacting laws at any point during the year. At both trials Demosthenes was attempting to restore the correct practice. This reconstruction is implausible: first, the law described at Dem. 20.89–94 does not correspond to the procedures described in the documents found in *Against Timocrates*. The law at Dem. 20.89–94 concerns the procedure for enacting new legislation; the two documents in *Against Timocrates* concern a general confirmation of the law code and the procedure for repealing laws. Nor do the individual provisions match, and the documents in *Against Timocrates* do not lay down the procedure for the public action against an inexpedient law. If both sources are reliable, they can hardly refer to the same procedure. And yet if they do, we would have multiple overlapping procedures, enacted at the same time, whose purpose is roughly the same, legislation. Rhodes also believes, relying on the document at Dem. 24.20–3, that early in the fourth century legislation could only be enacted at the beginning of the year and only to replace existing statutes repealed on 11 Hekatombaion. This is implausible because it would have made it impossible for the Athenians to enact necessary legislation during the rest of the year (e.g. *ad hoc* changes of the *merismos* for the purpose of funding a festival or a grant of honours like those prescribed in *IG* II<sup>2</sup> 222, *IG* II<sup>2</sup> 330 and *IG* VII 4254 would not have been possible). It is on the other hand implausible that the Athenians would have ignored a valid law, if it actually contained a provision on such an important issue, for several years before Demosthenes brought the violation to everyone's attention.

<sup>11</sup> MacDowell (n. 2).

<sup>12</sup> Cf. Rhodes (n. 2), 56.

<sup>13</sup> P.J. Rhodes, 'Athenian democracy after 403 B.C.', *CJ* 75 (1980), 305–23, at 305–6.

Hansen reduces the procedures to three.<sup>14</sup> The first procedure is described in the document found at Dem. 24.20–3, the second in the document found at Dem. 24.33 (which Hansen believes is the same procedure which is discussed at Dem. 20.89–94) and the third at Aeschin. 3.38–40 (a procedure for removing contradictory laws). According to Hansen, the first two procedures existed simultaneously and were used to appoint *nomothetai*. On this reconstruction the law at Dem. 24.20–3 provides a procedure to modify, repeal or introduce new laws starting at a meeting of the Assembly to be held on 11 Hekatombaion and ending with a decision of the *nomothetai*. The procedure in the document at Dem. 24.33 would lead to the same outcome, but through a procedure which could be initiated at any time of the year. This reconstruction also meets with several objections. First, the document found at Dem. 24.33 does not correspond to the description of the procedure discussed at Dem. 20.89–94. Many provisions mentioned in the latter are missing in the document (like the requirement to post the new laws before the Eponymous Heroes). Hansen tries to evade this objection by claiming that the document at Dem. 24.33 is incomplete and that the complete document would have contained the missing provisions. Yet many of these missing provisions are in fact found in the document at Dem. 24.20–3; it would have been perverse for the Athenians to enact two different laws at the same time for the same purpose and with almost identical contents. Finally, it strains credibility to believe that in *Against Leptines* Demosthenes (20.89–94) describes a statute about repealing existing laws (document at Dem. 24.33) as one about enacting new laws.<sup>15</sup> These sources, if they refer to the same statutes, contradict each other.

All these reconstructions contain implausible hypotheses, and none of them accounts for all the evidence and is therefore clearly superior to the others. The reason why none of these reconstructions has been successful is that the evidence they attempt to explain is itself contradictory. The solution to the problem is to start by recognizing that the documents at Dem. 24.20–3 and 33 are not authentic. Many scholars in the nineteenth century regarded these documents as forgeries,<sup>16</sup> and the stichometry of the *Against Timocrates* reveals that they were not in the *Urexemplar* of the speech but were added later.<sup>17</sup> At the end of the nineteenth century Schöll and Drerup argued that they were genuine documents, and their authenticity has not been questioned since then.<sup>18</sup> The conclusions of Schöll and Drerup rest however on their reconstructions of the *nomothesia* procedure. Since their reconstructions have been abandoned,<sup>19</sup>

<sup>14</sup> M.H. Hansen, 'Athenian nomothesia in the fourth century BC and Demosthenes' speech against Leptines', *C&M* 32 (1979–80), 87–104 and id. (n. 2).

<sup>15</sup> Even though the statute could be interpreted as allowing enacting new laws to replace old ones, one cannot deny that the wording of the document at Dem. 24.33 makes clear that the topic is repealing old laws. See below pp. 156–8.

<sup>16</sup> Cf. A. Westermann, *Untersuchungen über die in die attischen Redner eingelegten Urkunden*. Abhandlungen der Sächsischen Gesellschaft der Wissenschaften. Phil. Hist. Klasse (Leipzig, 1850); G.E. Benseler, *Demosthenes. Reden gegen Androtion und Timocrates* (Leipzig, 1861); W. Wayte, *Demosthenes. Against Androtion and Against Timocrates* (Cambridge, 1882), *passim*.

<sup>17</sup> F. Burger, *Stichometrische Untersuchungen zu Demosthenes und Herodot: ein Beitrag zur Kenntnis des antiken Buchwesens* (Munich, 1892), 14.

<sup>18</sup> R. Schöll, 'Ueber attische Gesetzgebung', *SBAW* (1886), 83–139; E. Drerup, 'Über die bei den attischen Rednern eingelegten Urkunden', *Jahrbücher für classische Philologie*. Supplementband 24.2 (1898), 221–366, at 248–63.

<sup>19</sup> The reconstructions found in MacDowell (n. 2), Rhodes (n. 2) and Hansen (n. 14 and n. 2) have really nothing to do with Drerup's and Schöll's attempts to understand Athenian *nomothesia*.

their defence of the documents must also be called into question. It is time to take a fresh look at the documents.<sup>20</sup>

This essay begins by analysing the summaries of the laws about *nomothesia* found in *Against Timocrates* and *Against Leptines* and shows that they are consistent with each other and provide a reliable account of the procedure (§ II). Section III then compares this account with the information found in the documents inserted at Dem. 24.20–3 and 33 and shows that they contain internal contradictions and language that is inconsistent with the terminology used in Athenian official documents during the fourth century B.C.E.

## II. DEMOSTHENES ON *NOMOTHESIA*: A RECONSTRUCTION

In the *Against Timocrates* Demosthenes (24.17) starts the main part of his legal case by saying that he wishes first to explain the statutes which Timocrates has violated in passing his law.<sup>21</sup> He claims that the laws are clear about the procedures to be followed when enacting a new law (περὶ τῶν μελλόντων τεθήσεσθαι νόμων). At 18 he states that first (πρῶτον) there is a time (χρόνος) during which one must legislate (νομοθετεῖν). Then (εἶτα), even at that time (τότε) one is not allowed to legislate as one pleases but must first place a copy of one's proposed law in front of the monument of the Eponymous Heroes for everyone to see (σκοπεῖν τῷ βουλομένῳ). Next (μετὰ ταῦτα), the proposed law must be the same for all citizens, and in addition to all this (πρὸς τούτοις) all opposing laws must be repealed (λύειν τοὺς ἐναντίους). Demosthenes mentions the fact that the laws contain other provisions that are not relevant for his case. Finally he states that if the proposer of legislation fails to follow any of these provisions, any Athenian who wishes is allowed to bring a public charge against him (τῷ βουλομένῳ δίδωσι γράφεσθαι). The provisions listed are linked by connectives like πρῶτον, εἶτα, μετὰ ταῦτα, πρὸς τούτοις, whose exact meaning is here unclear. Some of the provisions describe the procedure to be followed when enacting new laws; others contain rules about the substance of new laws. There is no need to think that Demosthenes follows the order of the provisions found in the actual statute. He has more likely selected only those provisions relevant to his case and placed them in an order determined by the sequence of his arguments.

At § 19 Demosthenes accuses Timocrates of violating every provision listed so far. He will start with the fact that Timocrates enacted his law in defiance of all the laws (παρὰ πάντα τοὺς νόμους ἐνομοθέτει), and afterwards he will deal with his other offences. Then he asks the *grammateus* to take and read the relevant laws (in the plural: καὶ μοι λαβὲ τουτουσὶ τοὺς νόμους). Demosthenes' legal discussion follows this arrangement: it starts with a section about the procedural violations committed by Timocrates (§§ 24–32), then discusses the rule requiring the repeal of any law with clauses contradicting the new law to be enacted (§§ 34–9). Finally, after the law of Timocrates is read out, Demosthenes lists the opposing laws which should have been

<sup>20</sup> For a full discussion of my methodology for assessing the authenticity of such documents see M. Canevaro, 'The decree awarding citizenship to the Plataeans ([Dem.] 59.104)', *GRBS* 50 (2010), 337–69; Canevaro and Harris (n. 1), 98–100.

<sup>21</sup> I accept the Demosthenic authorship of the speech and I refer to Demosthenes as the author, although I am aware that Diodorus pronounced it in court. Cf. Dem. 24.6–16 with D.M. MacDowell, *Demosthenes the Orator* (Oxford, 2009), 181–5.



repealed but were not (§§ 39–67). In this last section we find the statute ordering that a law must be the same for all the Athenians (§ 59).<sup>22</sup>

Demosthenes' account continues at § 24, where he starts to discuss the law just read by the *grammateus*. After a general praise of the statute, at § 25 he states that first (πρῶτον) there must be a διαχειροτονία on whether a new law is to be proposed (πότερον εισοιστέος ἐστὶ νόμος καινός) or the laws in force are considered sufficient. This vote must be held ἐφ' ὑμῖν, which must be interpreted here as 'in the Assembly', since the stage at which the *nomothetai* are summoned is still to come, and the word διαχειροτονία is never used in Athenian sources for a vote by judges in court.<sup>23</sup> After this stage (μετὰ ταῦτα), if the Assembly votes that proposals for new legislation can be introduced (ἄν χειροτονῆτ' εἰσφέρειν), it is however not permitted for anyone to enact new statutes immediately (οὐκ εὐθὺς τιθέναι προσέταζαν). The law orders that the appointment of the *nomothetai* be discussed at the third meeting of the Assembly (and does not allow legislation to be enacted at that time either). In the interval between the two meetings whoever wants to propose a new law must post it before the monument of the Eponymous Heroes for everyone to read (τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους πρόσθεν τῶν ἐπωνύμων).

Up to this point the procedure prescribed by the law asked to be read out at § 20 is quite clear. To present new laws a vote on whether new legislation can be proposed must be held in the Assembly. If the decision is positive, copies of the proposals must be placed before the monument of the Eponymous Heroes. At the third Assembly the method for appointing *nomothetai* must be discussed, and, presumably, a decree of appointment must be passed. In my discussion I have consistently used the plural, speaking of 'proposals' for 'new laws'. That the preliminary vote must have been a general vote, allowing, if positive, to propose laws in general, is clear from the clause τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους. This inference is confirmed by *IG VII 4254*, lines 39–40: the Assembly prescribes in a decree that the *prytaneis* submit a piece of legislation ἐν τοῖς πρῶτοις νομοθέταις, in the first available meeting of the *nomothetai*. As soon as the procedure for new legislation was begun after a preliminary vote, one had to submit a proposal to the *nomothetai* on behalf of the Assembly, but there did not have to be another preliminary vote for that proposal. This implies that the preliminary vote, if positive, would have allowed several proposals to be made, and was therefore a general invitation to submit proposals.

What Demosthenes says about *nomothesia* up to this point is sufficiently clear. It is equally important to pay attention to what Demosthenes does not say in this section. At § 26 Demosthenes lists the violations committed by Timocrates: he did not place a copy of his proposal before the Eponymous Heroes and did not therefore give the Athenians a chance to read it. Most important, he did not observe the times prescribed in the laws (οὐτ' ἀνέμεινεν οὐδένα τῶν τεταγμένων χρόνων ἐν τοῖς νόμοις): 'the meeting of the Assembly at which you voted on the laws being on 11 Hekatombaion (ἐν ἧ τὸς νόμους ἐπεχειροτονήσατε, οὐσης ἐνδεκάτη τοῦ ἑκατομβαιῶνος μηνός), he proposed his law on the 12th of the same month'.

<sup>22</sup> The document inserted at that point is not authentic. Cf. Canevaro and Harris (n. 1), 117–19.

<sup>23</sup> Cf. E.S. Staveley, *Greek and Roman Voting and Elections* (London, 1972), 84–5; MacDowell (n. 2), 70; M.H. Hansen, 'How did the Athenian *ecclesia* vote?', *GRBS* 18 (1977), 123–37, at 124; id. (n. 14), 93–4; P.J. Rhodes, 'Sessions of *nomothetai* in fourth-century Athens', *CQ* 53 (2003), 124–9, at 126–7.

What about the specific clause ἐν ἧ τοὺς νόμους ἐπιχειροτονήσατε at § 26? The key to understanding this clause is the meaning of ἐπιχειροτονεῖν. Scholars, under the influence of the document at §§ 20–3, have always interpreted this sentence as referring to an ἐπιχειροτονία τῶν νόμων, a general approval (confirmation) of all the laws to be held every year on the 11th of the first prytany. However such an interpretation would imply that Demosthenes is alluding here in passing to a general, annual vote on the laws, the key element of the procedure he is commenting on, after having ignored it all through his account. I believe the verb should be interpreted in a less specific way as ‘to put a matter to the vote’ and refers to the διαχειροτονία described at § 24.

In the Demosthenic corpus the verb, or the substantive ἐπιχειροτονία, occurs ten times (excluding our case): it occurs twice in spurious documents of *On the Crown* (Dem. 18.29 and 105), which cannot be used to determine its meaning. Moreover, six other occurrences are in Demosthenes’ *Against Timocrates*. The *First Philippic* (Dem. 4) and the speech *Against Theocrines* ([Dem.] 58) yield one each. Three of the occurrences of ἐπιχειροτονεῖν (or ἐπιχειροτονία) are in the document at Dem. 24.20–3. The remaining three occurrences in the *Against Timocrates* refer to different contexts. At § 39 the verb is used in the document reporting the law of Timocrates, and its wording is confirmed by § 84: the law prescribes that τοὺς δὲ προέδρους ἐπιχειροτονεῖν ἐπάναγκες, ὅταν τις καθιστάναι βούληται sureties for their debt. The meaning in this context is clearly the etymological one: to put a particular matter to the vote, in this case the acceptance of sureties.<sup>24</sup> At § 50 the word ἐπιχειροτονία is used in a document that purports to be a law about supplication to the Council or the Assembly on behalf of a debtor. The *proedroi* shall not allow an ἐπιχειροτονία before the debtor has paid his debt. Whether authentic or not,<sup>25</sup> this document uses the word, again, with the simple etymological meaning ‘a vote on’ a matter. Particularly useful is the usage of the verb at Dem. 4.30: ἐπειδὴν δ’ ἐπιχειροτονήτε τὰς γνώμας, ἂν ὑμῖν ἀρέσκη, χειροτονήσετε. In this passage the action of ‘putting proposals to vote’ is followed by the approval (χειροτονήσετε) of one of them. As G.A. Davies rightly pointed out, ‘there is no sound support for Liddell and Scott’s rendering “sanction by vote”’: also τὰς γνώμας means “all the proposals before you”, i.e. my own and others which may be made; and they cannot all be sanctioned’.<sup>26</sup> This particular meaning is the essential one, and is found also in the *Constitution of the Athenians*. At § 43.5 we read that in the sixth prytany the *prytaneis* put to the vote whether there shall be an ostracism or not (ἐπὶ δὲ τῆς ἕκτης πρυτανείας ... περὶ τῆς ὀστρακοφορίας ἐπιχειροτονίαν διδῶσιν, εἰ δοκεῖ ποιεῖν ἢ μῆ). At § 37.1 the Thirty present two laws to the Council and order them to be put to the vote (νόμους εἰσήνεγκαν εἰς τὴν βουλὴν δύο κελεύοντες ἐπιχειροτονεῖν).<sup>27</sup> Rhodes singles out a

<sup>24</sup> Cf. P.J. Rhodes, *A Commentary on the Aristotelian Athenaiion Politeia* (Oxford, 1981), 452, *pace* LSJ s.v. ἐπιχειροτονέω 2.

<sup>25</sup> The stichometry of the manuscript does not allow one to decide whether the document was part of the *Urexemplar* or not. See Burger (n. 17), 14.

<sup>26</sup> G.A. Davies, *Demosthenes: Philippics I, II, III with Introduction and Notes* (Cambridge, 1949), *ad loc.*

<sup>27</sup> Rhodes (n. 24), 452 singles out here a specific meaning ‘vote in approval of’. K. von Fritz and E. Kapp, *Aristotle’s Constitution of Athens and Related Texts*, The Hafner Library of Classics, 13 (New York, 1950), 183 stick to the more generic meaning ‘put the matter to vote’. I believe with Rhodes that the context makes clear that the two laws had to be approved; yet I do not think that we need to postulate a further technical meaning here. The passage simply says that the Thirty ordered the Council to put a vote on the two laws. That the outcome of the vote could not be anything other than approval is implied.



more specialized use of the verb (and of the connected substantive) meaning ‘to confirm a decision already taken’.<sup>28</sup> The verb is used in this sense in regard to a particular vote held in every *kuria* Assembly on whether the magistrates are satisfactorily performing their duties or not. This vote is mentioned in *Ath. Pol.* 43.4, 61.2 and 61.4 and [Dem.] 58.27. However, it is clear that such a specialized meaning is secondary, and derived from the primary ‘to put a matter to the vote’. *Ath. Pol.* 55.4 makes this passage clear: the *dokimasia* of the nine archons is held in front of the Council, and then in a tribunal. The procedure leads to an *ἐπιχειροτονία* in the Council, and to a *ψηφός* in the tribunal (δίδωσιν ἐν μὲν τῇ βουλῇ τὴν ἐπιχειροτονίαν, ἐν δὲ τῷ δικαστηρίῳ τὴν ψηφόν). Although the vote in the Council is technically speaking a vote of confidence (a ‘confirmation of a decision already taken’), it is apparent that the reason for its name, whatever specialized meaning one wants to attribute to the word *ἐπιχειροτονία*, is that it is a ‘vote on’ the archons held by raising of hands. The main meaning of *ἐπιχειροτονεῖν* is simply ‘to put a matter to the vote.’<sup>29</sup>

Now, nothing in Demosthenes’ account of the law on *nomothesia* points to any other meaning for *ἐπιχειροτονεῖν* than ‘put a matter to the vote’. At Dem. 24.24 he describes, as we have seen, a *διαχειροτονία* on whether new laws can be proposed or not. After the vote, if positive, anyone could present proposals for new laws. The vote is on *πότερον εἰσοιστέος ἐστὶ νόμος καινός*, whether a new law can be proposed, and not a vote of approval of the ‘code’ of Athenian laws. The *διαχειροτονία* was held in two stages, at which voting by raising of hands followed each one of two questions: the first question was probably ‘Who thinks that a new law is to be brought in (εἰσοιστέος ἐστὶ νόμος καινός)?’<sup>30</sup> The second was therefore ‘Who thinks that the existing laws are sufficient (ἀρκεῖν οἱ κείμενοι [νόμοι])?’ This has nothing to do with a vote of approval of the ‘code’ of law. A parallel for such a preliminary vote allowing proposals is provided by the law on *adeia* discussed at §§ 45–6 of this speech: no proposal is allowed about the condition of *atimoi* and debtors of the public treasury unless a preliminary vote (with a quorum of six thousand) in the Assembly grants *adeia* to consider such matters.

The obvious reading of ἐν ἧ τοὺς νόμους ἐπιχειροτονήσατε at § 26 is therefore ‘at which you voted on the laws’ (plural), meaning ‘on whether laws can be proposed’. Basically the same concept (in a different context) is expressed at *Ath. Pol.* 43.5 with περὶ τῆς ὀστρακοφορίας ἐπιχειροτονίαν διδόνασιν, εἰ δοκεῖ ποιεῖν ἢ μή. The verb ἐπιχειροτονήσατε is only a brief way of describing the entire process described at § 24, and is not referring to a general vote of confidence on the ‘code’ of laws. This meaning is found in our sources only in connection with the *ἐπιχειροτονία τῶν ἀρχῶν*, and even in that case it is subordinated to the primary, generic meaning of ‘putting the conduct of the magistrates to the vote’. Demosthenes here only refers, again, to a preliminary vote about whether to allow proposals of new laws.

The last issue to discuss in relation to Demosthenes’ account of the text read out at § 20 are the ‘times prescribed by the laws’ (§ 26 τεταγμένων χρόνων ἐν τοῖς νόμοις) that Timocrates has not respected. ‘Times’ had already been mentioned at § 18. At § 26 Demosthenes, as we have seen, lists the infractions committed by Timocrates. He does not discuss here other provisions of the law; he just lists which provisions Timocrates

<sup>28</sup> Rhodes (n. 24), 452, 523, 619, 682, 686.

<sup>29</sup> The verb (or the connected substantive) appears thrice in Athenian inscriptions: in *IG II<sup>2</sup> 24, SEG 21.528* and 41.51.

<sup>30</sup> Cf. Hansen (n. 23), 124; id. (n. 14), 94 n. 5; id. (n. 2), 365–8; Rhodes (n. 24), 126–7.

has not respected, and then tells the judges what he has done instead. Every violation in the list corresponds to one of the clauses in the law presented at § 25: the bills must be published before the monument of the Eponymous Heroes for everybody to see and make up their mind, while Timocrates has neither published his proposal nor allowed the Athenians the chance to consider it. Moreover he did not respect the ‘times’ prescribed by the law. Demosthenes is here alluding, again in passing, to something he has already discussed: after the preliminary vote the appointment of *nomothetai* must be discussed in the third Assembly (§ 25 τὴν τρίτην ἀπέδειξαν ἐκκλησίαν). These are the τεταγμένοι χρόνοι Demosthenes is alluding to. In fact, he proceeds to show how Timocrates infringed this provision: the preliminary vote was held on the 11th of Hekatombaion, and Timocrates enacted his law on the 12th of the same month, without waiting for the third Assembly to discuss the appointment of the *nomothetai*. The ἀλλά in the middle of the sentence, creating a strong opposition between the τεταγμένοι χρόνοι and Timocrates’s behaviour, grants this. Therefore, Demosthenes is not alluding here to a provision of the law on *nomothesia* setting a compulsory vote on the 11th of Hekatombaion. At § 28 Demosthenes emphasizes again that Timocrates’ offence was to propose that his law be enacted on the next day (ἔγραψεν αὐριον νομοθετεῖν). Demosthenes never states nor implies that there was a requirement to hold a vote about the laws on the 11th of Hekatombaion. If there was to be such a vote, he would have listed it with the other provisions at § 25. Nothing in Demosthenes’ account of *nomothesia* in this section is inconsistent with the epigraphic evidence, which shows that one could initiate the *nomothesia* procedure at any time of the year.

I will now discuss Demosthenes’ account of the law read out at § 33, and I will then compare my provisional results with the discussion of *nomothesia* in the *Against Leptines*. After listing Timocrates’ infractions the *grammateus* reads out (§ 27) a decree summoning the *nomothetai* the day immediately after the preliminary vote, with the excuse of the arrangements for the Panathenaea.<sup>31</sup> The discussion of the procedural infractions committed by Timocrates carries on to § 31. At § 32 Demosthenes closes this part of his discussion and introduces a new topic, already anticipated at § 18: Timocrates enacted a law that violates many other statutes. This, Demosthenes anticipates, is illegal because a law prescribes that nobody can present new laws contrary to existing ones. If one does, a public action can be brought against the proposer (ἀνάγνωθι δέ μοι λαβὼν τουτονὶ πρῶτον τὸν νόμον, ὃς διαρρήδην οὐκ ἔᾶ νόμον οὐδέν’ ἐναντίον εἰσφέρειν, ἐὰν δέ τις εἰσφέρει, γράψεσθαι κελεύει).<sup>32</sup> What is the relationship between this law and the one discussed at §§ 24–6? This law is described by Demosthenes as new and different from the previous one (τουτονὶ πρῶτον τὸν νόμον). However, a law such as the one summarized here obviously concerns legislation, and defines what the previous one ignored: it states what a new law cannot contain, and provides a procedure to bring against new laws that do not respect its

<sup>31</sup> This decree has been recently shown to be a forgery by M. Piérart, ‘Qui étaient les nomothètes à l’époque de Démosthène?’, in E. Levy (ed.), *La Codification des lois dans l’antiquité* (Paris, 2000), 229–56, at 245–50. Rhodes (n. 23), 125 n. 8 accepts Piérart’s account.

<sup>32</sup> I translate here κελεύει with ‘authorizes’ since the verb in similar contexts does not mean ‘orders’ but simply ‘provides for it’. Athens did not know compulsory prosecution for any crime. Cf. Dem. 29.9 with D.M. MacDowell, ‘The authenticity of Demosthenes 29 (Against Aphobos III) as a source of information about Athenian law’, in *Symposium 1985*, ed. G. Thür (Cologne, 1989), 253–73, at 257–72 and MacDowell (n. 21), 46–7. See also E.M. Harris, *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics* (Cambridge, 2006), 131 for another example.

provisions. Hansen rightly points out that ‘*nomos* can mean anything from one line of a law to complete legislation’, and adduces as evidence of this the case of the *Against Aristocrates*, where at §§ 37 and 60 Demosthenes discusses as different laws two texts that are found in the same inscription as part of a single statute (*IG I<sup>3</sup> 104.26–9, 37–8*).<sup>33</sup> Therefore the law read out by the *grammateus* at § 33 of the *Against Timocrates* is likely to be a further section of the legislation on *nomothesia*. The law one would expect to find here would be one prohibiting anyone from proposing a law that contradicts an existing one and providing public actions against an inexpedient law if such a law is enacted by the *nomothetai*.

The account of the law at § 34 is consistent with what has been anticipated at § 32: Demosthenes again clearly states that one cannot pass a law contradicting other statutes. Demosthenes adds that if anyone proposes such a law, he must repeal the opposing laws before enacting the new one (οὐκ ἔῴ τοῖς ὑπάρχουσι νόμοις ἐναντίον εἰσφέρειν, ἐὰν μὴ λύση τὸν πρότερον κείμενον). Demosthenes proceeds to explain the rationale behind this rule: this provision is necessary in order to let the judges cast a righteous vote (πρῶτον μὲν ἴν’ ὑμῖν ἐξῆ τὰ δίκαια ψηφίζεσθαι μετ’ εὐσεβείας). In fact, if there were laws contradicting each other, the judges would not be able to make decisions and would be forced to violate their pledge in the judicial oath to vote according to the laws because they would have to follow one law and not follow another law (§ 35).<sup>34</sup> The lawgiver enacted such rules in order to protect the judges against this hypothetical situation. The law just read out therefore prescribes that no law contradicting existing statutes can be proposed, unless these statutes are repealed. If anybody fails to follow these provisions, anyone can accuse him through a γραφή νόμον μὴ ἐπιτήδειον θεῖναι.

Demosthenes also states here (καὶ ἔτι πρὸς τούτῳ) that the lawgiver enacted such provisions in order to make ‘you’ guardians of the laws (βουλόμενος φύλακας ὑμᾶς τῶν νόμων καταστήσαι). The word ὑμᾶς in forensic speeches can refer to the judges only, or to the entire citizen body. Because he is describing how difficult it is to render verdicts according to the oath, it is clear that here ὑμᾶς refers explicitly to the judges, those among the Athenians who swore the annual Heliastic Oath. However Demosthenes in the following passage at §§ 37–8 seems to extend this claim to the people of Athens as a whole: he lists many different safeguards of the laws, claiming that none of them is in itself sufficient and concludes with: τίς οὖν μόνη φυλακὴ καὶ δικάια καὶ βέβαιος τῶν νόμων; ὑμεῖς οἱ πολλοί.

In this section Demosthenes, following his claim that his audience are the real guardians of the laws, provides, as we have seen, a list of ‘insufficient’ safeguards. Demosthenes here is no longer summarizing the provisions of the law read out at § 33. He is just singling out all the mechanisms of control deployed throughout the procedure of *nomothesia*, to reveal their weaknesses. There is no need therefore to attribute all these mechanisms to the law at § 33.<sup>35</sup> Two of the mechanisms discussed here have already been mentioned: the provision for publication of the bills before the monument of the Eponymous Heroes has been mentioned at § 25 and must have been contained in the law read out at § 20. The provision granting everybody the right to bring a γραφή νόμον μὴ ἐπιτήδειον θεῖναι is mentioned at § 32 and must have been the final provision of the law read out at § 33, and possibly the last of the provisions on *nomothesia*,

<sup>33</sup> Hansen (n. 2), 359.

<sup>34</sup> See on the judicial oath E.M. Harris, ‘The rule of law in Athenian democracy. Reflections on the judicial oath’, *Dike* 8 (2008), 157–81.

<sup>35</sup> Pace Hansen (n. 2), 348.

granting a way to prosecute whoever infringes any of the rules previously stated. Demosthenes however mentions here a further safeguard: the election of *sunēgoroi* (τοὺς συνηγόρους, οὓς χειροτονεῖτε).<sup>36</sup> He does not give many details about their role, and simply points out that they might be ineffective, since somebody could convince them to stay silent. We can assume however that such *sunēgoroi* must have been elected to speak in defence of the opposing laws that would have been repealed before the enactment of a new one. There is in fact no need for elected *sunēgoroi* speaking for the new law, since the proposer himself would have argued his case in person. Such a function is consistent with the role of the four *sundikoi* elected (ἡρηγνται) to assist Leptines in defending his law (Dem. 20.146, 152, 153), whatever the differences between the two cases and the two procedures followed.<sup>37</sup> At what point of the procedure were they appointed? Schöll more than one century ago correctly pointed out that the election in Athens was used only when experts were needed, and this must be the case here.<sup>38</sup> In our reconstruction such an observation carries even greater weight, since, as we have seen, the preliminary vote opened the doors to any proposal, and it was impossible before the ‘third Assembly’ to know what laws had been proposed, and what opposing laws had therefore to be repealed. Electing the *sunēgoroi* at any point before the ‘third Assembly’ would have been pointless, since it would not have been possible to select experts on the laws to be repealed. Moreover, the very mechanism of the publicity in front of the monument of the Eponymous Heroes in order to let the Athenians make up their minds seems to be explicitly established in order to have, at the ‘third Assembly’, candidates for the election of the *sunēgoroi*. To sum up, the election of the *sunēgoroi* is likely to have happened at the ‘third Assembly’, together with the appointment of the *nomothetai*. A provision about this was certainly contained in the legislation on *nomothesia*, but it is impossible to tell whether it was part of the section read out at §§ 20–3, or the section read out at § 33.

At this point our reconstruction of the Athenian *nomothesia* based on the *Against Timocrates* seems to be consistent in itself and with the epigraphical material. We need now to check it against the other Demosthenic speech written for a γραφή νόμου μὴ ἐπιτήδειον θεῖναι: the *Against Leptines*.<sup>39</sup> I will concentrate on the summary

<sup>36</sup> Cf. L. Rubinstein, *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens*. *Historia Einzelschriften* 147 (Stuttgart, 2000), 44.

<sup>37</sup> I do not discuss here the legal context of the *Against Leptines*, to which I plan to come back in a further essay. For various interpretations of what happened in that case see H.J. Wolff, ‘Normenkontrolle’ und Gesetzesbegriff in der athenischen Demokratie. *Untersuchungen zur graphe paranomon*, *Sitzungsberichte der Heidelberger Akademie der Wissenschaften*, Phil. Hist. Klasse 1969 (Heidelberg, 1970), 35–7; I. Calabi Limentani, ‘Demosthene XX, 137: A proposito della *graphe nomon me epitedeion theinai*’, *Studi Biscardi* 1 (1982), 357–68. Hansen (n. 14), 95–9 and (n. 2), 368–71 believes that the four *sundikoi* were elected with the *sunēgoroi* in mind. The *sunēgoroi* are identified with the *sundikoi* also by Schöll (n. 18), 109 and Wotke *RE Suppl.* 8.579. Pace Atkinson (n. 7), 110 and MacDowell (n. 2), 67.

<sup>38</sup> He therefore athetized the final clause of the document at §§ 20–3 which set their election at the same time as the preliminary vote, since electing experts before the proposals were published would have been nonsense; see Schöll (n. 18), 108. Cf. also Atkinson (n. 7), 113. MacDowell (n. 2), 67 reports Schöll’s opinion, but points out that in that first Assembly the people voted on the sections of the ‘code’ of laws, and therefore *sunēgoroi* could be appointed that were experts on the particular section to revise. We have seen that there is no reason to believe that an annual approval of the ‘code’ of laws ever existed.

<sup>39</sup> For the political context of this speech see M. Canevaro, ‘L’ accusa contro Leptine: crisi economica e consensus post-bellico’, *Quaderni del Dipartimento di Filologia, linguistica e tradizione classica A. Rostagni*, ns 8 (2009), 117–41.

of the legislation on *nomothesia* (§§ 93–4) provided immediately after the *grammateus* read out the relevant law. That is the place where Demosthenes is more likely to give a faithful picture of the law(s) about *nomothesia*.

At § 93 the speaker starts his account claiming that it is clear to anyone who has listened to the text of the law how excellent are Solon's provisions for the enactment of new laws (ὄν τρόπον ... ὁ Σόλων τοὺς νόμους ὡς καλῶς κελεύει τιθέναι). This is consistent with Dem. 24.18 (περὶ τῶν μελλόντων τεθήσεσθαι νόμων) and 24 (πότερον εἰσοιστέος ἐστὶ νόμος καινός): the topic of the statute is the enactment of new laws. Demosthenes also states that opposing laws must be repealed when enacting a new law.<sup>40</sup> This provision is recalled at Dem. 24.32 and 34 as the main topic of the law read out at § 33. The reasons given for this provision, mainly to avoid confusion for the judges, are consistent in both speeches. Demosthenes then (§ 94) turns to stages of the procedure prior to those just listed (καὶ πρὸ τούτων) and recalls that the proposals must be first published before the Eponymous Heroes, as we know from Dem. 24.25 and 37. He then adds that the bills must be read 'often' in the Assembly by the *grammateus* (καὶ τῷ γραμματεῖ παραδοῦναι, τοῦτον δ' ἐν ταῖς ἐκκλησίαις ἀναγιγνώσκειν, ἵν' ἕκαστος ὑμῶν ἀκούσας πολλάκις). This rule is not found in the *Against Timocrates*, but is confirmed by Din. 1.42 and supplies a further detail about the procedure.

It is easy to see that this short account is coherent with the reconstruction we have drawn from the *Against Timocrates*. The two accounts are consistent with each other to provide the following rules: 1) a preliminary vote in the Assembly, at any point of the year, had to be held in order to allow new laws to be proposed (Dem. 24.25); 2) the new proposals had to be posted in front of the monument of the Eponymous Heroes (Dem. 24.25; 20.94); 3) the bills had to be read out by the *grammateus* in each Assembly until the appointment of the *nomothetai*, to allow everyone to make up their mind (Dem. 20.94); 4) in the third Assembly after the preliminary vote, on the basis of the bills presented, the people had to discuss the appointment of the *nomothetai* and pass a decree of appointment (Dem. 24.25; 20.92); 5) presumably in the same context expert *sunēgoroi* were elected to defend those laws whose repeal was necessary for enacting the new laws (Dem. 24.36; 20.146); 6) opposing laws had to be repealed before enacting new laws (Dem. 24.32, 34–5; Dem. 20.93); 7) if the proposer of a new law failed to abide by any of these provisions, anyone could bring him to trial through a γραφή νόμον μὴ ἐπιτήδειον θεῖναι (Dem. 24.32).

### III.1. THE DOCUMENT AT DEM. 24.20–3

I shall now examine the two laws on *nomothesia* inserted in the speech *Against Timocrates*. The first law is found at §§ 20–3. Stichometric calculations have shown that this document cannot have been part of the *Urexemplar* of the speech. Its text is however abundantly commented on in the scholia, which shows that the document was present in copies of the speech circulating in late antiquity.<sup>41</sup>

<sup>40</sup> I do not discuss here the identity of the *nomothetai*. This, together with the procedure for repealing contradictory laws described in Demosthenes' speech *Against Leptines* and Aeschines' speech *Against Ctesiphon* (3.38–40) will be the subject of a further essay.

<sup>41</sup> If, following M. Heath, *Menander: A Rhetor in Context* (Oxford, 2004), 132–83, we attribute many of these scholia to Menander, then we can at least keep the late 3rd century A.D. as a *terminus ante quem*.

## ΕΠΙΧΕΙΡΟΤΟΝΙΑ ΝΟΜΩΝ.

Ἐπί δὲ τῆς πρώτης πρυτανείας τῆ ἑνδεκάτῃ ἐν τῷ δήμῳ, ἐπειδὴν εὐξήται ὁ κῆρυξ, ἐπιχειροτονίαν ποιεῖν τῶν νόμων, πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεῦτερον δὲ τῶν κοινῶν, εἶτα οἱ κείνται τοῖς ἑννέα ἄρχουσιν, εἶτα τῶν ἄλλων ἀρχῶν. ἡ δὲ χειροτονία ἔστω ἢ προτέρα, ὅτῳ δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί, ἢ δ' ὑστέρᾳ, ὅτῳ μὴ δοκοῦσιν· εἶτα τῶν κοινῶν κατὰ ταῦτά. τὴν δ' ἐπιχειροτονίαν εἶναι τῶν νόμων κατὰ τοὺς νόμους τοὺς κειμένους. ἐὰν δὲ τινες τῶν νόμων τῶν κειμένων ἀποχειροτονηθέντι, τοὺς πρυτάνεις, ἐφ' ὧν ἂν ἡ ἐπιχειροτονία γένηται, ποιεῖν περὶ τῶν ἀποχειροτονηθέντων τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν· τοὺς δὲ προέδρους, οἱ ἂν τυγχάνωσι προεδρεύοντες ἐν αὐτῇ τῇ ἐκκλησίᾳ, χρηματίζειν ἐπάναγκες πρῶτον μετὰ τὰ ἱερά περὶ τῶν νομοθετῶν, καθ' ὅ τι καθεδοῦνται, καὶ περὶ τοῦ ἀργυρίου, ὅπῃθεν τοῖς νομοθέταις ἔσται· τοὺς δὲ νομοθέτας εἶναι ἐκ τῶν ὁμομοκότων τὸν ἡλιαστικὸν ὄρκον. ἐὰν δ' οἱ πρυτάνεις μὴ ποιήσωσι κατὰ τὰ γεγραμμένα τὴν ἐκκλησίαν ἢ οἱ πρόεδροι μὴ χρηματίσωσι κατὰ τὰ γεγραμμένα, ὀφείλιν τῶν μὲν πρυτάνεων ἕκαστον χιλίας δραχμῶν ἱεράς τῇ Ἀθηνᾷ, τῶν δὲ προέδρων ἕκαστος ὀφειλέτω τεταράκοντα δραχμῶν ἱεράς τῇ Ἀθηνᾷ. καὶ ἔνδειξις αὐτῶν ἔστω πρὸς τοὺς θεσμοθέτας, καθάπερ ἐὰν τις ἀρχὴ ὀφείλων τῷ δημοσίῳ· οἱ δὲ θεσμοθέται τοὺς ἔνδειχθέντας εἰσαγόντων εἰς τὸ δικαστήριον κατὰ τὸν νόμον, ἢ μὴ ἀνιόντων εἰς Ἄρειον πάγον, ὡς καταλύοντες τὴν ἐπανόρθωσιν τῶν νόμων. πρὸ δὲ τῆς ἐκκλησίας ὁ βουλόμενος Ἀθηναίων ἐκτιθέτω πρόσθε τῶν ἐπωνύμων γράψας τοὺς νόμους οὓς ἂν τιῆ, ὅπως ἂν πρὸς τὸ πλῆθος τῶν τεθέντων νόμων ψηφίσῃται ὁ δῆμος περὶ τοῦ χρόνου τοῖς νομοθέταις. ὁ δὲ τιθεὶς τὸν καινὸν νόμον ἀναγράψας εἰς λεύκωμα ἐκτιθέτω πρόσθε τῶν ἐπωνύμων ὁσημέραι, ἕως ἂν ἐκκλησία γένηται. αἰρείσῃται δὲ καὶ τοὺς συναπολογησομένους τὸν δῆμον τοῖς νόμοις, οἱ ἂν ἐν τοῖς νομοθέταις λύωνται, πέντε ἄνδρας ἐξ Ἀθηναίων ἀπάντων, τῆ ἑνδεκάτῃ τοῦ ἑκατομβαιῶνος μηνός.

ΕΠΙ ΧΕΙΡΟΤΟΝΙΑΝ S | 2 περὶ del. Schoell | 2–3 περὶ τῶν κοινῶν A | 3 ἡ δὲ χειροτονία S : ἡ δ' ἐπιχειροτονία A F Y P | ἄρχῶν susp. Dobree | 5 κοινῶν codd. : λοιπῶν Westermann : κοινῶν καὶ τῶν ἄλλων Sykutris | κατὰ ταῦτά F : κατὰ αὐτά S : κατ' αὐτά A (apost. add. manus secunda) | 7 ἀποχειροτονία A Y P (P<sup>yp</sup>. ἐπιχειροτονία) | 9 τυγχάνωσι A P Schol. ad loc. : τύχῃσι S F Y | παρεδρεύοντες S Y | 10 τοῦ om. S F Y P | 11 τὸν om. A | 12 ποιῶσι S F Y P | κατὰ τὰ προγεγραμμένα A F Y P | 13 κατὰ τὰ γεγραμμένα (προγεγραμμένα F Y P) om. A | ὀφείλιν τῶν codd. : ὀφειλόντων A | 15 ἔστω αὐτῶν A | 18 Ἀθηναίων νομοθετεῖν F | 20 ἐκτεθέντων F | 22 <ἦ> ἐκκλησία add. Dobree | 23 οἴοι A | 23–4 τῆ ἑνδεκάτῃ τοῦ ἑκατομβαιῶνος μηνός del. Schoell cf. 26.

On the eleventh day of the first prytany in the Assembly; after the herald says the prayers, the approval of laws shall proceed as follows: first those laws concerning the Council, second the general ones, then those concerning the nine archons and then those of the other magistrates. First, those satisfied with the laws about the Council will raise their hands and then those who are not satisfied, and later in the same way they shall vote about the general statutes. The approval of laws shall be conducted according to the existing laws. If some existing laws are rejected, the *prytaneis* in whose term the voting takes place shall devote the last of the three Assemblies to discuss the rejected laws; the chairmen of this Assembly shall, immediately after the religious observances, put the question about the sessions of *nomothetai* and the fund from which their payment is to be drawn. Only persons who have sworn the judicial oath can be appointed as *nomothetai*. If the *prytaneis* do not convene the Assembly as above or the chairmen do not put the question in discussion, each *prytanis* shall owe a thousand drachmas sacred to Athena and each chairman forty drachmas sacred to Athena. And an *endeixis* shall be lodged with the *thesmothetai* as in the case of anyone who holds office while in debt to the public treasury; and the *thesmothetai* are to introduce the cases of those against whom information was given to the court according to the law, otherwise they are not going to become members of the Areopagus on the ground of obstructing the rectification of the laws. Before the day of the Assembly any Athenian who wishes may display in front of the monument of the Eponymous Heroes the laws he proposed, in order that the Assembly may vote about the time allowed to the *nomothetai* with due regard to the number of the proposed laws. Anyone proposing a new law shall write it on a white board and display it in front of the Eponymous Heroes as many days as remain until the day of the Assembly. The Assembly,



on the eleventh of the month Hekatombaion, shall elect five persons from all the Athenians who will defend the laws under repeal in front of the *nomothetai*.<sup>42</sup>

There are major differences between the document and Demosthenes' accounts in this speech and in the *Against Leptines*. 1) The procedure described by Demosthenes is one for enacting new laws, whereas the document provides for an annual vote of approval of the entire 'code' of laws and for the rejection of some. 2) Demosthenes describes a preliminary vote to allow new proposals (plural) to be made whereas the document describes a vote of approval for the existing laws section by section. 3) The document sets this vote of approval in the 11th day of the first prytany of every year and provides, in case some laws are not approved, for the appointment of the *nomothetai* following a discussion in 'the last of the three Assemblies'. Demosthenes, on the other hand, supported by the epigraphical evidence, shows that the *nomothetai* could be appointed at any point of the year. 4) The document provides for the election of five *sunêgoroi* in the same Assembly on the 11th of the first prytany. Demosthenes, on the other hand, implies that they were appointed later after the proposals for new laws were presented. A closer analysis of the features of the document confirms that it cannot be an authentic Athenian statute.

1) The expression 'after the herald says the prayers' (ἐπειδὴν εὔξεται ὁ κῆρυξ) to indicate that a matter must be the first item on the agenda of an Assembly meeting is unparalleled in Athenian inscriptions. The customary expression, in Athens and elsewhere, was μετὰ τὰ ἱερά ('after the sacrifices').<sup>43</sup>

2) In the document we find the phrase ἐπιχειροτονίαν ποιεῖν τῶν νόμων. The verb ποιεῖν is in the active, but there is no subject for it. The subject here should be the *proedroi* or the people. Even if we assume that the subject is understood, the expression is nevertheless unparalleled. In Athenian inscriptions the *proedroi* put to the vote (ἐπιψηφίζεῖν), they never ποιεῖν χειροτονίαν (or words derived from the same root), it is always the δῆμος (or the βουλῆ) that (ἐπι- or δια-) votes by show of hands (χειροτονῆσαι).<sup>44</sup> In literary sources the verb used with χειροτονίαν (or derivatives) is invariably δίδωμι.<sup>45</sup> It is easy to see where a later forger could find such an expression: at § 25 Demosthenes writes καὶ πρῶτον μὲν ἐφ' ὑμῖν ἐποίησαν διαχειροτονίαν. However, the subject of ἐποίησαν is there οἱ νόμοι, specifically those about *nomothesia*. The expression means 'and first the laws set a vote among you (in the Assembly)', and in this sense is perfectly normal. The forger took it from this context and misunderstood it.

<sup>42</sup> This translation is adapted from I. Arnaoutoglou, *Ancient Greek Laws: A Sourcebook* (London, 1998), 88–9.

<sup>43</sup> This expression is found in the document later at § 21. It was widespread in the Greek world. A search in the PHI database yields 34 occurrences in Athenian inscriptions (e.g. *IG II<sup>2</sup>* 107.16; 185.8; 212.57; 238 fr. bc1.13–4), but 345 from the Aegean Islands and Crete, and 69 from Asia Minor. τὰ ἱερά refers to the sacrifices, cf. Harris (n. 32), 91–2.

<sup>44</sup> Cf. e.g. *IG II<sup>2</sup>* 28.14, 22–3; 211.5–6; 244.28 for the people, 244.10 for the Council.

<sup>45</sup> Cf. for the fifth and fourth century Aeschin. 3.39; Dem. 24.50, 24.25, 22.9; and *Ath. Pol.* 43.5, 55.4. They confirm that the correct verb is δίδωμι. The only exception seems to be Dem. 21.6, where we find καταχειροτονίαν ὁ δῆμος ἐποίησατο. However καταχειροτονία in this case does not mean simply a vote, it means a vote of censure in a *probolê*, even though without legal effects; see E.M. Harris, *Demosthenes. Speeches 20–22* (Austin, TX, 2008), 79. The expression therefore does not mean, as in all the other cases, 'to put a matter to the vote', but to 'condemn'. ποιεῖν with χειροτονία becomes common in later times. Cf. e.g. Plut. *Nic.* 12.5; Paus. *Att. Att. On.* 1.9; Didymus Caecus, *Comm.* 2.256; Lib. *Orat.* 15.5; Socr. *Schol. Hist.* 2.24, 6.14, etc.

3) The document describes the procedure for ἐπιχειροτονία and orders the confirmation πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εἶτα οἱ κείνται τοῖς ἑννέα ἄρχουσιν, εἶτα τῶν ἄλλων ἀρχῶν. Scholars have seen in these categories the organization of the Athenian ‘code’ of laws. Laws would have been grouped in these broad categories, in the Stoa Basileios or in the archives, according to the official responsible for them.<sup>46</sup> The second part of the *Ath. Pol.* would be based on the actual arrangement of the laws of Athens, and would confirm the content of the document.<sup>47</sup> MacDowell has also, accordingly, argued that if the laws were arranged according to the officials in charge of them, then the category τῶν κοινῶν cannot refer to laws common to all citizens, but must refer to laws common to all the officials.

This is not the place to discuss the hypothesis of a ‘code’ of laws arranged by the names of the competent officials. I shall limit myself to pointing out a few difficulties in the text of the document. First, the grammar of the clause does not work: the clause ἐπιχειροτονίαν ποιεῖν τῶν νόμων requires a genitive of the categories, and περὶ τῶν βουλευτικῶν (‘make a vote of confirmation about the laws about the bouletic [*sc.* laws]’) as it stands does not make any sense.<sup>48</sup> Moreover τῶν ἄλλων ἀρχῶν as it stands recalls the ἐπιχειροτονία τῶν ἀρχῶν, a procedure that has nothing to do with an approval of the Athenian ‘code of laws’, and is, unlike this procedure, well attested (cf. *Ath. Pol.* 43.4, 61.2 and 61.4 and [Dem.] 58.27). Schöll, in order to save the provision, proposes that τῶν ἀρχῶν is haplography for τῶν τῶν ἀρχῶν.

A second difficulty is in the next sentence (ἡ δὲ χειροτονία ἔστω ἢ προτέρα, ὅτω δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί, ἢ δ’ ὑστέρᾳ, ὅτω μὴ δοκοῦσιν· εἶτα τῶν κοινῶν κατὰ ταῦτά). The document spells out the procedure of approval, but stops with the ‘common laws’ and does not say anything about the last two categories. Their absence from the description of the actual procedure points to an interpretation of the last categories not as subdivisions of the ‘code’ of laws, but rather as an actual ἐπιχειροτονία of the officials, which has nothing to do with the legislation on *nomothesia*.<sup>49</sup>

The third difficulty is that later in the document we read that εἰάν δέ τινες τῶν νόμων τῶν κεμένων ἀποχειροτονηθῶσι (‘if some existing laws are rejected’), a later Assembly must discuss the appointment of the *nomothetai* περὶ τῶν ἀποχειροτονηθέντων. This passage refers to actual laws rejected in the annual vote of approval, but the document provides only for approval of macro-sections of the ‘code’. When and how ‘were some of the existing laws rejected’ (τινες τῶν νόμων τῶν κεμένων ἀποχειροτονηθῶσι)? One might argue that the Athenians voted on every single law section by section, but this would have taken far longer than one meeting of the Assembly. A further, general difficulty in accepting a vote *kapitelweise* is that

<sup>46</sup> Cf. Schöll (n. 18), 85–95; U. Kahrstedt, ‘Die Nomotheten und die Legislative in Athen’, *Klio* 31 (1938), 1–25, at 11; E. Ruschenbusch, *Solonos nomoi: die Fragmente des solonischen Gesetzeswerkes mit einer Text und Überlieferungsgeschichte* (Wiesbaden, 1966), 27–31; MacDowell (n. 2), 67; Rhodes (n. 24), 33–9; J.P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill and London, 1999), 149–50.

<sup>47</sup> Cf. the essays cited in the note above and in particular Rhodes (n. 24), 33–4. Such a correspondence is not beyond doubt. For the arrangement of the second part of the *Ath. Pol.* see also M.H. Hansen, *The Sovereignty of the People’s Court in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals* (Odense, 1974), 10–12 and Harris (n. 32), 30–2.

<sup>48</sup> Schöll (n. 18), 86, in order to save the provision, has athetized περὶ.

<sup>49</sup> This was already noted by Westermann (n. 16), 14.

we never find in our sources, either literary or epigraphic, any mention of such categories. If these categories were listed and spelt out every year in the Assembly, we would expect the Athenians to be generally aware of them, and the orators to refer to them in order to make the statutes mentioned easily recognized. Instead, we find νόμους τελωνικούς (Dem. 24.101), φονικούς νόμους (Dem. 23.51), a μεταλλικὸν νόμον (Dem. 37.35), ἐμπορικούς νόμους (Dem. 35.3), περὶ διαθηκῶν νόμους (Hyr. 3.17), a περὶ τῆς κατηγορίας νόμον (Isoc. 20.3), a περὶ τῆς ἀργίας νόμον (Dem. 57.32), but never a single mention of any of the categories found in the document.<sup>50</sup>

4) The next clause in the document, τὴν δ' ἐπιχειροτονίαν εἶναι τῶν νόμων κατὰ τοὺς νόμους τοὺς κεμένους, is otiose. The document purports to report the statute about the ἐπιχειροτονία τῶν νόμων, and it lays down the procedure for approval. Thus there is no point in providing that the vote of approval is given κατὰ τοὺς νόμους τοὺς κεμένους: either there were no pre-existing laws on the topic, or the new procedure overrode them. The rule therefore makes no sense.<sup>51</sup>

5) The next sentence provides that in case any of the laws is rejected, the *prytaneis* must schedule the discussion of the rejected laws τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν. Such an expression (or similar) is unparalleled in Athenian inscriptions and has troubled many scholars. Its meaning seems to be clear: it specifies a total of three Assemblies that were held, presumably, every prytany, and prescribes that discussion on the rejected laws must be scheduled for the third of these meetings in the first prytany. *Ath. Pol.* 43.3, however, clearly states: οἱ δὲ πρυτανεῖοντες ... συνάγουσιν ... τὸν δὲ δῆμον τετράκις τῆς πρυτανείας ἐκάστης. Hansen and Mitchel<sup>52</sup> have proposed that the system of four meetings of the Assembly every prytany must be dated later than this speech, as late as about 350 B.C.E., and previously, in accordance with the document, there were only three meetings per prytany. Demosthenes (24.25) however states that the discussion about the appointment of the *nomothetai* must be held τὴν τρίτην ... ἐκκλησίαν. Schöll<sup>53</sup> rightly noted that in Athenian inscriptions εἰς τὴν πρώτην ἐκκλησίαν always refers to the following Assembly (e.g. *IG II<sup>2</sup>* 103, line 14) and therefore τὴν τρίτην ... ἐκκλησίαν must refer to the third Assembly after the first one. This would confirm the figure of four Assemblies per prytany provided by the pseudo-Aristotelian *Constitution of the Athenians*.

Hansen tries to refute Schöll's argument by pointing out that the Greeks usually counted inclusively, and the fact that τὴν πρώτην ἐκκλησίαν means 'the following Assembly' does not prove that τὴν δευτέραν ἐκκλησίαν means 'the second Assembly' after the original one. I doubt whether such an ambiguity would have been acceptable in official language: if Hansen is right, ideally it would have been possible to refer to the 'following Assembly' both with τὴν πρώτην ἐκκλησίαν and τὴν δευτέραν ἐκκλησίαν, and this second expression would have meant both 'the following Assembly' and 'the second Assembly' after the original one. No evidence supports this implausible hypothesis. Moreover at Dem. 20.94 we read that the bills had to be read

<sup>50</sup> E.M. Harris, 'What are the laws of Athens about? Substance and procedure in Athenian statutes', *Dike* 12/13 (2009/10), 5–67 provides more examples and shows that Athenian laws were organized not by procedure but by substantive content.

<sup>51</sup> The same remarks have been made by Westermann (n. 16), 19 and Schöll (n. 18), 99–100.

<sup>52</sup> M.H. Hansen and F. Mitchel, 'The number of *ecclesiai* in fourth-century Athens', *SO* 59 (1984), 13–19.

<sup>53</sup> Schöll (n. 18), 101.

many times (πολλάκις) in the Assembly. One could not call one meeting of the Assembly, or even two, 'many times'. It would require at least three meetings. Moreover Din. 1.42 states that Demosthenes μετέγραφε καὶ μετεσκεύαζε τὸν νόμον (his trierarchic law) καθ' ἑκάστην ἐκκλησίαν. Again, I find it hard to believe that ἐκάστην ἐκκλησίαν can refer to one, or even two (it would have been ἑκατέραν) meetings of the Assembly. Hansen counters this argument claiming that in the first case the procedure was probably a different one, and in the second the number of Assemblies per prytany had already been changed. This begs the question. Demosthenes' wording clearly points to 'the third Assembly' after the original one. The document is clearly in disagreement with the orator. Schöll tried to solve this difficulty by hypothesizing that τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν might mean 'the last of the three (remaining) Assemblies'. But this interpretation strains the Greek and is less satisfactory than the straightforward reading of the phrase.

However an alternative solution exists. If we look at the scholia to this passage (Σ Dem. 24.20 Dilts) we read κατὰ μῆνα τρεῖς ἐκκλησίας ἐποιοῦντο, and then a list of typical days for Assemblies that is confirmed by the epigraphical evidence.<sup>54</sup> This piece of information is found also in Σ Dem. 18.73, 19.123, 154 Dilts, Σ Aesch. 1.60, 3.24 Schultz, Σ Ar. Ach. 19, Phot. s.v. κυρία ἐκκλησία. All these texts are likely to derive from an independent source which was, as the wide spread of attestations show, well known from at least the second century A.D. (Harpocration, s.v. σύγκλητος ἐκκλησία provides the *terminus ante quem*). A later forger, independently aware of this piece of information and faced with τὴν τρίτην ... ἐκκλησίαν in Demosthenes' account might easily have concluded that the orator was referring to the third Assembly of the month. Yet this is not what Demosthenes says. He states that the discussion about the appointment of the *nomothetai* is to take place at the third meeting of the Assembly after the initial vote to allow new legislation, no sooner, no later.

6) The date at the beginning of the document is given according to the bouletic calendar, whereas at the end we find 'on the eleventh of the month Hekatombaion', which follows the festival calendar. However in the fourth century we never find in inscriptions the date expressed according to the festival calendar before 341/0.<sup>55</sup> This law, if authentic, would have been enacted at the end of the fifth or at the beginning of the fourth century. The speech itself dates from the 350s. The presence of a date expressed according to the festival calendar is unacceptable.<sup>56</sup>

7) There follows a long section about the penalties for *prytaneis*, *proedroi* and *thesmothetai* who do not perform their duties. Afterwards the document requires that copies of the proposals be placed before the monument of the Eponymous Heroes, in order to allow the people to assess the time needed by the *nomothetai* and appoint them accordingly. The last provision deals with the election (αἰρεῖσθαι) of advocates of the laws to be repealed (τοὺς συναπολογησομένους τοῖς νόμοις). We have seen above that the rationale for the election of advocates of the laws would require them to be chosen

<sup>54</sup> E. M. Harris, 'When Did the Athenian Assembly Meet? Some New Evidence', *AJPh* 112 (1991), 325–41. M. H. Hansen, 'How often did the Athenian Assembly meet? A reply', *GRBS* 28 (1987), 35–50 claims that the information applies only to the period of the twelve tribes but see Harris (n. 32), 118–120.

<sup>55</sup> *JG* II<sup>2</sup> 229.4–5. Cf. A. Henry, *The Prescripts of Athenian Decrees* (= *Mnemosyne* Suppl. 44) (Leiden, 1977), 37.

<sup>56</sup> Harris (n. 32), 104 n. 5; M.H. Hansen, 'Was the Athenian *ekklesia* convened according to the festival calendar or the Bouletic calendar?', *AJPh* 114 (1993), 99–113, at 101–2.

when the laws to be repealed are known, that is ‘in the third Assembly’. One could not know what opposing laws (if any) were to be repealed until after the proposals for new laws were made at subsequent meetings of the Assembly.<sup>57</sup> In the document they are nevertheless appointed τῆ ἑνδεκάτῃ τοῦ ἑκατομβαιῶνος μηνός. Schöll, in order to solve this problem, has proposed to athetize the indication of the date. Such an emendation is not acceptable unless the document’s authenticity can be independently confirmed.

8) Demosthenes at § 36 calls the advocates of a law συνηγόρους. At Dem. 20.146 he calls them σύνδικοι. Both these terms are attested in contemporary Athenian inscriptions.<sup>58</sup> Instead, the participle συναπολογησομένων or any other form of the verb συναπολογέομαι are unattested in Attic inscriptions. The two words employed by Demosthenes are technical terms, yet the participle in the document, where we should expect official language, is not.<sup>59</sup>

To sum up. The person who composed the document at Dem. 24.20–23 was a skilful forger, one who knew the Attic orators and possibly had access to a lexicon or commentary. Whatever he knew, the document is not consistent with Demosthenes’ accounts in *Against Leptines* and *Against Timocrates* and contains features which find no parallel in contemporary documents or betray the composer’s misinterpretation of his sources.

### III.2. THE DOCUMENT AT DEM. 24.33

The stichometry shows that this document was also not present in the *Urexemplar* of the speech.<sup>60</sup> The scholia provide comments on the document, which show that it was present in manuscripts circulating in late antiquity.

#### NΟΜΟΣ.

Τῶν δὲ νόμων τῶν κεμένων μὴ ἐξεῖναι λύσαι μηδένα, ἐὰν μὴ ἐν νομοθέταις. τότε δ’ ἐξεῖναι τῷ βουλομένῳ Ἀθηναίων λύειν, ἕτερον τιθέντι ἀνθ’ ὅτου ἂν λύη. διαχειροτονίαν δὲ ποιεῖν τοὺς προέδρους περὶ τούτων τῶν νόμων, πρώτον μὲν περὶ τοῦ κεμένου, εἰ δοκεῖ ἐπιτήδειος εἶναι τῷ δήμῳ τῷ Ἀθηναίων ἢ οὐ, ἔπειτα περὶ τοῦ τιθεμένου. ὀπότερον δ’ ἂν χειροτονήσωσιν οἱ νομοθέται, τοῦτον κύριον εἶναι. ἐναντίον δὲ νόμον μὴ ἐξεῖναι τιθέναι τῶν νόμων τῶν κεμένων μηδενί. ἐὰν δὲ τις λύσας τινὰ τῶν νόμων τῶν κεμένων ἕτερον ἀντιθῆ μὴ ἐπιτήδειον τῷ δήμῳ τῷ Ἀθηναίων ἢ ἐναντίον τῶν κεμένων τῶν, τὰς γραφὰς εἶναι κατ’ αὐτοῦ κατὰ τὸν νόμον δὲ κείται ἐάν τις μὴ ἐπιτήδειον θῆ νόμον.

4 τῷ Ἀθηναίων codd. : τῷ Ἀθηναίῳ S | 5 τοῦτον τὸν κύριον S | 6–7 μηδενί – κεμένων om. P  
add. in marg. | 7 ἀντιθῆ codd. : ἀντιτιθῆ S<sup>(m.a.)</sup> | 8 ἢ om. S<sup>a</sup> |

It is prohibited to repeal any existing law except at a session of *nomothetai*. And then, any Athenian who wishes to repeal a law, shall propose a new law to replace the one repealed. And the chairmen shall take a vote by showing of hands about those laws, first about the

<sup>57</sup> Cf. above, pp. 144–7.

<sup>58</sup> σύνδικος is found in inscriptions up to the end of the fourth century in *SEG* 3.117.7; 42.217.8–9; *GRBS* 26:165.49.5; 51.17. συνήγορος is found in *IG* II<sup>2</sup> 1183.14; 1237.32; 1251.10–1; III App. 38.6–7; E. Ziebarth, *Neue Verfluchungstafeln*, *SPAW* 1 (1934), 2.2; *SEG* 44.226.6, 10; 28.103.41–2. For differences between the two terms, and the overlap in their application see Rubinstein (n. 36), 43–5.

<sup>59</sup> Participles of συναπολογέομαι are found in fourth-century prose only at Dem. 25.56; Hyp. 1.10; Lycurg. 138. They are never employed as technical terms but simply mean ‘one who joins in mounting one’s defence’. It is also interesting that the verb is found in the Demosthenic corpus only in two other places: Dem. 24.157, 159, both in the same speech where we find the document.

<sup>60</sup> Cf. Burger (n. 17), 14.

existing one, if it seems that the law is advantageous to the Athenians or not, and then about the proposed one. The law which the *nomothetai* vote for shall be the valid one. It is not allowed to introduce a law in conflict with existing laws, and if anyone, having repealed an existing law, proposes a new law not advantageous for the Athenians or in conflict with any of the existing laws, indictments shall be lodged against him according to the existing law regarding the proposer of an unsuitable law.<sup>61</sup>

Demosthenes, both in his adjacent summary (§§ 32–5) and in his summary of the law about *nomothesia* in the *Against Leptines* (Dem. 20.93–4), clearly states that the statute supposed to be read here by the *grammateus* ordered that those who proposed new laws according to the procedure previously described had to propose the repeal of any contradictory law. If they failed to do so, they were liable to a γραφή νόμον μη ἐπιτήδειον θεῖναι. This document instead provides a procedure for repealing existing laws to which Demosthenes never refers, and orders that those who repeal a law have to propose a new law in its place. This reverses the order of the procedure's steps in Demosthenes' paraphrase. If the law proposed to replace the existing law contradicted existing statutes, the repeal of those laws had to be proposed too. This procedure has nothing to do with the straightforward provisions summarized by Demosthenes.

The document is moreover inconsistent in itself, and some of its features reveal that it cannot be a genuine document.

1) The document contradicts itself: in its first sentence it states that 'it is prohibited to repeal any existing law except at a session of *nomothetai*',<sup>62</sup> but in its last sentence it provides a different way to do it, through a γραφή νόμον μη ἐπιτήδειον θεῖναι, which had to be heard by judges, not *nomothetai*. That a γραφή νόμον μη ἐπιτήδειον θεῖναι, if successful, resulted in the repeal of the law enacted by the defendant is witnessed by the very existence of the speeches *Against Timocrates* and *Against Leptines*. In fact, we know that the charge brought by Apsephion was successful and resulted in the repeal of Leptines' law.<sup>63</sup> Both cases were heard by judges, not by a panel of *nomothetai*.<sup>64</sup>

2) The sentence 'the chairmen shall take a vote by showing of hands about those laws' (διαχειροτονίαν δὲ ποιεῖν τοὺς προέδρους περὶ τούτων τῶν νόμων) is unparalleled. In all our sources the *proedroi* always give (διδόναι) a διαχειροτονίαν. This expression derives, again, from § 25 (καὶ πρῶτον μὲν ἐφ' ὑμῖν ἐποίησαν διαχειροτονίαν: 'and first the laws set a vote among you') where, however, the subject was the laws on *nomothesia*.

<sup>61</sup> This translation is adapted from Arnaoutoglou (n. 42), 89–91.

<sup>62</sup> The forger might have been misled by Dem. 3.10. This passage mentions the possibility of appointing *nomothetai* for the sole purpose of repealing laws, but his language makes it clear that their normal function was to ratify laws and that his own proposal would have been an innovation.

<sup>63</sup> See Dio Chrys. 31.128 with Harris (n. 45), 20–1.

<sup>64</sup> The orator addresses the audience with the words ἄνδρες δικασταί at Dem. 20.1, 15, 29, 36, 45, 55, 64, 67, 69, 79, 87, 95; 24.1, 19, 24, 43, 51, 64, 72, 111, 113, 121, 122, 123, 124, 125, 130, 134, 136, 139, 140, 142, 143, 144, 145, 146, 147, 151, 152, 153, 154, 167, 200, 212. Hansen (n. 2), 350 postulates that during the first year after its enactment a law was not fully in force, but had an intermediate status, and could be repealed in a tribunal. After one year it became one τῶν δὲ νόμων τῶν κεκλιμένων, a part of the 'code', and could be repealed only by the *nomothetai*. This seems to me to explain *ignotum per ignotius*. This intermediate status is clearly excluded by the law of Diocles, quoted and discussed at Dem. 24.42–4, which states that τοὺς νόμους ... τοὺς δὲ μετ' Εὐκλείδην τεθέντας καὶ τὸ λοιπὸν τιθεμένους κυρίου εἶναι ἀπὸ τῆς ἡμέρας ἧς ἕκαστος ἐτέθη. This document there inserted was, according to the stichometry, part of the *Urexemplar*, and M.H. Hansen, 'Diokles' law (Dem. XVI 42) and the revision of the Athenian corpus of laws in the archonship of Eukleides', *C&M* 41 (1990), 63–71 accepts it as an authentic statute.



3) At § 32 Demosthenes states that the law about to be read by the *grammateus*, in case someone enacts a law in contrast with existing statutes, γράφεσθαι κελεύει. This expression means that the law permits anyone to bring a public action and lays down the procedure for it.<sup>65</sup> The document on the other hand does not lay down any procedure, but states that if one enacts a law in contrast with existing statutes and does not repeal them, the γραφαί ‘shall be lodged against him according to the existing law regarding the proposer of an unsuitable law’. Instead of describing the proper procedure, the document refers to a further law: τὸν νόμον ὃς κείται ἐάν τις μὴ ἐπιτήδειον θῆ νόμον.

To sum up, the provisions described in this document are quite inconsistent with Demosthenes’ accounts of *nomothesia* in the *Against Leptines* and *Against Timocrates*. They are also contradictory, and one phrase finds no parallel in contemporary inscriptions. Moreover there is no reason to believe that the additional information found in the inserted document that is not found in the accompanying summary derives from an independent source and is reliable. The disagreements between the document and the orator’s account can be more likely explained as due to clumsy composition from the orator’s words.

#### IV. CONCLUSIONS

This essay has shown that the documents found at Dem. 24.20–3 and 33 are later insertions and do not provide genuine texts of the original statutes, not even ones heavily corrupted in the process of transmission. They are instead very early attempts to reconstruct the procedure discussed by Demosthenes in these speeches and to fill in their gaps from information found in other speeches (and possibly some other sources), but marred by errors and misunderstandings.

I have reconstructed the procedure of *nomothesia* from the mutually consistent accounts found in Demosthenes’ speeches *Against Leptines* and *Against Timocrates*, which are confirmed in some respects by contemporary epigraphical evidence. The procedure began in the Assembly with a vote on whether to allow new proposals. This meeting could take place at any time during the year. Afterwards any proposal had to be posted before the statues of the Eponymous Heroes and read out at several meetings of the Assembly. Before enacting a new law, opposing laws had to be repealed. In the third Assembly meeting after the preliminary vote the people passed a decree of appointment for the *nomothetai* and elected *sunēgoroi* to defend the opposing laws. If any of these rules was ignored, anyone could prosecute the proposer on a public charge of enacting an inexpedient law (*graphē nomon mē epitēdeion theinai*).

This procedure fits well into the context of the revision of the laws of Solon and of the laws about legislation passed at the end of the fifth century. The revision of the laws of Solon started in 410/9. *Anagrapheis* were appointed to find the relevant laws and submit them to the Assembly for approval. The approved laws had to be reinscribed on stelae placed in front of the Royal Stoa. The procedure was interrupted during the regime of the Thirty but resumed after the restoration of the democracy and was completed by 399. At this stage, the Athenians also enacted new statutes defining precisely what a law

<sup>65</sup> Cf. Dem. 29.9 with MacDowell (n. 32), 257–72 and id. (n. 21), 46–7. Demosthenes obviously does not mean that the law ‘orders’ the prosecution of the law’s proposer.

is, how it differs from a decree, and made explicit that laws are always superior to decrees.<sup>66</sup>

The common purpose of these measures was to put some order in the mass of the Assembly's enactments, providing a hierarchy among them and eliminating contradiction between statutes. The aim of these reforms was to strengthen the rule of law by improving the internal consistency of the legal system, and thus securing for litigants consistency and predictability in the verdicts of the courts.<sup>67</sup> The coherence of the legal system, however, had to be protected from unscrupulous changes. After all, in 411 democracy itself had been 'legally' abrogated through simple enactments of the Assembly. The approval by the Assembly could no longer suffice to legislate. Therefore it is only natural to date the introduction of the new procedure of *nomothesia* in the context of the revision of the Solonian laws, together with the clear definition of what a law is and how it differs from a decree.<sup>68</sup>

My reconstruction of fourth-century *nomothesia* shows how the Athenians devised a procedure for enacting new legislation whose purpose was not only the careful examination of new proposals, but also an assessment of their consistency with existing measures, and with the legal system as a whole. The speeches *Against Timocrates* and *Against Leptines* show that the arguments employed for repealing laws not only included an analysis of their effects on the public good but also addressed the issue of their consistency with other statutes on the same topic. An accuser might also argue that the law he was indicting conflicted with the alleged intent of the lawgiver as it could be discovered in other statutes.<sup>69</sup> In the speech *Against Timocrates*, at §§ 41–67, we find a long list of laws and a discussion of how the law of Timocrates clashes with their provisions. At § 35 the speaker explicitly states that if there are two contradictory laws, the judges cannot possibly vote according to their oath, since by following one law they would break the other one. In the speech *Against Leptines* at §§ 102–4 Demosthenes states that the aim and spirit of the law of Leptines contradicts the aim and spirit of another ancient and revered law, whose author was Solon. The proposed law must therefore be consistent both with the terms of other laws and with the overall aims of the legal system as a whole. Similar arguments must have been key in the debates about enacting new laws.

In the fourth century the Athenians added further procedures to preserve the internal coherence of their laws: they appointed commissioners to inspect the existing laws to find contradictions (Dem. 20.91) and provided that the same control over the existing laws should be performed by the *thesmothetai* (Aeschin. 3.38–9).<sup>70</sup> These measures were intended to remove the inconsistencies in the laws that occurred in spite of the new procedure for *nomothesia*. The law of Nicophon (*SEG* 26.72, lines 55–6) of

<sup>66</sup> Cf. Canevaro and Harris (n. 1), 110–13, 116–19.

<sup>67</sup> Cf. J. Sickinger, 'Indeterminacy in Greek law: statutory gaps and conflicts', in E. Harris and G. Thür (edd.), *Symposion 2007: Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Vienna, 2008), 99–112.

<sup>68</sup> A.R.W. Harrison, 'Law-making at Athens at the end of the fifth century B.C.', *JHS* 75 (1955), 26–35 argued extensively for this date, and has generally been endorsed. See e.g. MacDowell (n. 2), 62; Rhodes (n. 1), 12–16; and M. Gagarin, *Writing Greek Law* (Cambridge, 2008), 185–8.

<sup>69</sup> For a discussion of the arguments from the intent of the lawgiver see E.M. Harris, 'Did the Athenian courts attempt to achieve consistency? Oral tradition and written records in the Athenian administration of justice', in C. Cooper (ed.), *Politics of Orality* (Leiden, 2007), 343–70, at 365–7.

<sup>70</sup> Cf. above, p. 139 n. 2.

375/4 shows that the texts of contradictory laws were actually destroyed when new measures were enacted.<sup>71</sup>

In fact, the Athenians in the fourth century clearly envisaged each law to form part of a coherent whole, and often argued their cases taking such consistency as a given.<sup>72</sup> Aeschines (3.37–40) goes so far as to claim that, because there were procedures in place to ensure the internal coherence of the legal system, it was impossible for two contradictory laws about the awarding of crowns to be valid at the same time. The existence of a procedure like *nomothesia* in Athens is evidence that the Athenians not only had a clear understanding of the importance of a coherent system of laws for the city. They also took practical steps to achieve it.<sup>73</sup>

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<sup>71</sup> Cf. Sickinger (n. 67), 107 about this aspect of the law of Nicophon. Pace A. Lanni, *Law and Justice in the Courts of Classical Athens* (Cambridge and New York, 2006), 115–48: Lanni's contention that the Athenians showed little regard for consistency in their legal system is untenable.

<sup>72</sup> Cf. for this attitude in the orators Harris (n. 69).

<sup>73</sup> I started working on Athenian *nomothesia* in 2005, while writing my BA thesis about Demosthenes' *Against Timocrates*. The riddle of reconstructing this procedure has troubled me ever since. I want to thank Lucio Bertelli for introducing me to this topic, the journal's referee for many valuable suggestions (among them, the title of this article), P.J. Rhodes for reading and commenting on various drafts of this article and for his support. Most of all, I want to thank Edward Harris: this article has benefited from months of fruitful discussion with him, through endless emails and long conversations. He has provided me with invaluable suggestions, and helped me at every stage. Finally, I want to thank Durham University, the AHRC, the British School at Athens, the Universität Mannheim and the Alexander von Humboldt Foundation for supporting the work for this article at various stages.