DIVIDED POWER AND EYNOMIA: DELIBERATIVE PROCEDURES IN ANCIENT SPARTA

I. INTRODUCTION

Spartan institutions were pictured as a model of political stability from the Classical period onwards.1 The so-called Spartan ‘mirage’ did not involve only its constitutional order but also social and economic institutions.2 Xenophon begins his *Constitution of the Lacedaemonians* by associating Spartan fame with the politeia set up by Lycurgus, which made the Laconian city the most powerful (δυνατωτάτη) and famous (ὀνομαστοτάτη) polis in Greece (Xen. *Lac.* 1.1).3 In Aristotle’s *Politics*, in which the assessment of Sparta is more complex and nuanced, one finds a critique of contemporary Spartan institutions as well as praise for Lycurgus as a great lawgiver who established the laws of Sparta (Arist. *Pol.* 2.1269a69, 2.1273b20).4 Most other ancient sources often remark upon the unchangeable features of some Spartan institutions as a key aspect of Spartan εὐνομία. Thucydides maintains that, after a long period of war and stasis, the Dorians established excellent laws and Sparta employed the same constitution for more than four hundred years (Thuc. 1.18.1: τετρακόσια καὶ ὀλίγῳ πλείω ἐς τὴν τελευτήν τούτων τοῦ πολέμου ἄφ᾽ όν Λακεδαιμόνιοι τῇ αὐτῇ πολιτείᾳ χρόνιται).5 This ancient invention of the ideal Spartan constitution and of its legendary lawgiver Lycurgus has been long recognized in scholarship.6 Cartledge has pointed out how the ‘partly distorted and partly invented’ view of Sparta was due to non-Spartans.7 In an essay published in 2002, however, Flower has shown that the Spartans themselves were not immune from inventing their own past during the Classical and the Hellenistic periods. This outcome was often reached by attributing contemporary institutional and social innovations to Lycurgus according to an ideological attitude that is also well known with regard to Solon and the πάτριος πολιτεία in fourth-century

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5 See also Lys. 33.7.
7 P. Cartledge, * Agesilaos and the Crisis of Sparta* (London and Baltimore, 1987), 118.
Athens. Yet, Hodkinson has shown in several important studies how this view of Sparta as an exceptional and static society within the Greek world during the Archaic and the Classical periods is in need of revision. In fact, most of the evidence about the institutions, the economy and the society of Sparta does not reflect the actual Archaic and Classical Spartan κόσμος but results from later invention, which is aimed at shaping collective memory about the past, and is consistent with reforms of the Hellenistic period.

This is especially true when it comes to studying the Spartan political institutions and deliberative practices. The preservation of the Great Rhetra, the alleged ‘founding’ constitutional document of Sparta, has given rise to a long debate about the origin of Spartan institutions. The text of the Rhetra, preserved in Plutarch’s Life of Lycurgus (Plut. Lyc. 6.1–10), reports a document from the lost Aristotelian Constitution of the Lacedaemonians and an additional clause, the so-called ‘rider’, which Plutarch attributes to Kings Theopompus and Polydorus. This document details the constitutional structure and the deliberative procedures of Sparta traditionally attributed to Lycurgus and based on the interaction between three institutions: the two kings, the Council of Elders (γερουσία) and the δῆμος. Nafissi has recently demonstrated that the Rhetra does not, in fact, outline the original foundation of the Spartan constitution; rather, it is a piece of retrospective history elaborated and accepted by Archaic Spartan society. The Rhetra marks the moment of institutionalization of the Spartan community between the seventh century and the sixth century, and is itself a first attempt of dating back their institutions to a remote past.


10 The noun ἄνθρωπος shows an oral origin of the archaic text. The division of the text of the Rhetra and the ‘rider’ are in fact later antiquarian distinctions; see M. Nafissi, La nascita del kosmos: studi sulla storia e la società di Sparta (Perugia, 1991), 67–71.


Although the *Rhetra* cannot be used for exploring the foundation of the Spartan political system, it is important evidence for the working of Spartan institutions at the time it was composed. It provides a brief account of the three most important Spartan institutions, which are still attested during the Classical and the Hellenistic periods along with the fundamental office of the five ephors, not mentioned in the text of the *Rhetra*. Spartan deliberation was the result of a complex interaction between the Council of Elders (*Gerousia*), the ephors and the Assembly. The *Gerousia* and the ephors constituted the most important boards of officials in Sparta. They shared the probouleutic power and checked the legality of the enactments of the Spartan Assembly, which ratified the proposals of the γέροντες and the ephors.\(^{13}\)

There is, however, no consensus amongst scholars about the actual workings and the balance of power among deliberative bodies of ancient Sparta. Some scholars have stressed the fundamental oligarchic features of Spartan deliberation, in which the Assembly played a marginal role, whereas powerful officials made all the decisions.\(^{14}\) By contrast, Ruzé has argued that the text of the *Rhetra* already envisaged a right of free speech for the δάμος, which could actively shape Spartan policy-making.\(^{15}\) In particular, Ruzé’s approach dismisses the official role of the *Gerousia* in the probouleutic procedure, by arguing for an informal *probouleusis* (προβούλευσις) during which the δάμος debated preliminary proposals without however taking a formal vote. Conversely, in a recent monograph on the Homeric councils and the Spartan *Gerousia* Schulz has made the case for a prominent role of the *Gerousia* in Sparta’s institutional system, and has provided a picture of the legislative procedure in which the γέροντες played a key role. Although Schulz recognizes that the decision-making process was achieved through interaction between the *Gerousia* and the ephors, he argues that, when there was no consensus amongst the γέροντες about a motion to submit before the δάμος, the ephor did not introduce the bill to the Assembly, but an advisory assembly was actually gathered to check the people’s opinion informally, and only after this passage could the *Gerousia* either submit or veto the draft through their probouleutic power before an actual vote of the Assembly.\(^{16}\) These approaches are, however, problematic, for several reasons. First, there is no evidence of informal or advisory meetings of the people’s Assembly in Greek deliberative practice *tout court*, especially in non-democratic contexts, and this assumption is mainly based on the idea of Sparta’s exceptionality. Second, Schulz’s reconstruction fails to isolate the difference between the power of *probouleusis* and the power of *nomophylakia* (νομοφυλακία), which was performed by the *Gerousia*’s veto of decision after the debate in the Assembly.

It is my contention in this article that the Spartan decision-making process shared with the Athenian decision-making process the principle of ‘divided power’, as is clearly shown by historical evidence regarding the role of the *Gerousia* and the ephors in the deliberative procedures of Classical and Hellenistic Sparta. Pasquino has recently introduced the concept of ‘divided power’ to the study of ancient Greek institutions in

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\(^{13}\) See section III below.


\(^{16}\) Schulz (n. 11), 196–201.
his analysis of fourth-century Athenian democracy. He defines the Athenian constitution as a ‘divided power’ because of the absence of ‘monocratic governmental agencies’, as no single institution could run the entire decision-making process. Although Pasquino’s analysis is strongly reliant on Hansen’s problematic claim of an institutional superiority of the law courts in the fourth-century Athenian constitution, the principle of ‘divided power’ conveys effectively the set of constitutional balances of the Athenian institutional system. In Sparta, too, deliberation was the result of a complex interaction, and particularly regarding the institutional relationship between the Gerousia, the ephors and the δῆμος. The balance of power and a sound legal order are key features of the Greek poleis since the Archaic period. Eὐνομία (eunomia) is the term that Spartans and other Greek communities used to refer to this kind of political system, which preserved freedom under the laws, and was regarded as typical of the Greek poleis in opposition to tyranny (Hdt. 1.65; 7.104; Thuc. 1.18.1). Indeed, when Sparta’s institutions were devised, they were not conceptualised as an oligarchy in opposition to a democracy. The opposing pair oligarchy–democracy became prominent in Greek politics and political thought only from the second half of the fifth century, and Spartan understanding of their regime as non-democratic emerged later, after the Peloponnesian War. Just as in the other Greek poleis, the rule of law and ‘divided power’ were at the foundation of the Spartan constitution, defining the very aim of its institutions. These institutions and procedures, however, were marked (compared, for example, to those in Athens) by stronger devices to limit the power of the people, and to keep it in check, while, at the same time, recognising its formal authority. It was, as at Athens, a case of ‘divided power’, but one with explicit protection of the deliberative power of the elite vis-à-vis that of the δῆμος—a power that was maintained, path-dependently, through complex procedures and institutional steps from the Archaic period to the Hellenistic period. Thus, the interplay between different governmental bodies followed these ideological patterns of the Spartan politeia, which gave the probouleutic bodies—the Gerousia and the ephors—the power to shape policy-making through the powers of probouleusis and nomophylakia. Neither of these governmental agencies, however, had exclusive control over these functions, which were in fact divided between the ephors and the γραφέ paranomon. The study of the practical workings of this constitutional mechanism underscores the complexity of Sparta’s institutional equilibrium and the features of ‘divided power’ in practice within a non-democratic political system.

18 Harris shows that there was no shift from popular sovereignty in the fifth century B.C. to the sovereignty of law in the fourth century B.C. In both periods it was the role of the courts to implement the rule of law and for the Assembly to uphold popular sovereignty. See E.M. Harris, ‘From democracy to the rule of law? Constitutional change in Athens during the fifth and fourth centuries B.C.E.’, in C. Tiersch (ed.), Die athenische Demokratie im 4. Jahrhundert. Zwischen Modernisierung und Tradition (Stuttgart, 2016), 80–5, pace M.H. Hansen, The Athenian Democracy in the Age of Democthenes: Structures, Principles, Ideology (Oxford, 1991), 150–5, 300–4.
This essay examines the two most detailed ancient accounts (Diod. Sic. 11.50.2–7; Plut. Agis 8.1–11.1) concerning the workings of Spartan deliberation. It begins by sketching an overview of Spartan political institutions and their functions within the theoretical framework of New Historical Institutionalism (section II). I shall then focus on the analysis of the literary sources in order to reconstruct the interactive relationship between distinct governmental bodies, in particular the interplay between the two probouleutic bodies, the Gerousia and the ephors, and the Spartan Assembly in the process of deliberation (section III). This will shed light on the constitutional workings as well as on the ideological features of Spartan deliberation by focussing on the powers of probouleusis and nomophylakia shared by γέροντες and ephors.

II. SPARTAN DECISION-MAKING INSTITUTIONS: KINGS, GEROUSIA AND EPHORS

The two kings, the Gerousia and the ephors made up the three institutions that dominated Spartan political deliberation. The text of the Great Rheta alludes to two of these institutions:21 the γέροντες and the founders (ἄρχοντες), a term interpreted by Plutarch as referring to the kings.22 Although the Rheta is a retrospective document, these references show that both the Gerousia and the Spartan kingship were already fully institutionalized in the early Archaic period.

During the Classical and the Hellenistic periods, the Spartan kings were formally limited in their power. In Xenophon’s Constitution of the Lacedaemonians, one reads that the kings had to take an oath in which they swore to reign according to the established laws (Xen. Lac. 15.7: ὁ δὲ ὀρχὸς ἐστὶ τοῦ μὲν βασιλεύει κατὰ τοὺς τῆς πόλεως κεκμένους νόμους βασιλεύσειν). Aristotle, in the Politics’ discussion of good kingship (1285a7), states that the Spartan constitution provides a kingship which is lawful and limited in its authority (ἡ γὰρ ἐν τῇ Δακωνικῇ πολιτείᾳ δοκεῖ μὲν εἶναι βασιλεία μόλιστα τῶν κατὰ νόμον, οὐκ ἔστι δὲ κυριὰ πάντων). He then defines the nature of Spartan kingship as a kind of supreme generalship for life (οὐτῇ μὲν οὖν ἡ βασιλεία οίων στρατηγία τις αὐτοκρατόρων καὶ ἀδιότως ἐστιν). As recent studies have pointed out, although the two kings were limited in their constitutional power, they could enjoy significant charisma-based authority grounded in the mythical origin of the Heraclid dyarchy as well as in their wealth and broad powers during military campaigns, especially during the Hellenistic period.23 Harris has noted that the

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22 See Plut. Lyce. 6.3. Nafissi (n. 11), 104–7 points out that this is a retrospective word, normally used for oikists and founders of cults.

Spartan military success was partly due to the balance between legal controls over the kings and the need of a centralized military command. This institutional design prevented the kings from acquiring too much power without interfering with the unity of command necessary for military efficiency on campaign.\textsuperscript{24}

More interestingly for our purpose, as the text of the \textit{Rhetra} shows, the two kings along with the twenty-eight \textit{γέροντες} constituted a collegial institution, the \textit{Gerousia}.\textsuperscript{25} The \textit{Gerousia}, however, should not be interpreted as a ‘royal Council’. As several sources confirm, the kings’ votes had the same weight as those of the other \textit{γέροντες},\textsuperscript{26} and, as I shall show in detail later, during the Hellenistic period the kings even needed the support of the ephors to introduce motions to the \textit{Gerousia}.

Unlike the Athenian \textit{Boulē}, made up of five hundred citizens appointed by lot every year, the Spartan \textit{Gerousia} was constituted of only thirty members appointed for life (Aeschin. 1.180; Arist. \textit{Pol.} 1270b39, 1272a36; Plut. \textit{Lyc.} 6, 26.1; Paus. 3.5.2; Plut. \textit{Ages.} 4.2.).\textsuperscript{27} Ancient evidence confirms that the \textit{Gerousia} was the most respected and prestigious Spartan institution, according to the typical values of aristocratic constitutions, such as \textit{kαλοκἀγαθία}, \textit{σωφροσύνη} and \textit{ἄρετή}.\textsuperscript{28} According to Aristotle’s \textit{Politics}, the \textit{Gerousia} represented the aristocratic element of the Spartan mixed constitution, and its members were the \textit{καλοί κάγαθοι}.\textsuperscript{29} As Aristotle states (\textit{Pol.} 1270b24–5), in Sparta the different parts (μέρη) of the city kept their relevant roles allowing the endurance of the constitution: the kings received their honour (\textit{διὰ τὴν αὐτῶν τιμήν}), the people held the ephorate (\textit{διὰ τὴν ἐφορείαν}), and the \textit{καλοὶ κάγαθοι} were entitled to the membership of the \textit{Gerousia} as an award for their individual merits and virtues (οἱ δὲ καλοὶ κάγαθοι διὰ τὴν γερουσίαν, ἄθλον γὰρ ἢ ἄρχη σύν τῆς ἄρετής ἔστιν), which the Spartan civic community highly respected, although the only formal requirement for appointment to the \textit{Gerousia} was that the candidate had reached the age of sixty.\textsuperscript{30} This is also confirmed by Xenophon, who states that Lycurgus was a good lawgiver for having established the \textit{Gerousia}, which makes it possible for the \textit{γέροντες} to show off their virtues (Xen. \textit{Lac.} 10.1–3). In the speech \textit{Against Leptines} (Dem. 20.107), Demosthenes employs an expression similar to that used in Aristotle’s \textit{Politics}, stating that the \textit{Gerousia} is the master of the Spartan \textit{politeia} and a reward for merit (τῆς ἄρετής ἄθλον). Such values played a

\textsuperscript{24} E.M. Harris, ‘Military organization and one-man rule in the Greek \textit{polis}’, \textit{Ktêma} 40 (2015), 83–90. For the legal controls of military leadership in the Greek \textit{poleis}, see E.M. Harris, ‘The rule of law and military organization in the Greek \textit{polis}’, in G. Thür (ed.), \textit{Symposium 2009: Vorträge zur griechischen und hellenistischen Rechtsgeschichte} (Vienna, 2010), 405–17.

\textsuperscript{25} The regular Doric word was \textit{γεροντία} (Xen. \textit{Lac.} 10.1).


\textsuperscript{27} For the life appointment, see E. David, \textit{Old Age in Sparta} (Amsterdam, 1991), 18; Ruzé (n. 15), 138–9.


\textsuperscript{30} Schulz (n. 11), 121–2 calculated that the average office term for a \textit{γέρον} was roughly 7.5 years, with a turnover of 3.73 new \textit{γέροντες} every year.
very important role in shaping the institutional task of the γέροντες and the nature of their political decisions in the legislative and deliberative procedure.

This seems to be confirmed by the appointment procedure of the γέροντες—described by Plutarch—in which the δάμος played an important role in the election of the candidates by shouting (Plut. Lyc. 26). They declared as elected whoever received the longest and loudest shouts (ὁτω δὲ πλείστα γένοντο καὶ μεγίστα, τούτων ἀνηγόρευον). In the Politics Aristotle disapproves the voting procedure for electing the γέροντες and labels it as ‘childish’ (παιδαριώδης), a term that he employs also for the appointment of the ephors (Pol. 1270b28, 1271a10). Aristotle does not justify his severe judgement, but it is likely that he is referring to the same acclamatory procedure described by Plutarch. In spite of Aristotelian criticism, the acclamatory shouts of the Spartan δάμος reflected a voting procedure embedded with precise ideological features. As Schwartzberg argues, by voting through acclamation, the Spartans in the Assembly secured a collective result for the election, in which the individual votes were not counted, because of the different levels of ‘epistemic dignity’ among the members of the civic community as a whole. As already shown, the Gerousia voted by majority rule, because the political and epistemic weight of each γέρων—including the two kings—was the same but also higher than that of the common citizen of the Assembly. The δάμος, on the other hand, voted as a collective deliberative body, showing the will of the community through acclamation. This different voting system also had relevant consequences for the legislative process, as I will show later when analysing the veto powers of the Gerousia.

The collective vote of the whole citizen-community in selecting the γέροντες was an important acknowledgement of the moral and political virtues of the Elders as representatives of the δάμος within the Gerousia. Once elected by the δάμος, the γέροντες held several honours, which were broadly similar to those for the winners of athletic contests. A new γέρων wore a crown and visited the temples followed by a procession of young men and women praising him with songs. He then went to the common mess in which he received a double portion that he should offer to one of his female relatives, whom he esteemed the most. Such considerable honours for the new γέροντες were not excessive in light of the broad powers of the Gerousia. The Council of Elders, including the kings, had exclusive judicial powers in lawsuits in which the penalty was death, ἄτιμω or exile (Xen. Lac. 10.1; Arist. Pol. 1294b29; Plut. Lyc. 26). The Gerousia was also involved in trials of the kings, but in this case the law court was composed of twenty-eight γέροντες, the other king and the ephors. Despite the fact that they are not mentioned in the Rhetra, the ephors were fundamental to the Spartan decision-making process. The ephorate was established after the Rhetra was composed, by the creation of a board of five officials.

31 See also Hdt. 9.28.1; Thuc. 1.87.
32 Schulz (n. 11), 114–15. For the election of the ephors, see Richer (n. 21), 296–307.
33 Schwartzberg (n. 26), 25–6.
34 For an analysis of the ritual, see B. Jordan, ‘The ceremony of the helots in Thucydides IV 80’, AC 59 (1990), 37–69; David (n. 27), 18–19; Schulz (n. 11), 117–19.
35 For death penalty and exile, cf. Schulz (n. 11), 180–1.
36 For instances of trials of Spartan kings, see Hdt. 6.82, Paus. 3.6.8, Xen. Hell. 3.3, 8–11, Plut. Agis 19. The legal procedure for capital trials began before the ephors, who conducted the ἀνάκρισις and brought the charge before the Gerousia. See also Vat. Gr. 2306 fr. A 1–30 and J.J. Keaney, ‘Theoephraustus on Greek judicial procedure’, TAPhA 104 (1974), 179–94.
37 Ephors are also called by sources as: ἀρχηγ., ἀρχοντες, τὰ τέλη, οἱ ἐν τέλει. See Richer (n. 21), 265–70.
Evidence for the origin of the ephorate is lacking, and the story about their origin in connection with King Theopompus is a later tradition (Arist. Pol. 1313a25–33). As Nafissi suggests, it is likely that the office was instituted during the sixth century reflecting the institutional consolidation of the political community.\textsuperscript{38} Its members were the highest magistrates of Sparta—one of whom was the eponym—elected by the δᾶμος for one year, possibly with the same procedure used to elect the γέροντες.\textsuperscript{39} As suggested by their name, the ephors had to oversee (ἐφοράν) the respect of nomoi as well as the behaviour of the individual citizens (Xen. Lac. 8.3). The kings were also subject to close control by the ephors, who accompanied one of the kings during military campaigns or, as we saw, could prosecute them in a trial. They also had jurisdiction over areas which in Athens were supervised by the Council, such as the mobilization of the army, public order, public finance, religion and the supervision of other officials (Arist. Pol. 1271a6–7).\textsuperscript{40}

The interaction between ephorate and Gerousia was not confined to the judicial sphere but was particularly prominent in political deliberation. As was typical of Greek institutional practice, the Council had probouleutic power, which in Sparta was shared between the Council of Elders and the ephors. If one compares Spartan probouleusis with its Athenian equivalent, it is immediately clear that Sparta shows a peculiar constitutional pattern. In Athens the probouleutic power was held by the Boulē, which submitted προβούλευμα to the Assembly. There were no other institutions entitled to prepare the agenda or to submit formal proposals to the dēmos.\textsuperscript{41} The Athenian Assembly could only discuss items put in the agenda by the Council. For example, when Nicias tried to have the πρυτάνεις put a motion to the vote about the expedition to Sicily, which was not on the agenda of the Assembly, he knew that he was doing something illegal, because his proposal did not follow the probouleutic procedure and was not in a προβούλευμα of the Council (Thuc. 6.14).\textsuperscript{42} In Sparta, on the other hand, probouleusis was not exercised by a single institutional agency but by both the Gerousia and the ephors according to different procedures, which shows that this fundamental power was actually ‘divided’. Unlike in democratic contexts, however, the interplay between the deliberative institutions reflects different institutional values, embedded in the constitutional design and therefore in the non-democratic features of the Spartan politeia. Spartan institutions evolved from the archaic arrangement shown by the Rhetra, for example, by introducing the board of five ephors. Nevertheless, political institutions changed path-dependently—according to New Historical Institutionalism terminology—and preserved, to an extent, functions, features and values of the έυνομία which originally shaped them. These values, embedded in the relevant institutions, preserved the balance of powers as well as the stability of the legal order, and were still found in the workings of the deliberative

\textsuperscript{38} Nafissi (n. 12), 130–1.
\textsuperscript{39} It is possible that an ephor could be elected only once to that office. On ephors, see also S. Sommer, Das Ephorat. Garant des spartanischen Kosmos (St. Katharinen, 2001).
\textsuperscript{40} For the mobilisation, see Richer (n. 21), 324–34; for the religious role, 157–257; for finance, 477–9; for ιερὸν, 442–4 with P. Fröhlich, Les cités grecques et le contrôle des magistrats (We–rste siècle avant J.-C.) (Geneva and Paris, 2005).
\textsuperscript{42} See E.M. Harris, ‘Nicias’ illegal proposal in the debate about the Sicilian expedition (Thuc. 6.14)’, CPh 109 (2014), 66–72.
institutions in the Hellenistic period, with consequences for the workings of decision-making. With this framework in mind, one can analyse the literary evidence from Diodorus and especially from Plutarch’s Life of Agis. These sources offer an account of Spartan deliberation in practice in the Hellenistic period, and a careful analysis will reveal the institutional and ideological patterns of the Spartan decision-making process.

III. INTERACTION BETWEEN EPHORS AND GEROUSIA: ‘DIVIDED’ PROBOULEUSIS AND NOMOPHYLAKIA

In Aristotle’s Politics one finds the theoretical description of the workings of probouleusis in oligarchic regimes. At 1298b26–35 he states that in oligarchies there are probouleutic magistrates, called πρόβολοι or νομοφύλακες, who put forward proposals to the δῆμος, which can only discuss these motions. The δῆμος cannot advance or debate proposals, except those already approved by these magistrates (ἐὰν ἦ ταυτά ὑπηρέσσατο τὸν δῆμον ἦ μὴ ἔναντίον τοὺς εἰσεφορμένοις).

If one compares the Aristotelian account with the text of the Great Rhetra, it seems clear that Aristotle’s statement matches the procedures envisaged in the Great Rhetra as well as in Spartan institutional practice. The text of the Great Rhetra is the following:

Διὸς Συλλανιού καὶ Αθηνᾶς Συλλανίας ἵππον ἵδρυσάμενον, φυλάς φυλάξαντα καὶ θέσεις ὀρθά ὑβάξαντα, τρίακόντα γερουσίαν συν ἄρχοντας καταστήσαντα, ὀράς ἐξ ὀράς ἀπελλάξειν μεταξύ Βακκύας τε καὶ Κνακιόνος, οὕτως εἰσφέρειν τε καὶ ἀφισταθαι δάμφο <…> καὶ κράτος. […] αἱ δὲ σκολιῶν ὁ δῆμος ἔλοιπο, τοὺς πρεσβυγενέας καὶ ἄρχοντας ἀποστῇσίας ἤμεν.

Having founded a cult of Zeus Syllanios and Athena Syllania, having divided the people [or ‘kept the divisions’] in tribes and having divided it in obai, having appointed a council of thirty members, including the founders, regularly celebrate the Apellai between Babyka and Knakion. Bring forward and reject [proposals] as follows: to the people must go (…) and final decision, […] but if the people speaks crookedly [or ‘asks for something crooked’] the elders and the founders are to be rejecters. (trans. Nafissi)

The text of the Great Rhetra shows that, during the Archaic period, the Gerousia and the kings had the power of putting proposals before the Assembly (οὕτως εἰσφέρειν τε καὶ ἀφισταθαι). The ‘rider’ also implies that the Gerousia could veto motions of the Assembly in case the δῆμος ‘speaks crookedly’, which means that the Assembly

46 A late sixth-century probouleutic Council of Elders (πρεῖγα) is also attested in an unknown city of Western Locris. It played a role along with the assembly (πόλις) and the ἀρχοντες in overriding an entrenchment clause about division of the land (IG IX I 2 609).
could not pass an enactment contrary to the Gerousia’s proposal without the possibility of being vetoed—a clear example of the power of nomophylakia of the γέροντες (Plut. Lyc. 6.3).

Evidence for the working of deliberation in Classical and in Hellenistic Sparta is scanty. The very same terms probouleusis and nomophylakia, used in accordance with Aristotle’s usage, are not found in Sparta. The former, in Aristotle, indicates the power of the Council or of the probouleutic officials (or a collaboration between these two bodies) to set the agenda of the people’s assemblies in order to achieve efficient deliberation. The latter function is the power to control the conformity of the motions of the Assembly to the general laws governing the life of the community. Both of these powers were fundamental to preserve balance between popular sovereignty and rule of law typical of the Greek poleis from the Archaic period onwards. In Greek normal institutional terminology, the two terms πρόβουλοι or νομοφύλακες (and cognates) were often used interchangeably to indicate special magistrates (and functions) with the power of drafting proposals and checking the legality of deliberations. For example, Plutarch uses the expression τὸ προβουλεύειν at Agis 11.1 to describe the powers of the Spartan γέροντες when vetoing Agis’ rhetra. In Plutarch’s passage the term indicates that the γέροντες were acting as πρόβουλοι with their relevant powers of legislative review. In Aristotle’s terminology that would constitute an exercise of nomophylakia. Despite the occasional terminological overlap, the Aristotelian classification shows that the two procedures were conceptually different, and they marked two different moments of the decision-making.47 Even though neither term is found in Spartan practice, however, just as in most of the Greek poleis, the Spartan deliberative bodies performed those functions through the relevant legal procedures, and therefore the use of this terminology has significant heuristic value within a Greek perspective.

The only piece of evidence for the probouleutic procedure in fifth-century Sparta is provided by a slightly obscure passage in Diodorus. He describes a debate in Sparta in 475/474 B.C. after the conflict between the Greek poleis and the Persians (Diod. Sic. 11.50.1–7). The historical authenticity of these events seems dubious, even though recent scholarship accepts Diodorus’ account as trustworthy.48 The historical events might be fictional, but it is hard to argue that the institutional framework is fictional: as Griffith pointed out, Ephorus—Diodorus’ source for this passage—can hardly be accused of ignoring Spartan deliberative procedures.49 Diodorus narrates that the Gerousia was summoned (συναχθείσης δὲ τῆς γερουσίας) to deliberate on the possibility of making war against the Athenians (ἐβουλεύοντο περὶ τοῦ πολέμου), who had supremacy over the seas and had therefore become a threat for Sparta.

Likewise, the Assembly was summoned (ὁμοίως δὲ καὶ τῆς κοινῆς ἐκκλήσιας συνεχθείσης) and the majority of the citizens agreed that Sparta had to gain leadership of the seas. Diódoros’ account seems at first glance to imply that a second meeting of the Gerousia was held (τῆς γερουσίας συνεδρεύσας περὶ τούτων), in which the ἑρόντες were about to make their decision by following the people’s preference for war (Diod. Sic. 11.50.2–5). But Hetoimaridas, one of the ἑρόντες, persuaded both the Gerousia and the δάμος with his eloquence to change their mind. The problem with this account is that it excludes the ephors from the procedure, whereas other evidence pictures active interaction between the Gerousia and the ephors. As I argue below, in case of absence of unanimity within the Gerousia, the ephors could formally introduce a proposal to the δάμος for ratification, but this bill had then to be examined and voted again by a majority of ἑρόντες in order to be passed.

This is shown by the most detailed account of the political decision-making procedure in Sparta found in Plutarch’s *Life of Agis*, which describes the legislative procedure during the Hellenistic period (Plut. *Agis* 8–11).50 Plutarch’s account is not immune from ideological bias, as it relies on the contemporary work of Phylarchus, who was fiercely criticized by Polybius for his dramatic historiographical style.51 Yet, Polybius’ critiques should not be overestimated, as he himself adopted a biased perspective against Phylarchus because of his anti-Spartan attitude. In his analysis of the role of women in the *Lives of Agis and Cleomenes*, Powell shows how several details drawn from Phylarchus’ work are indeed plausible pieces of information from contemporary Sparta.52 According to Plutarch, in 243/242 B.C. King Agis IV proposed an ambitious plan of reforms—remission of debts, distribution of land and extension of citizenship.53 Agis succeeded in procuring the election of Lyonsander as ephor and through him the bill was put forward before the Gerousia (Plut. *Agis* 8.1: εὐθὺς εἰσέφερε δὴ αὐτοῦ ῥήμαν εἰς τοὺς ἑρόντας). The new ῥητρα, however, did not receive the unanimous favour of the ἑρόντες, who were divided in their opinions (γραφείσης δὲ τῆς ῥήματος, καὶ τῶν ἑρόντων εἰς ταῦτα παῖς γνώμαις ὑπὸ συμφερόμενον). Lyonsander thus summoned the Assembly (ἐκκλήσιας συνομοσσίας ὁ Λύσανδρος) to discuss the proposal (Plut. *Agis* 9.1). After a debate between Kings Agis and Leonidas, who supported the traditional κόσμος against Agis’ reforms, the Spartans backed Agis by passing his motion (τῷ μὲν Ἀγίδι τῷ πλῆθος ἐπικολούθησαν). But the ἑρόντες eventually vetoed it through a majority vote (Plut. *Agis* 11.1), so that the reform never entered into force (τοὺς ἑρόντας, οἷς τὸ κράτος ἦν εν τῷ προβοηθεῖν).

Building on these two literary accounts, several studies on Spartan legislative procedures have reconstructed it as characterized either by an unclear distribution of powers between ephors and Gerousia or by an ‘informal’ preparatory phase. Kelly, in

50 Plut. *Agis* 8–11.
53 For the reforms of Agis IV, see P. Cartledge and A. Spawforth, *Hellenistic and Roman Sparta* (London and Berkeley, 1991), 68–72.
his reconstruction of the procedure in Diodorus, highlights that the meeting of the Gerousia was held before the δάμος, which usually showed its mood through shouts, silence and applause.\(^{54}\) As Diodorus makes clear (Diod. Sic. 11.50.5), the Gerousia was still in session when the δάμος expressed favour for war (πάντων δὲ σχεδὸν τῶν πολιτῶν πρὸς ταύτην τὴν υπόθεσιν ὄρισμένων, καὶ τῆς γερουσίας συνεδρεύσεις περὶ τούτων). For this reason, Kelly argues that, when the γέροντες and the ephors—not mentioned by Diodorus—did not agree on a motion, they put their case before the Assembly and decided on the spot whether to put their motions to the vote in the Assembly. Thus, during the same meeting, Hetoimaridas persuaded the γέροντες to put his motion to the vote, which was passed by the δάμος. Kelly envisages the very same procedure in Plutarch’s account on the reform of Agis IV without clearly identifying the relevant roles of the ephors and of the γέροντες in the decision-making procedure.\(^{55}\) Other scholars have adopted views stressing the informality of Spartan deliberation. Following Ruzé, Richer argues that the literary sources show that both the Gerousia and the Assembly were not summoned to make an ultimate decision, because the γέροντες did not submit a formal proposal to the δάμος, so that the early stages of the procedure (the first meeting of the Gerousia and the first meeting of the Assembly) consisted of mere preparatory work before the final decision.\(^{56}\) Schulz argues that these passages from Diodorus and Plutarch attest deliberative procedures in which the Assembly played an advisory role when there was no unanimity among the γέροντες.\(^{57}\) According to Schulz, Plutarch’s passage in particular illustrates a probouleutic procedure structured in two steps:\(^{58}\) first, the Gerousia prepared the motions to be submitted to the Assembly; second, the Assembly was summoned and the motion was put to the vote. However, if the Gerousia could not make a unanimous decision, a meeting of the δάμος could be held in order to gauge the people’s opinion without taking a formal vote. After hearing that, the Gerousia submitted a final προβούλευμα for the vote before the δάμος, approving it by majority rule.\(^{59}\) These studies, however, provide accounts of the probouleutic procedure that does not fit the historical evidence of deliberative practice in non-democratic constitutions.\(^{60}\)

\(^{54}\) Diodorus’ text does not mention shouts and applauses, but this practice is attested in Sparta. For voting by shouting, see n. 35.

\(^{55}\) Kelly (n. 49), 60.


\(^{57}\) Schulz (n. 11), 198–200 substantiates his thesis by including other pieces of evidence. In particular, the passages in Plut. Agis 5.3–5 about the rhêtra introduced by the ephor Epitadeus and the passages in Plut. Lys. 16–17 about the prohibition of silver and gold seem clearly to highlight the wide probouleutic power of the ephors rather than the primacy of the Gerousia. Yet, Schüttrumpf and Hodkinson have clearly demonstrated that the Epitadeus episode in the Life of Agis is an unhistorical account, and that it is based on Plato’s Republic (555c–e). See E. Schüttrumpf, Aristoteles, Politik: Buch II und Buch III (Berlin, 1991), 317; S. Hodkinson, Property and Wealth in Classical Sparta (London, 2000), 90–4. See also M. Nafissi, ‘Asteropos et Epitadeus. Storie di due efori spartani e di altri personaggi dai nomi parlanti’, Incidenza dell’Antico 6 (2008), 49–89, at 72–84.

\(^{58}\) For previous reconstructions, see W.G. Forrest, Legislation in Sparta, Phoenix 21 (1967), 11–19.

\(^{59}\) Schulz (n. 11), 196–201. Schulz singles out two distinct kinds of assemblies: an advisory assembly (beratende Volksversammlung) and a decision-making assembly (entscheidende Volksversammlung).

\(^{60}\) Ruzé (n. 15), 154 argues that the ‘spéificité’ of the Spartan polis made it difficult for the ancient author to describe the decision-making by using ordinary institutional terminology. For examples of oligarchic practice, see pp. 369–70 below.
In reconstructing the Spartan deliberative procedure, all these scholars have drawn a forced analogy between Hetoimaridas’ debate in Diodorus’ Library and Plutarch’s account of Agis’ reforms. Schulz’s reconstruction, moreover, underestimates the role of the ephorate in the deliberative practice by implying that the Assembly did not discuss a formal proposal. There are several problems with these accounts.

First, one should clearly identify the specific procedural features of the two historical accounts. The problem with any simple juxtaposition is that the episodes are substantially different from a procedural point of view—not in the nature of the procedure but in how the procedure unfolds. We can see that Diodorus’ account, structured in two parts, shows a decision-making process that is conditioned by a key difference with that summarized by Plutarch. Initially, the Gerousia and the δῆμος agreed on making war against Athens, then Hetoimaridas delivered his speech and persuaded both the γέροντες and the citizens to change their plans. Diodorus thus makes clear that there was an initial general consensus among the γέροντες, as well as among the citizens, and this is the reason why no one ‘dared to advance any other proposal’ (Diod. Sic. 11.50.5: οὐδὲνα τολμὴσαν συμβουλεύσαι ἐτερὸν τι). In contrast to the case of Agis described by Plutarch, there is no dispute within the Gerousia, and this consensus in the Gerousia determines the next procedural step: a vote of ratification by the Assembly. Plutarch clearly shows that in the case of Agis’ reforms there was instead political dissent, organized into two factions: on one side, Agis, the ephor Lysander and the majority of the citizens, and, on the other side, the majority of the γέροντες and King Leonidas. This dissent was already expressed in the first meeting of the Gerousia and later in the debate in the citizens’ Assembly. By contrast, in Diodorus’ passage there is no contrast at all. Everyone agreed about the proposal for making war and an assembly was called to ratify the decision of the Gerousia. Hetoimaridas, at that point, delivered his speech by which he persuaded the γέροντες, still in session, and the Assembly, which rejected the proposal without any opposition from the γέροντες. This shows a probouleutic procedure that follows the usual pattern common in the Greek world. The Council of Elders, and possibly the unmentioned ephors, reached an agreement about a proposal, which was then submitted to the Assembly for ratification. In that case, the Assembly, influenced by a γέρων who spoke against the bill approved by the Gerousia, rejected the bill, with the endorsement of the rest of the Gerousia, that had by then also changed its mind.

Moving from Diodorus to Plutarch’s Life of Agis, we find a more detailed description of the procedure, the steps of which are compatible with those identified in the case of Hetoimaridas. In Plutarch, the kings, the Gerousia, the ephors and the Assembly are all involved. First, Plutarch makes it clear that it was the ephor Lysander who drafted a formal written proposal (γραφείσης δὲ τής ρήτρας) in the Gerousia (εἴθες εἰσέφερε δι’ αὐτοῦ ρήτραν εἰς τοὺς γέροντας).61 The use of written documents in Spartan public life is not surprising. As Millender has convincingly shown, the Spartans made wide use of written documents for their diplomatic activities, and already in the Classical period Sparta had an archive with copies of state documents, such as international treaties, lists of eponymous ephors and athletic victories.62 This means that there was an official document containing the provisions of the bill, and only after (aorist participle) the...
presentation of the formal draft did the legislative procedure begin. The γέροντες did not reach unanimity about the provisions of the bill (καὶ τῶν γερόντων εἰς τοῦτο ταῖς γνώμαις οὐ συμφερομένου), which means that a proper draft was prepared after a discussion in the Gerousia (Plut. Agis 9.1). The two genitive absolute clauses are key here. The former genitive absolute shows a causal connection between the presentation of the rhetra by Lysander and the subsequent dissent of the γέροντες, which presupposes a formal debate in the Gerousia, after which the ephor prepared the relevant draft. The latter can be understood as having concessive meaning: ‘the rhetra was written, although the opinions of the γέροντες did not agree’. This confirms that the ephor could introduce a proposal, even if the γέροντες did not pass the proposal. The following sentence (ἐκκλησίαις συνοχειών ὁ Λύσανδρος αὐτός τε διελέχη τοῖς πολίταις) is logically coordinated and implies that Lysander, in force of his ephoral power, summoned the Assembly to discuss the same written motion.

Thus, the role of the ephor Lysander in starting the decision-making process highlights a key feature: probouleusis was not the exclusive province of the Gerousia; rather, the power was actually divided between ephorate and Gerousia. Even without the unanimous vote of the Elders in the Gerousia, the ephor Lysander was able to summon an Assembly and to put the motion to the vote. This is also supported by the fact that Agis IV was very concerned with procuring the election of Lysander before presenting his bill to the Gerousia, in order to have a political ally for his revolutionary reforms. The king had clearly no power to introduce his rhetra to the Assembly without the fundamental support of the ephor who could bypass the γέροντες when initiating the deliberative process.

The ephors took part in the Gerousia meetings, and the eponymous ephor was in charge of presiding over the Assembly and supervising the voting of the δόμος. This is consistent with the evidence concerning the power of the ephors to initiate legislation. In the Hellenica Xenophon says that in 400 B.C. the Spartan ephors and the Assembly resolved (ἐδόξε τοῖς ἐφόροις καὶ τῇ ἐκκλησίᾳ) to send ambassadors to Elis (Xen. Hell. 3.2.23). He employs the same expression when Sparta decides to go to war with the Achaeans against the Acharnanians (Hell. 4.6.3: ἐδόξε τοῖς τ ν ἐφόροις καὶ τῇ ἐκκλησίᾳ). Ruzé rightly points out that this formula resembles the Athenian enactment formula, which shows a parallel between the probouleutic function of the Athenian Boulê and the probouleutic function of the Spartan ephors. The ἐδόξε–formula in deliberative practice not only is similar to the Athenian version but also was widespread across the Greek world. Thucydides reports the Spartan

64 N.M. Kennell, Spartans: A New History (Chichester, 2010), 169. Cf. Xen. Hell. 2.3.34; the decisions of the board of ephors were binding for all its members.
65 Cf. Plut. Lys. 14.4, which reports the decree of the ephors stating: ‘this is resolved by the authorities of the Lacedaemonians’ (τὸ δ’ ἄλληθρον δόγμα τῶν ἑφόρων ὑπὸς εἶχε: τάδε τὰ τέλη τῶν Λακεδαιμονίων ἔγγοι).
66 Schulz (n. 11), 212 explains that the formula mentions only the ephors and the Assembly, because of an ellipse of the term ‘Gerousia’, since it was in-between these two institutions in the decision-making. The ephors started the legislative procedure by putting forward the motion in the Gerousia and the Assembly ratified it. However, the enactment formula usually shows the enactment bodies of a decree or of a law, and Schulz’s explanation is forced.
67 There are 3,692 occurrences of this clause on the PHI database of Greek inscriptions. However, cf. P.J. Rhodes and D.M. Lewis, The Decrees of the Greek States (Oxford, 1997), 258 e.g. on Mytilenean probouleutic formulas, which are very different from this model.
enactment formula by quoting two treaties in Doric dialect between Sparta and Argos (Thuc. 5.77.1, 5.79.1). The first text is a Spartan peace-treaty draft with the preliminary proposal to Argos (κατατάσσει δοκεῖ τῷ ἐκκλησίᾳ τῶν Λακεδαίμων), the second document provides the final text of the alliance between the Spartans and the Argives (ἐδόξε τοῖς Λακεδαίμονις καὶ Ἀργείοις).

In both cases, the formula shows patterns similar to those found in Xenophon’s *Hellenica*, even if the ephors are not mentioned. These formulas are not in contradiction with each other. Indeed, Xenophon had direct access to Spartan institutional practice and the formulas he cited should therefore be taken to represent the normal deliberative practice in Classical Sparta. Thucydides instead reports the draft and the final version of a copy of an international treaty, which he perhaps consulted during the period of his exile. In the Spartan proposal Thucydides might have consulted an archival copy, because it seems implausible that the Spartans or the Argives had inscribed on stone a copy of the preliminary proposals. On the other hand, the second formula underlines the agreement procedure between the two communities without mentioning the respective deliberative bodies of the two cities. Another famous Thucydidean passage shows that the ephors were in charge of putting a matter to the vote even without the unanimous consensus of the *Gerousia*. When the Spartans were discussing whether they should declare war against Athens in 432 B.C., King Archidamus delivered a speech against war, while the ephor Sthenelaidas spoke forcefully in favour of war, and he himself put the question to the vote of the Assembly (τοιαύτα λέξεις ἐπενήργεσεν αὐτὸς ἔφορος ἃν ἐς τὴν ἐκκλησίαν τῶν Λακεδαίμων), which passed it (Thuc. 1.79–87). Yet, a comparison with other Hellenistic cities shows that the role of the Spartan ephors in the decision-making process has also a contemporary parallel in the function of the Iasian προτάνεις. Decrees from Hellenistic Iasos attest that, after the third century’s reform, the Iasian Assembly could only examine motions passed by the Council after the prior consideration of the προτάνεις acting as πρόβουλοι. Likewise, in Hellenistic Cyme, the στρατηγοὶ summoned the Council and introduced the προβουλεύματα to the Assembly.

The probouleutic power of the ephors and their relevant role in the deliberative procedure shows that there is no need to hypothesize any *contio*-like or advisory

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69 Richer (n. 21), 339.
70 On Thucydides’ autopsy of these documents, see G. Schepens, *L’autopsie dans le méthode des historiens grecs du Ve siècle avant J.-C.* (Brussels, 1980), 184.
71 Schulz (n. 11), 206–7 interprets this passage as evidence for the lack of *probouleusis* between the two speeches and the vote of the Assembly. It is possible that no written draft was discussed, but it is clear that the ephor was legally empowered to use his probouleutic power by putting the item to the vote of the δήμος. Similarly, in Polyb. 4.34–5 the ephors allowed the Aetolian ambassador to address the Assembly and to discuss the alliance, even if there was no unanimity amongst the γεροντες.
73 P. Hamon, ‘*Kymê d’Éolide, cité libre et démocratique, et le pouvoir des stratèges*’, *Chiron* 38 (2008), 63–106, at 70.
meeting of the Spartan Assembly. As Nafissi rightly points out, the Great Rhetra does not mention any informal meeting of the δῆμος. An examination of the probouleutic practice in the Greek poleis shows no evidence of such advisory meetings of an assembly before or during probouleusis. Instead, Greek deliberative procedure shows that the people’s assemblies were always gathered either to discuss a well-defined proposal drafted by the relevant probouleutic body—a Council or a board of officials—or to discuss an open προβούλευμα, which implies broad deliberative powers of the people’s Assembly. It is clear from the evidence that the Spartan Assembly had only the first of these prerogatives, and could only enact or reject a proposal submitted by the Gerousia and the ephors but could not deliberate on an open προβούλευμα. In the passage from Diodorus, the Assembly is asked to vote on the Gerousia’s proposal for war, already approved by the γέροντες unanimously. Conversely, in the passage from Plutarch, Lysander opens the formal discussion in the Assembly about Agis’ reforms, which are then passed by the δῆμος, but the bill had not been previously approved unanimously by the Gerousia. The text shows that, if the bill had not been unanimously pre-approved by the Gerousia, even after the Assembly’s approval, it could be vetoed by the γέροντες with a simple majority vote. This point should be stressed: it appears that the vote of the δῆμος on a decree not pre-approved unanimously by the γέροντες was not final; but it was not meaningless either, as it gave the bill the chance to be approved by a simple majority of γέροντες, whereas at the normal probouleumatic stage it needed unanimity in order for the vote of the δῆμος to be final.

Thus, a procedure structured in these three stages fits both the so-called ‘rider’ of the Great Rhetra and the Aristotelian account of oligarchic probouleusis already mentioned. At Pol. 1272a10–12 Aristotle describes the similarities between the Cretan and the Spartan constitutions by drawing analogies between the roles of the Cretan κόσμοι and the roles of the Spartan ephors, as well as between the role of the Councils of Elders. He then states that in both constitutions every citizen attends the meetings of the Assembly, which has however no authority (κυρία δ’ οὐδενός ἔστιν) except

74 For the Spartan Assembly as contio, see n. 15 above.
75 Nafissi (n. 10), 364.
76 Rhodes and Lewis (n. 67), 484–91 with many examples of probouleusis in practice in the Greek poleis.
77 Nafissi (n. 23), 335, pace Ruzé (n. 56). For the prohibition on emending proposals drafted by magistrates in the Spartan assembly, see Arist. Pol. 1272a10–12 below, pace Andrews (n. 14), 4, who drew an analogy with the Athenian practice of open προβούλευμα. It is worth noting that even in fourth-century Athens, where the Assembly had broad powers, in the period from 403/402 b.c. to 323/322 b.c. the number of preserved decrees on stone that were verbatim ratifications of the Council’s προβούλευμα is higher than non-probouleumatic decrees amended by the δῆμος (52%–48%); see G. Oliver, ‘Oligarchy at Athens after the Lamian War: epigraphic evidence for the Boule and the Ekklesia’, in O. Palagia and S. Tracy (edd.), The Macedonians in Athens 322–229 BC. Proceedings of the International Conference held at the University of Athens, May 24–26 2003 (Oxford, 2003), 40–51, at 46.
78 Kennell (n. 64), 110.
80 The term kyrios (κύριος) indicates both in the documentary sources and in philosophical language a legally recognized power that does not need to refer to a higher authority. Cf. F.D.
in ratifying the proposals (συνεπιψηφίσασα τὰ δόξαντα) of the Elders and of the κόσμοι.\textsuperscript{81} Yet, at Pol. 1298b, when describing the institutional powers of προβουλοῦντος and νομοφύλακες, Aristotle states that in the politeia-regimes—such as Sparta and Crete—the few have the authority to reject (οἱ γὰρ ὀλίγοι ἄποψιν ἠκοσμοῦσιν μὲν κύριοι) but not to pass proposals (κατασαρασάμενοι δὲ οὐ κύριοι), which are always referred to the δῆμος (ἀλλ᾽ ἐπανάγεται εἰς τοὺς πλεῖους αἰεί). The verb ἄποψιν ἠκοσμεῖται is the very same term that Plutarch employs to describe the vote of rejection by the Gerousia. As the literary evidence shows, this verb is often used in Athenian forensic speeches for penalties that needed to be approved (Antiph. 1.12, 5.96; Lys. 10.31, 12.90; Lyc. 1.149), therefore of proposals that had already been formally presented. In the case of Sparta, the verb marks the fact that the proposal had already been passed by the δῆμος.\textsuperscript{82} To push the parallel with the Athenian usage of the verb, the ἄποψιν ἠκοσμεῖται were those Athenian citizens who lost their civic rights for not fulfilling the legal requirements and were therefore ‘rejected’ from the civic registers of the demes.\textsuperscript{83} Thus, according to the Aristotelian account, in some oligarchic constitutions legislation is to be ratified by assemblies, but the probouleutic bodies can make them invalid a posteriori. In addition to the probouleutic power, which is used before a proposal reaches the Assembly, they have a veto power that can be used after the approval of a bill by the Assembly. This matches precisely the powers of the Spartan γέροντες: they clearly had probouleutic powers (exercised before a bill reached the Assembly) but also the power of nomophylakia through which they could stop the legislative procedure by invalidating those motions that contradicted the nomoi, which were therefore σκόλιον, as the Great Rheta states.\textsuperscript{84} A similar view is found in Aeschines’ Against Timarchus (Aeschin. 1.180–1).\textsuperscript{85} When praising Sparta, Aeschines states that, during a debate, a dissolute but skilful speaker addressed the Assembly which was persuaded by his argument. A γέρον, however, stood up and said that they should not listen to that man, and asked a virtuous man to give the same advice, so that the Spartans could act according to the suggestions of a distinguished citizen. This anecdote is unlikely to be historically accurate, but it clarifies the Athenian understanding of the political decision-making in Sparta, and of the role of the Gerousia. A γέρον could stop the debate in the Assembly, if some basic principles embedded in the εὐνομία were not respected, performing therefore a nomophylakia role.

Finally, a comparison between Plutarch’s account and other non-democratic deliberative practices may also shed light on this issue. Demetrius of Phalerum introduced magistrates called νομοφύλακες in Athens between 317 and 307 B.C. during the oligarchic government following the peace between the Athenians and the

\textsuperscript{81} Cf. Nafissi (n. 10), 363–5; Bertelli (n. 4), 40–3; cf. the use of the same expression in Polyb. 21.32.1 to indicate the ratification vote of the motion of the συνεδρίῳ by the δῆμος (δόξαντος δὲ τὸ συνεδρίῳ, καὶ τὸ δήμου συνεπιψηφίσασαν, ἐκυρώθη τὰ κατὰ τὰς διαλύσεις).

\textsuperscript{82} Canevaro (n. 45), 315–17. Cf. also IG II\textsuperscript{7} 1237 (lines 31, 38, 90, 95, 98, 101–3).


\textsuperscript{84} David (n. 27), 33—contra Schulz (n. 11), 155–7—recognizes that the Gerousia was empowered of nomophylakia but does not include it in his reconstruction of the probouleutic and deliberative procedure.

Macedonian king Cassander.\(^8^6\) The powers of the Athenian νομοφύλακες are described in an entry of the *Lexicon Rhetoricum Cantabriensi* (s.v. νομοφύλακες), based on Philochorus’ evidence, which states that the νομοφύλακες sat at the meetings of the Council and the Assembly next to the πρόσεδροι with the task of stopping inexpedient deliberations.\(^8^7\) This shows a clear analogy with the role of the γέροντες in Spartan decision-making procedures. The Gerousia indeed was present and gathered during the Assemblies of the δήμος,\(^8^8\) as were the Athenian νομοφύλακες, but not to gauge ‘informally’ the δήμος; rather, their role involved checking the legality of deliberation and potentially vetoing illegal enactments. This is the reason for which, after Agis’ ῥητρα had been enacted by the Assembly, a simple majority vote of the γέροντες would have sufficed for the bill to be carried, instead of the unanimity required at the probouleutic stage. Agis must have known that he could not obtain a unanimous vote from the γέροντες but must have hoped that, faced with the overwhelming favour of the δήμος, at least a simple majority of γέροντες would decide to let the bill stand. Agis claimed to represent the Lycurgan tradition, but similarly his opponents among the γέροντες could maintain that his ῥητρα was contrary to the established nomoi. The Gerousia therefore exercised its prerogative to halt the legislative procedure safeguarding the traditional order—the majority vote at nomophylakia–stage sank his reform.

What was the ideological rationale of this decision-making procedure? In democratic Athens, for example, the Assembly could delegate power to the Council to enact a further decree, in order to complement the decision-making by exploiting the expertise of the βουλευταί in particular matters and displaying a ‘divided power’ in deliberation between Council and Assembly (*SEG* 10, 40; *IG* I\(^3\) 136; *IG* II\(^2\) 204; *RO* 53; *IG* II\(^2\) 1629).\(^8^9\) That procedure was rooted in the democratic ideological framework according to which the deliberative power did not belong exclusively to one governmental agency. Democratic ideology was alien to Sparta, but one can nevertheless find patterns of ‘divided power’, though essentially non-democratic in their nature. The ἐθος of the Spartan deliberative procedures was to constrain deliberation within the boundaries of the traditional nomos. As the evidence has shown, the probouleutic procedure in Sparta limited free debate in the Assembly. *Probouleusia* therefore assumes a prominent role in the constitutional equilibrium, since every matter discussed in the Assembly was put forward through this procedure without allowing further changes. The Spartan institutional system, however, shows that this fundamental power was shared between ephors and


\(^{88}\) Kelly (n. 49), 60.

\(^{89}\) Cf. Harris (n. 18), 76–80.
Gerousia, because neither of these two bodies had an exclusive role in bringing motions before the δᾶμος. Α προβούλευσα thus needed the unanimous vote of the Gerousia in order to be submitted for ratification before the Assembly, but the ephors, being in charge of initiating the legislative process, could also present a motion directly to the δᾶμος. A προβούλευσα thus needed the unanimous vote of the Gerousia in order to be submitted for ratification before the Assembly, but the ephors, being in charge of initiating the legislative process, could also present a motion directly to the δᾶμος. This institutional mechanism allowed the ephors to run the legislative process by giving voice to the people, in case of opposition by the γέροντες. As a consequence, the Spartan system gave a prominent role to the voice of the Assembly in case of dissent between the γέροντες and the ephors and when the γέροντες could not reach unanimity. The standard legislative procedure was therefore based on the need for general consensus within and between those bodies of government that held the probouleutic powers. No single institution had a more prominent role in the decision-making process, as the constitutional system was designed to achieve balance and stability. Ephors and γέροντες, therefore, had to play a joint role in managing an effective probouleusis, in order for a decision to be finally enacted by the Assembly.

On the other hand, when there was no consensus between the two probouleutic bodies, or within the Gerousia, a bill could go to the Assembly anyway but with the proviso that it would still need to be ratified by the γέροντες by simple majority. The alleged ‘rider’ of the Rhetra provided the legal foundation for this by allowing a decision of the γέροντες after a vote of the Assembly was taken. In Athens, the Boule could be legally empowered through a delegation-clause to enact a new decree to integrate the decision passed by the Assembly. Just as in Athens, therefore, in Sparta a decision could be reconsidered by the probouleutic body, but there was no need of ad hoc delegation, because the γέροντες were in charge of checking whether the decisions of the Assembly conformed to the nomoi, rather than integrating the people’s decisions with new enactments. Thus, the Gerousia played the role of a judicial-review body that in Classical Athens was performed by the law courts. Athenian law courts democratically scrutinized the legality of Assembly decrees through the γραφὴ παρανόμων, which could be brought by any Athenian citizen (ὁ βουλόμενος). By contrast, in Sparta the same institutional task was performed by a restricted body according to different procedures but addressing the same need to conform to the laws.

In order to be performed, this nomophylakia did not require the unanimity of the Elders, who rejected the rhetra of Agis with a vote by simple majority. The different voting procedure adopted by the Gerousia at the two different stages reflects the different roles it was called to perform—in one case probouleusis, in the other nomophylakia. Through its use of majority vote in the veto procedure, the Council of Elders was able to render invalid a decision of the δᾶμος, which voted by acclamation, because of their higher status in the community in terms of the institutional knowledge, values and prestige that the office of γέρων carried. More remarkably, it is worth stressing that the Gerousia itself employed two different voting systems in performing probouleusis and nomophylakia, which had relevant implications for the nature of deliberation. The difference in the voting system not only is a matter of institutional technique but also was supported by strong connections with two distinct ideological approaches. When voting a draft to be sent for ratification to the Assembly, the Gerousia did not use majority rule but a unanimous vote, which was a deliberative mechanism favouring the creation of consensus within the political body, in this case the narrow gathering of the Elders. This consensus-based mechanism was typical of deliberative settings in the Greek world and tried to shape decision-making through the
inclusion, rather than the exclusion, of dissent.91 By contrast, when the γέροντες acted as guardians of the laws, performing a legislative review over deliberation, they adopted the principle of majority rule. In this case, the task required by the decision-making procedure was different. When vetoing a decision of the δόμος, the γέροντες were checking the consistency of that decision with the traditional Spartan nomos. What was at stake was not a political decision and the creation of consensus but rather the safeguarding of the laws. Again, this is consistent with the practice of other Greek poleis in which legislative or judicial review is attested. In democratic Athens, most of the time, the Council and the Assembly passed their decrees with overwhelming consensus or unanimity, very rarely by a bare majority (for example, Thuc. 3.37.3–4 during the Mytilenean debate).92 The law courts, however, when adjudicating the legality of decrees and laws through the γραφὴ παρανόμων and the γραφὴ νόμων μὴ ἐπιτήδειον θείναι voted by majority rule because of their distinct institutional task. Each voting procedure was thus designed to answer the distinctive ideological and institutional goals of probouleusis and nomophylakia.

In addition to this, it is important to underscore that the features of ‘divided power’ applied not only to probouleusis but also to the practice of nomophylakia, which was also shared between γέροντες and ephors. The νομοφύλακες, as we find them attested in other poleis and as their function is described by Aristotle, not only exercised control over deliberation but also supervised the application of the rule of law. While the Gerousia was in charge of supervising the legality of the debate in the Assembly, the ephors had the task of overseeing the observance of the laws by public officials as well as the individual behaviour of citizens according to the traditional custom. As the ancient evidence shows, like the Athenian νομοφύλακες during the Demetrian oligarchy, the ephors had broad powers over the other magistrates, who had to perform their duties according to the laws in order not to be subject to the severe sanctions of the five ephors.93 Xenophon states that the ephors did not (as in other poleis) leave the elected magistrates to rule as they liked throughout the year (τοὺς αἰρεθέντας ἄει ἄρχειν τὸ ἐτος) but immediately punished those who broke the laws (τινὰ αἰσθάνοντα παρανομούντα τι, εὑρὼς παραρχήμα κολάζουσι), in the manner of tyrants and supervisors of athletic games (Xen. Lac. 8.4). Aristotle says that the ephors have the power to perform the εὐθύνα over the other magistrates (Arist. Pol. 1271a4–6). The kings themselves were supervised by the ephors during their military campaigns, and every month the kings and the ephors took an oath.94 The kings swore to rule respecting the established nomoi (κειμένως νόμως βασιλεύειν) and the ephors swore to preserve the kingship (Xen. Lar. 15.7).95 The ancient sources therefore illustrate that both the power of nomophylakia and the power of probouleusis

92 Cf. Canevaro (n. 91).
93 Fröhlich (n. 40), 294–7: in democratic regimes, ο βουλόμενος could bring a charge against magistrates who were usually supervised by larger bodies, such as the Council or the Assembly. For the ephors as supervisors of magistrates, see Fröhlich (n. 40), 373–5.
94 Harris (n. 24), 87.
95 See Lipka (n. 3), 246; cf. Plut. Cleom. 9.2, who, reporting Aristotle, says that the ephors taking
were shared between the Gerousia and the ephors, who worked jointly in running the deliberative process as well as in preserving Spartan laws according to the ideology of the Spartan politeia. This conservative ideology required a permanent control of the elected magistrates regarding deliberation, which was strictly constrained within the limits of the traditional nomoi. Institutions and legal procedures were therefore shaped according to these ideological values, which, in the institutional sphere, favoured in practice the dominant role of the elite within the restricted group of Spartan citizens.

IV. CONCLUSION

To sum up: the analysis of ancient evidence concerning deliberative procedure in Sparta shows that a decision could go back to the Gerousia because of the permanent legal and political control of its officials over the δᾶμος, which regulated the decision-making interplay between Gerousia, ephors and Assembly. As in the rest of the Greek world, the Assembly in Sparta played an important role in deliberation, but the people’s deliberation was strictly controlled by probouleutic officials. The Gerousia and the ephors shared the role of probouleutic bodies as well as that of νομοφύλακες within the Spartan decision-making process, according to the patterns of ‘divided power’. As literary evidence from Plutarch demonstrates, the ephors had the power of initiating the legislative procedure, both in the Gerousia and in the Assembly, but a unanimous vote of the γέροντες was needed in order to submit a προβούλευμα to the δᾶμος for final ratification. The ephor could introduce a motion in the Assembly with no need of unanimity among the γέροντες, but in this case the procedure required the bill to be revised by the Gerousia, which could veto the motion with a majority vote by employing the power of nomophylakia granted by the Great Rhetra. The deliberative procedure therefore required a third passage in the Council of Elders, when there was a lack of consensus among the probouleutic bodies (or even within the Gerousia alone). The ideology of Spartan institutions granted the power to officials to shape decisions through probouleusis and nomophylakia, and the aim was to avoid innovation in legislation and institutional practice, as well as to maintain balance in the decision-making process, even if Spartan society was remarkably unequal even with its very narrow citizen body. Such a decision-making process combines the need to gain popular consent with a strict control over legislation in accordance with conservative values and practices.

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office told the citizens ‘to shave their moustaches and to obey the laws’ if they wanted to avoid their sanctions.

96 For analysis of property and wealth in Sparta, see Hodkinson (n. 57).

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