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Nomothesia (Legislation)

SUMMARY

Athenians in the 4th century were governed by laws (νόμοι, or νόμος in the singular) and decrees (ψηφίσματα, or ψήφισμα in the singular). Decrees were passed by a vote of the Assembly, of the Council, or both. Laws came into being by a more complicated process. Laws took precedence over Decrees. Anyone who proposed a decree in the Assembly that contradicted an existing law was subject to prosecution on a charge of “Illegal Proposal” (γραφὴ παρανόμων). Laws were passed through a process called *nomothesia* (νομοθεσία) or “legislation”. Each year the Assembly met to discuss the current body of laws. Any citizen could propose a change in the laws, but could only propose the repeal of a law if he suggested another law to replace the repealed law. If the Assembly decided to change the laws, a board of *Nomothetai* (νομοθέται) or “legislators” was selected to review and revise the laws. The process of legislation was like a trial, with advocates speaking in de-

fense of the existing laws, and others speaking against the existing laws. The Nomothetai would vote on changes, and any changes that passed were published on inscriptions near the statues of the Eponymous Heroes and read aloud at the next meeting of the Assembly. The Nomothetai also undertook an annual review of all existing laws, to make sure that none contradicted others, and that none were redundant.

TERMS

To understand legislation under the Athenian democracy, it is necessary to understand some terms. The Athenians of the 5th century BCE seem to have used two words interchangeably to refer to what we call a “law,” *nomos* (νόμος) and *psephisma* (ψηφισμα). In the 4th century these words had two distinct meanings: a *nomos* was a “law,” while a *psephisma* was a “decree.” For the 5th century usage, we have the historian Xenophon and his account of a speech that Euryptolemus gave before the Assembly in 406 (Source for date: *OHCW*). The speaker tells his audience that, in a particular case, either the *psephisma* of Kannonus applies (Xen. *Hell.* 1.7.20), or the *psephisma* regarding temple-robbers and traitors (Xen. *Hell.* 1.7.21); he then refers to both of these *psephismata* as “*nomoi*” (the plural form of *nomos*) (Xen. *Hell.* 1.7.22). So it would seem that these two terms were more-or-less equivalent. In the 4th century, however, these two terms clearly referred to

two different things: *nomoi* were laws enacted through a special process of legislation, while *psephismata* were decrees passed by a vote of the Assembly. The orator Aeschines in one of his speeches asks, rhetorically, why the “laws” (νόμοι) are good, but the “decrees” of the Assembly (ψηφισματα) are bad (Aeschin. 1.177). The philosopher Aristotle makes a theoretical distinction between “laws” and “decrees,” noting that in certain kinds of democracy the laws rule, but in other kinds of democracies decrees can override laws (Aristot. *Pol.* 1292a). Athens was the former kind of democracy, according to Demosthenes, who quotes a principle of Athenian governance, that “No decree, either of the Council or the Assembly shall have more authority than a law” (ψηφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι) (Dem. 23.87).

On the other hand, the laws could determine what sorts of decrees the Assembly could pass, such as a law that allows the Assembly to pass a decree honoring a citizen, but that limits the circumstances of such an honor (Aeschin. 3.36). The courts could nullify a decree, based on the laws (Dem. 23.96). When inscribed on stone for the permanent record, decrees begin with the formula, “it was decided by the People,” or, “It was decided by the Council and the People” (*IG II² 206 4–5*; *IG II² 206 28–30*; *IG II² 237.5*; *IG II² 237 31*); a law began with the formula, “It was decided by the Nomothetae” (*SEG 12 87.607*).

The Athenians had no formal constitution such as the United States has, a body of laws that fundamentally define

the state. Some laws, however, included additional clauses that made it very difficult to change or revoke the law. One such clause is quoted at Dem. 23.62: “Whosoever, whether magistrate or private citizen, shall cause this ordinance to be frustrated, or shall alter the same, shall be disfranchised with his children and his property” (Dem. 23.62; see also *IG II²* 43.51–63 = Tod 123).

WRITTEN VS. UNWRITTEN LAWS

A law included as a quotation in a speech by the orator Andocides says, “In no circumstances shall magistrates enforce a law which has not been inscribed. No decree, whether of the Council or Assembly, shall override a law. No law shall be directed against an individual without applying to all citizens alike, unless an Assembly of six thousand so resolve by secret ballot” (Andoc. 1.87). This establishes three important principles of Athenian legislation: (in order from last to first) that except under very special circumstances, the laws of Athens were to apply to all citizens equally; that the laws (νόμοι) had more authority than the decrees (πρήψιματα) of the Assembly or Council; and finally that only the written laws were valid.

According to Plutarch, when Solon revised the laws of Athens in the 6th century BCE, he wrote the new laws on wooden tablets (εἰς ξυλίνους ἄξονας) (Plut. *Sol.* 25.1). By inscribing laws, either on wood or in stone, and setting them in a public place, knowledge of the laws was made available

to all citizens rather than to a small elite. As Demosthenes says, “all the citizens have the same laws before them, simple to read and to understand” (πᾶσιν ἢ ταῦτ’ ἀναγνῶναι καὶ μαθεῖν ἀπλᾶ καὶ σαφεῖ τὰ δίκαια) (Dem. 20.93).

Knowledge of the laws was important, since juries in the Peoples’ Court were made up from the citizens in general. Demosthenes reminds the jurors sitting in judgement on one occasion, “You have sworn to give a verdict according to the laws, and to the decrees of the People and of the Council of Five Hundred” (Dem. 19.179; note that he mentions the laws before the decrees).

But elsewhere, Demosthenes reminds Athenian jurors that the laws cannot cover every eventuality: “Again, men of Athens, you must also consider well and carefully the fact that you have come into court today, sworn to give your verdict according to the laws... and where there are no statutes to guide you, you are sworn to decide according to the best of your judgement” (Dem. 20.118). So in the absence of clear laws, jurors were free to vote according to unwritten laws, or their own understanding of justice (or their own prejudices).

A HISTORY OF LEGISLATION IN ATHENS IN THE LATE 5TH AND EARLY 4TH CENTURIES BCE

In 411 BCE, a group of Athenians overturned the democracy and installed an oligarchic government; during this crisis, both the oligarchs and the democrats claimed to

be supporting the “ancestral constitution” (τοὺς πατρίους νόμους), the laws established in the 6th century by Solon, and after him, those by Cleisthenes (Aristot. *Ath. Pol.* 29.3; Thuc. 8.97.6; source for date: Hansen, *Athenian Democracy*, 162). The next year, 410 BCE, when the oligarchy was overthrown, the restored democratic government immediately set up a body of “Law Publishers” (ἀναγραφεῖς τῶν νόμων) to publish all of the laws, especially those of Draco and Solon (*IG I³* 104.5–6; Lys. 30.2; Lys. 30.25; source for date: Hansen, *Athenian Democracy*, 162–3). That this was one of the first actions of the newly restored democracy suggests the importance Athenians placed on public knowledge of the laws. Nicomachus was in charge of this board, as “Commissioner of Laws” (τῶν νόμων ἀναγραφεὺς), and was originally supposed to complete publication in four months (Lys. 30.2). The board spent six years, however, compiling and publishing Solon’s body of laws (Lys. 30.2–3). The published laws, which included the homicide law of Draco and laws regarding the powers of the Council (M&L 86; *IG I³* 105) were inscribed on the wall of the Stoa Basileios in the Agora (Lys. 30.2–3).

In 404 BCE, when Athens surrendered to Sparta, the government of the Thirty Tyrants, imposed on Athens by the Spartans, removed these published laws from the Stoa Basileios (Lys. 30.2–3). Nicomachus, the head of the “Law Publishers” was later put on trial, accused of manipulating the laws he published and helping the Thirty Tyrants consolidate their power (Lys. 30.1–3).

Like the Oligarchy of 411, the tyranny of the Thirty lasted only one year, and after it was overthrown and the city returned to democratic rule, Athens once again compiled and codified its old laws: “On the motion of Teisamenos the People decreed that Athens be governed as of old, in accordance with the laws of Solon, his weights and his measures, and in accordance with the statutes of Draco, which we used in times past. Such further laws as may be necessary shall be inscribed upon tables by the *Nomothetae* elected by the Council and named hereafter, exposed before the Tribal Statues for all to see, and handed over to the magistrates during the present month. The laws thus handed over, however, shall be submitted beforehand to the scrutiny of the Council and the five hundred *Nomothetae* elected by the Demes, when they have taken their oath. Further, any private citizen who so desires may come before the Council and suggest improvements in the laws. When the laws have been ratified, they shall be placed under the guardianship of the Council of the Areopagus, to the end that only such laws as have been ratified may be applied by magistrates. Those laws which are approved shall be inscribed upon the wall, where they were inscribed aforetime, for all to see” (Andoc. 1.83–84).

To affirm a principle of democratic rule, Teisamenos’ decree was followed by another law that said, “In no circumstance shall magistrates enforce a law which has not been inscribed [that is, written down and published in a public place – CWB]” (Andoc. 1.85).

After inscribing the old laws of Solon and Draco, which Andocides says were to be used temporarily while the democracy codified new laws (Andoc. 1.81), the Athenians appointed a board of “law givers” or *nomothetae* (νομοθέται) to conduct a “scrutiny” (δοκιμασία) of all the laws, in other words, to examine the laws and vote on whether each law should remain in effect (Andoc. 1.84). According to Andocides, this revision of the laws happened quickly (Andoc. 1.85). The *nomothetae* dealt with the laws of Draco and Solon, and to other laws as well (Andoc. 1.96–98; Dem. 24.42), including a codification of all the sacrifices that Athens had to carry out during the course of a year (Lys. 30.17).

Even after this revision, Athenians continued to refer to the “laws of Draco and Solon” (see Dem. 23.51; Dem. 24.42). It does seem that in the 4th century homicide was still governed by Draco’s homicide law (Dem. 23.37; Dem. 43.57; *IG I³ 104*), and the laws of inheritance were closely based on Solon’s laws (Dem. 44.67–68; Dem. 46.14).

After Andocides, there is no 4th century reference to laws being published at the Stoa Basileios; orators mention laws published on pillars (στήλαι) (Dem. 59.75–76) or in the Metroon (Dem. 25.99; Lyc. 1.66). Mogens Hansen suggests that in the 4th century there were simply too many laws to put them all on stone, so they were written on papyrus and kept in the public archives at the Metroon (Hansen, *Athenian Democracy*, 164–165).

THE PROCESS OF MAKING LAWS: THE NOMOTHETAE

The procedures for making new laws or revising existing laws was complicated, and seems to have been intended to make the process as democratic as possible, and to prevent any hasty or poorly considered changes to the laws.

When the Athenian democracy published a law (νόμος), as opposed to a decree (ψήφισμα), the text of the law began with the formula: “It was decided by the nomothetae” (*SEG* 12 87.6–7; decrees began with the formula, “It was decided by the People,” or, “It was decided by the Council and the People,” *IG II²* 206 4–5; *IG II²* 206 28–30; *IG II²* 237.5; *IG II²* 237 31).

Demosthenes describes process of legislation in detail, in his speech prosecuting Timocrates (*Dem.* 24). He reminds the jurors that, “In our laws at present in force, men of Athens, every condition that must be observed when new statutes are to be enacted is laid down clearly and with precision. First of all, there is a prescribed time for legislation; but even at the proper time a man is not permitted to propose his law just as he pleases. He is directed, in the first place, to put it in writing and post it in front of the statues of the Eponymous Heroes for everyone to see. Then it is ordained that the law must be of universal application, and also that laws of contrary purpose must be repealed; and there are other directions with which I do not think I need trouble you now” (*Dem.* 24.17–18).

While any citizen could suggest changes to the laws, laws were not passed by the Assembly or the Council, as decrees were, but were passed by a rather prolonged process involving the “Law givers,” the *nomothetai* (νομοθέται; the singular form is νομοθετής). Panels of *Nomothetai* were formed for the purposes of creating new laws and reviewing existing laws; the *Nomothetai* were drawn from Athenians who had sworn the “dikastic oath,” the oath that jurors swore before entering a courtroom (Dem. 24.27; a passage in Demosthenes, Dem. 24.149–151, purports to be the text of that oath). So these *Nomothetai* were ordinary citizens assigned the task of creating and revising the laws.

These *Nomothetai* would get together and conduct legislation under three circumstances: if the Assembly called for revisions to the laws, if an individual Athenian proposed a change in the laws, and if the six Archons called the *Thesmothetai* (θεσμοθέται; see Aristot. *Ath. Pol.* 55.1) undertook a scrutiny of the laws (respectively: Dem. 24.20; Dem. 24.33; Aeschin. 3.38).

LEGISLATION INITIATED BY THE ASSEMBLY

At the first meeting of the Assembly for the year, in the month of Hekatombaion, the Athenians held votes on the whole body of laws (Dem. 24.20; see Dem. 24.23 where the month of Hekatombaion is specified). This is how Demosthenes describes the process:

“In the first presidency and on the eleventh day thereof, in the Assembly, the Herald having read prayers, a vote shall be taken on the laws, to wit, first upon laws respecting the Council, and secondly upon general statutes, and then upon statutes enacted for the nine Archons, and then upon laws affecting other authorities. Those who are content with the laws respecting the Council shall hold up their hands first, and then those who are not content; and in like manner in respect of general statutes. All voting upon laws shall be in accordance with laws already in force” (Dem. 24.20).

This passage tells us several things. First, it suggests that the laws of Athens were divided into several categories. There were laws concerning the Council (περὶ τῶν βουλευτικῶν); this presumably included laws governing the Nomothetae and the procedure for legislation itself, since it was the Council that appointed the panels of Nomothetae (Dem. 24.27; Dem. 24.47–48). There were laws “common” to all Athenians (τῶν κοινῶν). There were laws having to do with the nine Archons (οἱ κεῖνται τοῖς ἐννέα ἄρχουσιν). And there were laws having to do with “other authorities” (τῶν ἄλλων ἀρχῶν). This passage also tells us that the Assembly voted on the existing laws by a show of hands (χειροτονία) (Dem. 24.20).

Demosthenes continues his description of the annual review: “If any law already in force be rejected on show of hands, the presidents [τοὺς πρυτάνεις, the ‘Prytaneis’ described in the article on the Council – CWB] in whose term

of office the voting takes place shall appoint the last of the three meetings of the Assembly for the consideration of laws so rejected. The commissioners [τοὺς προέδρους, the ‘Proedroi’ – *κωβ*] who preside by lot at the Assembly are required, immediately after religious observances, to put the question respecting the sessions of the Nomothetae (τῶν νομοθετῶν), and respecting the fund from which their fees are to be paid. The Nomothetae (τοὺς δὲ νομοθέτας) shall consist of persons who have taken the judicial oath” (Dem. 24.21).

So, if the Assembly voted against any of the current laws, several things happened. First, the Prytaneis (those in charge of the Council for that month, who set the agendas for meetings of the Assembly) would set aside the last meeting of the Assembly in that month for discussion of the laws. The Nomothetae, ordinary citizens selected out of those who had sworn the oath that all jurors swore, would conduct the actual process of legislation, but the Assembly would decide certain details regarding the meetings of the Nomothetae. Specifically, the Assembly would discuss payment for the Nomothetae (mentioned here at Dem. 24.21), and how much the Nomothetae should be given to conduct their business (this is mentioned more specifically at Dem. 21.23).

The Athenians took this process very seriously, as Demosthenes tells us, and specified severe penalties for any official who deviated from the proper procedure: “If the Prytaneis do not convene the Assembly according to the

written regulations, or if the Proedroi do not put the question, each president shall forfeit one thousand drachmas of sacred money to Athene, and each commissioner shall forfeit forty drachmas of sacred money to Athene, and information thereof shall be laid before the Thesmothetae in such manner as when a man holds office being in debt to the treasury; and the Thesmothetae shall bring before the Court according to the law all persons against whom such information is laid; otherwise they shall not be raised to the Council of the Areopagus, as obstructing the rectification of the statutes” (Dem. 24.22).

So the punishment for failing to follow the proper procedure was a 1000 drachma fine, and in the case of one of the archons, disqualification from serving on the Council of the Areopagus after his term in office.

Before this meeting of the Assembly, when the Athenians voted on the existing laws, anyone who wanted to change the laws was supposed to make public specific proposals for new laws: “Before the meeting of the Assembly any Athenian citizen who wishes shall write down the laws proposed by him and exhibit the same in front of the Eponymous Heroes, to the end that the People may vote on the question of the time allowed to the Nomothetae with due regard to the total number of laws proposed. Whosoever proposes a new statute shall write it on a white board and exhibit it in front of the statues of the Eponymous Heroes on every day until the meeting of the Assembly” (Dem. 24.23).

This must have meant that the vote on the existing laws was equivalent to a vote on the proposed changes. If the citizens liked the suggestions posted beforehand, they could vote against the existing laws, thus starting a process of legislation. If the citizens did not like the posted suggestions, they would vote in favor of the existing laws. Requiring proposed changes before the meeting would allow the Assembly to make an informed decision regarding how long the Nomothetae should take to conduct their business (see also Dem. 20.94; Dem. 24.36; Aeschin. 3.39).

Demosthenes says, elsewhere in his speech against Timocrates, that it was lawful for any citizen to propose changing an existing law, but only if he suggested a new law to take its place (Dem. 24.33).

The Assembly, at this first meeting of the year (on the 11th day of the month Hekatombaion), would also choose five citizens to “speak in defence of laws proposed for repeal before the Nomothetae” (Dem. 24.23). This suggests that the process of legislation was very much like a trial in a courtroom, with some people “prosecuting” the existing laws (and advocating new laws), and others defending the existing laws (Dem. 24.23; Dem. 24.36).

After this first meeting of the Assembly for the year, if the voting determined that the laws should be reviewed and possibly changed, there was a delay, presumably to let people consider matters. No further action happened at the next meeting of the Assembly in that month, but at the third meeting, the Assembly decided how long the

Nomothetae should spend legislating, and details of their pay (Dem. 21.24).

The Nomothetae were not chosen until the actual day assigned for legislation; on the morning of that day they were chosen by lot from those who had sworn the Heliastic Oath that all jurors swore (Dem. 24.27). A board of nomothetae could be huge: Demosthenes reports that in 354/3 BCE, Timocrates passed in the Assembly a decree setting up a board of 1001 Nomothetae, and ordering the Council to assist them in their work (Dem. 24.27; source for date, Hansen, *Athenian Democracy*, 167). It should be mentioned, however, that Demosthenes attacked this particular motion by Timocrates as being illegal, although not, it seems, for the number of Nomothetae that Timocrates proposed (Dem. 24).

The meeting of the Nomothetae was conducted by Proedroi (τοὺς προέδρους mentioned at Dem. 24.33). One of these served as chairman (ἐπιστάτης τῶν προέδρων) (*IG II² 222.41–52*). The meeting was conducted like a trial, with advocates speaking in favor of the existing laws (τοὺς συναπολογησομένους τὸν δῆμον τοῖς νόμοις; Dem. 24.23), and others speaking in favor of changing the laws (τοὺς συνηγόρους) (Dem. 24.36). When both parties had spoken, the Nomothetae voted by show of hands (Dem. 24.33).

Any new laws proposed by the Nomothetae were published near the statues of the Eponymous Heroes and were also read aloud to the next meeting of the Assembly (Dem. 20.94).

OTHER WAYS OF INITIATING LEGISLATION

In addition to this regularly scheduled, annual, opportunity for legislation, there were other ways of initiation the process of making changes to the laws of Athens. Any citizen could, at any time, propose a change in the laws (Dem. 24.33). The Archons, specifically the Thesmothetae, were also charged with making an annual review of the existing laws and, if they found contradictory laws or redundant laws, they could arrange for a board of Nomothetae to change the laws (Aeschin. 3.38).

In the case of an individual citizen who wanted to change the laws, he could not propose repealing a law without suggesting a new law to take its place (Dem. 24.33; Dem. 20.89–94; Dem. 24.21). The Assembly would decide whether or not the proposal had sufficient merit to be brought before the Nomothetae (Dem. 24.21; Dem. 3.10–13; Aeschin. 3.39).

The Council had to be involved, too, because it was the Council that set the agenda for meetings of the Assembly. So once a citizen had posted a proposal for new legislation, the Council had to put the issue on the agenda for a meeting of the Assembly; this was done by means of a *probouleuma* (προβούλευμα) (Dem. 24.27; Dem. 24.48; Aeschin. 3.39). Dem. 24.27 contains a decree that orders “the Council to cooperate in the legislative process” (συννομοθετεῖν δὲ καὶ τὴν βουλήν) in the matter of convening the Nomothetae, which may mean only that the Council was to ensure that the business appeared on the agenda for the Assembly. The

Council did, however, also have a special “legislative secretary” (γραμματεὺς ἐπὶ τοὺς νόμους), who made copies of all laws, and attended all meetings of the Council; this suggests that the Council discussed proposals for legislation before sending them on to the Assembly (Aristot. *Ath. Pol.* 54.4; Agora XV 62.235–6).

The Thesmothetae were required to review all the laws of Athens every year. (There were nine Archons: the Archon, the King Archon, the Polemarch, and nine Thesmothetae; see Aristot. *Ath. Pol.* 55.1). Aeschines says: “[The lawgiver] has expressly laid upon the Thesmothetae the duty of making an annual revision of the laws in the presence of the people, prescribing sharp investigation and examination, in order to determine whether any law stands written which contradicts another law, or an invalid law stands among the valid, or whether more laws than one stand written to govern each action. And if they find such a thing, they are required to write it out and post it on bulletins in front of the Eponymous Heroes; and the Prytaneis are required to call a meeting of the Assembly, writing at the head of the call, ‘For Nomothetae’; and the chairman of the Proedroi must submit to vote the question of the removal of one set of laws and the retention of the other, in order that for each action there may be one law and no more” (Aeschin. 3.38–39).

Demosthenes also suggests that it would be possible for the Assembly to convene the Nomothetae for the sole purpose of repealing laws (Dem. 3.12). It was unlawful for an

individual Athenian to suggest the repeal of a law without offering a replacement, but perhaps the Assembly was not limited in that way (Dem. 24.33; Dem. 20.89–94; Dem. 24.21).

SCRUTINY OF LAWS

Since laws, passed by the *Nomothetae*, were more important than decrees of the Council or Assembly (Andoc. 1.87), what happened when a decree contradicted a law? Or, what happened when someone proposed a law in a way that violated the laws governing legislation?

Agraphē paranomōn (παρανόμων γραφή, or γραφή παρανόμων), or “prosecution for having proposed an unlawful decree,” was the means by which the Athenians ensured the sovereignty of the laws; any such charge would be tried before the People’s Court (Aristot. *Ath. Pol.* 59.2; Dem. 24.33).

Demosthenes’ speech against Timocrates focuses on just such a charge; the prosecution claims that Timocrates introduced a new law that contradicted an old law (Dem. 24.33). That doing so was illegal runs contrary to the assumption in American law that newer legislation takes precedence over older laws.

Demosthenes actually claims that Timocrates’ proposal was illegal for several reasons. First, it contradicted already existing laws (Dem. 24.33). Second, the proposal had not been published by the statues of the Eponymous Heroes

(Dem. 24.18). Third, he did not allow the Council to consider the law before referring it to the Assembly (Dem. 24.26). Finally, he did not follow the lawful schedule, which would have meant proposing a new law at one meeting of the Assembly, taking no action at the next meeting, and at the third meeting voting on whether or not to convene the Nomothetae (Dem. 24.21); Timocrates, it is alleged, proposed his law at one meeting of the Assembly and moved that it be handed over to the Nomothetae on the very next day (Dem. 24.28).

Demosthenes' speech against Leptines (Dem. 20) is another example of a *graphe paranomon*. Here, Demosthenes claims that Leptines arranged for the Nomothetae to pass a law without repealing any contrary laws (Dem. 20.89; Dem. 20.96), publishing the proposal beforehand, or allowing the Assembly to consider the matter before sending it to the Nomothetae (Dem. 20.93).

Demosthenes himself was once charged with improperly suggesting the emendation of a law governing the maintenance of warships (Dem. 18.105).

CRITICISM OF ATHENIAN LEGISLATION

Aristotle criticises direct democracy on the grounds that in democracy decrees (*ψήφισματα*) have more authority than laws (*νόμοι*) (Aristot. *Pol.* 1297a4–7). But this criticism does not seem to apply to the democracy of 4th century Athens.

We find a more apt criticism in Aristotle's *Constitution of the Athenians* (Aristot. *Ath. Pol.*), which says that in Athens everything is decided by "decrees and lawcourts" (Aristot. *Ath. Pol.* 41.2); since the legislators, the Nomothetae, were chosen from the same pool as potential jurors, and swore the same oaths as jurors (Dem. 24.27; Dem. 24.149–151), this comment seems fairly accurate. Whether or not we should see this fact as a bad thing is, of course, a matter of opinion.

We also find Athenians criticizing their city's legislation. Both Isocrates and Demosthenes complain that Athens passes too many laws and fails to enforce them (Isoc. 8.50; Dem. 24.142). Demosthenes makes another criticism, accusing his fellow Athenians of legislating too frequently and in too much haste; he says that there are too many new laws that invalidate older decrees, but that those decrees are still in force – a confusing state of affairs (Dem. 20.91–92).

PRAISE FOR ATHENIAN LEGISLATION

The Athenians do seem to have been, on the whole, proud of the distinction between decrees and laws. Aeschines, for example, asks and answers a rhetorical question pitting the decrees of the Assembly, which were easy to pass, against the laws, which were subject to the complex procedures for legislation: "Why do you suppose it is, fellow citizens, that the existing laws are good, but that the decrees of the

city are inferior to them, and that the verdicts rendered in the courts are sometimes open to censure? I will explain to you the reason. It is because you enact the laws with no other object than justice, not moved by unrighteous gain, or by either partiality or animosity, looking solely to what is just and for the common good. And because you are, as I think, naturally, more clever than other men, it is not surprising that you pass most excellent laws. But in the meetings of the Assembly and in the Courts, you oftentimes lose all hold of the discussion of the matter in hand, and are led away by deceit and trickery” (Aeschin. 1.177–178).

Demosthenes praises this practice of legislating (τοὺς νόμους τιθέναι) as being open and democratic (παρ’ ὑμῖν, ἐν τοῖς ὁμωμοκόσιν, παρ’ οἷσπερ καὶ τᾶλλα κυροῦνται), and in helping the average citizen keep track of the laws of the city: “[The Nomothetae undertake their annual review] so that there may be only one law dealing with each subject, and that the plain citizen may not be puzzled by such contradictions and be at a disadvantage compared with those who are acquainted with the whole body of law, but that all may have the same ordinances before them, simple and clear to read and understand” (Dem. 20.93).

As for the laws themselves, the products of the complex and carefully designed process of νομοθεσία, legislation, we find similar praise. The orator Lycurgus reminds his listeners that, “The things which in the main uphold our democracy and preserve the city’s prosperity are three in number: first the system of law, second the vote of the jury,

and third the method of prosecution by which the crimes are handed over to them” (Lyc. 1.3–4).

And Demosthenes tells a jury, “I shall say nothing novel or extravagant or peculiar, but only what you all know to be true as well as I do. For if any of you cares to inquire what is the motive–power that calls together the Council, draws the people into the Assembly, fills the law–courts, makes the old archons resign readily to the new, and enables the whole life of the State to be carried on and preserved, he will find that it is the laws and the obedience that all men yield to the laws; since, if once they were done away with and every man were given licence to do as he liked, not only does the constitution vanish, but our life would not differ from that of the beasts of the field” (Dem. 25.20).

The procedures for enforcing the laws are a subject more appropriate to a discussion of the “People’s Court”.



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