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## **FORMING THE ASSEMBLY AS A LEGISLATIVE BODY IN ANCIENT GREECE**

*In every democratic society, the role of the assembly is of utmost importance, as it is a political body whose main task is to represent the will of the people. While societies and states have evolved over the centuries and become more complex, both ancient and modern democracies have faced similar issues, the most important one being the creation of efficient democratic mechanisms that will truly allow the voice of the people to be heard and enacted. In this paper, the authors will focus on the evolution of the assembly in ancient Greece, in an attempt to draw conclusions that would also benefit the modern world.*

**Key words:** *National assembly. – Legislation. – Legislation process. – Democracy. – Ancient Greece.*

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## 1. INTRODUCTION

Although they are centuries removed from the present day, ancient civilizations can still offer us insights that are crucial for understanding the roots and essence of many modern institutions. To better understand current issues, it is sometimes necessary to look back to the very beginning and analyze how the first societies overcame similar challenges.

When it comes to the lawmaking process and its challenges, what better role model to turn to than ancient Greece, especially ancient Athens, which is considered the cradle of democracy. The Greeks began to enact laws in the mid-7<sup>th</sup> century BC,<sup>1</sup> and since that moment legislation became an important element in supporting the development of the polis and its authority, especially in the Archaic Period (Gagarin 2013, 222). Over time, the popular assembly in ancient Greece evolved from the least significant to the most important bearer of legislative and other branches of power. The two most prominent city-states (poleis) typically studied in the context of ancient Greek law and government are Sparta and Athens: Athens, because the preserved sources predominantly reveal information about its constitution and society, and Sparta, as there is no other Greek polis that can be so successfully contrasted with Athens. The constitutions of other poleis are very obscure, and information about them is either fragmentary or nonexistent. While no sources from Sparta have been preserved, there are still a decent number of accounts that document the Spartan legal system and allow us to successfully reconstruct some of its segments.

Some warning must be given: all the information about Spartan law and its institutions comes from various Greek authors and their historical, biographical, philosophical, and theatrical works. Relying solely on these sources always carries the risk of making scientific conclusions based on the ancient authors' subjective perceptions of the topics they focused on. Caution is necessary, especially considering that in the late 5<sup>th</sup> century BC Athenian intellectuals had a strong fascination with Sparta. Most of them had never even visited Sparta, yet they idealized it and considered it morally superior due to its values and prioritization of common interests over individual

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<sup>1</sup> The oldest preserved laws come from the city of Dreros on the island of Crete, enacted between 650 and 600 BC (Jordović 2011, 86). There were also Draco's laws, from around 621 BC, and the laws of Zaleukos of Locris, also from the 7<sup>th</sup> century BC.

ones (MacDowell 1986, 15).<sup>2</sup> This attitude was especially widespread after Athens suffered defeat at the hands of Sparta in the Peloponnesian War, and its democracy was not as stable as it used to be, which caused dissatisfaction among the Athenians.

Unsurprisingly, more details are available about the ancient Athenian legislative procedure. We will attempt to determine the extent to which the people had an active role in shaping the laws in each of these poleis – whether they had the ability to freely propose laws, discuss their content and form, enact, and nullify them.

## 2. SPARTA

Ancient Sparta, an oligarchic monarchy, is a typical example of an ancient Greek polis. While ancient Athens managed to outgrow its initial aristocratic organization through a series of reforms and subsequently took pride in its new democratic constitution, it was an exception to the general rule: most ancient Greek poleis were ruled by an aristocratic council, and their assemblies had very limited power. That form of political dynamic was also mirrored in the legislative procedure, leaving the people with little opportunity to influence the form and content of laws.

As mentioned in the introduction, the biggest hindrance to uncovering the Spartan constitution is the lack of sources. There is not a single original legal text preserved, due to the Spartan tradition of keeping their laws (*rhetai*) in oral form. The main authorities on this topic are various Greek authors, many of whom had never visited Sparta, yet they wrote about it, based on their personal perceptions, combined with information gathered from the other authors. The ones we will primarily focus on are Plutarch, Xenophon, Diodorus Siculus, Aristotle, and Thucydides.<sup>3</sup> Other authors will be mentioned as well, but these five offer some crucial information about the lawmaking procedure in Sparta.

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<sup>2</sup> Even Aristophanes mentioned “Spartan mania” in one of his plays. In a dialogue between a herald and an Athenian citizen, the herald says: “Before your city was built, all men had a mania for Sparta: long hair and fasting were held in honor, men went dirty like Socrates and carried staves. Now all is changed.” (Aristoph. *Birds* 1280–1281)

<sup>3</sup> Among them, only Xenophon and Thucydides had actually visited Sparta. Herodotus had visited it as well, though the information he offers about the participation of Spartan people in lawmaking is scarce.

The origins of Spartan constitution are closely connected to the story of Lycurgus – a legendary Spartan king and lawmaker, who is credited with shaping the Spartan state, law, and society, creating the “good order” (*eunomia*), and promoting desirable moral values to his people, by weaving them into every aspect of both private and public life in Sparta. There has been much scholarly debate about the existence of Lycurgus, with some authors believing he was a historical figure, while others argue he was a mythological ruler.<sup>4</sup> Whether Lycurgus was real or not is of no importance for the purpose of this paper: Spartans certainly would not have been the only people who created a mythical shrine around the origins of their state.<sup>5</sup> It was fairly common in the antiquity to connect the state-founders or great law-makers to gods and oracles, as this was a way to shape a people’s identity and give the greatest authority and legitimacy to their existence.

## 2.1. The Great Rhetra

The one thing that is more important than the realness of Lycurgus is the Great Rhetra – the most important Spartan law, which defined the constitution and created the oligarchic political dynamic between the institutions. There are two explanations behind its creation.

The first and most commonly encountered explanation in the texts relies on mythology. Apparently, the state of affairs in Sparta was terrible before Lycurgus: lawlessness and confusion had plagued the state for a very long time (Plut. *Lyc.* 2.3; Hdt. 1.65.2; Plat. *Laws* 691e – 692a). When Lycurgus finally came to power, he first traveled to Delphi to consult the Pythian priestess about the new constitutional order he wanted to establish in Sparta. The priestess gave him a favorable answer, told him he was “rather god than man”, and said that the Apollo had granted his prayer for good laws,

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<sup>4</sup> What contributes to this confusion is the lack of certain facts about his life. Plutarch acknowledges this, while noting the contradictory information regarding the alleged time of his rule (Plut. *Lyc.* 1).

<sup>5</sup> For example, the Athenians credited their existence to the mythical king Ion, who allegedly divided the population into four tribes, each tribe into 3 phratries, each phratry into 30 gentes, and finally every gens into 30 families. Theseus, a legendary divine hero, was celebrated for unifying these four tribes into one people. Similarly, while the most famous Athenian lawgiver, Solon, was a historic figure, the respect and authority he gained reached an almost mythical level. Decades after his time, he was credited as a maker of many laws, which he actually did not create, simply because his authority was so great that individuals wanted to use it to strengthen or legitimize lesser-known or dubious laws. Similarly, Gortyn had its own legendary figure, King Minos.

promising him the best constitution in the world (Plut. *Lyc.* 5.3). Lycurgus then brought the oracle back to Sparta, established the new order, and later returned to Delphi for final confirmation that the laws were good (Plut. *Lyc.* 29.4; Xen. *Const. Lac.* 8.5). The divine oracle he delivered is what is called the Great Rhetra.

The second explanation encountered in the sources is of a more mundane nature: right before becoming a basileus, Lycurgus spent a certain amount of time traveling around the Mediterranean and becoming acquainted with foreign constitutions. According to the historians, he visited: Crete – whose institutions allegedly impressed him enough that he decided to copy them in Sparta; Asia – whose forms of government he studied and compared to those he was already familiar with; and Egypt – whose laws inspired him to commit to separating the military class from other social classes in Sparta and remove mechanics and artisans from participation in government (Plut. *Lyc.* 4.1, 4.3, 4.5; Arist. *Pol.* 1271b). It is plausible that the Great Rhetra was actually a creation of the Spartan institutions, that Lycurgus, having gathered all this constitutional knowledge during his travels, drafted the laws and initiated their enactment through legislative procedure, where both the Gerousia and the assembly were involved. He could have visited Delphi afterward, to receive confirmation from the god that the constitution he had established was good, thus giving it the necessary divine legitimacy. The laws, however, would have been a human creation in this second explanation, unlike in the first one, where they were of divine origin. Herodotus says “Some say that the Pythia also declared to him [Lycurgus] the constitution that now exists at Sparta, but the Lacedaemonians themselves say that Lycurgus brought it from Crete when he was guardian of his nephew Leobetes, the Spartan king” (Hdt. 1.65.4). Chrimes (1971, 476) further explains that at the time, it was probably common knowledge among Spartans that Lycurgus had visited Crete, and that there were similarities between the two constitutions, which undermined the story of the Delphic origins of the laws. Additionally, the Oracle was no longer as trusted by Spartans as before, since control of the shrine had been taken over by the Phocians, who were known to be pro-Athenian. Furthermore, during Cleomenes’ war with Argos, the Oracle gave the Spartans bad advice, which resulted in their defeat (Hdt. 6.80.1), and once more, when the Oracle advised them to march against the Tegeatae instead of the Arcadians, which also resulted in a defeat (Hdt. 1.66.2). All of this likely weakened trust in the Oracle, and the belief in the mythological origins of the laws was abandoned by at least part of the population. Wade-Gery also believes that the Great Rhetra was a creation of the Spartan institutions, not the Oracle (Wade-Gery 1943, 62).

Whether the Rhetra was created by the Oracle and delivered to Lycurgus, or it was drafted by him and enacted by the governing bodies through a legitimate legislative procedure, is also of little relevance to our study – what matters is its contents. The existence of the Great Rhetra has been attested to by several ancient authors, and the full text of it can be found in Plutarch's *Lycurgus*. The Rhetra goes as follows: “When thou hast built a temple to Zeus Syllanius and Athena Syllania, divided the people into ‘phylai’ and into ‘obai,’ and established a senate of thirty members, including the ‘archagetai,’ then from time to time ‘appellazein’ between Babyca and Cnacion, and there introduce and rescind measures; but the people must have the deciding voice and the power.” (Plut. *Lyc.* 6.1).

Sometime later,<sup>6</sup> during the reign of Kings Theopompus and Polydorus, a clause was added to this Rhetra: “But if the people should adopt a distorted motion, the senators and kings shall have power of adjournment” (Plut. *Lyc.* 6.4 and 7.1).

We gain some basic information about Spartan institutions from the Rhetra. A senate of 30 members was established, including the *archagetai*, which is probably a term for the kings. This senate was the Gerousia, an aristocratic council consisting of 30 members: 28 were aristocratic men over the age of 60 (the elders), and two were the kings (Plut. *Lyc.* 26.1). The Rhetra further states that they would “from time to time ‘appellazein’” in a certain geographic location to introduce and rescind measures. We will not engage in a philological discussion about the exact meaning of the term *appellazein* (see Chrimes 1971, 419–421; Wade-Gery 1943 and 1944), but it does seem that it represents some form of assembling where the people were also included. Obviously, the purpose of those meetings was “to introduce and rescind measures”, but the people had the final say, meaning that they probably voted on the suggested measures and decided whether they should be introduced or not. To summarize: there were two kings, a senate (a Gerousia, consisting of 28 elders and two kings), and an assembly of Spartan citizens. They would periodically meet to decide on certain measures (which could have included both decrees and laws, *psephismos* and *nomos*), in such a way that the Gerousia would make a proposal, and the assembly would vote for or against the proposal.

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<sup>6</sup> We again encounter the timeline issue, as the exact years of Lycurgus’ life are uncertain. Most authors place him in the 8<sup>th</sup> century BC. Plutarch claims that Theopompus and Polydorus introduced the changes about 30 years after the time of Lycurgus.

The addition to the Rhetra is where things get interesting. Plutarch (Plut. *Lyc.* 6.4) mentions Kings Theopompus and Polydorus as its authors. Apparently, the creator of the Great Rhetra had not intended for the people to have the right to discuss the proposals put forward by the Gerousia, but only to agree or disagree with them. It seems that in the decades following Lycurgus' time, the people's assembly had begun to oppose the proposals, asking that parts of them be removed or added before voting. This distortion of the Lycurgan constitution prompted the creation of the addition to the Rhetra, which clarified the role of the people: they were to simply vote "for" or "against" the proposals without altering them, and if they ever attempted to adopt a distorted motion, the Gerousia had the right of veto. The full text of the Rhetra (main text and the addition) is also confirmed by the Spartan poet Tyrtaios:<sup>7</sup>

*Phoebus Apollo's the mandate was which they brought from Pytho,  
Voicing the will of the god, nor were his words unfulfilled:  
Sway in the council and honours divine belong to the princes  
Under whose care has been set Sparta's city of charm;  
Second to them are the elders, and next come the men of the people  
Duly confirming by vote unperverted decrees.* (Plut. *Lyc.* 6.4)

Around the time when the addition to the Rhetra was made,<sup>8</sup> another institution emerged – the Ephorate. Both Plutarch and Aristotle claim that it was King Theopompus who introduced the five ephors to the polis, with the task of controlling the kings (Plut. *Lyc.* 7.1; Arist. *Pol.* 1313b). Over time, the Ephorate became the most powerful body in Sparta (Arist. *Pol.* 1270b, 1271a). The final constitutional order was as follows: two kings, five ephors, the Gerousia, and the assembly.

## 2.2. The Role of the Assembly

Participation in the assembly was reserved only for Spartiates<sup>9</sup> over the age of 30. Unlike the Gerousia, the assembly was not aristocratic – every Spartiate who met the required conditions (age, land ownership, and income) had the right to attend the meetings and vote.

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<sup>7</sup> Tyrtaios seems to have lived at least two generations after Lycurgus, as his grandfather is mentioned as a contemporary of Lycurgus (Wade-Gery 1944, 1).

<sup>8</sup> Possibly around the mid-8<sup>th</sup> century BC.

<sup>9</sup> Male citizens, who only participated in military actions and state governing. As mentioned, Lycurgus committed to the separation of the military from other classes, and forbade the Spartiates from engaging in trade and craftsmanship. Every

While the assembly was definitely necessary to enact a law or pass a decree, it seems that its powers were very limited. Firstly, it could not self-assemble; it had to be summoned by the authorized body, which were the ephors.<sup>10</sup> The fact that the assembly was unable to initiate a meeting and request a matter to be discussed and decided, shows that the political power most certainly did not rest with the people. This is not surprising, however, as it seems that Spartans saw democracy as a very dangerous form of government (Plut. *Lyc.* 5.7).<sup>11</sup>

Secondly, even when the assembly had been summoned, it was not allowed to propose anything; its only task was to hear the proposals that came from the Gerousia and vote on them. It was also restricted in the ability to suggest amendments: if the people changed the proposal in any way, and then voted for it, such a decision would have been crooked and the Gerousia could veto it. Discussions were allowed in the assembly, but the people were merely spectators, and the only ones who could participate in the discussions were the ephors, the kings, and the elders. There is one interesting example in the sources, where it appears that some of the common people did in fact participate in the discussion (Aeschin. 1.180–181). If the account is reliable, there is a possible explanation: it seems that the common man who addressed the assembly was summoned by an elder from the Gerousia. Additionally, he seems to have been used by the elder to make a point about how a skilled rhetor could deceive the assembly into voting for a proposal, even if the proposal was harmful. The elder asked this man, who was a talented warrior, but not a gifted speaker, to step forward and say the same thing as the previous speaker (who made a harmful proposal, but almost managed to sway the assembly to support it, because he was an excellent rhetor). Since the common man's speech was not worded elegantly, the assembly eventually realized that the proposal was indeed bad. Technically speaking, the common man did not substantively participate in the debate, but was instead used to emphasize the point the elder was making. It is,

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Spartiate needed to possess two things: landed property (all properties were the same size) and the means to finance *syssitia* (common meals). In the event that a Spartiate lost either of these two (land or income), he would cease being a *homoios* and become a second-class citizen, *hypomeion*, who was not allowed to exercise political rights.

<sup>10</sup> Prior to the existence of the ephors, the assembly was most likely summoned by the kings.

<sup>11</sup> "...since the twenty-eight senators always took the side of the kings when it was a question of curbing democracy, and, on the other hand, always strengthened the people to withstand the encroachments of tyranny." So, neither democracy nor tyranny were the acceptable form of government.

therefore, possible that the common people could address the assembly during the discussion, but only if they were summoned by an elder, a king (Jones 1967, 20), and possibly one of the ephors.

The legislative procedure went as follows. A formal suggestion would be made to the Gerousia to issue a decree or enact a law. The available sources contain only a few mentions of the initiator – and it was an ephor every time (Plut. *Agis* 8.1, 5.2; Thuc. 1.87). Whether only an ephor could initiate a procedure, or others could also but were simply not documented in the surviving sources, is something we cannot know for certain.<sup>12</sup> Once the initiation occurred, the Gerousia would discuss the proposal. It is in this step that a decree or a law would have been drafted, and when the elders and kings would have discussed the matter. The process would end with a vote: if the majority of the Gerousia voted in favor of the proposal, then the ephors would summon the assembly, and the proposal would be put to a vote. Additional discussion could have taken place, but the people were passive in it and merely listened to the arguments. Afterward, the ephors would ask the assembly to vote, and the voting process itself was quite nontransparent – by shouting. The ephors would decide if the crowd was louder for or against the proposal, and then they would declare the results. It seems that the votes were physically counted only in cases of extreme doubt (Thuc. 1.87.2–3; Plut. *Agis* 11.1).

There are two notable cases in the sources that are worth mentioning: one appears in Plutarch's *Agis*, and the other in Diodorus Siculus. Both describe situations where the assembly had been summoned, but the Gerousia did not have a proposal ready to present and vote on.

In *Agis*, Plutarch describes the time of King Agis IV, who reigned during the 3<sup>rd</sup> century BC and sought to bring change to Sparta. By that time, the Spartans had drifted away from the Lycurgan constitution and the values it promoted; they had embraced a life of luxury and wealth, which stood in stark contrast to the modest and humble lifestyle that had once been considered ideal (Plut. *Agis* 3.1 and 3.6). Agis aimed to return Spartan society to its original form and, in doing so, prompted one of the ephors, Lysander, to introduce a *rhētra* in the Gerousia. This *rhētra* proposed relieving all debtors

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<sup>12</sup> In *Agis*, King Agis urges ephor Lysander to propose a *rhētra* to the Gerousia. If he did this because the law prohibited a king from proposing a *rhētra*, it would confirm that only the ephors were allowed to make such proposals. However, we cannot be certain that Agis acted for that reason alone. It is also possible that he had political calculations in mind, such as not wanting the *rhētra* to come from him directly, but rather from someone else, so that it would appear as though there were other prominent supporters backing the proposed reforms.

of their debts, and redistributing the properties to their original sizes, as it was in the time of Lycurgus.<sup>13</sup> This would require the wealthy Spartiates to give up their large estates and suffer significant financial losses. As expected, the Gerousia became heavily divided over the proposal. However, before the Gerousia could even reach a final decision on whether to put the *rhetra* forward, Lysander summoned the assembly to discuss it in front of the people. The debate became heated, with the common people siding with Agis and the wealthy supporting the second king, Leonidas, who opposed the *rhetra*. Ultimately, the votes had to be physically counted, and the *rhetra* was rejected by a margin of just one vote (Plut. *Agis* 8.1, 9.1 and 11.1).

Diodorus Siculus recounts the events of 189 BC (Diod. 11.50.1–2),<sup>14</sup> when the elders were debating whether to go to war with Athens. While the Gerousia was still deliberating the matter, the assembly had already been convened. From the text, it appears that the people were eager to go to war (Diod. 11.50.3–5), however, an elder named Hetoemaridas managed to persuade both the Gerousia and the assembly to abandon the idea of war, and the proposal was ultimately rejected (Diod. 11.50.6–7).

In both cases, the usual course of action was disrupted. Instead of waiting for the Gerousia to decide whether to present a proposal to the assembly, the ephors hastily summoned the people while the elders were still in session. What could have been the purpose of this, especially knowing that any decision made by the assembly in such circumstances would have been crooked and subject to veto? The most likely explanation is that the ephors were deliberately using the assembly to exert pressure on the Gerousia. It would have certainly been more stressful for the elders to deliberate on the proposal with a shouting crowd of warriors nearby, particularly if the Gerousia was inclined toward a proposal that most of the assembly might not support. However, ultimately, it was the Gerousia that had the final say, retaining the power to veto the popular will, regardless of the crowd's influence.

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<sup>13</sup> Until the *rhetra* of the ephor Epitadeus, in the early 4<sup>th</sup> century BC, it was forbidden to dispose of landed property in Sparta. The primary purpose of land division, introduced by Lycurgus, was to ensure that each Spartiate received a plot of equal size, creating an economic balance where no one would be wealthier or poorer than others. However, Epitadeus altered this arrangement, allowing the free transfer of land. As a result, some Spartiates were able to expand their holdings, while others lost their land, leading to an economic imbalance within the state.

<sup>14</sup> “When Dromocleides was archon in Athens, the Romans elected as consuls Marcus Fabius and Gnaeus Manlius. In this year, the Lacedaemonians [...] had lost the command of the sea [...] And when a meeting of the Gerousia was convened, they considered making war upon the Athenians for the sake of regaining the command of the sea.”

In conclusion, it is clear that while the assembly played a necessary role in the legislative process, its power was largely limited: it had no legal means to initiate the creation of a law or to directly influence its content. Even when the people attempted to exert pressure on the Gerousia, they remained a tool in the hands of the ephors, rather than an independent body, as they lacked the authority to convene on their own. As a result, in ancient Sparta – and likely in most oligarchic Greek city-states – the assembly’s role was reduced to the least influential political body in the state.

### 3. ATHENS

Ancient Athens had a typically oligarchic constitutional order during the aristocratic period. The polis had magistrates of aristocratic origin, an aristocratic council (Aeropagus), which held all the political and judicial power in the polis, and finally an assembly, which had little influence. It is likely that it was organized similarly to the Spartan assembly, with acclamation being the standard method of voting (Jordović 2011, 130). Situation started to change with the first reforms aimed at diminishing the aristocratic nature of the government. Prior to these reforms, a person’s status in society was largely determined by consanguinity and affiliation with clans and tribes. Subsequent reforms sought to make these factors irrelevant. The primary goal was to organize citizens based on the territorial principle rather than their ancestral origins, with the intention of making all citizens equal,<sup>15</sup> regardless of their ancestry.

#### 3.1. The Reforms

The first reform aimed at achieving territorial equality was likely the division of Athens into territorial units known as *naukraroi* (Billigmeier, Dusing 1981, 11–16). This was followed by Draco’s reforms, which reduced some of the aristocratic privileges,<sup>16</sup> and later Solon’s and Cleisthenes’

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<sup>15</sup> The concept of *isenomia* – the equality under the law.

<sup>16</sup> Draco is credited with being the first to codify Athenian law, possibly in 621 BC. By doing so, he created a legal framework for the institutions, providing written laws on which they could rely, instead of relying on oral traditions and the arbitrary decisions of the aristocracy. Although the influence of the aristocrats remained prevalent, their power in the judicial sphere and legal matters was no longer absolute.

reforms. All three reforms spanned the 7<sup>th</sup> and 6<sup>th</sup> centuries BC (Avramović, Stanimirović 2022, 107). Solon was the first to reshape the class division by using average annual income in terms of corn, oil, or wine as a parameter. As a result, he created four new classes and introduced a new form of government known as timocracy, where the ability to hold political positions was based on the wealth of the citizen rather than on birth (Jordović 2011, 140–145; Hansen 1991, 29–32; see Leão, Rhodes 2016). This was the first big step towards a more democratic constitution. However, the democratization process was only completed with the final set of great reforms – by Cleisthenes. These were the changes that finally transformed society and laid the foundation for Athenian democracy.

In short, Cleisthenes completely removed the importance of ancestry in the exercise of political rights (Ostwald 1969, 137–160). He divided the entire citizenry into 10 tribes (*phylai*), with the criterion for their creation being purely territorial. He then subdivided the tribes into smaller units – municipalities called demes. Each deme maintained a register of citizens living in its territory and it was from these registers that candidates for political positions were selected, usually by lot. These registers of citizens included all adult male Athenian citizens,<sup>17</sup> regardless of their ancestry or affluence (see Divac 2019). These reforms, along with the rule that the term of every office would last only a year, enabled all citizens to be equal in terms of their political rights<sup>18</sup> and gave them an equal footing in decision-making and legislative procedures. As a result, the assembly evolved from the least influential to the most important governing body in the polis.

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<sup>17</sup> Initially, the status of an Athenian citizen was granted to everyone whose father was an Athenian citizen. However, in 451 BC, Pericles introduced a law stipulating that citizenship would only be granted to those whose parents were both Athenian by birth. This change resulted in a reduction of the citizen body and made Athenian citizenship somewhat more exclusive (Plut. *Per.* 37.3–4).

<sup>18</sup> It is important to emphasize that only male Athenian citizens had political rights; women were entirely excluded from public life. Therefore, whenever the participation of citizens in the assembly and other governing bodies is mentioned in this paper, it refers solely to male citizens.

## 3.2. The Lawmaking Process

### 3.2.1. Enacting a Law

The aforementioned reforms brought significant changes to many aspects of life in Athens. Not only did they empower the people and completely transformed the structure of government, but they reshaped the perception of the law. Earlier, during the 7<sup>th</sup> and 6<sup>th</sup> centuries BC, the word used for a law was *thesmos*, while in the 5<sup>th</sup> and 4<sup>th</sup> centuries BC, it shifted to *nomos*. Though both terms referred to rules, they emphasized different aspects. *Thesmos* highlighted that a particular authority enacted a rule, whereas *nomos* emphasized that the rule was generally accepted by the community. This change in terminology underscores the democratization of Athenian society, where the validity of a law depended on its acceptance by the people, rather than the power of the ruler (MacDowell 1978,144; Zartaloudis 2019, xxix-xxxi Canevaro 2015, 10, 13).

The two bodies with legislative powers were the assembly (Ekklesia) and the council (Boule). The Boule first emerged during the time of Solon but reached its final form during the time of Cleisthenes. It was a democratic body consisting of ten divisions known as *prytanies*: ten *prytanies* for the ten tribes. Each tribe selected 50 citizens over the age of 30 by lot to serve as tribal representatives in the Boule for one year, bringing the total membership of the council to 500 members. Furthermore, each *prytany* presided over the Boule for only one month, and the chairman of the presiding *prytany* was elected on a daily basis (Hansen 1991, 246–259; see Rhodes 1972). This system reveals a deeply democratic way in which the council operated: not a single tribe was able to dominate or appropriate more power than they were intended to have.

It is difficult to classify the Boule as belonging solely to one branch of power, since it had certain executive, legislative, judicial, and administrative powers at the same time. This was, in fact, typical of ancient times, as a clear separation of powers was not commonly practiced: the nature of governing bodies was mixed, as they performed various tasks belonging to different branches of power (see Avramović 1998, 11–21). In the legislative process, the Boule played a leading role as the initiator. It was the body in which the proposed laws and decrees<sup>19</sup> were discussed and drafted. Unsurprisingly

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<sup>19</sup> *Nomoi* and *psephismata*. There was not always a clear distinction between the two and sometimes the two terms overlapped, especially during the 5<sup>th</sup> century BC. The general understanding from the sources is that *nomos* had a higher authority than *psephisma*. Rhodes and Canevaro believe that the first serious attempt to

for such a democratic polis, the Boule was not the only body capable of initiating the lawmaking process – every Athenian citizen was allowed to appear before the Boule and propose a law or decree. The Boule would then consider the proposal, and if it approved, it would forward it to the Ekklesia, where the proposal would also be discussed and voted on.

The Ekklesia, as previously mentioned, was the most important governing body in the democratic period. Citizens over the age of 20 (Dem. 44.35)<sup>20</sup> were allowed to participate in all decision-making procedures that took place in the assembly. There were no formal restrictions on the ability to suggest amendments or address the people from the rostrum (see Cammack 2013, 156–161).<sup>21</sup> As for the voting process, the sources mention two methods that were utilized in Athens: public voting by raising hands and secret voting with ballots. The latter was described in detail by Aristotle and was mostly used in courtrooms (Arist. *Ath. Const.* 68–69). However, sources mention it was also used in the Ekklesia on special occasions. It seems that secret ballot voting took place in all cases where a quorum of 6,000 was stipulated by law and where every vote had to be counted precisely (Dem. 24.45; 59.89–90).<sup>22</sup> In all other instances, voting was public, most likely conducted by raising hands (*cheirotomia*). Hansen states that in simple matters, voting was likely conducted in stages: if one proposal was being discussed, the hands raised “in favor” would be counted first, followed by those “against”. Similarly, if the Ekklesia was expected to choose between two proposals, the hands raised for the first proposal would be counted first, and then those for the second (Hansen 1977, 124). He argues, however, that the hands were probably not counted precisely, but rather roughly, since the regular meetings of the Ekklesia lasted less than a day and with an attendance of around 6,000

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clearly distinguish between the two occurred during the restored democracy of 403–402 BC. Before this, *nomos* referred to rules that were more established and permanent, i.e., rules that were part of the Athenian “statute book”, enacted by a legislative commission, such as the one from Solon’s time. In contrast, *psephisma* referred to rules enacted by the Ekklesia (Rhodes 1972, 49; Canevaro 2015, 28).

<sup>20</sup> Every male had an obligatory two-year military service starting at the age of 18. The 18- and 19-year-olds were called the *epheboi*, and after completing their military service, they were inscribed in the Assembly register (*pinax ekklesiastikos*) within their respective demes (Hansen 1991, 89). That meant that male citizens gained the right to participate in the assembly at the age of 20.

<sup>21</sup> The right of all citizens to deliver a public speech was called *isegoria*, which literally meant “the equal opportunity to speak”. This was a fundamental concept in a democratic society, as it allowed everyone to express their opinion on the matter and prevented individuals from monopolizing the political discourse. For this reason, the art of oratory was highly valued and nurtured in ancient Athens.

<sup>22</sup> Ostracism, for example, along with many other cases concerning citizenship matters (such as granting citizenship to foreigners).

citizens (see also Avramović 1998, 12). It would have been impossible to count every raised hand “for” and “against” every point of the daily agenda as the counting process would likely have taken between five and ten hours (Hansen 1977, 128). Unfortunately, the sources do not reveal much on this topic. It seems plausible that the magistrates who conducted the counting used a visual criterion to determine the will of the majority: if the number of raised hands was obviously higher for one option, there was probably no need to count the exact number of votes. On the other hand, if the number of raised hands “for” and “against” appeared visually similar, we believe that a more precise counting had to take place, especially for important decisions such as enacting a law or a decree, because failing to do so would have compromised the validity of the legislative act.

Slight changes in the lawmaking process took place by the end of the 5<sup>th</sup> century BC. It seems that the majority of Athenians believed that the existing procedure needed to be modified, as it was not thorough enough.<sup>23</sup> As a result, they decided that enacting, modifying, and nullifying the laws required more than one meeting of the assembly to be properly discussed. Therefore, a committee of 500 *nomothetai*, who were elected by the demes, was introduced in 403/2 BC (Andoc. 1.83–84). While the enactment of *nomos* had not been completely removed from the Ekklesia, an additional step was created: any proposal, after being scrutinized in the Boule, had to be read in the Ekklesia several times. Afterward, the people were asked to vote: if the majority voted in favor of the proposal, it still would not become law immediately; instead, it had to be additionally assessed by the *nomothetai*. Only if the proposal passed their scrutiny would it officially become the law, without further discussion or amendments in the Ekklesia. The purpose of introducing these new magistrates was to create a committee of officials who would dedicate all their attention solely to establishing order in the Athenian legal system. This reform was a part of the efforts to restore democracy after overturning the Thirty Tyrants, the Spartan-imposed oligarchy that had terrorized Athens during 404–403 BC, in the wake of the Peloponnesian War (Arist. *Const. Ath.* 34–40). The goal of the *nomothetai* was to scrutinize and remove all laws that were obsolete or in collision with the rest of the legal system, as well as to oversee the constitutionality and adequacy of future laws (Dem. 3.10, 20.91, 24.20–23, 33; Aesch. 3.38–39; Rhodes 1972, 49–52; MacDowell 1978, 48–49; Gagarin 2013, 229–230). While the introduction of this additional committee, which was seemingly above the Ekklesia and was granted the final say on legal matters, might appear to be a step

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<sup>23</sup> Canevaro calls this “a shift from an extreme form of democracy to the sovereignty of the law” (Canevaro 2015, 6).

back from the democratic principle, it was done for the greater good. The Athenians truly believed that this was a necessary measure to allow their beloved democracy to flourish. If the statements found in Demosthenes and Aeschines are accurate, then they provide evidence that the Ekklesia remained the true master of the legislative procedure. The nomination of the *nomothetai* can be seen as analogous to the assembly utilizing its powers to form an expert committee to handle a specific task – namely, a more thorough final check of matters that had already been preapproved by the assembly itself. Finally, the role of the *nomothetai* was restricted solely to the enactment of laws, while the authority to issue decrees remained entirely in the hands of the assembly. Overall, despite these changes, the essence of the lawmaking process remained intact: any citizen could propose a law and any citizen could challenge it.

### 3.2.2. Challenging a Law

Every law and decree was subject to challenge. In line with the democratic principles upon which Athens was founded, every citizen had the right to dispute any law or decree they believed conflicted with the existing legislation. These legislative acts could be challenged both after their enactment or during their proposal stage. Once a citizen initiated the procedure, the rule in question – or the process of its enactment – became suspended until the matter was resolved. There were two ways to challenge a legislative act: before 403/2 BC, the only available way was by submitting a *graphe paranomon*, essentially an action against the law or a decree that resulted in a trial; After 403/2 BC, the *graphe paranomon* was used only for contesting decrees, while the *graphe nomon me epitedeion theinai* was introduced for challenging laws (Phillips 2013, 14).

While the two indictments seem to have functioned in a similar way, it is apparent that the *graphe paranomon* was more commonly used. In the orators, Hansen found only six speeches that were written for the *graphe nomon me epitedeion theinai*, compared to 35 for the *graphe paranomon* (Hansen 1991, 212). Additionally, sources reveal that the *graphe paranomon* was an especially prevalent procedure, particularly in the 4<sup>th</sup> century BC. In one of Aeschines' speeches, a man claimed that he was acquitted in at least 75 cases of *graphe paranomon* during his 50-year political career (Aesch. 3.194). This is an astonishingly high number of such indictments. Demosthenes also shares his views on the importance of this procedure: “when indictments for illegality [*graphe paranomon*] are done away with it

is the ruin of your democracy” (Dem. 58.34). What explains this attitude, and does it mean that the Athenians cared so much about their democracy that they scrutinized their laws all day long?

The answer is probably not so surprising. We need to reflect once again on the changes that took place in 403/2 BC. Previously, the *graphe paranomon* was the sole legal action used to contest laws and decrees deemed unconstitutional (either formally or materially) or those that were outright harmful to the interests of the polis. And then in 403/2 BC another action was introduced exclusively for challenging unsuitable laws, while the *graphe paranomon* remained reserved for the troubling decrees. Decrees were legislative acts that applied to individual cases or situations, and in the 4th century BC they often involved honors and grants of citizenship (Hansen 1991, 211). This distinction is important because, by this time, decrees were passed more frequently than laws, which now required a more complicated procedure due to the introduction of the *nomothetai*, while decrees could still be enacted directly by the assembly. Also, decrees were often used as a political weapon. While ostracism was the most powerful tool against political rivals during the 5th century BC, the *graphe paranomon* took over that role in the 4th century BC (Hansen 1991, 205). This explains its popularity – not so much for safeguarding the legal system from damaging decrees, but for political rivalry, allowing Athenians to target enemies, discredit them, or even have them disenfranchised. Among the preserved *graphe paranomon* speeches, at least 19 are directed towards the honorary decrees.

As for the procedure, both of these indictments could be initiated by any citizen, since they were public actions.<sup>24</sup> The person challenging the law or decree took on the role of the prosecutor, while the individual who proposed the legislative act in question became its defender. If the proposer was not available for some reason, the polis would probably appoint a public defender (Avramović, Stanimirović 2022, 111). The trial took place in front of the Heliaia. If the prosecutor was successful, the disputed rule would be rendered null and void, and the person who proposed it could face punishment: sometimes a simple fine, and other times quite a debilitating penalty, such as a crippling debt to the state, combined with *atimia*, i.e., disenfranchisement (Dem. 58.1). On the other hand, if the prosecutor failed

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<sup>24</sup> Public actions (*graphai*) were intended for the most severe offences, which endangered the polis and its fundamental values. This is why any citizen could initiate them, in contrast to private actions (*dikai*), which could be initiated only by the interested parties.

to secure at least 1/5 of the votes, he was also liable for punishment (Todd 1995, 109). This was a typical outcome in public cases since it served as a safeguard for the polis against groundless and thoughtless proceedings.

#### 4. CONCLUSION

A stark contrast can be noted between the two systems of government and the way they valued the importance of people's participation in the political life of the state. As previously mentioned, most of the Greek constitutions were oligarchic. The political agency of the people was subdued and diminished. They were expected to participate, but only to a limited extent; to enact, but without asking questions. Such was the constitution of Sparta, as well as those of numerous other Greek poleis, one of which is slightly more familiar to us than the rest – the Cretan constitution, at least according to Aristotle (Arist. *Pol.* 1271b, 1272a, 1272b, 1273a). There were ten *kosmoi*, magistrates from the most reputable families, an aristocratic council consisting of former *kosmoi*, and an assembly of citizens. The Dreros law, the earliest surviving inscribed law in Ancient Greece, begins with “The polis has decided”, implying that the people were the ones who enacted the law, probably in the presence of the *kosmoi* and the *damioi*, the aristocratic class. Gortyn, apparently, enacted legislation similar to the Dreros law (Gagarin 2013, 223–224). These oligarchies defined qualifications needed for an active political role in the poleis in such a way that it was reserved only for the most affluent members of the citizen body. Even if access to the assemblies was granted to all male citizens, that did not always entail the right to have an active say in the process (Blok 2013, 169–170).

In the beginning, ancient Athens followed the same path, until it took a sharp turn toward a democratic constitution. The ultimate proof of the sovereignty of the people is the importance that was given to the Ekklesia from the 6<sup>th</sup> century BC on. Athenian democracy was in no way flawless. It came with many challenges and issues, which the polis tried to curb with various legal and political measures. There are many aspects of it that could be criticized: the amateurism of the political actors and their lack of expertise,<sup>25</sup> the voluntarism of their participation,<sup>26</sup> susceptibility to demagoguery and

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<sup>25</sup> Everyone who participated in political life was a layman: there were no law schools where people could get educated in the field of law. The only legal knowledge people acquired was that gained through experience.

<sup>26</sup> There was no legal obligation for citizens to attend assembly meetings regularly. The quorum of 6,000 was an exception, not the norm.

pressure, bribery and general corruption, which presented a significant problem in the 4<sup>th</sup> century BC (Cammack 2013, 162, 167; Finley 1985, 38–75). However, if we want antiquity to teach us, we must move beyond these individual elements and dive into the essence.

It would be naïve to claim that we can directly borrow solutions from ancient times and implement them in modern societies – which are dramatically different and more complex – especially without any adjustments. Nevertheless, we can gain wisdom from them. It is beneficial to reflect on the past from time to time, remind ourselves of the essence of different forms of government, and apply that knowledge to the present by analyzing how far astray we have gone.

In its pure raw core, democracy means that absolute power lies in the hands of the people, and that the will of the people should be the law. Every rule that Athens set, every reform it enacted, and every penalty it imposed was directed toward preserving its people and democratic values.<sup>27</sup> Knowing this, we should reexamine our existing democratic mechanisms and truly investigate whether they are still performing their main purpose – serving as instruments of popular political and civic will – or whether they have become corrupted and politicized, serving the desires of the few. If that is the case, our task is to reshape them and return them to their original function, otherwise, the only thing remaining of democracy will be the illusion of it.

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<sup>27</sup> The most heinous crimes in Athens, punishable by capital punishment, included treason, deception of the people, subversion of democracy, attempting to install tyranny, and dishonorable behavior in the assembly. There was also a special category of murders, known as “legally allowed murders,” in which anyone could kill a person attempting to subvert the democracy and become a tyrant, without facing any legal repercussions (Avramović, Stanimirović 2022, 122–123).

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