THE development of Athenian procedure in the making of new laws has formed the subject of a recent article by U. Kahrstedt. His main thesis, that the development of a more complex and on the whole more efficient system led in the fourth century B.C. to a partial abandonment of the democratic principle at Athens, will come as a surprise to many, and suggests the need for further study of this most important aspect of Greek constitutional development. "Wir kennen aus Reden des 4 Jahrh.," says Kahrstedt (op. cit., p. 1), "einen eigentümlichen Modus der Gesetzgebung in Athen, dessen Charakteristikum darin besteht, dass die in griechischen Republiken normale Instanz von der materiellen Schöpfung des Rechts ausgeschlossen ist, die Volksversammlung." The part normally played by the popular assembly in the making of new laws (Nomoi) was taken in fourth-century Athens, according to Kahrstedt's interpretation, by a specially appointed board of Nomothetae, whose authority was binding upon the whole state.

This interpretation of the functions of the Nomothetae is regarded by Kahrstedt as an explanation of the Athenian assertion that in the State the Law (Nomos) was the highest authority.

The laws by which the sovereign people were ruled could not be altered by the sovereign people. This work was left for the Nomothetæ; the sovereign people had to content themselves with passing Psephismata, decrees which had the force of law but could not in any way alter the existing law. The study of the Athenian Nomothetæ therefore leads Kahrstedt to a new interpretation of one of the fundamental principles of Aristotle, that in the well-constituted State, Law must be the Sovereign, a principle which (interpreted in a manner fundamentally opposed to that of Kahrstedt) has had the greatest influence on the development of modern political philosophy. Even if it is correct as applied to the actual working of the Athenian constitution, this sophistical interpretation of his own principle would not have satisfied Aristotle himself, who obviously does not connect the absolute authority of Nomos with the inability of the People to alter it. He regards it as the normal arrangement in democratic states that the making of laws should be reserved for the whole body of the citizens, whatever other functions are left for specially appointed magistrates; and that he regarded the constitution of Athens in the fourth century B.C. as an absolute democracy is evident from his description of it elsewhere as a constitution in which "the Demos has made itself absolute master of everything, and controls the whole government through Psephismata (decrees) and through the


2 On Psephismata in general, and on Kahrstedt's view of that, see below, pp. 135 ff.

3 Cf. Pol., III, 11, 19 (1282a) ad fin., III, 16, 5 (1287a) etc.

4 Cf. ibid., III, 16. 5: ἀλλ' ἐπίτηδες παώδεισας ὁ νόμος ἐφίστησα τὰ λοιπὰ τῇ δικαστάτῃ γνώμῃ κρίνειν καὶ διοικεῖν τοὺς ἀρχοντας· ἔτι δὲ ἐπαναφθοῦσα διδύμου, ὅτι ἂν δόξη πειρωμένους ἀμενοὺς εἶναι τῶν κειμένων.

5 Cf. Pol. IV, 14. 3 ff. (1298a), and ibid., 14. 12: συμφέρει δὲ δημοκρατίᾳ τε τῇ μάλιστ' εἶναι δοκοῦσθαι δημοκρατίαν νῦν (λέγω δὲ τοιαύτην ἐν ἓ κύριος ὁ δήμος καὶ τῶν νόμων ἐστίν) . . . . ποιεῖν δὲ προ ἐπὶ τῶν δικαστηρίων ἐν ταῖς ὀλιγάρχειαι (i.e. to provide pay for meetings of the Ecclesia, as was done at Athens in the fourth century B.C.).
law-courts, in both of which spheres the Demos has the power."  
If, then, the specially appointed Nomothetae at Athens (of all cities) were actually entrusted with the work of making new laws, a function normally reserved for the Ecclesia even in the moderate oligarchies, it is very strange that Aristotle does not think it necessary even to mention them either in his Politics, in the passages where he is discussing such matters, or in his Constitution of Athens.  
Moreover in the common parlance of the fourth century, the Athenian people are still spoken of as the authors of new laws (υμεῖς, ὁ ἄνδρες Ἀθηναίοι, νόμον ἑθικαὶ κανόν) as appears from many passages in which the Athenian orators address them to this effect. It therefore seems worth while to consider the whole question of the Nomothetae afresh, especially since there has been no detailed and documented examination of the subject in English since the English edition of Schoemann and the work of Creenidge, neither of which in any case takes account of the epigraphical evidence.  
We may begin with a brief account of the procedure when Nomothetae were appointed, for which our evidence comes from the orators of the fourth century B.C. At the first meeting...
of the Ecclesia in the new year, about the end of July, a vote was taken to see whether revision of the laws was desirable (ἐπιχειροτονία τῶν νόμων). The Assembly voted separately upon each of four categories of laws, those relating to the Boule, those concerning the State as a whole, those regulating the functions of the nine archons, and those regulating the functions of the various other magistrates.\(^1\) If it was decided that revision of the law was necessary in any or all of these groups, five advocates (Synegoroi) to defend the old laws were elected at the same meeting of the Ecclesia,\(^2\) and the appointment of Nomothetae, drawn from those who had taken the jurors' oath, was put on the agenda \(^3\) for the third meeting of the Ecclesia in the same Prytany, about three weeks later. The precise definition of the work which they were to undertake, the length of time they were to remain in office, and the source from which their salary was to be derived, were also matters put on the same agenda, and during the interval any Athenian citizen who wished to propose a new law in place of one already existing \(^4\) was required to provide copies of the old and of the new

\(^1\) Dem. XXIV, 20: σρώτων μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, ἔτσι οἶ κείμενοι τοῖς ἐννέα ἀρχοντεύοντος, ἔτσι τῶν ἄλλων ἀρχῶν.

\(^2\) Kahrstedt (op. cit., p. 11) thinks this classification implies a codification of the laws, but the classification is so general in character that this is not a necessary conclusion; anyone could tell into which category his proposed emendation fell.

\(^3\) Ibid., 23: αἱρεῖται δὲ καὶ τοὺς συναπολογημένους τοῦ δήμου τοῖς νόμοις, οἳ ἐν τοῖς νομοθεταῖς λιόνται, πέντε ἄνδρας ἐξ Ἀθηναίων ἀπάντων, τῇ ἐνδεκάτῃ τοῦ Ἐκατομβαίων μηνός. Daremberg-Saglio, s.v. Synegoroi identifies these advocates with the σύνδικοι (four in number) mentioned in Dem. XX, 146, 152, 153; but for reasons explained below (p. 116) as well as on account of the discrepancy of number, this identification cannot be accepted.

\(^4\) The Proedroi who should then be in office (cf. below, p. 125, note 2) were bound under heavy penalties to bring these questions before the third Ecclesia (Dem. XXIV, 21 f.); the responsibility for drawing up the agenda for the meeting was laid upon the Prytaneis of the tribe then presiding (Dem., ibid.), in accordance with the usual practice (cf. Ath. Pol., 43, 4).
law, which were publicly displayed, in order that the citizens might be guided by the number of the proposed new laws in deciding at the later Ecclesia how long the Nomothetæ should remain in office.

Since the speech against Timocrates, which gives our most detailed information on this subject, aims at directing the attention of the court to a wholly irregular appointment of Nomothetæ, arranged by the defendant in order to carry through an illegal law, the orator does not concern himself with the part played by normal Nomothetæ once they were appointed; but on the basis of a document cited in the same speech it is usually supposed that the Nomothetæ were left entirely free, once they were appointed, to decide between the two alternative texts in each case where a revision of the law was proposed, and to make their decision into law.

This passage (supported by the evidence of Theophrastus, cf. Müller, F.H.G., II, p. 115, no. 29) reveals the incompleteness of the same orator's account (ibid., 37 f.) of the Nomothesia, in which he says simply that it was the business of the Nomothetæ διορθοῦν ἐν τῷ δήμῳ τῶν νόμων, including any cases of conflicting laws in force. Since this responsibility fell to the Thesmothetæ, it seems clear that those of the previous year are meant, for newly appointed magistrates (especially when appointed by lot!) could not possibly discover cases of conflicting laws in the short interval between their entering upon office and the third Ecclesia of the first Prytany. It is much more likely that they discovered the existence of conflicting laws in carrying out their magisterial duties in the course of the year, and that it was merely their business to collect such instances and see that they were brought before the next Nomothetæ. For the procedure in such a case see below, pp. 123 ff. The technical nature of inquiry into conflicts in existing law was recognised in the first half of the fourth century by the election of specially appointed experts for the purpose. Cf. Dem., XX, 91 fin: χειροτονεῖ οἷς τούς διαλέξοντας τούς ἐναντίους ἐπὶ πάμπολον ἕτη χρόνον (Kahrstedt, op. cit., p. 6, note 1, supposes this to refer to the Nomothetæ, but this view involves the assumption that Demosthenes contradicts his own statement made just before). These presumably reported to the Thesmothetæ, who reported to the Ecclesia the version of the law which was recommended by the experts.

1 See below, p. 113, note 1.
2 Kahrstedt, op. cit., p. 2: Die Nomotheten entscheiden zwischen den beiden oder mehreren zur Debatte stehenden Texten, und erheben damit den von ihnen gewählten zum geltenden Recht, ohne dass das Volk noch einmal befragt wird. Similarly Greenidge, op. cit., p. 172, speaks of the Nomothetæ as "the final ratifying authority."
Kahrstedt, who stresses this view, cites two Attic inscriptions of the fourth century which seem at first sight to provide absolute proof for it. One of these (I.G. II 11, 140) concerns a law of 353 B.C. regulating the dedication of first-fruits at Eleusis; the other (I.G. II 11, 244) is the record of legislation about the rebuilding of the fortifications of the ports in 337 B.C. Both inscriptions include the words “Decision of the Nomothete" (δεδόχθαι τοῖς νομοθεταῖς) after the preamble giving the name of the proposer and other particulars usual in the headings of decrees. But the conclusion that this formula indicates an independent decision of the Nomothete is by no means certain, since there are many examples of Athenian inscriptions to show that the form of these two might have been exactly the same had each recorded a Psephisma of the Ecclesia adopting a previous resolution of the Nomothete. This at least is the form in which the Ecclesia frequently adopts the preliminary decisions (προβουλέωματα) of the Boule.1 That I.G. II 11, 140, is a similar ratification by the Ecclesia of a decision of the Nomothete is suggested by the clause providing for the cost of inscribing the decision out of the special fund set aside for making payments authorised by Psephismata (ἐκ τῶν εἰς τὰ κατὰ ψηφίσματα). At all events, the other inscriptions of this period which mention payments out of this fund demonstrably refer to payments authorised by Psephismata either of the Ecclesia or of the Boule.2

No definite conclusion can therefore be drawn from these inscriptions whether or not the last word lay with the Nomothete, and there is great uncertainty about the genuineness

1 Cf. e.g. I.G. II 11, 103 (369/8 B.C.). The whole document is a Psephisma of the Ecclesia, and is publicly inscribed as such (I. 40), but after the heading with the proposer's name and the date there follow the words δεδόχθαι τῇ βουλῇ. Cf. also Dittenberger Syll.1, 207, 263, 288, all conferments of special privileges upon benefactors by the Ecclesia. A parallel from the fifth century B.C. is the decree of the Ecclesia reorganising the tribute (Meritt and West, The Athenian Assessment of 425 B.C., Ann Arbour, 1934). Here all the provisions are actually the work of the Boule (cf. op. cit., p. 44, l. 33, ἑγονενεκέτω δὲ τοῦ ἡμῶν Ἠ ὁμήρη πρυτανεία; and ibid., p. 46, l. 51, τὰ μὲν ἄλλα καθάπερ τῇ βουλῇ) but the whole thing is a Psephisma of the Ecclesia ratifying them.

2 So I.G. II 11, 212, 222, 226; I.G. VII, 4254.
of the supposed law cited in the speech Against Timocrates which implies that it was so.1 Moreover, the supposed law merely says that the proposal selected by the Nomothetae is to be κύριος, and it can be shown that the use of this adjective does not necessarily imply a final decision. Thus, in his speech against the law of Leptines, Demosthenes, addressing the Dicasts in a preliminary trial, says, “If you make this law κύριος, you will seem to have removed the privileges” (the law was concerned with the granting of special privileges to benefactors of the State) “from jealousy, not because you have discovered the recipients to be unworthy.”2 If, on the other hand, the Dicasts reject Leptines’ law and select that of Demosthenes, the orator points out that his own law must still be brought forward in due form at the next Nomothesia (ὅταν πρώτον γένοιτα νομοθέται).3 When, therefore, the Dicasts made one of the two alternatives κύριος, this did not mean that it automatically became law. It still had to be dealt with by the Nomothetae.

But apart from the vexed question of whether the decision of the Nomothetae was subject to ratification by the Ecclesia, there are many reasons which make it hard to accept Kahrstedt’s view that the Nomothetae took the place of the Demos in the making of laws (Nomoi) “without limitation”;4 as, for instance, the necessity for a preliminary majority vote in the

1 The law in Dem., XXIV, 33, contains the clause “ὀπότερον δ’ ἂν (sc. τῶν νόμων) χειροτονήσωσιν ὦ νομοθέται, τοῦτον κύριον ἐλνα.” The meaning of κύριον here is itself uncertain (see further below); but the chief doubt arises from the spurious character of most of the documents which appear in the text of this speech (cf. above, p. 109), note 5.

2 Dem., XX, 139: ἐὰν δὲ . . . τὸν νόμον ποιήσετε κύριον, δόξετε φθονήσαντες, ὀυχὶ πονηροὶ λαβόντες αφηρηθοῦσαν. Cf. ibid., 143: ἐὰν μὲν ἡγόνησε ταῦτα (ὁ Πεπτής) . . . . . αὐτικα δηλάσει: συνχωρηθεῖσαι γὰρ χὰ μὲν λύσαι περὶ δὲν αὐτὸς ἤμαρτεν. ἐὰν δὲ φανήσεται σπουδάζων καὶ διαπενομένως κύριον ποιῶν τὸν νόμον κ.τ.λ. Cf. also ibid., 11, and Dem. XXIV, I.

3 Dem., ΧΧ, 136 f.: κελεύετε τοῦτον (i.e. the Dicasts must tell Leptines and his supporters) . . . ἐὰν τίνα τῶν εὐρήμειν τὴν δωρεάν ἀνάξιων ἐλαιαντίους, ἡ μὴ πεποιηκότ' ἐφ' οὗ εὑρέτ' ἔχειν, ἡ ἀλλ' οὕτως ἐγκαλοῦν τυν, γράφεσθαι κατὰ τὸν νόμον ὑπὲρ παρεισφέρομεν ἡμεῖς, ἡ δὲντος τιμῶν, ὀσπερ ἐγγυώμεθα καὶ φαμέν θήσεω, ἡ δὲντας αὐτοῦς, ὅταν πρώτον γένοιτο νομοθέται.

Ecclesia in favour of revision; the check imposed by the election, several weeks before the Nomothetae were themselves appointed, of five advocates for the original form of the law;\(^1\) the strict definition by the Ecclesia, if it finally decided to appoint Nomothetae when the definite proposals for new laws came before it, both of the scope of the Nomothetae\(^2\) and of the length of time they were to remain in office.\(^3\) The compulsory choosing of the Nomothetae from among those who had sworn the Heliastic oath\(^4\) imposed a further considerable limitation in the oath itself, its most important provision being

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\(^1\) Since these were elected (Dem., XXIV, 36), whereas nearly all Athenian officials were appointed by lot, it is to be presumed that they were chosen as experts in the law.

\(^2\) According to Kahrstedt, op. cit., p. 2, it was to choose between two already established texts. On this point see further below, pp. 120 ff.

\(^3\) Cf. Dem., XXIV, 21: τούς δὲ νομοθέτας ἕνα ἐκ τῶν ὁμομοιότων τὸν ἡλιαστικόν ὄρκου. The “Heliastic oath” cited in Dem., XXIV, 149, is usually regarded as a forgery, but there is good authority for the oath: ἐλεγχόμεθα κατὰ τούς νόμους, περὶ δὲ ἐν κατοικίας κρίνεις (cf. Dem., XX, 118, XXIII, 96, XXIX, 40, LVII, 63; Æsch., adv. Ctes., 31; Arist. Pol., III. 16. 5 init.; Pollux, VIII, 122), and the undertaking cited in Dem., XXIV, 149, to vote in accordance with Psephismata as well as laws is supported by Dem., XXIII, 96. There is some doubt whether all the citizens took the Heliastic oath, or only those who applied to serve in the jury courts each year and were included in the lists by the lot. The first view, which is adopted by Kahrstedt (op. cit., p. 3, note 1), receives some support from Harpocratin s.v., ἄρθρητος: Λυσίας ἐν τῷ πρὸς Ἐλεύθερον τότος Ἀθηναίων . . . . ἐν τούτῳ, φασί, δημοσίᾳ πάντες ὁμος Ἀθηναίοι τὸν ὄρκον τὸν ἡλιαστικόν (cf. Suidas s.v.). Both lexicographers add the information that Theophrastus in his Laws (written at the end of the fourth century B.C.) said that the practice of swearing-in the citizens had then been given up. In favour of the view that a special Heliastic oath was taken by those appointed to serve on the Heliaea, it is to be observed that only citizens over thirty years of age who owed no debts to the public treasury, and had not suffered loss of civil rights, were eligible to serve in the Heliaea (Aith. Pol., 63. 3). Lysias cannot, therefore, have been quite accurate in saying that all Athenian citizens took the Heliastic oath. On the other hand, it was usual to regard the Heliaea as itself representing the whole citizen body, both on account of the large size of the Heliaea and on account of the binding quality of its decisions (see further below, p. 120). Hence Lysias might well say that “all the Athenians” took the Heliastic oath when he meant in fact the 6000 selected as Dicasts each year. This conclusion is supported by Pollux, VIII, 122, who says that it was the Dicasts who swore the oath at Ardeittos (not the whole people).
to vote in accordance with the laws in matters about which there were laws, otherwise to give the most just decision possible."

But by far the most important limitations upon the Nomothetae, in a case where a new law was being proposed which conflicted with an existing law, were those which operated before the Nomothetae came into office at all, and even before the Ecclesia had met, towards the end of the first Prytany, to consider the new laws which were being proposed. The Leptines case reveals an essential feature of the procedure of revising laws at Athens which has not received the attention it deserves, namely the necessity for a preliminary trial (Graphe) between the old law and the proposed new one, before legislation initiated by a private person could come before the Nomothetae. It has already been pointed out that the trial of Leptines' preceded the appointment of Nomothetae to consider Demosthenes' new law.\(^1\) That this trial before a section of the Heliaea was an invariable requirement and not a special feature of the Leptines case is proved by the general law to this effect cited by Demosthenes himself.\(^2\) "If anyone believes any of the existing laws to be inexpedient, he is to enter an indictment against it (γράφεσθαι), bringing forward another proposed law which he wishes to substitute for it, and the Heliaea\(^3\) is to hear the case and choose the better alternative." Leptines had not carried out this requirement before proposing his own law, and consequently laid himself—or rather his law\(^4\)—open to the Graphe which Demosthenes, proposing an addition to the original law concerning ἰδρυματία, brought against it.

The same conclusion results from a passage in the speech against Timocrates. The orator asks why the law prescribes that no one shall propose a law contrary to an existing law

\(^1\)P. 113.
\(^2\)Dem., XX, 89: ὁ παλαιὸς, ὅν οὖς παρέβη, νόμος οὖς κελεύει νομοθετεῖν, γράφεσθαι μὲν, ἄν τίς τινα τῶν ὑπαρχόντων νόμων μὴ καλὸς ἔχειν ἔγγισαι, παρεισφέρειν δ' αὐτὸν ἄλλον, ὅν ἄν τίθῃ λύων ἐκεῖνον, ὅμας δ' ἀκούσαντας ἐλέεσθαι τὸν κρείττων.
\(^3\)ὁμᾶς in the text (cf. preceding note) refers to the Heliaea. On this point see further below.
\(^4\)See below, pp. 117-8.
without having the earlier law repealed first, and replies that it was in order to prevent two contrary laws from being in force at the same time, and also because the legislator (supposedly Solon) wished to make you the guardians of the law. For he realised that the other safeguards which he instituted could be rendered useless in many ways. The advocates whom you elect to defend the old law could be bribed to keep silent . . .

It is clear that "you" here refers to the Heliaea, addressed as ὧν ἀνδρεῖς δικασταί in many passages of the same speech, and in this one spoken of as if they were themselves the sovereign people and elected the five advocates. No one would seriously deny that both the action against Timocrates and that against Leptines were heard before the Heliaea, and in the case of Leptines it is clear that it was not held before the Nomothetae.

But although both these actions appear to be Graphae Against an inexpedient law, there is clearly a difference between them, in that the prosecutors of Leptines are proposing an alternative law, but the prosecutors of Timocrates are not. To this second case Demosthenes appears to furnish a parallel in a passage in which he suggests a way of completely revising the finances and revenue laws of the State. "Set up Nomothetae. But do not propose before them any new law, for you have

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1 Dem., XXIV, 34. That the abolition of the old law must precede the proposing of the new is clear from ibid., 109: καὶ τούτους (the old laws) ὅπι πρὶν δίπαι τόνδε τάθηκεν ἐπίστασθε.

2 According to the accepted view in Demosthenes' time. The attribution to Solon of laws of later origin is discussed in the Appendix to this article.

3 Dem., XXIV, 36.

4 Cf. also ibid., 37: τίς οὖν μόνη φιλακτή, καὶ δικαία καὶ βέβαιος, τῶν νόμων; οὐκεὶς οἱ πολλοὶ. This clearly refers to the Heliaea.

5 Cf. above, p. 113. Moreover Demosthenes (XX, 146) cites four σύνδικοι as advocates for the law of Leptines (here representing the old law), whereas an old law to be considered by the Nomothetae was supported by five συνήγοροι (Dem., XXIV, 23, 36).

6 Kahrstedt (op. cit., p. 24) is almost certainly right in maintaining that a Graphē against a Nomos was always a γραφῇ νόμον μή ἐπιτήδειον θείων, even if (as in the Timocrates case) it rested on the claim that the law in question conflicted with other laws or had been brought forward in an illegal manner. The nature and application of the Graphe Paranomon is discussed below, pp. 131 f.
plenty; simply repeal all those which at the present time are injurious to you, I mean those concerning the Theoric and Military Funds." 1 He goes on to say that the proposal of new laws can be proceeded with later, when this fatal obstacle of the existing finance laws has been removed. 2 Unless, therefore, the proposal of Demosthenes was as startling from the constitutional as he admits himself that it was from the purely financial point of view, it is reasonable to conclude that the similar case of Timocrates, where again no alternative proposal was under consideration, was held before the Nomothetae. 3 If this be admitted, it follows that the Nomothetae were simply a section of the Heliæa appointed for the purpose, whenever the Ecclesia decided at the beginning of the year on a revision of the laws. The conclusion is supported by the way in which the orator addresses the court, usually as ὃ ἀνδρες δικασταί, but in one passage as the actual makers of law. 4

If, then, an illegal or inexpedient proposal in some way became law, a case could apparently be brought against it before the Nomothetae in the ordinary form of a Graphe; and without an alternative law being proposed, the Nomothetae could condemn the law so attacked. But before any new proposal could in due form become law, it had to be subjected to the initial test in the Heliaea before it reached the Nomothetae. As to the regulations prescribed for such a Graphe, the proposer of a law could only be attacked in person by it for the period of a year after its first proposal, 5 as happened in the case of Timocrates' proposal.

1 Dem., III, 10 (349 8 B.C.). Kahrstedt (op. cit., p. 4) interprets this passage as evidence for a general financial competence of the Nomothetae where reorganisation was involved. This, however, is most unlikely. See further below, pp. 123 f.

2 Dem., III, 11.

3 The chronological aspect of this conclusion is discussed below, p. 118, note 1.

4 Dem., XXIV, 123: οὔδε νόμον τοιοῦτον τίθεντ' ὅπου ἔδοξαί ἦσσαι ἐξαμαρτεῖν, ἀλλὰ τοῦνατιν, ὅπως μὴ. ὅπως οἱ τὰ ἄνθρωπα καὶ τὰ δεινότατα ποιοῦντες δίκαιν μὴ δψόουν. The activity of the same court as Nomothetae is contrasted with that of Timocrates and his friends.

5 Dem., XX: Hypoth., II, 3: νόμος γὰρ ἄν τὸν γράφαντα νόμον ἐς ἄρθραμα μετ' ἐναντίων μὴ εἶναι ὑπεύθυνον. It is not clear from what moment this year was reckoned in the case of a Nomos (cf. Daremberg-Saglio s.v. Graphe, p. 1658), but in the case of a Psephisma it probably dated from its first proposal as a Proboleuma in the Boule (cf. Schoemann, The Assemblies of the Athenians,
illegal law concerning the granting of bail; on the other hand the death penalty was sometimes enforced, and after the lapse of a year it was still possible to bring an indictment against the law itself, as in the action against Leptines, where no penalty against an individual was involved. It may incidentally be observed that this procedure would leave even the most ancient laws open to revision. A necessary preliminary to the bringing of the case was the citation of the accused to appear before the Thesmothetae, if there was a personal defendant. In any case the Thesmothetae had to give permission for the charge to be brought and supervised the drafting of the alternative law proposed by the accuser.

Thus even before the proposal for a new law reached the stage of a Graphe before the Heliea, it was subjected to careful scrutiny. Moreover it received much publicity; copies of the proposed new law had to be posted in front of the statues of the Eponymi, and sent to the secretary of the Boule, who was 1838, p. 162). On this analogy it is to be supposed that the proposer of a Nornos was liable to attack for a year after he proposed it in the Ecclesia (see below, p. 119).

Dem., XXIV, 214, etc. If, therefore, Timocrates' case was heard before Nomothetae (cf. above, p. 117), it must have been brought against him immediately, when the regular Nomothetae had been appointed at the end of the same Prytany as that which had seen his own appointment of extraordinary Nomothetae (cf. Dem., XXIV, 27 f.). Since there was apparently a law forbidding the mere abolition of a law (without substitution of a fresh one) except ev nómoiteitōs (cf. Dem., XXIV, 33), Timocrates no doubt counted on the lapse of more than a year, which would have put him out of personal danger.

Dem., XXIV, 138. Dem., XX, 144.

Cf. in general Ath. Pol., 59, 2, and for a special case (the Leptines trial), Dem., XX, 98, 99.

Cf. Dem., XX, 99: ἐγώ δ', ὅτι μὲν θῇ ψήφῳ τοῦ τοῦτον νόμου λυθέντος, τὸν παρεισενεχθέντα κύριον εἶναι σαφῶς ὁ παλαιὸς κελεύει νόμος, καθ' ὅν οἱ θεομοθέται τοῦτον ὠμίν παρέγραψαν, εάυτος. Similarly in a Graphe Paranomon, the laws which were claimed to be transgressed by the new proposal were cited in the παραγραφή, as is shown by Dem., XXIII, 215.

Dem., XX, 94. The publicity given to the proposal for a new law at this stage is not to be confused with the sending of copies of the old as well as the proposed new law to be posted near the statues of the Eponymi during the first Prytany of the year, a few weeks before the appointment of Nomothete. At the later stage, just before the Nomothesia, there were no copies of the document sent to the secretary of the Boule, nor were the documents publicly read in the Ecclesia (cf. Dem., XXIV, 23).
required to read it publicly at every meeting of the Ecclesia until the trial came on,¹ in order, says Demosthenes, that each one of the Dicasts who would be called upon to vote in the Graphe would have full knowledge of the material for consideration and plenty of time to consider it. This procedure would also give an opportunity to anyone present in the Ecclesia to declare his intention of entering an indictment ² against the new law being proposed, on the ground of its illegality or inexpediency, thus automatically preventing the proposal of the new law from being further proceeded with, until after the indictment against it had been brought.

It thus appears that control by the Ecclesia and opportunity for objection by any Athenian citizen began at a very early stage in the history of a project for a new law which altered or conflicted with an old one.

To resume the conclusions already reached: the proposer prepared his law and approached the Thesmothetae with his proposal. If the Thesmothetae permitted a Graphe to be brought against an old law or its proposer on this basis, the proposed new law was read several times before the Ecclesia. At one (presumably the last) of these meetings it was voted upon by the Demos and became a Psephisma, as appears from a passage of Demosthenes concerning a new law which he himself had introduced.³ Then, if no one gave notice of his intention to

¹ Deinarchus (ad顶层设计., 42) accuses Demosthenes of having taken bribes to make alterations in his proposed law concerning the Trierarchy (for which see following note) at every meeting of the Ecclesia (μετέγραφε καὶ μετασκέ- ναξε τὸν νόμον καθ’ ἐκάστην ἐκκλησίαν).

² The intention of bringing an indictment was declared in a ὑπωμοσία, for which cf. Schoemann, op. cit., p. 157 f. It is defined by Pollux (VIII, 56) as follows: ὑπωμοσία δὲ ἐστιν, ὅταν τις ἡ ψῆφισμα ἡ νόμον γράφοντα γράφη- ται ὡς ἀνεπιτήδειον. Cf. also ibid., 44: ὑπομοσάμενος γὰρ τις τὸ γραφέν, ὦ ἡ κατηγορία ὑπωμοσία ἑκαλείτο, διήλεγεν διὶ ἐστὶ παράνομον, ἡ ἀδικον, ἡ ἀνυπόφορον. This implies that the indictment when it came would be either a Graphe Paranomon or the Graphe “Against an inexpedient law.” The passing of Demosthenes’ law concerning the Trierarchy was temporarily postponed through a Graphe being brought against it following upon a ὑπωμοσία (Dem., XVIII, 103).

³ Cf. Dem., XVIII, 105. Referring to his own law about the Trierarchy (see note above) in his speech On the Crown, he asks the clerk of the court to read “the Psephisma on account of which I was indicted under the Graphe.” (καὶ
prosecute the proposer of the new law, he proceeded with his own prosecution of the old law or its proposer in a public trial before the Heliaea. If the Heliaea signified their approval of the proposed new law by condemning the old one, and if at the next vote in the Ecclesia upon the existing laws in general (ἐπιχειροτονία τῶν νόμων) it was decided to make any alterations in the section under which the proposed new law fell, expert advocates were elected to defend the cause of the old law. If these failed to convince the Ecclesia that the old law was preferable, the Nomothetæ (consisting simply of a section of the Heliaea) were at last appointed and gave their decision. It is not unlikely, though not certain, that the Ecclesia had to ratify the decision of the Nomothetæ before the project at last became law.

It is apparent that the whole cumbrous procedure is not only calculated to prevent the ill-considered introduction of new laws, but is also intensely democratic. The view that in this matter the sovereign Demos delegated its authority to an irresponsible council of Nomothetæ cannot be accepted. It is true that most of the formalities seem to have been introduced merely for the purpose of giving as much publicity and opportunity for objection as possible, but the trial before the Heliaea was of fundamental importance, and the Nomothetæ in fact fade into insignificance before the Dikasterion. The project could not become law without the Nomothetæ, but there is reason for thinking that where a new law was under consideration, so far from debating two alternative propositions they were bound to adopt the proposal already accepted by the court which had heard the Graphe. For the decision of any Athenian court was normally binding upon the whole State, whatever the size of the Dikasterion, the theory being that the verdict of the Dicasts was merely a reaffirmation, in relation to the case at issue, of the existing law.\(^1\) The decision which

\[\text{μοι λέγε πρῶτον τὸ ψήφισμα καὶ δ' εἰσῆλθον τὴν γραφήν} \]

and the documents relating to the trierarchic law are then cited. The so-called Psephisma included in the text (§ 105) shows however, by its form that it is an interpolation.

\(^1\) Cf. Dem., XXI. 223 f.: καὶ γὰρ αὐτὸ τοῦτ’ εὶ θέλοιτε σκοπεῖν, καὶ ζητεῖτε τῷ ποτ' εἰσὶν ὑμῶν οἱ δει δικαίωσεις ἱσχυοί καὶ κύριοι τῶν ἐν τῇ πόλει πάντων, ἐὰν τε διακοσίους ἐὰν τε χιλιούς ἐὰν δ’ ὀποσουσοῦν ἢ πόλις
they reached was in theory always the right one, and no subsequent law or decree could override it; nor was any appeal possible from a sentence passed in the Heliae, except conceivably in the case of a non-Athenian. Moreover, even in a case which, although covered by an existing law, revealed an aspect of it which had not come to light before, the verdict of the Heliae was still binding upon the whole State, and in this non-technical sense the Dicasts could themselves be regarded as Nomothete, as Lysias in one of his speeches points out to them. Their power to create a precedent under these limitations—strict adherence to the existing law in so far as it covered the case at issue—was safeguarded by the form of

1 Cf. Dem., XXIV, 75 f. The orator urges that the chief difference between oligarchy and constitutional government is that in an oligarchy anyone in power may cancel past decisions, whereas in a democracy the past decisions of the Dikasteria remain inviolable and new laws are never made to apply retrospectively. Timocrates, however, has introduced into the Athenian democracy the practice of oligarchies, and perì tòn parellhóv tôv autòv kuriòtérōn tòn katagyvntwn dikastáv hēiwsa poýsai. This is one of the chief grounds of attack against his law: cf. ibid., 78: ἃρ᾽ οὖν τῷ δοκεῖ συμφέρει τῇ πόλει τοιοῦτος νόμος, δὲ δικαστηρίου γνώσεως αὐτὸς κυριότερος ἔσται, καὶ τὰς τῶν ὁμομοίωτας γνώμας τοῖς ἀνωμοίωτοι προστάξει λύειν;

2 Cf. Daremberg-Saglio s.v. Ephesis, p. 640. The only appeal from the Heliae, according to Pollux, VI 11.62, was to the Ἐρεπτης ἀναίρεσις. Nothing further is known of this court at Athens, but its name implies that it concerned only cases where a now Athenian was involved, and it may refer merely to the summary jurisdiction of the officials of the port mentioned by [Xen.] De Vect., 111. 3. Cf. also Arist., Pol., IV, 16, 3, 4 (1300b).

3 Lys., XIV, 4: εἰκός τῶν ἑστίν, ὃ ἀνδρεῖς δικασταί, ἐξ ὧν τὴν εἰρήνην ἐποιησάμεθα (i.e. since the restoration of democracy and the reform of the laws in 403 2 B.C.), πρῶτον περὶ τούτων νυν δικάζοντας μη μόνον δικαστάς ἀλλὰ καὶ νομοθέτας αὐτοὺς γενέσθαι, εὖ εἰδότας ὅτι ὅπως ἂν ὑμεῖς νυν περὶ αὐτῶν γνώτε, οὕτω καὶ τὸν ἄλλον χρόνον ἡ πόλις αὐτοῖς χρήσεται. The same principle is recognised by Aristotle (Pol., III, 16, 10, 1287b).

4 Lysias points out in another speech (XV, 10) that the Dicasts must remember that in fact they are not Nomothete, and that they must not be tempted by considerations of clemency to deviate from the existing law in any particular case: καὶ μὲν δὴ, ὃ ἀνδρεῖς δικασταί, εἰ τῷ δοκεῖ μεγάλη ἡ ζημία εἶναι καὶ λίγαν ἵσχυρόν ὃ νόμος, μεμηχανόν χρῆ ὅτι ὃν νομοθετήσοντες περὶ αὐτῶν ἥκετε, ἀλλὰ κατὰ τοὺς κειμένους νόμους ψηφιοῦμενοι.
their oath—which bound them to take "the most just decision possible" where there was no existing law or Psephisma to guide them.¹

We seem then to be faced with a dilemma. If the Nomothetae could override a decision of the Heliaea concerning the expediency of introducing a new law—which was precisely a decision of the type considered above—this would be a grave departure from a fundamental principle of the Athenian democracy. If, on the other hand, they could not do this, but could merely accept the decision of the Heliaea, what was the object of appointing Nomothetae at all? To the first objection there is no answer; in answer to the second it may be suggested that there were strong practical reasons in favour of this course and no theoretical reasons against it. In practice, the delay involved in appointing Nomothetae gave opportunity for still further consideration of, or objection to, a proposed new law, and by others than those who had acted as Dicasts at the Graphe; it was also in accordance with the traditional Athenian belief in the majesty and inviolability of the laws.² With regard to the theory, the validity of the decision as a purely judicial one was in no way affected by the question whether the proposal concerned was or was not later transformed into Nomos. But the only conceivable case in which the Nomothetae may have

¹ See p. 114, note 4.

² In the γραφή νόμον μὴ ἐπιστήμην θείνα the Dicasts had to consider both the law being attacked and the proposed new law under definite heads: (i) its legality (τὸ νόμμου), i.e. whether it accorded with all other laws, as well as whether it had been or was being carried through in due form (cf. Dem., XXIV, 108); (2) its expediency for the State (τὸ συμφέρον, τὸ ἐπιστήμην); (3) its abstract justice (τὸ δίκαιον), which in practice meant very much the same as τὸ συμφέρον, as Thrasymachus and his like had long observed (cf. also Arist., Pol., III, 12, 1, 1282b). (For these headings cf. Dem., XXIV, 108 f., Pollux, VIII, 56 (cited above, p. 119, note 2), and the Hypotheses to the speeches of Demosthenes against Leptines (II, 7, 6) and Timocrates (I, 4; II, 5, 9). Hypothesis II adv. Timocr., § 9, adds as a fourth heading "practicability" (τὸ δυνατόν), which must always have been taken for granted. When the final decision was given in favour of the new law, it is evident that a part of the decision had no basis in τὸ νόμμου, but merely in τὸ συμφέρον and τὸ δίκαιον, so that here the Dicasts were already Nomothetae in the non-technical sense suggested by Lysias. Cf. above, p. 121, note 3.

³ Cf. Dem., XXIV, 212 f.
had power to reverse the decision of the Heliaea is that of a
Craphe brought against an old law, where no personal defendant
was involved. Since such a case is parallel to no other among
the decisions of the Heliaea, it may perhaps have been differently
regarded from the rest.

This conclusion reached above may still seem paradoxical,
but it is to be observed that the system did not reduce the Nomo-
thetae to mere figure-heads. Apart from their function of
acting as a court of law in certain Graphe “Against an inexpedient
law,”¹ it would fall to them to make sure that each particular
law proposed for ratification had passed through all the pre-
liminary stages, and had already received the approval of the
Dicasts in that particular form. But for this important work,
al the elaborate precautions of the earlier procedure would be
rendered useless.² Consequently a certain length of time,
varying according to the number of new laws proposed for
ratification, was necessary for the Nomothetae to remain in
office, and the Ecclesia prevented dilatoriness (to which the
Nomothetae might otherwise have been tempted in order to
earn more pay or for other improper reasons) by prescribing
definitely this length of time in advance.

The number of proposed new laws which were brought
forward in any one year in accordance with the elaborate pro-
cedure which has been discussed cannot have been very large.
But it is to be observed that so far we have been concerned
only with proposals by private citizens of laws which conflicted
with existing laws. This form of legislation has indeed been
supposed to have been the only one with which the Nomothetae
were concerned.³ But this conclusion, based on the orators,
fails to take account of several inscriptions which show that
additions to existing laws which did not conflict with them
also came before the Nomothetae. Thus, for example, in I.G.

¹ Cf. above, p. 116.
² The passing of the law of Timocrates, who had the audacity to bring about
an extraordinary appointment of Nomothetae for the purpose (cf. Dem., XXIV,
28) was a striking illustration of the consequences of insufficient investigation by
the Nomothetae. Timocrates’ proposed law had not in fact gone through any
of the earlier stages (ibid.).
³ Cf. De Sanctis, Atthis, p. 443.
II, 222, it is resolved by the Boule, in a Probouleuma later brought before the Demos, that a temporary payment shall be made out of the special fund to a Delian who is to receive Athenian citizenship and a pension, but "the Proedroi and Epistates in office at the time are to propose before the Nomothetæ as an addition to the law that the Apodectæ shall pay over this money each year to the Treasurer of the Demos, and he shall pay it over to Peisitheides in each prytany." Similarly in I.G. II, 330, which is also a Psephisma of the Demos following upon a Probouleuma, it is provided that money for a complimentary gold crown shall be temporarily lent in advance by the Treasurer of the Demos, but in order that the Treasurer may recover this sum, "the Proedroi . . . are to make a proposal before the Nomothetæ as an addition to the law concerning the payment." Exactly the same provision is again made in a Psephisma of the Demos of 329 B.C. concerning the grant of a crown to the organisers of a festival, that the Treasurer is to advance a certain sum and an addition to the law concerning such payments as were authorised by him is to be made, in order that he may recover the amount from this new source. It is clearly wrong to regard these three inscriptions, and in addition I.C. II, 244, which has already been mentioned, as

1 Cf. I. 24: τοὺς δὲ πρυτάνεις δοῦναι περὶ αὐτοῦ τὴν ψῆφ. ν τῶν δ' ῥημάτων εἰς τὴν πρώτην ἐκκλησίαν. That the Probouleuma is incorporated in a subsequent Psephisma is shown by the appearance (twice under the whole inscription) of the words ὁ δῆμος surrounded by a wreath, also by the parallel of other decrees of the Demos conferring honours upon foreign benefactors (cf. I.G., II, 218, 284, 351).

2 ἐκ τῶν εἰς τὰ κατὰ ψηφίασμα. Cf. above, p. 112.

3 I.G., II, 222, 1. 41: ἐν δὲ τοῖς νομοθεταῖς τῆς προεδρείους οἱ ἐπὶ προεδρεύωσιν [καὶ τὸν ἔπαθτην προσνομοθετη] σαι τὸ ἀργύριον τοῦ κεκάθεται τῷ ταμίᾳ τοῦ δήμου[ν εἰς τὸν ἔναν ἐκαστόν]. ὁ δὲ ταμίας ἀναθοδότως Πεισιθηίδει κατὰ τὴν προτασθ. νεικείται κατά τὴν πρωτασθήν.

4 Ibid., 330, 1. 5, 10-15.

5 Ibid., 1. 15 f.: ὅπως οὐ τῷ ταμίᾳ τοῦ ἀργύριου τὸ εἰρημένον, τοῖς προεδρεύοντι οἱ δεκάχων προεδρεύει τοῖς νομοθεταῖς προσνομοθετη] σαι περὶ τοῦ ἀναλάματος.

6 I.G., VII, 4254, 1. 9: ἐκκλησία: λ. 21, δεδοχθαὶ τῶν δήμων.

7 It would appear that the province of each several magistracy was defined by a separate law. Cf. above, p. 110.

8 Cf. above, p. 112.
evidence that the Nomothetae remained in office throughout the year, and had full responsibility for any alterations which it was proposed to make in the standing payments out of State funds. On the contrary, it was decided in advance, by the Probouleuma and the Psephisma which followed it, precisely what alteration in the existing law was to be made by the Nomothetae, and the Proedroi and Epistates who should be in office at the time were bound to put this alteration to the Nomothetae, in one case on pain of a heavy fine. Moreover the Nomothetae are evidently not already in office at the time when this

1 Cf. Kahrstedt, op. cit., p. 4 f. There is no evidence from I.C. II 2, 244 for the date when the Nomothetae reached their decision; 1. 21 f., which Kahrstedt regards as establishing the fact that it was "gegen Ende desAmtsjahres," merely provides that payments in accordance with the new law concerning the fortifications are to be made in the first, fifth, and ninth prytanies.

2 These were nine men chosen each day by lot, one from each of the tribes except the presiding one, to bring motions before the Boule and Ecclesia (cf. Ath. Pol., 44, 2 f.). They chose an Epistates from among their own number. Aristotle does not mention them as presiding over the Nomothetae (to whom indeed he makes no reference at all either in this treatise or in the Politics) and it has usually been supposed that the Proedroi and Epistates "of the Nomothetae" (mentioned in I.G. II 2, 222) were a different board from the presidents of the Boule and Ecclesia (cf. Daremberg-Saglio s.v. Nomoi, p. 100). Kahrstedt (op. cit., p. 3, note 2) regards them as the same, and this is certainly the obvious interpretation of the decrees considered above. The Proedroi and Epistates of the Nomothete, whose business it is en tois nomothetais proseu'mothe'th, can scarcely be other than the nine men usually designated by this name, otherwise the decree itself would give rise to confusion; yet in I.G. II 2, 222, it is "the Proedroi and Epistates of the Nomothetae" who are to be fined if they do not put the matter to the vote. Evidently then there was only one set of Proedroi and Epistates, and on the days when the Nomothetae met the Proedroi and Epistates presided over them just as they did over the Boule and Ecclesia. It does not follow that there could not be a meeting of Boule or Ecclesia on the days when the Nomothetae met, but merely that the meetings could not be held at the same time, unless, as happened occasionally if not always, the Boule as a whole was associated with the Nomothetae. Cf. Kahrstedt, op. cit., p. 3. Kahrstedt denies that the Boule can always have been associated with the Nomothetae (although this is implied by Dem., XXIV, 26, as well as being stated by Pollux, VIII, 101) on the grounds that in that case it would have been mentioned in the inscriptions concerning Nomothetae. It is not, however, mentioned in the δώμα τῶν νομοθετῶν cited in Dem., XXIV, 63, although it is known that the Boule was associated with the Nomothete on that occasion (ibid., 27); and if the Boule was always associated with the Nomothetae there was no reason why it should be mentioned in the resulting δόμματα.

3 Cf. I.G. II 2, 222 ad fin. (1000 drachm each).
resolution is passed, but will be in office at some time in the future, namely at the next Nomothesia. So far therefore from proving that the Nomothetæ remained in office throughout the year, these inscriptions prove that they did not do so.

They also serve to corroborate the statement of the "Old Oligarch" referring to the fifth century B.C., that one of the functions of the Boule was to consider proposals for new laws—a statement which has hitherto been regarded with suspicion. ¹

Although the inscriptions of this class all happen to be concerned with purely routine additions to the law regulating the expenditure of the Treasurer of the Demos, there is reason to think that not all the matters referred to the Nomothetæ by the Ecclesia in advance, during the course of the previous year, were of this character. It is hard to see how the Thesmothetæ of one year can have carried out their obligation to bring cases of conflicting laws already in force before the Nomothetæ of the next year ² unless they did this by proposing a Psephisma in the Ecclesia, in the form illustrated by these inscriptions.

But in any case the existence of a second method of bringing up new laws, as revealed by these inscriptions, provided an open door for unscrupulous legislators. It was a very much simpler procedure than the one involving the Graphe against an old law. All that was necessary was a Psephisma in the Ecclesia, following upon a Probouleuma in the Boule, and containing the formula προσωνυμητήσαι ἐν τοῖς πρώτοις ν μέταται. It is true that the proposer of such a Psephisma risked being attacked in a Graphe Paranomon, a procedure which closely resembled the Graphe "Against an inexpedient law," ³ and was concerned with the same charges, but could only be brought against a proposal (or, if within a year of its passing, against its author) while it was still a Psephisma. ⁴ But if he

¹ Cf. [Xen.] Ath. Pol.: τὴν δὲ βουλήν βουλεύοντοι πολλὰ μὲν περὶ τοῦ πολέμου, πολλὰ δὲ περὶ νόμων θέσεως. Wilamowitz, op. cit. (cf. above, p. 108, note 1) accepts the information as correct, but interprets it to mean that what the Boule deliberated upon was only the application of long-standing Athenian laws to other States within the Athenian empire.

² Cf. above, p. 110, note 4.

³ Cf. above, pp. 116 f.

⁴ On the Graphe Paranomon see further below, pp. 131 f. An example is the indictment brought against Demothenes, mentioned above, p. 119, notes 2, 3.
escaped this indictment, which might well happen if his proposal was popular or proposed late in the year, the proposal would go straight to the Nomothetæ already blessed by the Ecclesia. At no stage was any publicity given to the proposal except when it actually came before the Boule and Ecclesia, and the unscrupulous legislator could no doubt contrive to choose meetings when the subject covered by his proposed law would be taken at dawn as soon as the Ecclesia or Boule met, or in the evening when all but his supporters had dispersed. It is true that in theory the simpler procedure existed only for the purpose of making additions to the existing law which were not already covered by the other procedure; the simpler method presumably concerned either wholly new laws dealing with a sphere not covered at all by any existing law—a type which in view of the highly complex state of fourth-century Attic law can scarcely have existed in practice at that period—or additions already covered in intention by an existing law, such as were the proposals made in the inscriptions which provide our chief evidence for this procedure.

The removal of existing contradictions in the recognised code was, as we have seen, the responsibility of the board of Thesmothetæ, not of individuals. But although the scope of the simpler procedure of law-making was in theory limited, it was very difficult to define, and herein lay the danger. For example, the inscriptions considered above concern what were clearly regarded as purely routine additions to the law regulating the expenditure of the Public Treasurer; since the Demos had long followed the practice of conferring special privileges on those who had deserved well of the State, it was evident that the extra expenditure entailed must also be regarded as in accordance with the laws. But in fact it is doubtful whether a general law existed empowering the State to grant such δωρεά to its benefactors, since the evidence for it is not quoted.

1 For the fixed order of proceedings at the various meetings of the Ecclesia, cf. Ath. Pol., 43, 5, 6. The danger of conducting important business late in the day is illustrated by Dem., LVII, 9, 10, which, however, concerns a meeting in Athens not of the whole Ecclesia, but of the citizens from a single deme.
in the Leptines case where it would have had great weight.\(^1\)

If, then, there could be uncertainty about the legality of what had been the established practice of the Demos for at least three-quarters of a century at the time of Demosthenes’ speech, the proposers of new laws, who, according to Demosthenes, were making new proposals almost every month,\(^2\) had plenty of scope for unscrupulous ingenuity. Such a man was Leptines himself, who according to Demosthenes had not had copies of his proposed law posted near the Eponymi and sent to the Secretary of the Boule, had not had it read in the Ecclesia, had not brought a Graphe against the old law, in short had not carried out a single one of the many formalities\(^3\) necessary for anyone proposing a new law which conflicted with an old law. Since his law was actually passed,\(^4\) it is evident that what he had done was to adopt the alternative procedure, maintaining that since there was no law in existence regulating the grant of δωρεάι by the State, his own could not be in conflict with it, and that consequently he was not obliged to take it through the elaborate procedure of the initial Graphe and the other formalities enumerated by Demosthenes. Moreover he could rest secure in the knowledge that, once his law was passed, having been laid before the Nomothetæ, it would override any Psephismata whatsoever,\(^5\) so that his only danger was in the interval during which his Psephisma remained a Psephisma in conflict with the

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\(^1\) Demosthenes quotes instead: (1) a law of Solon concerning freedom of bequest by private individuals; he maintains that grants by the State are analogous (Dem., XX, 102 f.); (2) Psephismata proving that δωρεάι were in fact granted by the State as early as the time of the Peloponnesian War (ibid., 115, a decree of Alcibiades granting land in Euboea to one Lysimachus); and (3) a law of uncertain date, but probably passed at the time of the restoration of the democracy in 403 B.C., forbidding the taking away of δωρεάι already granted (ibid., 96. The probable date of this law rests on its resemblance to the second of the laws cited by Andocides, De Myst., 87.)

\(^2\) Dem., XXIV, 142: οἱ δὲ παρ᾽ ἡμῶν βήτορες . . . . δοσὶ μηνες μικρὸι δέοιοι νομοθετεῖν τὰ αὐτοῖς συμφέροντα.

\(^3\) Dem., XX, 94: τούτων τῶν τοιαύτων δοντων δικάων τὸ πλῆθος, οὔτοις μὲν οὐδὲ ὑποίησε Λεπτῖνης.

\(^4\) Cf. above, p. 118.

\(^5\) For the law ἡθίσωμα δὲ μηδὲν, μήτε βουλῆς μήτε δήμου, νόμον κυριωτέρον εἶναι, see Andoc., De Myst., 87, 89 (referring to 403 2 B.C.), Dem., XXIII, 87; XXIV, 30.
other innumerable Psephismata which had already granted such privileges to benefactors. During this interval he no doubt thought himself sufficiently covered by the popularity of a proposal which was designed to abolish, at a time of great financial stress, during the Social War, the freedom from liturgies granted to benefactors of Athens. "Expediency" was in fact the argument on which he chiefly relied when Demosthenes subsequently brought an indictment against his law. He realised no doubt that the well-known gullibility of the Ecclesia was never more in evidence than where immediate measures of financial advantage were under consideration.

It was presumably by similar arts that the fourth-century Athenian orator Aristophon succeeded in passing numerous new laws and surviving no less than seventy-five unsuccessful indictments under the Graphe Paranomon, retaining popular support and respect to the end of his long career. But in fact it was one of the weaknesses of the Athenian democracy that it had no effective protection against unscrupulous orators, with the result that the courts were not infrequently confronted with conflicting laws even in the time of Demosthenes, with all the other safeguards in full vigour. These protections were fairly efficient when the proposed new law was obviously inexpedient for the State and calculated to serve private ends, as was the law of Timocrates concerning debts to the State. Realising that his proposed law combined all the possible flaws at once,
Timocrates did not venture even upon our simpler form of procedure, but was reduced to the desperate expedient of arranging for an extraordinary appointment of Nomothetae. This was a device which can rarely have been tried, otherwise its patently revolutionary character would surely have prevented it from succeeding in this instance. A more constant danger was the orators of the type of Leptines, who were able to conform outwardly to the established laws and constitution, and still to bring about, through the simpler form of procedure, the passing of inexpedient new laws.

This raises the question why the machinery devised to make difficult the introduction of undesirable decrees failed to achieve its purpose. We are told in a speech ascribed to Antiphon that there were several ways of taking proceedings against the proposer of such a decree¹ in the Ecclesia, according to its content and the manner of its proposal. The activity of the Rhetor (in the technical use of this word, as the author of any proposal in the Ecclesia), came under the scope both of the Graphe Paranomon and of the Law of Treason (εἰσαγγελτικός νόμος), and was further limited by the law which defined the qualifications of the Rhetor himself to address the Assembly. Under Solon’s law this last included stipulations as to age and moral character,² but even after Solon’s laws on the subject were repealed,³ presumably in 403 2, the Rhetor was still required to own land in Attica and to have children born of a legitimate marriage, conditions which ensured that he should be an Athenian citizen and could be threatened if necessary with loss of civil rights for himself and his descendants,⁴ as well as with loss of his property in less serious offences.

The Law of Treason, which was mainly concerned with naval or military commanders accused of negligence leading

¹ Ηαρπ. σ.υ. δητορική γραφή quotes the author of the speech κατὰ πρυτάνεως ascribed to Antiphon as saying ὅτι κατὰ διαφόρους νόμους αἱ κατὰ δητορικὴν γραφὴν εἰσάγονται.
³ Cf. Esch., adv. Ctes., 2. Aeschines declares the present precautions against unscrupulous proposers of Peophimata to be inadequate, and wishes the laws of Solon were still in force.
⁴ Cf. the sentence against Antiphon cited in [Plut.], Vit. Antiph., 24.
to the loss of armies or fleets, included also a clause applying
the same procedure to Rhetors who took bribes to make an
inexpedient proposal to the Demos. None of the delays per-
mittcd in other forms of indictment were permissible here,
the trial was held in the Ecclesia and the death-penalty was
involved. Consequently few persons accused under the Law
of Treason stayed to stand their trial, but went into voluntary
exile with the least possible delay. The law was already in
force early in the fifth century B.C., since Miltiades was tried
under it for “deceiving the Demos” in connection with his
ill-fated Parian venture of 489 B.C.

The Graphe Paranomon, the indictment for proposing a
Psephisma contrary to the laws, included illegality of various
types—illegality in the subject-matter of the proposal, in
the technical procedure adopted, and in the qualifications of
the proposer, who obviously could be attacked under the Graphe
Paranomon because he had no land in Attica or no children.
Yet some or even all of these requirements were frequently
neglected: Demosthenes proposed Psephismata of various
types for over thirty years without ever having had children.

1 As in the famous trial of the eight generals after Arginusæ (Xen., Hell.,
I, vii, 3 ff.).
2 Cf. Hyperides, Pro Euxenippo, 1 ff. The relevant clause in the law (ibid., 7)
was εἰς τις . . . . . . ήπται ήν μὴ λέγη τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων
χρήσατα λαβών.
3 Hyperides, ibid.
4 Ibid.
5 Cf. Herod., VI, 136.
6 The procedure is mentioned above, p. 118, note 5; p. 119, note 2; p. 126.
7 Kahrstedt (op. cit., p. 24) rightly points out that illegal laws (Nomoi) did
come under the scope of the Graphe Paranomon, which was limited to the
proposers of Psephismata. This contention is supported by the fact that all
recorded Graphe Paranomon are directed against Psephismata (cf. De Sanctis,
Atthis, p. 439, note 4. It is now clear, however, that the indictment against
Timocrates was a Graphe νόμου μὴ ἐπιτήδειον θείαν, as mentioned above,
p. 116, note 6). Conclusive in its favour appears to be Lycurgus, In Leocr., 7:
ὅταν μὲν γὰρ τὰς τῶν παρανόμων δικαίη, τοῦτο μόνον ἑπανορθοῦτε καὶ
ταύτην τὴν πράξειν καλλίτετε, καθ’ ὅσον ἄν τὸ ψήφισμα μέλλει βλάπτειν
tὴν πόλις.
8 Governed by the law that no Psephisma could override existing Nomoi
(cf. above, p. 128, note 5).
9 E.g. on the grounds that it had not been first proposed in the Boule (cf.
10 Dein., adv. Dem., 71.
and many Psephismata proposing new laws were transformed into Nomoi before they were revealed to be illegal; and this in spite of the fact that the Graphe Paranomon was already in existence in the time of Antiphan, and was probably introduced as early as 461 B.C., and although it was open to any Athenian citizen whatever to bring an indictment.

The explanation seems to be the general reluctance to prosecute, of which we often find indications in the orators, and which is quite understandable in view of the law which required the prosecutor to win at least one-fifth of the votes, on pain of paying a heavy fine and losing the right ever to sue in the courts again.

It was necessary to persuade the court not only of the illegality of the Psephisma in a Graphe Paranomon, but also that the case had not been brought to satisfy a private grudge, or from mere litigiousness, and that the proposal being attacked was against the best interests of the State. We get the impression from the orators that the Dicasts were as a rule more likely to be swayed by the personal aspect, or by considerations of expediency for the State, than by purely legal arguments. We know that in the Graphe Paranomon the aspect of expediency was one of the chief elements in the consideration; and although it is uncertain whether this was strictly in accordance with the law regulating the Graphe Paranomon or not, it was clearly prudent to permit it, as a further safeguard against legislators who had sufficient ingenuity to make their proposals

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1 Harp., s.vv., Ἀλκίβιάδης, Ἀποτελείχαι, Δικαστευτάς, Κελέοντες, Σκαφίων, Συνῆγορος (all words used by Antiphan ἐν τῇ πρὸς τὴν Δημοσθενοῦ γραφῆς ἀπολογίας). That Demosthenes' impeachment was a Graphe Paranomon is shown by the reference to the same trial in Ps.-Plut., Vit. Dec. Orat., 833 D. The terminus ante quem is fixed by Demosthenes' death in 413 B.C.

2 See further Appendix, pp. 142 f., 149.

3 Cf. e.g. Dem., XXIII, init.

4 Reff. in Daremberg-Saglio s.vv. Graphe, p. 1653, notes 4, 5. The fine was 1000 drachmas (about £40).

5 Cf. above, p. 122, note 2, and Dem. XXIII, 2: δει δε... μὴ μόνον τοῖς γεγραμμένοις ἐν τῷ ψηφίσματι δήμωσιν προσέχειν, ἀλλὰ καὶ τὰ συμβολώ μεν' ἐξ αὐτῶν ακοπεῖν.

It can easily be seen that few persons would be found willing to indict under the Graphe Paranomon a Psephisma which was popular with the majority, such, for example, as that of Leptines. It would be extremely difficult to convince the court that it was inexpedient for the State, and the accuser would be very lucky if he succeeded in obtaining one-fifth of the votes. The seventy-five acquittals of the popular orator Aristophon under this Graphe illustrate the great difficulty of obtaining a conviction. Thus the measures devised to prevent frivolous prosecutions and prosecutions for unjustified ends hindered the successful working of the elaborate machinery designed to prevent the passing of laws contrary to the existing laws and constitution.

In order that it may be possible to consider the general implications of the whole legislative system from the juristic point of view, it seems desirable at this point to summarise the conclusions which have already been reached as to the way in which it worked.

Hitherto it seems to have been generally supposed that in the fourth century B.C., when we find the system fully developed, Nomoi originated solely with the Nomothetae, while the People as a whole were limited to the passing of "decrees" (Psephismata). Moreover it has been supposed that the new Nomoi were first proposed, discussed and ratified, all within the limits of the short time during which the Nomothetae remained in office. It is now seen that these conclusions need to be modified. The Nomothetae were required, it is true, to ratify every single Nomos which was added to the existing code, but the Demos played a much larger part than has hitherto been recognised. There were two distinct methods of bringing a new Nomos into existence, according to whether it conflicted with an existing law or not. If it did so conflict, the Thesmothetae had to give permission for the Graphe "Against an inexpedient law" to

1 Cf. Dem. XXIII, 3: τοῦτον τὸν τρόπον καὶ λέγειν καὶ γράβειν εὖν, δὲν ἂν ἴκισθ' υμεῖς ὑπίδοιατε τε καὶ φαλάσασθε.

2 Cf. above, p. 129.
be brought against the old law, and the popular law-courts decided the issue before it came to the Nomothetæ. If there was no conflict, at least in appearance, with an existing law, the preliminary intervention of the popular law-courts was eliminated, but the popular Assembly (with the help of preliminary deliberation by the Boule) intervened and made the initial decision instead. Only in cases where no new law was being proposed, but where the abolition of certain existing laws was under consideration, do the Nomothetæ appear to have had greater responsibility, acting in this case as a law-court to decide a Graphe "Against an inexpedient law," although they were apparently selected with greater care than Dicasts in an ordinary popular law-court, being chosen out of the number of the Heliastæ, but by the Demesmen in the same way as the Council of Five Hundred.

The whole system is admirably summed up by Pollux, who says, "There were 1000 Nomothetæ, and they had power to abolish an old law, but not to set up a new one. For the new laws were scrutinised by the Boule, the Ecclesia, and the law-courts." The independent evidence of Pollux would perhaps not be convincing, but it rests upon his own study of the Athenian legal system, and provides a striking confirmation of the conclusions which have been reached independently of him through the evidence of the Athenian orators.

Thus it is clear that both forms of procedure for the passing of new laws were completely democratic in character, and we have seen that the numerous and elaborate precautions to prevent unscrupulous passing of new laws were wholly democratic also; such weaknesses as have been revealed were perhaps inevitable under so completely democratic a form of government.

It remains to consider the general implications of this system from the juristic point of view. What light does it throw upon

1 Cf. above, p. 117.

2 Cf. De Sanctis, op. cit., p. 442, citing as evidence the Psephisma of 403/2 B.C. quoted by Andoc., de Myst., 83 f. For further discussion of this Psephisma see Appendix, p. 148, note 3.

3 Pollux, VIII, 101: Νομοθέται δ’ ἔσαν χίλιοι, οἵς ἐξήν λῦσαι νόμον παλαίνων, ἄλλ’ οὐθείν νέον. τοὺς γὰρ νέους ἐδοκίμαζεν ἤ βουλή, καὶ ὁ δήμος, καὶ τὰ δικαστήρια.
the Athenian conception of the nature of Law itself? What was the relation of Nomos to the decrees (Psephismata) of the popular Assembly? To what extent was the law in practice modified as a result of decisions in the courts or upon the recommendation of legal experts?¹

To this last question, widely accepted opinion among students of Greek law would unhesitatingly answer that no such modifications were possible; that Law (Nomos) was something static and unalterable, so much so that a divorce between theory and practice was inevitable, and in practice the policy of the State was directed through Psephismata which had precisely the same force as law, but admitted of change.² But is not this view in fact at variance with the system of Nomothesia, whatever precise interpretation be given of the functions of the Nomothetae? If Nomos was regarded as fixed and immutable, why provide for the possibility of an annual revision of the laws and creation of new laws? Should we not rather expect the code of Nomoi to remain unchanged from the general codification of 403/2 until the new codification of 304/3 B.C.?³ And have we not in fact abundant evidence that many new Nomoi were established during this period?

Further, the view that Psephismata dealt with the same kinds of subject as Nomoi, and had exactly the same validity, is untenable. Although Kahrstedt maintains the contrary,⁴ there was a perfectly definite difference in the scope, as well as in the origin, of Nomoi and Psephismata after as well as before the codification of 403 2 B.C.; Psephismata were never independent of Nomoi, but related to them as particular cases to general principles. A passage in Demosthenes' speech against Leptines, sometimes misunderstood, makes this perfectly clear. The orator is speaking of the desirability of not changing old laws for new, and says that Solon's regulations (i.e. the more elaborate method involving the initial Graphe) did in fact prevent new laws from being passed for a long time.⁵ But when

¹ For the use made of these, cf. above, p. 110, note 4 ad fin.
² Cf. Glotz, La cité grecque (1928), pp. 193 f.
³ Cf. I.G., II 8, 487.
⁵ Dem., XX, 91 f.
the second and simpler method came in, and influential politicians began proposing laws "at any time they liked and in any chance fashion," the number of contradictory laws in force at the same time became so great that it had long been necessary, at the time when Demosthenes was speaking, to entrust the discovery of the contradictions to experts specially appointed for the purpose, and still the end was not in sight; indeed the laws (Nomoi), in accordance with which Psephismata ought to be passed, are no better than Psephismata; in fact they are of more recent origin than the Psephismata themselves. It is evident from the context that the orator is here contrasting what ought to be with what is; he does not mean (as Kahrstedt strangely supposes him to mean) that Nomoi in the technical sense of Demosthenes' time (i.e., according to Kahrstedt's interpretation, laws which had either been included in the code in 403 2 B.C., or had originated with the Nomothetai) were of more recent origin than Psephismata, and that there was no difference, either in fact or in theory, between Nomoi and Psephismata in the matter of scope and validity. What Demosthenes does mean is that in theory Psephismata ought to depend on Nomoi, so that no Psephismata should precede the law (Nomos) on the same subject; but that in practice Nomoi are now being introduced which are dependent on previous Psephismata.

This interpretation of the proper relation between Nomos and Psephisma is accepted as a general principle by Aristotle, Dem., XX, 91: ἐπειδὴ δὲ τῶν πολιτευμένων τινές διυπηρέτες, οὐ εὖ πυθόταται, κατασκευάζαν αὐτοῖς ἐξεύθεν νομοθέτες ἄν τις βοηθήτω καὶ ὃν ἄν τύχῃ τρόπον, τουσοῦτοι μὲν ἐναντίον οὕτως αὐτοῖς εἰς νόμοι ἀπτε ἑξεροτοιεῖτο ὡμές τὸσ διαλέγοντας τοὺς ἐναντίον ἐπὶ πάμπολον ἀντὶ λεύσων ἐπικό λέγον, καὶ τὸ πράγμα οὐδέν μᾶλλον δύναται πέρας ἐχεῖν.

1 I.e. the one described above, pp. 123 f.
2 Dem., ibid.: ψηφισμάτων δ' οὖν διαφέρουσιν οἱ νόμοι, ἀλλὰ νεώτεροι, καθ' οὓς τὰ ψηφισματα δεὶ γράφεσθαι, τῶν ψηφισμάτων αὐτῶν όμών εἰσίν.
4 Ibid., p. 16.
5 Kahrstedt.
who frequently insists upon the impossibility of the laws (Nomoi) dealing with anything but general principles. The details of government and administration must be left to human agents, and in a democratic state this work is left to the law-courts and the Ecclesia. But in a State where the laws (Nomoi) have absolute validity, ipso facto and of necessity Psephismata have not. If Psephismata have this authority, it is not a constitutional government at all, but government by demagogues. Such is Aristotle's view. That it was also the view held in Athenian law-courts in the fourth century B.C. is shown by the passage of Demosthenes quoted above (p. 135 f.).

The essential difference between Nomos and Psephismata lies, then, not in their authorship—for in the last resort the assembly of the citizens, the Demos, must in a democracy be responsible for both—but in their content. A Nomos propounds the general principle, a Psephisma is a decree in accordance with that principle. The existence of Nomoi and Psephismata concerning the same subject, as, for example, grants of immunity from taxation, is therefore only to be expected and certainly does not mean that Psephismata were on exactly the same footing as Nomoi. Among a series of definitions ascribed to Plato are found two defining Nomos as "A decision of the people not limited to any particular time," and Psephima as "A decision of the People limited in time." These would appear to be correct as far as Athens was concerned in defining both Nomos and Psephisma as "decisions of the People," but the distinction in point of time, though on the whole true, is not invariably

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1 E.g. Pol., III, 15. 4, "Those who think it best for there to be a king, produce the argument τὸ καθόλου μόνον οἱ νόμοι λέγει, ἀλλ' οὐ πρὸς τὰ προσπεπέτευσαν ἐπιτάττειν". Cf. ibid., II, 8. 21, 22; III, 11. 19; III, 15. 6, 9; Nic. Eth., V, 10. 4.

2 Pol., III, 16. 11.

3 Ibid., 15. 7: ὅσα δὲ μὴ δυνατὸν τὴν νόμον κρίνειν ἡ ὅλως ἢ εὖ, πότερον ἐνα τὸν ἄριστον δεῖ ἄρχειν ἢ πάντας; καὶ γὰρ νῦν συνώντες δικάζεις καὶ βουλεύονται καὶ κρίνουσι, αὐτὰ δὲ αἱ κρίσεις εἰναι πάσαι περὶ τῶν καθ' ἐκαστον.

4 Ibid., IV, 4. 25, 26. Ibid.

5 Cf. Dem., XX, 131 : οὐ γὰρ ἐστ' οὐδεὶς ἀτελῆς παρ' ὑμῖν ὅτι μὴ ψήφισαι ἡ νόμος ἑδοκε τὴν ἀτέλειαν.

6 Ps.-Plato, ὅροι, 415 B.
true, as Kahrstedt has pointed out. On the other hand, the view expressed above, that Nomoi were concerned with general principles, Psephismata with the application of these principles to particular cases, seems to fit in with the general practice at Athens as well as with the theory. For to refute this view it would not be enough to cite isolated instances where a Nomos seems to be partially concerned with particulars, as for example is the Nomos of 337 B.C. concerning the rebuilding of fortifications. The reason for this being a Nomos rather than a Psephisma is presumably that it involved permanent new arrangements concerning the meetings of the Boule and the provision of funds for permanent upkeep of the fortifications. In practice borderline cases must have arisen, in which it was not easy to keep the general principle quite separate from the immediate application of it, and indeed the passage of Demosthenes cited above (p. 135 f.), which deprecates the failure of fourth-century orators to keep the distinction clear between Nomos and Psephisma, implies that such was the case.

A certain number of Athenian Psephismata of the fifth century B.C. are thought by some authorities to have a universal character which makes them indistinguishable from laws; but when these are more closely examined, it will be seen that there are no good grounds for confusing them with Nomoi. The following inscriptions are cited: (1) a Psephisma regulating judicial arrangements at Miletus (a vassal State) in 450 49 B.C.;

2 Cf. above, p. 112. This law, besides providing for the immediate repair of the fortifications, also makes provision for their periodical inspection and repair in future years.
3 Kahrstedt, op. cit., pp. 13 ff.; Keil, Griechische Staatsaltertümer (in Gercke-Norden, Einleitung in die Altertumswissenschaft, Bd. III, 1914, pp. 380 f.); Busolt, Griechische Staatskunde, 1 Hälfte (1920), pp. 457 ff., all take the view that there was no difference whatever in quality or content between Nomoi and Psephismata, either in the fifth century B.C., or in the fourth, supposing the difference to lie entirely in the form and manner of publication. It has, however, been pointed out in the text (pp. 135 ff.) that the fourth century evidence shows this conception to be false for that period.
4 References in Busolt, op. cit., p. 458, note 5; Clotz, La cité grecque, p. 194.
5 I.G., I2, 22 (re-edited with additions by J. H. Oliver in Trans. Amer. Philol. Assoc., LXVI, 177 f.).
(2) another, providing for the building of the temple of Athena Nike, and making arrangements for paying the salary of the priestess; 

(3) a decree of 446 B.C. concerning the establishment of Athenian colonists at Brea in Thrace;

(4) a decree regulating relations between Athens and the vassal State of Chalcis after the revolt of 446 B.C.;

(5) a decree of about 418 B.C. making regulations for the collection of first-fruits for the temple at Eleusis in Attica, the contributions to come partly from Attica and partly from the vassal States in the Athenian empire.

It is apparent that several of these Psephismata can be at once dismissed as clearly not laws (Nomoi), since they are concerned not with Athenian citizens only, but with the relations between Athens and other States. A treaty is not a law, as Aristotle emphatically points out, and Nomos in the Greek sense is concerned only with the territory and with the permanent inhabitants of the State which makes it. Other countries may have other conceptions of law (as opposed to administrative provisions), thus for example, Glotz seeks to explain these Athenian Psephismata as "lois-décrets" in the French sense; but the possibility of this comparison does not make them any more like Nomoi in the Athenian sense.

Nos. 2, 3 and 5 in our list, however, concern Athenian citizens, although the decree regulating the sending of first-fruits to Eleusis also concerns the vassal-states. Of these three, the Brea Psephisma cannot be a law, but is merely the application to a particular case of a general law (whether written or customary) regulating the sending-out of colonies. It was far from being the initiation of a new policy in the matter of colonisation. The Psephisma concerning the first-fruits is also merely reaffirming existing

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1 Tod, Greek Historical Inscriptions, No. 40 = Ditt., Syll. 63 = Michel, Recueil, 671.
2 Tod 44 = Ditt., Syll. 67 = Michel, 72.
3 Tod 42 = Ditt., Syll. 64.
4 Tod 74 = Ditt., Syll. 83 = Michel, 71.
6 I.e. with citizens and resident aliens (πρός δύο μετοικοί).
7 Cf. Arist., Pol., II, 6, 7: λέγεται δ' ὡς δει τὸν νομοθέτην πρὸς δύο βλέπωντα τιθέναι τοὺς νόμους, πρὸς τε τὴν χώραν καὶ τοὺς ἀνθρώπους.
8 Glotz, La cité grecque, pp. 194 f.
custom, for it is several times stated in the course of the decree that these arrangements are "in accordance with the traditional custom" (κατὰ τὰ πάρτα), not only in so far as Athenian citizens are concerned, but in the clauses relating to the vassal-states as well.

We are left with the Psephisma relating to the temple of Athena Nike, which concerns only Athens, and appears (though this is not certain) to be setting up a new priesthood. But neither is this a matter for a new law, since the State had set up new priesthoods before, for example when the new Theseum was built about 470 B.C. Again we must suppose the existence of an enabling law, which permitted the Demos to found new priesthoods and laid down in general outline the procedure to be followed. It is by no means necessary to suppose that all such enabling laws were written laws; indeed the probability is that they were not, but were merely assumed on account of long-established custom.

The Athenian State set itself an impossible task when on the restoration of democracy in 403 B.C. a law was enacted that there must be no more unwritten laws.¹ This new Nomos may well be the explanation of a tendency observable at Athens in the fourth century to call provisions Nomoi which were much more like Psephismata, and to apply the elaborate system of the Nomothetia to them, in case it should afterwards transpire (as apparently it did in the case of δωρεάν)² that there was no written law (Nomos) upon the subject. In the fifth century, when unwritten Nomoi had the same force as the written,³ we do not find the same nervousness lest Psephismata should not be covered by a Nomos, and the Psephismata of this period which have just been considered make no attempt to appear other than purely administrative provisions.⁴ Their importance

¹ Andoc., de Myst., 85 f.
² Cf. above, pp. 127 f.
³ Cf. [Lysias], VI, C. Andoc., 10 (citing Pericles).
is undeniable, but does not affect the issue. They are still Psephismata, not Nomoi.

Nor again does it make any difference that these particular Psephismata were proposed on recommendations drawn up by a committee of Syngrapheis. These "drafter" share nothing but the name with the board who were appointed in 412 B.C. (and again in 410) to draw up proposals for new laws. It is obviously possible to employ a committee to draft any kind of proposal whatever, whether it be legislative or administrative. Moreover it is not to be supposed that in the case of the Psephismata passed following on the recommendations of Syngrapheis the normal requirement that the proposal should also come before the Boule was waived. For in most of these inscriptions either the prescript, or incidental allusion later in the inscription, shows that the proposal had come before the Boule in due form, and in the examples which do not reveal this the heading of the inscription has been lost.

Apart from these inscriptions, which clearly do not bear the interpretation which has been put upon them, there is no evidence to show that in the fifth century B.C. any different view was held in Athens as to the relation of Nomos and Psephisma from that which was held in the fourth. When Aristotle says in the Constitution of Athens (26. 2), speaking of the years which followed the downfall of the Council of the Areopagus in 461, that there was less regard for the laws in the administration than before, he means simply that several of the earlier laws were

1 Cf. B. Keil, op. cit., p. 381: "Das Psephisma über die eleusinischen ἀπαρχαί ist ein Gesetz, weil es in ihm heisst τάδ' οἱ ἐγγραφεῖς ἐνέγραψαν." But since it has now been shown that the proper title of the so-called "Mileían Decree" (above p. 138, note 5) is Μιλείαι εὐγεγραφαί (cf. J.H.S., LVII, 171), it can no longer be supposed that the deliberations of Syngrapheis necessarily resulted in a Nomos.

2 Clotz, op. cit., p. 194.

The inscriptions cited above, p. 138, note 5; p. 139, notes 1, 3, 4, all have the prescript ἐδοξε τῇ βουλῇ καὶ τοῖς δήμοι; section b of Dict., Syll. 67 (above, p. 139, note 2) shows that at least part of the decree came before the Boule, and the same is proved for ibid., no. 83 (above, p. 139, note 4), by ll. 60 f. Hence it is clear that the inclusion of the Boule in the prescript is more than mere common form.

4 On the significance of its overthrow from the point of view of the revision of laws, see further Appendix, p. 149.
changed at this period, and proceeds to enumerate some of the changes. But the fact that changes were made does not, as we have seen, imply any different theory as to the nature of Nomos in general from that which was held in the fourth century. It was in fact not a view peculiar to the fourth-century philosophers, or even peculiar to Athens, but shared by all the constitutionally-governed states of Greece in all periods of antiquity. To what extent other Greek States devised complicated machinery such as that adopted by Athens in order to safeguard their systems of Nomoi from hasty and ill-considered changes, it is impossible to say, but we are told by Demosthenes that many other Greek States in his time had adopted the whole body of Athenian law, and at least one example of this so far as the system of Nomothesia was concerned seems to be revealed by an inscription of the second century B.C. from Cyme in Aeolis, a state which had long been a member of the Athenian Confederacy.

Appendix.—The date of the introduction of Nomothetæ.

The modern authorities have ascribed the origin of the Nomothetæ to very different periods, agreeing only in rejecting the belief held at Athens in the fourth century B.C., according to which they were introduced by Solon. De Sanctis ascribes them to Cleisthenes' legislation of nearly a century later, shortly before 500 B.C., Grote to 461 B.C., supposing their functions to have been exercised earlier by the Areopagus, until its overthrow in the revolution of that year. Wilamowitz, Busolt and others, without, however, adducing definite evidence,

1 Dem., XXIV, 210.
3 Dem., XX, 90, 93; Ἀσσ., adv. Ctes., 38. The only modern authority who is inclined to accept this view (with the reservation that the form of the law itself regulating the ἐπιχειροτονία τῶν νόμων must have undergone modifications since Solon's time) is Caillemer (in Darmenberg-Saglio s.v. Nomoi, pp. 100 ff.). See further below, p. 149.
4 Ατθ., p. 442.
suppose the Nomothetae to have become a regular part of the constitution only in the restored democracy after 403 B.C.; Kahrstedt has lately advanced reasons for supposing that they were introduced in the year 403 itself. Before these reasons are considered, it must first be observed that Nomothetae are mentioned by Thucydides (VIII, 97. 2) as having been set up by the Ecclesia after the fall of the Four Hundred in 411 B.C., in order to bring into existence a new constitution of a moderately oligarchical character. According to De Sanctis, Thucydides mentions the Nomothetae here as if they were an institution already well known: on the other hand, those who take the view that the Nomothetae only became an established part of the constitution in or after 403 suppose the Nomothetre referred to 411 to be a different kind of Nomothetae, mere drafters of new laws, not a court appointed to ratify them. Earlier than this there is no literary reference to them, but the restoration of their name in the Athenian tribute-assessment of 425 B.C. is on epigraphical grounds practically certain.¹

¹ The text as restored by Meritt and West (op. cit., p. 44, l. 16) runs oí δὲ [νομοθήτων] νέον κα[θ]ιστάντων χ[λιους δικαστάς]. Since the inscription in question is “one of the most carefully inscribed of all the documents of the fifth century” (ibid., p. 54), and is strictly στοιχεῖον, the only conceivable substitute for νομοθήτων here would be θεσμοθήτω, written with accidental omission of one of the two similar adjacent letters Ω. And although it was the business of the Thesmothetae to enrol the various courts (καθεζείν, πληροῦν δικαστήρια) they presumably had no powers to enrol them for a new purpose (viz., to hear appeals from the allies against assessments) as provided for by the terms of this decree. The doubts which Kahrstedt (op. cit., p. 9) expresses about the reading νομοθήτων are based on non-epigraphical grounds which have already been shown to be untenable; and the instruction to Nomothetae to form a new court for the hearing of appeals would be in accordance with the normal procedure adopted for routine additions to the existing law (cf. above, pp. 1 ff.). No conflict of laws was involved in this case, since no departure from the normal method of enrolling Dikasteria was contemplated. It is true that in the other similar instances discussed in this article, the instruction to the Nomothetae was given by the Ecclesia before the Nomothetae were actually appointed, whereas in this case it was given just after they had come into office, which perhaps implies a slight irregularity of procedure. The precise date of the decree is discussed by Meritt and West (op. cit., pp. 54 ff.), whose conclusion is that the Probouleuma was passed in the second Prytany and the Psephisma itself (after an unexpected delay) at the end of the third. At this time it is reasonable to suppose that the Nomothetae were still in office.
According to Kahrstedt, it is self-evident that the method of Nomothesia described by Demosthenes could find no place in the fifth century B.C., for the following reasons: (1) Inscriptions like the decree concerning the Eleusinian first-fruits\(^1\) show that the Demos performed in the fifth century the functions which were performed by the Nomothetae in the fourth.\(^6\) This argument may now be dismissed, for reasons already fully discussed.\(^3\) (2) The annual review of the laws described by Demosthenes presupposes a complete code of laws, which did not exist in the fifth century until 403 B.C.\(^4\) (3) It also presupposes state archives in which the official copies of the laws might be consulted, and the existence of such archives before 403 B.C. is also denied by Kahrstedt.\(^5\) The arguments which lead him to deny that there was either a fixed code of laws or a collection of official copies of laws before 403 B.C. are the following: (a) Before the re-publication of the laws in 403 2, it was necessary to appoint Anagrapheis ("copyists") to search out and copy the existing laws.\(^8\) (b) Orators speaking before 403 2 always cite as their evidence the actual stone on which a Nomos or a Psephisma was engraved, never a written copy in the public archives; but after 403 2 they always cite the written copy, and although copies on stone are still made, they are no longer the official ones. (c) There is no evidence for the Grape Paranomon in the fourth-century sense,\(^7\) or of the Grape

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1 Cf. above, p. 139.  
2 Kahrstedt, op. cit., p. 9.  
3 Cf. above, pp. 139 ff. Kahrstedt (op. cit., pp. 17 ff.) also lays stress on the supposed fact that resolutions passed in the fifth century are referred indiscriminately as Psephismata or as Nomoi, and that this confusion never occurs in the fourth century. But an instance of this confusion occurs in relation to a fourth-century law (cf. Isæus, ed. Wyse, 1904, pp. 714 f.) and in any case it has now been shown (above, pp. 119, 123 f.) that every Nomos had to be preceded by a Psephisma, which explains the confusion.  
4 Kahrstedt, op. cit., p. 11.  
5 Ibid., pp. 8, 25 ff.  
6 For the Anagrapheis see I.G., I 4, 115 (409/8 B.C.), Lysias, XXX, 2 ff. Kahrstedt (op. cit., p. 10) supposes the first set of Nomothetæ mentioned in the Psephisma cited by Andoc., de Myst., 83 ff., to be Anagrapheis, but this merely confuses the issue. The business of the Anagrapheis was simply to inscribe the laws from the copies indicated to them (Lysias, XXX, 4); they must be carefully distinguished from the Syngrapheis of the same period, whose function was to draft proposals for new laws (cf. e.g. Xen., Hell., II, iii, 11).  
7 Cf. above, pp. 131 ff.
"Against an inexpedient law," 1 earlier than 403/2 B.C. When the Graphe Paranomon is referred to as existing earlier than this year, it is to be interpreted as a charge against a magistrate for not discharging his duties in accordance with the laws (νόμοις μη χρῆσθαι). 2

To meet the last argument first, it may justly be asked whether an indictment νόμοις μη χρῆσθαι does not imply a fixed code of laws just as much as the Graphe Paranomon in its accepted sense. But in fact the references to the Graphe Paranomon in the fifth century cannot be explained in Kahrstedt’s sense. There is no evidence to show that the Graphe Paranomon in which Antiphon was involved had to do with the official acts of a magistrate, since it was not brought by Antiphon against Demosthenes in his official capacity as Strategos (as Kahrstedt wrongly supposes) 3 but by the Strategos against the orator. 4 The attempt to explain away the Graphe Paranomon threatened against the proposer of a decree to decide the fate of all the eight generals concerned by a single vote after Arginusae (406 B.C.) is also misguided; the reason why Xenophon’s account makes no further reference, in describing the subsequent discussion, to the proposer of this decree, is not that proposers of decrees did not come under the Graphe Paranomon at this time (as Kahrstedt supposes), but that the ensuing uproar in the Ecclesia resulted in the threat of a Graphe Paranomon being dropped. 5

Finally, it is clearly stated in the texts 6 that the ban on the use of the Graphe Paranomon in 411, on the eve of the revolution of the Four Hundred, was intended to allow any proposals whatever, without reference to the existing laws, to be made in the Ecclesia. This surely proves that the Graphe Paranomon in its fourth-century meaning was already in existence in 411 B.C.

With regard to the argument concerning the archives, inscriptions and references in the orators establish the following facts, fatal to Kahrstedt’s theory. (1) The actual inscription of the relevant law or decree on stone or wood is still quoted as

1 Cf. above, p.116.  
2 Kahrstedt, op. cit., p. 22.  
3 Ibid.  
4 References above, p. 132, note 1.  
5 Cf. Xen., Hell., I, vii, 12 ff.  
evidence after 403 B.C.1 (2) As before 403, so after that date, the official evidence for a decree can be destroyed by destroying the stele on which it was inscribed, and restored by having it officially inscribed afresh.2 (3) A reference in Andocides, referring to 411 B.C. and written in that year, shows that before 402/3 a Psephisma could be repealed (in this instance a grant of amnesty) and the copy of it could remain in the Bouleuterion (Council-House) after the repeal of the Psephisma.3

The obvious inference from these facts is that both in the fifth century and in the fourth the official copy of a Nomos, or of any Psephisma which was likely to be needed for future reference,4 was the one inscribed by order of the Ecclesia. Written copies were also kept by the Secretary of the Boule; before the Metroon was rebuilt and used for this purpose, at the end of the fifth century B.C., these were kept in the Bouleuterion.5 These written copies from Bouleuterion or Metoion are not infrequently cited as evidence by the orators,6 but this was only

1 Cf. Lysias, XXX, 17 ff. (399 B.C.), citing as evidence for the laws concerning sacrifices the kúreiēs of Solon and the στήλαι, both of which the Ecclesia had decided to adopt as the official evidence in 403 2; also Andoc., de Myst., 96 (400 B.C.), quoting a Nomos of θην τη στήλην ἐμπροσθεν ἐστὶ τοι θου λεπτηρον; also Ditt., Syll.6, 129. II. 20-25 (after 394 B.C.); ibid., no. 147, II. 30-35 (378/7 B.C.).
2 Ditt., Syll.5, 184, II. 35-40 (official destruction in 361 0 B.C. of a stele recording an alliance with Alexander of Pherae in 368); ibid., no. 119, II. 10-15 (restoration soon after 403 2 of a stele recording a grant of the position of Proxenos to a Thasian, which had been destroyed by order of the Thirty); ibid., no. 317, ll. 25-35 (restoration in 318 17 B.C. of a stele which had been destroyed by order of the oligarchs who had been in power three years earlier. Cf. Cambridge Ancient History, Vol. VI, pp. 459 ff.)
3 Cf. Andoc., II (De redivit), 23 ff. The orator asks for the copy from the Bouleuterion to be read in the court, but clearly states that the Psephisma itself had been repealed.
4 As Kahrstedt points out (op. cit., p. 28, note 3), it is unlikely that all the Psephismata passed in the forty meetings of the Ecclesia held each year were inscribed on stone. Presumably those which were of purely temporary significance—and these would be the vast majority—were not so inscribed. This hypothesis would explain the more general import of the Psephismata which have been preserved on stone.
5 As maintained by the American excavators of the Metoion. Cf. Thompson, Hesperia (Amer. School Arch. Athens), Vol. IV, p. 215, note 7. The Metoion seems, however, already to have been in use for this purpose before the loss of the Empire (cf. Athen., IX, 407 C.).
natural seeing that the original inscriptions on stone would have been no more convenient to bring into court than the original metal bars and weights which form the official English standards of weights and measures. In practice it could usually be assumed that the written copy was an accurate transcription of the inscribed one, but when a clerk was suspected of producing copies to suit his own ends, as happened between 411 and 403 B.C. the decisive evidence was the inscribed law or Psephisma.

As to the business of Anagrapheis, it was not to engage in private researches upon the existing laws, or to look for evidence for them, but simply to inscribe afresh laws and Psephismata for which the official evidence, inscribed copies, was in danger of becoming illegible. This was no doubt the condition in 411 B.C. of the inscribed wooden κύρβεις and ἄξονες on which the laws of Dracon and Solon were written. The inscriptions in question were naturally kept in different places, according to the nature of their contents, but it was well known where they were, and the Anagrapheis were told exactly which to copy. Consequently the appointment of Anagrapheis in the period between the revolutions of the Four Hundred and the Thirty does not mean that there was no fixed code of laws before 403 B.C. In fact we are distinctly told by Andocides, citing the relevant Psephismata, that when the Nomoi in force under the earlier democracy were re-affirmed in 403 B.C., all except the laws of Dracon and Solon (which had already been reinscribed, where necessary, some years previously) were inscribed on the walls of the Stoa Basileia, where they had been inscribed before, and from which they had presumably been erased by order of the Thirty.

It may therefore be concluded that the year 403/2 marks no important change in the policy with regard to the archives; and it may justly be asked whether it marks any conspicuous

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1 In the case of the Anagrapheus Nicomachus (Lysias, XXX, 2-5).
2 Cf. above, p. 144, note 6.
3 Cf. I.G., Ia, 115; Lysias, XXX, 3 ff.
4 Andoc., de Myst., 84 f.
5 The Thirty had destroyed the inscriptions on the Areopagus recording the laws which related to the Council of the Areopagus (Ath. Pol., 35, 2), and separate stele recording the grant of special privileges to individuals (cf. above, p. 146, note 2).
change in laws or constitution, as compared with the period before the revolution of 411, or between 411 and the revolution of the Thirty. As evidence against this belief may be cited the peace-terms imposed by Sparta in 404, which included insistence on government according to "the traditional constitution"; and the policy adopted after the revolutionary interlude under the Thirty, when the restored democracy aimed at and effected a return to the ancient and traditional laws and constitution.

The year 403 B.C. is therefore a most unlikely time to have chosen for a complete change in the method of law-making itself. Further, the method, described in the Psephisma cited by Andocides, which was adopted when the ancient laws were reaffirmed on this occasion, is distinguishable in no material respect from the method described earlier, which was employed in the fourth century in cases where there were no laws to be repealed. There is no reason for supposing that it marks the first occasion when the Nomothetae were employed; consequently there is no need to explain away the reference to Nomo-

1 πάτριος πολυτεία (Ath. Pol., 34, 3). To make this possible after the confusion recently caused by unscrupulous Anagrapheis (cf. Lysias, XXX, 3 ff.) was in fact the reason for the appointment of the thirty Syngrapheis (cf. Xen., Hell., II, iii, 2) who afterwards assumed despotic power.

2 τοίς νόμοις τοίς ἀρχαίοις χρήσαται (Xen., Hell., II, iv, 42), πολυτείσθαι κατά τὰ πάτρια (Andoc., de Myst., 83).

3 Cf. Andoc., de Myst., 83 ff. Five hundred Nomothetae chosen by the Boule are to write up on boards and display before the statues of the Eponymi all the laws except those of Draco and Solon, which are to be reaffirmed automatically. The Boule, and another set of 500 Nomothetae chosen in the demes, these last after taking the oath, are to carry out a scrutiny of the laws so set forth. The only difficulty here, and that merely an apparent one, is the first set of Nomothetae, who do not correspond to those who in the fourth century operated at the end of the first Prytany. Kahrstedt explains them as Anagrapheis, but for reasons explained above (cf. p. 144, note 6) they should rather be regarded as Syngrapheis appointed for the purpose of drafting the laws in question. The Syngrapheis of 404 (the Thirty) are in fact called Nomothetae by Xenophon (Memor., I, ii, 31), and it was natural to use this name, seeing that in the fourth century it is given not only to the sworn Nomothete who scrutinised the laws, but also to the individual proposers of new laws. In 403/2 it was clearly undesirable to leave it to individuals to bring forward proposals, and natural to appoint a committee for this purpose, as had been done on many occasions earlier in the fifth century (cf. above, p. 141).

4 Cf. above, pp. 123 ff.

5 As Kahrstedt suggests, op. cit., p. 11.
thetae in 411 B.C., and no reason other than an *argumentum ex silentio* for denying that they existed earlier in the fifth century.

Of the suggestions made by De Sanctis and by Grote, the revolution of 461 seems a more likely time for the innovation of Nomothetae than the earlier date, since the functions performed by the Nomothetae are such as we should expect to have been included in the "Guardianship of the Laws" entrusted to the Areopagus until its overthrow in that year. De Sanctis' argument that election of the Nomothetae in the demes connects them with Cleisthenes' organisation of the Boule of five hundred carries no weight, since the members of the Boule were still themselves chosen in the demes in the fourth century B.C., and it would be natural to adopt the same procedure if the same number (or twice the number) of Nomothetae were required, even if the Nomothetae were a later innovation than the Boule.

In the absence of more precise information, it seems, therefore, most probable that Grote was right in assigning the origin of the Nomothetae to 461 B.C., and it may be supposed that the whole complicated system of law-making was already in force under the Periclean democracy. But this is not to say that the *ἐπίχειρον οντος νόμων* described in Demosthenes (XXIV, 20 ff.) preserves the law in precisely the form in which it existed in 460 B.C. The system of law-making itself implies that alterations could be from time to time incorporated in any law, and it is therefore perfectly natural that this particular law should contain later additions such as are pointed out by Kahrstedt.

It remains to explain the fourth-century attribution of the Nomothetae to Solon, which cannot be accepted because Solon left the Areopagus as "Guardians of the Law." A possible explanation is to be found in the sharp distinction drawn between (a) the laws of Dracon and Solon, which were republished before 403/2 (where necessary) on separate stelae, or if this was thought unnecessary, were left on the original *κύρβεις* and *ἀξόνες*;  

2 Cf. above, p. 134.  
5 Cf. p. 146, note 1, also *I.G.*, 1², 115, ll. 5-10 (Dracon's law of homicide was set up in 409/8 on a separate stele in front of the Stoa Basileia).
and (b) the later laws, which were reinscribed in 403/2 on the walls of the Stoa Basileia. It is known that the laws issued in 461 B.C. had not been inscribed on the Stoa Basileia, but in 404 it were still set up on the Areopagus; but after 403/2 it might easily be supposed that the general distinction held good for all cases, and that all laws which were not inscribed on the walls of the Stoa Basileia were laws of Draco or Solon. Since, moreover, the only laws of Draco which still remained in force after Solon's legislation were those relating to murder and homicide, it was natural to suppose that if a law was not inscribed on the wall of the Stoa Basileia, and did not relate to homicide, it must be a law of Solon.

1 Andoc., de Myst., 84 f.  2 Ath. Pol., 35. 2.  3 Ibid., 7. 1.