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THE DOCUMENTS IN ANDOCIDES' *ON THE MYSTERIES*

It is now widely recognized that many of the laws and decrees inserted into the speeches of the Attic Orators are not genuine documents from the Classical period.[1] For instance, the prescripts of the decrees found in Demosthenes' *On the Crown* contain the names of archons who are not attested in the fourth century B.C.E. and contain other features which are inconsistent with the epigraphical evidence for the period.[2] The laws inserted into Aeschines' *Against Timarchus* are now considered forgeries.[3] D.M. MacDowell has shown that the witness statements in Demosthenes' *Against Meidias* have post-Classical linguistic forms,[4] and recent study has found similar problems with the texts of three laws in the same speech which reveal them to be forgeries.[5] The legal documents found in Andocides' *On the Mysteries*, however, have escaped scrutiny and are now regarded generally as genuine.[6] In this essay, we take a fresh look at these documents and present evidence which shows that they cannot be authentic documents of the late fifth and early fourth centuries B.C.E.

Before examining these documents it is important to make four points about method. First, one should examine the texts as they are found in the manuscripts of Andocides. Over the past two centuries scholars have attempted to remove the problems found in these documents by means of transpositions, emendations and deletions, but this approach begs the question. If one can determine on the basis of external evidence that a particular document is genuine, then it is legitimate to attribute minor errors to scribes copying the text. On the other hand, major problems with the text may be mistakes made by someone who composed the document after the Classical period and did not understand Athenian law and legal procedure.

[1] The last general study of the documents inserted into the speeches of the Attic Orators is E. Drerup, 'Über die bei den attischen Rednern eingelegten Urkunden', *Jahrbuch für Classische Philologie* Supplementband 24 (1898), 221–366, who showed that many are forgeries.

[2] See P.L. Schläpfer, *Untersuchungen zu den attischen Staatsurkunden und den Amphiktionenbeschlüssen der demosthenischen Kranzrede* (Paderborn, 1939). Cf. H. Wankel, *Demosthenes. Rede für Ktesiphon über den Kranz* (Heidelberg, 1976), 79–82.

[3] See Drerup (n. 1), 305–8; N.R.E. Fisher, *Aeschines Against Timarchus* (Oxford, 2001), 68, 138–40, 145, 164, 183, 204–5, 206.

[4] On the witness statements at Dem. 21.22, 82, 93, 107, 121 and 168, see D.M. MacDowell, *Demosthenes Against Meidias (Oration 21)* (Oxford, 1990), 245–6, 302, 316, 333, 343–4, MacDowell 317–18 also rejects the authenticity of the law at Dem. 21.94.

[5] On the laws at Dem. 21.8, 10 and 47 see E.M. Harris, review of MacDowell (n. 4), *CPh* 87 (1992), 71–80 at 76–8 and id., *Demosthenes Speeches 20–22* (Austin, TX, 2008), 86–7, 89–90, 103–4.

[6] The first detailed study of the documents in this speech is J. Droysen, *De Demophanti Patroclidis Tisameni populiscitis quae inserta sunt Andocidis orationi ΠΕΡΙ ΜΥΣΤΗΡΙΩΝ* (Berlin, 1873), who believed that all were genuine. In their commentaries on the speech D.M. MacDowell, *Andokides On the Mysteries* (Oxford, 1962) and M.J. Edwards (ed.), *Greek Orators IV Andocides* (Warminster, 1995) accept all the documents as genuine. They are not discussed by A. Westermann, *Untersuchungen über die in die attischen Redner eingelegten Urkunden*. (=*Abhandlungen der Sächsischen Gesellschaft der Wissenschaften. Phil. Hist. Klasse*) (Leipzig, 1850) and Drerup (n. 1). For references to scholarship on each document see the notes below.

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Second, it is important to pay careful attention to the summaries and paraphrases of the documents' contents provided by Andocides. These summaries should be accurate because the judges would have immediately detected any inaccuracies once the secretary of the court read the document to them. If the orators misrepresented the contents of a document read by the secretary, one would expect to find inconsistencies when two different orators summarize the same document or when the same orator summarizes the same document in different speeches. But that is not the case. For instance, Aeschines and Demosthenes both refer to three laws in the speeches they delivered at the trial of Ctesiphon in 330: the law requiring magistrates to undergo an audit of their activities (Aeschin. 3.17–22; Dem. 18.111–18); the law about crowns for magistrates (Aeschin. 3.11, 31; Dem. 18.111–18) and the law about the announcement of crowns in the theatre (Aeschin. 3.35–6; Dem. 18.120–2). Although they differ about the interpretation of these laws, they do not differ about their basic terms.[7] When Demosthenes and Aeschines refer to the decree of the Council passed in Munichion of 346, their statements about this document do not contradict each other.[8] Isaeus alludes to or paraphrases a law about the validity of wills in several speeches, and in each case what he says about the law is consistent.[9] Lysias (1.30–5) and Demosthenes (23.55) discuss one of the provisions in the law about just homicide. Although Lysias' interpretation of this provision is questionable, the two orators are in agreement about its contents.[10] Demosthenes discusses the procedure for legislation (*nomothesia*) in two speeches, *Against Leptines* and *Against Timocrates*. The charges against the defendant in each speech are different, but in both speeches Demosthenes mentions the requirements that proposals for new laws must be posted at the monument of the Eponymous Heroes for all to read (Dem. 20.94; 24.25) and that any law contrary to the new proposal must first be repealed; if the proposer neglects to do this, he can be charged in court (Dem. 20.93; 24.32).[11] In his *Against Aristocrates* Demosthenes (23.37–8, 60–1) quotes from Draco's law of homicide in one passage and summarizes one provision in another; both the quotation and the summary are confirmed by the epigraphic text of the law (*IG* i^3 104, lines 26–9, 37–8). Finally, Demosthenes summarizes the contents of a decree awarding immunity to Epicerdes in his speech *Against Leptines* (20.41–5); fragments of this decree have been found, and the preserved text confirms Demosthenes' statements about the document.[12] As we shall see, the information contained in the summaries provided by Andocides can often be corroborated by evidence from other sources. Any major differences

[7] For an analysis of the legal arguments in these speeches see E.M. Harris, 'Open texture in Athenian law', *Dike* 3 (2000), 27–79, at 59–67.

[8] Dem. 19.161; Aeschin. 2.91, 98, 103 with E.M. Harris, *Aeschines and Athenian Politics* (New York and Oxford, 1995), 79.

[9] Isae. 1.11; 3.1; 4.14, 16; 6.9, 21, 28; 9.11, 13, 37; 10.2, 9. Cf. Dem. 46.16 and Hyp. *Ath*. 17.

[10] See E.M. Harris, 'Did the Athenians consider seduction a worse crime than rape?', *CQ* 40 (1990), 370–7 (= id., *Democracy and the Rule of Law in Classical Athens* [Cambridge, 2006], 283–93). This analysis is now widely accepted: see C. Carey, 'Rape and adultery in Athenian law', *CQ* 45 (1995), 407–17; S.C. Todd, *A Commentary on Lysias, Speeches 1–11* (Oxford, 2007), 49; G. Herman, *Morality and Behaviour in Democratic Athens: A Social History* (Cambridge, 2006), 146 n. 76. Carey attempts to vindicate Lysias' view that seduction was a more serious crime than rape, but see Harris, *Democracy* at 293–5.

[11] This is not the place to discuss the many issues about the procedure of *nomothesia*. Canevaro will show in another article that the problems can be solved once it is recognized that the document at Dem. 24.20–3 is not authentic.

[12] *IG* i^3 25. Cf. B.D. Meritt, 'Ransom of Athenians by Epikerdes', *Hesperia* 39 (1970), 111–14; W.C. West, 'The decrees of Demosthenes' *Against Leptines*', *ZPE* 107 (1995), 237–47, at 243–5.

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between the summary or paraphrase given by Andocides and the contents of the documents are therefore grounds for concluding that the document is a forgery.

Third, when there is no discrepancy between the summary provided by the orator and the text of the inserted document, this fact cannot be used as evidence in favour of the document's authenticity. It is quite possible that an editor could have composed the document using the information found in the summary.[13]

Fourth, when the document contains information which is not found in the orator's summary of its contents, this should not be taken as an argument in favour of the document's authenticity unless the additional information can be corroborated by evidence from contemporary inscriptions. For instance, the text of Ctesiphon's decree honouring Demosthenes inserted into the text of *On the Crown* (Dem. 18.118) contains information not found in the orator's description of the decree, but must be a forgery because the name of the archon is wrong and the prescript contains elements not found in contemporary decrees.[14] On the other hand, the lists of those denounced for participation in the mutilation of the Herms and the parody of the Mysteries found in Andocides (13, 15, 35, 47) contain names not provided by the orator but confirmed by the Attic stelae (*IG* i^3 421).[15]

Fifth, the language of the documents should conform to the language, style and conventions of contemporary Athenian laws and decrees preserved in inscriptions.[16] Parallels from literary prose do not count in favour of authenticity because there is a difference between the prose found in documents and that found in literary texts. Some words or grammatical forms which occur in literary prose are not found in documentary prose in the same period.[17] Terminology or formulae which are not consistent with those found in contemporary laws and decrees also provide evidence against the authenticity of the inserted documents.

1. THE DECREE OF PATROCLIDES

In the first part of his speech Andocides attempts to prove that he never committed impiety in the year 415 B.C.E. After Andocides finishes the narrative portion of his defence (11–70), he discusses the legal aspects of the case against him (71–116). Andocides says that Cephisius has accused him of violating the decree of Isotimides, passed in 415, which banned from temples all those who had com-

[13] See e.g. the document at Dem. 20.27 with Harris (n. 5), 30 n. 51. See also the witness statement at Dem. 21.22. The information in the document does not contradict Demosthenes' summary, but the document is proved to be a forgery by late linguistic forms. See MacDowell (n. 4), 245–6.

[14] For analysis see Schläpfer (n. 2), 79–91.

[15] The names Cephisodorus, Oenias and Hephaestorus, found in the documents but not in the rest of the speech, are attested in the Attic Stelae (*IG* i^3 421, line 33 [Cephisodorus]; lines 217, 219, 375 [Oenias]; line 10 [Hephaestodorus]).

[16] The language and terminology of laws and decrees from other communities cannot be used as parallels. For instance, the use of the word *polemios* used as a synonym of *atimos* in a decree from Amphipolis (*SIG*^{3} 194, line 9) cannot be used as evidence for Athenian terminology, which never uses the term in this way. See Appendix 2.

[17] For instance, third-person imperatives ending in *-τωσαν* are found in literary prose before 351 B.C.E. but never in decrees before this date and very rarely between 350 and 322. The form is never found in laws dated to the fourth century B.C.E. See L. Threatte, *The Grammar of Attic Inscriptions 2. Morphology* (Berlin, 1996), 462–6.

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mitted impiety and confessed their guilt (71). Andocides argues that he is not subject to the terms of this decree because he has neither committed impiety nor confessed to having committed it. Yet even if he had, he would not be subject to punishment because the decree of Isotimides has been repealed and is no longer in effect (72: *λέλυται καὶ ἄκυρόν ἐστιν*). His first argument is that the decree of Patroclides restored civic rights to those who had lost them (*τοὺς ἀτίμους ἐπιτίμους ποιῆσαι*). This decree was passed after the defeat of Aegospotami, probably in the winter of 405/4 (73).

Andocides next lists the categories of those who had lost their civic rights. There are three main categories: 1) those who owe money to the public treasury (73); 2) those who have lost their civic rights but retain ownership of their property (74); and 3) those who have lost specific rights but retain other rights (75–6). The decree also stipulates that the decrees should be destroyed (*ἐξελεῖψαι*) as well as any copies. These decrees should be those regarding the *atimoi*. Finally, the Athenians are to give pledges about maintaining unity to each other on the Acropolis (76). Andocides then asks the secretary to read out the decree. The following document is found in the text of the speech (77–9):

ΨΗΦΙΣΜΑ. Πατροκλείδης εἶπεν· ἐπειδὴ ἐψηφίσαντο Ἀθηναῖοι τὴν ἄδειαν περὶ τῶν ὀφειλόντων ὥστε λέγειν ἐξεῖναι καὶ ἐπιψηφίζειν, ψηφίσασθαι τὸν δῆμον ταὐτὰ ἅπερ ὅτε ἦν τὰ Μηδικά, καὶ συνήνεγκεν Ἀθηναίοις ἐπὶ τὸ ἄμεινον. περὶ δὲ τῶν ἐπιγεγραμμένων εἰς τοὺς πράκτορας ἢ τοὺς ταμίας τῆς θεοῦ καὶ τῶν ἄλλων θεῶν ἢ τὸν βασιλέα εἴ τις μὴ ἐξεγράφη μέχρι τῆς ἐξελθούσης βουλῆς ἐφ' ἧς Καλλίας ἦρχεν, [78] *ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες, καὶ ὅσων εὔθυναί τινές εἰσι κατεγνωσμέναι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων, ἢ μήπω εἰσηγμέναι εἰς τὸ δικαστήριον γραφαί τινές εἰσι περὶ τῶν εὐθυνῶν, ἢ προστάξεις ἢ ἐγγύαι τινές εἰσι κατεγνωσμέναι, εἰς τὸν αὐτὸν τοῦτον χρόνον, καὶ ὅσα ὀνόματα τῶν τετρακοσίων τινὸς ἐγγέγραπται, ἢ ἄλλο τι περὶ τῶν ἐν τῇ ὀλιγαρχίᾳ πραχθέντων ἐστί που γεγραμμένον πλὴν ὁπόσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων ἢ ἐξ Ἀρείου πάγου ἢ τῶν ἐφετῶν ἢ ἐκ πρυτανείου ἢ Δελφινίου ἐδικάσθη ἢ ὑπὸ τῶν βασιλέων, ἢ ἐπὶ φόνῳ τίς φυγὴ ἢ θάνατος κατεγνώσθη ἢ σφαγεῦσιν ἢ τυράννοις.* [79] *τὰ δὲ ἄλλα πάντα ἐξαλεῖψαι τοὺς πράκτορας καὶ τὴν βουλήν, καὶ τὰ εἰρημένα πανταχόθεν, ὅπου τι ἔστιν ἐν τῷ δημοσίῳ, καὶ εἰ ἀντίγραφόν που ἔστι, παρέχειν τοὺς θεσμοθέτας καὶ τὰς ἄλλας ἀρχάς. ποιεῖν δὲ ταῦτα τριῶν ἡμερῶν, ἐπειδὰν δόξῃ δήμῳ, ἃ δ' εἴρηται ἐξαλεῖψαι, μὴ κεκτῆσθαι ἰδίᾳ μηδενὶ ἐξεῖναι μηδὲ μνησικακῆσαι μηδέποτε· εἰ δὲ μή, ἔνοχον εἶναι τὸν παραβαίνοντα ταῦτα ἐν τοῖς αὐτοῖς ἐν οἷσπερ οἱ ἐξ Ἀρείου πάγου φεύγοντες, ὅπως ἂν ὡς πιστότατα ἔχει Ἀθηναίοις καὶ νῦν καὶ εἰς τὸν λοιπὸν χρόνον.*

Patroclides made the motion. Since the Athenians have voted immunity about (public) debtors so that it is permitted to speak and submit (proposals about them) to a vote, the people have voted the same measures which were in force during the Persian Wars and which proved beneficial to the Athenians for their better interests. Regarding those who have been registered with the *praktores* or with the Treasurers of the Goddess and the Other Gods or with the *basileus* or if he was not removed (i.e. his name was not removed) before the Council left office during the archonship of Callias, all who were without rights or debtors and those whose audits (of their terms of office) have been decided in the Auditors' office by the *euthynoi* and their assessors or whose public charges arising from their audits have not yet been brought to the court or their specific limitations of rights or pledges of personal security have been judged at the same time; and all the names of anyone of the Four Hundred whose names have been recorded or any other act done during the oligarchy has been recorded anywhere except for the names of all those who did not remain here or were judged by the Areopagus or the *ephetai* or by the *prytaneion* or by the *Delphinion* or by the *basileis* or who have been condemned to exile or death on a charge of murder or (?) for massacre or (?) for tyranny. The *praktores* and the Council

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are to delete all the other names anywhere in accordance with the aforesaid wherever they are in the public treasury and if there is a copy anywhere, and the *thesmothetai* and the other officials are to produce them. They are to do this within three days after the people decides. It is not permitted for anyone to acquire privately those documents which it has been proposed to delete or at any time to recall harm done in the past. If one does not, he who violates these regulations is to be subject to the same penalties as those who are in exile (by a sentence) of the Areopagus so that there is as much trust as possible for the Athenians both now and in the future.

There are several reasons to conclude that the document is not an authentic copy of the decree of Patroclides.

1) After the standard formula for the proposer (*Πατροκλείδης εἶπεν*), there follows a clause starting with the subordinating conjunction *ἐπειδή*. This clause states that the Athenians have voted to grant immunity from prosecution to those wishing to speak about public debtors with the result that it is permitted to make proposals about them and put them to the vote. This vote was apparently taken in accordance with a law reported by Demosthenes (24.45–7) requiring that there could be no proposals or discussion about those who had lost civic rights or public debtors unless the Assembly voted immunity for such a discussion. But the document mentions only debtors and omits those who have lost rights. Sauppe therefore inserted the words *τῶν ἀτίμων καὶ* between *περί* and *τῶν ὀφειλόντων*, an emendation which has been accepted by subsequent editors.[18] But is the error the result of textual corruption or the mistake of a clumsy forger?

2) Normally in Athenian decrees of the late fifth and early fourth centuries B.C.E., a clause beginning with *ἐπειδή* is followed by an infinitive indicating the proposal of the speaker and the decision of the Assembly. For instance, in a decree from the early fourth century B.C.E., the explanatory clause, which states that a stele recording grants of *proxenia* has been destroyed during the time of the Thirty, is followed by two infinitives (*ἀναγράψαι*, *καλέσαι*) giving the orders of the Council (*IG* ii^2 6, lines 11–19). But in this document the explanatory clause is followed by the phrase *ψηφίσασθαι τὸν δῆμον*, which is unparalleled in Athenian decrees. What is more, this phrase does not give an actual order in the ways decrees normally do.[19] From Andocides' summary, it is clear that the decree included the order 'to restore rights to those who had lost them' (73: *τοὺς ἀτίμους ἐπιτίμους ποιῆσαι*). In the section after the document Andocides again states *τοὺς ἀτίμους ἐπιτίμους ἐποιήσατε* (80). Later when summarizing his own arguments, he repeats these words (103). When he mentions the amnesty for the last time, he again repeats the phrase *τοὺς ἀτίμους ἐπιτίμους ποιῆσαι* (109). There is no reason to doubt Andocides' account of the decree: Xenophon (*Hell.* 2.2.11) reports that after Aegospotami, the Athenians *τοὺς ἀτίμους ἐπιτίμους ποιήσαντες* and so does Lysias (25.27). Yet this key phrase is absent from the inserted document.

3) The only source which states that the Athenians voted during the Persian Wars to restore rights to those who had lost them is Andocides in *On the Mysteries* (107).

[18] MacDowell (n. 6), 114–15; Edwards (n. 6), 58.

[19] See e.g. *IG* i^3 73, lines 29–31. M.H. Hansen, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi, and Pheugontes: A Study in the Athenian Administration of Justice in the Fourth Century B.C.* (Odense, 1976), 89 believes that the phrase *πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια* in the decree of Tisamenus provides a parallel, but this document is a forgery. See below.

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Raubitschek,[20] followed by MacDowell,[21] believed that this measure was identical to one passed before Marathon (mentioned in the same section of the speech), which allowed slaves to fight in that battle (Paus. 1.32.3; 7.15.7; 10.20.2). But the two measures are very different, and there is no evidence that civic rights were restored to those who had lost them at this time. Andocides is probably alluding to the decree passed by Themistocles shortly before the battle of Salamis, but that decree only affected those who were ostracized.[22] This measure restoring rights to the *atimoi* must be an invention of Andocides, who is creating a precedent for the Reconciliation Agreement of 403.[23] The person who composed the document at 77–9 naively took this invention as historical fact and used it when fabricating his version of the decree of Patroclides.

4) According to Andocides, the decree listed the three main categories of *atimoi* who were to regain their rights: 1) those who owe money to the public treasury (73); 2) those who have lost their civic rights but retain ownership of their property (74); and 3) those who have lost specific rights but otherwise retain other rights (75–6). The inserted document first lists those who are *atimoi* or public debtors, but the categories of the latter are not the same as those found in Andocides' summary. The second main category includes those who were members of the Four Hundred or those involved in the oligarchy. The inserted document then excludes those who have been convicted of murder or are guilty of 'massacre' (*σφαγεῦσιν*) or an attempt at tyranny. There is nothing similar to this in Andocides' summary. MacDowell[24] and Piérart[25] believe that the categories listed in the inserted document were the only ones covered in Patroclides' decree, which means that Andocides had the secretary read a document which did not support his argument. Alternatively, Hansen[26] and Boegehold[27] believe that the aim of the document is just to specify what physical records must be destroyed as the result of a general amnesty, which was enacted by the clause *ψηφίσασθαι τὸν δῆμον ταὐτὰ ἅπερ ὅτε ἦν τὰ Μηδικά*. Even if we accept these implausible hypotheses, the text still contains several other features which show that it is not an authentic document of the late fifth century.

5) The document uses the word *ἐπιγεγραμμένων* to describe those debtors whose names have been inscribed in public records. Emperius rightly pointed out that the verb for this action is invariably *ἐγγράφειν*, not *ἐπιγράφειν* (Aesch. 1.35; *IG* i^3 59, lines 21–3, 38–47; *IG* ii^2 45, lines 5–7; [Arist.] *Ath. Pol.* 48.1).[28] One should also note that the crime of falsely inscribing a person's name in the list of public debtors is *ψευδεγγραφή*, not *ψευδεπιγραφή*.[29] Editors have followed

[20] A. Raubitschek, 'Zur attischen Genealogie', *RhM* 98 (1955), 258–62, at 259 n. 2.
[21] MacDowell (n. 6), 140.
[22] [Arist.] *Ath. Pol.* 22.8; Plut. *Them.* 11.1; *Arist.* 8.1.
[23] The word *μνησικακῆσαι* at 108 makes this certain.
[24] MacDowell (n. 6), 115.
[25] M. Piérart, 'Les *ΕΥΘΥΝΟΙ* athéniens', *AC* 40 (1971), 526–73, at 540.
[26] Hansen (n. 19), 89.
[27] A. Boegehold, 'Andokides and the Decree of Patrokleides', *Historia* 39 (1990), 149–62, at 154.
[28] At Dem. 58.48 some manuscripts have the reading *ἐπιγεγραμμένοι* in the phrase *ὅσοι μὴ ἐν ἀκροπόλει ἐπιγεγραμμένοι εἰσίν* but others the reading *ἐγγεγραμμένοι*. Clearly the latter reading, which is consistent with usage in the epigraphic documents, should be preferred. Cf. Piérart (n. 25), 533.
[29] Harpocration s.v. *ψευδεγγραφή*.

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Emperius and emended the text of the document,[30] but this begs the question. It is more likely to be another indication that the document is not genuine.

6) The document mentions lists of debtors kept by the *praktores*, the Treasurers of Athena and the Other Gods, and the *basileus*. This clashes with evidence from contemporary sources, which state that there was one list of public debtors kept on the Acropolis.[31] When Theocrines had to pay a debt to the state, he plotted to avoid 'either paying it or having it placed on the Acropolis' (Dem. 58.19: *μήτε ἐκτεῖσαι μήτ' εἰς ἀκρόπολιν ἀνενεχθῆναι*). Piérart points to Dem. 25.28, which refers to a list of public debtors maintained by the Treasurers of Athena in the temple of the goddess (*παρὰ τῇ θεῷ*), but this list is identical with that kept on the Acropolis mentioned in other passages. As Harpocration (s.v. *ψευδεγγραφή*) states, the list of public debtors was kept on a board (*sanis*) and placed in the temple of the goddess (*ἐν τῇ σανίδι παρὰ τῇ θεῷ κειμένῃ*), which was on the Acropolis. There is also no contemporary evidence for a list of public debtors kept by the *basileus*. Some scholars have pointed to records maintained by the *basileus* at [Arist.] *Ath. Pol*. 47.4, but these are leases, which only recorded the names of the lessees, the terms of the lease and the amounts to be paid. A separate tablet existed for every instalment due.[32] If a lessee missed a payment, he became a public debtor, but the responsibility for recording his name lay in the hands of the *praktores* who provided the names for the list on the Acropolis.[33] The *basileus* in this case played a role similar to that of the *pôlêtai* who recorded the names of lessees of public property and tax contractors on whitened boards, but entrusted the task of collecting overdue payments to the *praktores*.[34] Because there is no contemporary evidence for separate lists of public debtors, the errors in this passage must be the result of the forger's misunderstanding of information found in the orators.

7) The expression *ἢ εἴ τις μὴ ἐξεγράφη* makes no sense. Two explanations have been proposed. Droysen,[35] followed by Gernet,[36] thought that there should be a verb meaning 'transcribe' in the passage and proposed emending *ἐξεγράφη* to *ἐνεγράφη*. Makkink,[37] followed by MacDowell,[38] observed that the verb can mean 'has been written out.' MacDowell interpreted the phrase to mean 'that any debtors whose names have for any reason not been copied on to the lists just mentioned shall still have the benefit of the amnesty'. On the other hand, Edwards noted that the main verb in this section is 'to erase' (79: *ἐξελεῖψαι*).[39] But how could the *praktores* and *thesmothetai* erase something which had not yet been inscribed? On the other hand, if one translates the phrase 'or if someone (i.e. someone's name)

[30] K.J. Maidment, *Minor Attic Orators I: Antiphon, Andocides* (Cambridge, MA, 1941), 398. MacDowell (n. 6), 46 retains the reading of the manuscripts but does not comment on it.

[31] See *Agora* XIX: P26, lines 494–5, 505, 508–9.

[32] P.J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981) 555; V. Hunter, 'Policing debtors in Classical Athens', *Phoenix* 54 (2000), 21–38, at 26.

[33] P.J. Rhodes, *The Athenian Boule* (Oxford, 1972), 150–1 (who assumes that the decree of Patroclides is a genuine document).

[34] The *basileus* and the *pôlêtai* appear to have collaborated in leasing sacred land – see *IG* i^3 84 with Rhodes (n. 32), 556. Cf. *Agora* XVI: 56, lines 33–5 with K. Clinton, 'A law in the city Eleusinion concerning the Mysteries', *Hesperia* 49 (1980), 258–88, at 283.

[35] Droysen (n. 6), 14.

[36] L. Gernet, 'Notes sur Andocide', *RPh* 5 (1931), 308–26, at 309.

[37] A.D.J. Makkink, *Andokides' Eerst Rede me Inleidung en Commentar* (Amsterdam, 1932), 217–18.

[38] MacDowell (n. 6), 115. Cf. Piérart (n. 25), 534.

[39] Edwards (n. 6), 177.

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was not deleted', the phrase is unnecessary: if the names were on the list, they had of course not been removed.

8) The document contains the phrase *μέχρι τῆς ἐξελθούσης βουλῆς ἐφ' ἧς Καλλίας ἦρχεν*, which is without parallel in Athenian laws and decrees from the Classical period preserved on stone. The phrase is redundant because the term of office for both the Council and the *archôn epônymos* ended on the same day. The person who forged the document appears to have found the expression *βουλὴ ἐξελθοῦσα* earlier in the speech (45) and placed it in this clause, where it is clearly out of place. It is also strange that the decree should exclude from the amnesty all those who became debtors after the archonship of Callias (406/5). Andocides' summary, on the other hand, indicates no exceptions to the amnesty.

9) The expression *ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες* creates two separate categories, those who have lost their rights and public debtors, but Andocides' summary makes public debtors a subset of those who have lost their rights, which is consistent with information from other sources. MacDowell tried to explain the two categories in the following way: 'those who have lost their citizen-rights because they owe debts to a public treasury' and 'those who owe debts to a public treasury and so are liable to lose their rights shortly'.[40] This distinction did not exist: as Dem. 58.49 clearly states, a public debtor became *atimos* from the moment he owed money to the state (*ἀφ' ἧς ἂν ὄφλῃ*). As MacDowell himself says elsewhere, the public debtor 'was regarded as disenfranchised from the moment when he incurred the debt'.[41] Piérart thought Patroclides was using both of the terms applied to public debtors, but why use two terms when one would suffice? And what was the point of specifying these two categories after the phrase 'regarding those (whose names are) recorded with the *praktores* etc.' (77: *περὶ τῶν ἐπιγεγραμμένων*), which refers to public debtors who have lost their rights? All the people recorded on the lists were debtors and *atimoi*, not just some of them.

10) The phrase *ὅσων εὔθυναί τινές εἰσι κατεγνωσμέναι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων* ('all those whose audits have been decided in the Auditors' office by the *euthynoi* and their assessors') has long puzzled scholars. It implies that the *euthynoi* and their assessors had the power to try cases, but we know that these cases had to be tried in a regular court.[42] Some have noted that the verb *καταγιγνώσκω* could refer to an investigation rather than a final verdict ([Arist.] *Ath. Pol*. 45.1–2, 46.2).[43] But even if this were the case, the defendant would not owe any money to the state until sentenced by a court, not as the result of a preliminary investigation. The same objections apply to the next phrase *μήπω εἰσηγμέναι εἰς τὸ δικαστήριον γραφαί τινές εἰσι περὶ τῶν εὐθυνῶν*; how could one know if the defendant were going to owe any money until after his case was tried? These two phrases clash with what is known about the procedure for the *euthynai*.

Another objection to this phrase is that the Aristotelian *Constitution of the Athenians* (48.4) and other sources state that the *euthynoi* received accusations at the monument of the Eponymous Heroes,[44] not in the *logisterion*, which was the

[40] MacDowell (n. 6), 114, 115–16.
[41] D.M. MacDowell, *The Law in Classical Athens* (London, 1978), 74. Cf. Hansen (n. 19), 93.
[42] [Arist.] *Ath. Pol*. 48.4–5.
[43] Boegehold (n. 27), 153 n. 8, citing Rhodes (n. 32), 563–4. Cf. MacDowell (n. 6), 116.
[44] Cf. Rhodes (n. 32), 560.

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office of the *logistai*.[45] Two attempts to evade this difficulty have been proposed. First, it has been suggested that the *euthynoi* held two meetings, one to receive charges before the Eponymous Heroes, a second in the *logisterion* to evaluate cases before passing them on to the Forty or to the *thesmothetai*.[46] Second, it has been proposed that in the fifth century the *euthynoi* met in the *logisterion* but moved to the monument of the Eponymous Heroes in the fourth century.[47] Each of these hypotheses, however, seeks to explain *ignotum per ignotius*. It is more likely that the document has been composed by someone who misunderstood the information he found in the literary sources about the *euthynoi*.

11) The phrase προστάξεις ἢ ἐγγύαι τινές εἰσι κατεγνωσμέναι contains an unparalleled use of the verb καταγιγνώσκω. In legal contexts, the verb has one of four meanings.[48] First, it can mean 'bring a charge against someone' with the name of the charge in the accusative and the person charged in the genitive (Andoc. 1.3; Lys. 14.16; 21.21). Second, it can mean 'pronounce a verdict of a crime against someone' with the person charged in the accusative and the name of the crime in the genitive (Lys. 1.30). Third, it can mean 'judge someone guilty of a crime' with the accused in the accusative and the crime expressed by a verb in the infinitive (Dem. 21.175, 206), Fourth, it can mean 'give a judgment against someone' with the penalty in the accusative and the accused in the genitive (Andoc. 1.106). This use is found in the passive with the penalty in the nominative (Antiphon 5.70). One might argue that the word προστάξεις refers to specific restrictions which might be imposed as a punishment, but the word ἐγγύαι refers to contracts of personal security, not to a crime or a punishment.[49]

12) The phrase ὅσα ὀνόματα τῶν τετρακοσίων τινὸς ἐγγέγραπται ('all the names of anyone of the Four Hundred which have been inscribed'). Reiske deleted τινὸς to provide a better sentence but the attempt to improve the text rests on the assumption that the document is genuine and would have been well drafted. MacDowell tried to explain the phrase without emending the text and thought that the 'names' would be those of the person and his father (patronymic).[50] But the term ὄνομα in inscriptions refers to both name and patronymic.[51] A good example is *IG* ii^2 8870, lines 5–6: εἰ δὲ ὄνομα ζητεῖς, Θεογείτων Θυμόχου παῖς.

13) The inserted document lists several categories of persons excluded from the amnesty. The first category includes ὁπόσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων. The antecedent of ὁπόσα is ὀνόματα. This exception has received many different interpretations. MacDowell believes it refers to those among the Four Hundred who withdrew to Decelea, or more generally to those who were con-

[45] Harpocration s.v. λογισταὶ καὶ λογιστήρια and Pollux 9.44.

[46] I. Efstathiou, 'Euthyna procedure in 4th century Athens and the case *On the False Embassy*', *Dike* 10 (2007), 113–35, at 118.

[47] Gernet (n. 36), 309–10; Piérart (n. 25), 541, 572; M. Ostwald, *From Popular Sovereignty to the Sovereignty of Law* (Berkeley and Los Angeles, 1986), 58–9.

[48] Boegehold (n. 27), 156 speculates that ἐγγύαι are physical objects recording the conditions of a guarantor's pledge and that κατεγνωσμέναι is the technical term for recording these conditions but cites no evidence for his view.

[49] Gernet (n. 36), 310; MacDowell (n. 6), 116; and Edwards (n. 6), 177 speculate about what kinds of guarantees are meant, but none observes the problems with the word ἐγγύαι as the subject of the verb εἰσι κατεγνωσμέναι.

[50] MacDowell (n. 6), 116.

[51] Cf. *IG* ii^2 1051, line 12; *IG* ii^2 1176, line 21; *IG* ii^2 1237, lines 19, 119; *Agora* XVI: 93, line 28. Cf. Piérart (n. 25), 536 n. 44.

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demned for serious crimes and went into exile to avoid punishment.[52] If interpreted this way the sentence would be a general provision excluding exiles, identical to the one Andocides mentions at 80, when he states that the Athenians nowhere in this decree recalled the exiles. There are two objections to this hypothesis. First, the position of the sentence: as Hansen rightly pointed out,[53] the section which precedes this exclusion, and to which the exclusion refers, is not a complete list of *atimoi*, but only a list of the physical records to be destroyed after the amnesty. The amnesty itself is expressed in a very vague way in the first part of the decree. Therefore, even if interpreted very broadly, this exclusion cannot refer to all the exiles, but just to the exiles among the *atimoi* listed in the records previously mentioned. Thus, what about the other exiles, those whose names were not recorded anywhere? Were they allowed to come back? This plainly contradicts Andocides' statement at 80. Moreover, there is no parallel for the expression *τῶν μὴ ἐνθάδε μεινάντων* referring to exiles.

For this reason other scholars have preferred to interpret this exclusion as referring to a more restricted category. Gernet suggested that the document refers to those who committed impiety, who are listed at 51 and in addition to the list of traitors mentioned by Thucydides (6.55.1), Isocrates (16.9) and Lycurgus, *Against Leocrates* 117–18.[54] Boegehold, on the other hand, believes that the exiles mentioned here are connected to the categories of homicides, murderers and tyrants mentioned in the next phrase. Those condemned to exile for homicide, as well as those who committed murder or attempted to establish a tyranny (these went into exile in order to avoid death) are therefore excluded from the amnesty.[55]

Both these hypotheses are possible, but if either one is right, then where does the decree state that all the exiles are not included in the amnesty, as Andocides himself clearly states at 80? Andocides makes this statement immediately after the secretary reads out the decree, so there can be no question that he is telling the truth. There is a further problem. The inserted document enacts the same measures passed at the time of the Persian Wars, but at 107 Andocides clearly states that by the terms of this measure the *atimoi* were re-enfranchised and the exiles recalled. But this conflicts with Andocides' statement that the exiles were specifically excluded from the terms of Patroclides' decree. The person who composed the document took his information about the measure passed during the Persian Wars from a later part of the speech, but did not see how it created a contradiction between his text and Andocides' summary of the decree's contents in the following passage.

14) The following section closely resembles an amnesty law of Solon quoted by Plutarch (*Sol*. 19.4): *ἀτίμων ὅσοι ἄτιμοι ἦσαν πρὶν ἢ Σόλωνα ἄρξαι, ἐπιτίμους εἶναι, πλὴν ὅσοι ἐξ Ἀρείου πάγου ἢ ὅσοι ἐκ τῶν ἐφετῶν ἢ ἐκ πρυτανείου καταδικασθέντες ὑπὸ τῶν βασιλέων ἐπὶ φόνῳ ἢ σφαγαῖσιν ἢ τυραννίδι ἔφευγον*. After the general statement that the *atimoi* must be *epitimoi*, the law makes clear the exceptions to the general rule: 'except all those who, condemned by judgements of the Areopagus, or of the *ephetai*, or of the *prytaneion* under the Kings, for murder or were in exile for slaughter or (attempting) tyranny'. The text of the document contains similar wording, but with slight differences and several grammatical dif-

[52] MacDowell (n. 6), 77–8; Edwards (n. 6), 177.
[53] Hansen (n. 19), 89.
[54] Gernet (n. 36), 311. Cf. Piérart (n. 25), 537.
[55] Boegehold (n. 27), 157–8.

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ficulties. This has led many scholars to emend it on the basis of Plutarch's text.[56] This approach has been rejected first by MacDowell, who claims: 'Patrocleides evidently had Solon's law in mind, but did not copy it word by word. (Or if he did, we must assume that Plutarch is not quoting precisely.)'[57] This is a possible way of explaining the relationship between the two texts, but it does not account for the problems in the text of the inserted document.

First, the document mentions the *Delphinion*, which is not found in Plutarch's text. Plutarch's covers all the courts for homicide by mentioning the Areopagus, the *ephetai* and the *prytaneion*. The Areopagus tried cases of deliberate homicide. The *ephetai* tried cases of homicide against one's will and attempted homicide at the *Palladion*, cases involving those in exile for homicide against one's will at Phreatto, and cases of just homicide at the *Delphinion*. At the *prytaneion*, the *basileus* and the *phylobasileis* judged cases where the killer was unknown or someone had been killed by an inanimate object ([Arist.] *Ath. Pol.* 57.4).[58] The addition of the *Delphinion* in the inserted document disrupts this careful arrangement and is redundant because cases tried at that court are covered by the cases judged by the *ephetai*.[59] This is best explained as a clumsy addition to Plutarch's text made by someone who read the account of the homicide courts at Dem. 23.63–4.

A second suspect feature is the mention of the *basileis*, who are placed on the same footing as the Areopagus, the *ephetai*, the *Delphinion* and the *prytaneion* and made responsible for passing judgment[60] (*ἐξ Ἀρείου πάγου ἢ τῶν ἐφετῶν ἢ ἐκ πρυτανείου ἢ Δελφινίου ἐδικάσθη ἢ ὑπὸ τῶν βασιλέων*). The *basileus* did not judge cases of homicide; he just received charges of homicide and presided over trials for homicide. For this reason Köhler[61] deleted the *ἢ* before *ὑπὸ τῶν βασιλέων*, a deletion accepted in subsequent editions. The final clause presents further problems: *ἢ ἐπὶ φόνῳ τίς ἐστι φυγὴ ἢ θάνατος κατεγνώσθη ἢ σφαγεῦσιν ἢ τυράννοις*. As noted above, the verb *καταγιγνώσκω* takes either the accusative or genitive for the offence, but the text has the datives *σφαγεῦσιν* and *τυράννοις*. MacDowell[62] (following Lipsius) adds *ἢ οἷς* at the beginning of the phrase, changes *ἐδικάσθη* to *δικασθεῖσιν* and connects the pronoun and the participle to *τίς ἐστι φυγὴ*. Yet this does not solve the problem: *σφαγεῦσιν* and *τυράννοις* should still be in the genitive, and to argue that they were attracted by the dative *οἷς* is just restating the original problem, since the structure, whatever attraction we may

[56] Cf. Droysen (n. 6), 17–22; J.M. Stahl, 'Über athenische Amnestiebeschlüsse', *RhM* 46 (1891), 250–86, 481–7, at 256.

[57] MacDowell (n. 6), 117. Cf. also Piérart (n. 25), 537–40; Boegehold (n. 27), 159–60.

[58] For these reasons Droysen (n. 6), 21 deleted the mention of the *Delphinion* and was followed by G. Smith, 'The Prytaneum in the amnesty law', *CPh* 26 (1921), 345–53, at 347–8. Piérart (n. 25), 539 claims that the *ephetai* sat also at the *prytaneion*, citing Harp. s.v. *ἐφέται* and Poll. 8.125. See however D.M. MacDowell, *Athenian Homicide Law in the Age of the Orators* (Manchester, 1963), 85–9 and Rhodes (n. 32), 649. The lexica appear to depend on Dem. 23: see A. Philippi, *Der Areopag und die Epheten, eine Untersuchung zur athenischen Verfassungsgeschichte* (Berlin, 1874), 59–60; E. Carawan, '*ἐφεταί* and Athenian Courts for homicide in the age of the orators', *CPh* 86 (1991), 1–16, at 13.

[59] This is also the opinion of MacDowell (n. 6), 118.

[60] If the plural meant the King Archon and the *phylobasileis*, as Rhodes (n. 32), 649 understands it, then we have here a further redundancy, since the document has already mentioned the *prytaneion*.

[61] U. Köhler, 'Attische Inschriften', *Hermes* 2 (1867), 16–36, at 33.

[62] MacDowell (n. 6), 117–18.

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postulate, still contains grammatical problems. Piérart[63] on the other hand suggested that they could just be archaic forms for the more usual structures with ἐπί and the abstract substantive (like ἐπὶ φόνῳ). Yet the necessary ἐπί is missing before the two datives, and the only way to provide it is by deleting ἢ θάνατος κατεγνώσθη. With these emendations and deletions one can remove the grammatical problems, but the text has become exactly the same as that of Plutarch.

To sum up, the person who composed the inserted document drew on the Solonian law quoted in Plutarch but introduced errors when trying to adjust its terms to a different context. Every time the text of the inserted document differs from Plutarch's text, the former contains corruptions and impossible Greek. The person who composed the document may have found the Solonian law in Plutarch or in a compilation of Solon's laws.[64]

15) The following section of the document gives an order to destroy any copy of the records previously listed (79). The first clause states: τὰ δὲ ἄλλα πάντα ἐξαλεῖψαι τοὺς πράκτορας καὶ τὴν βουλήν, καὶ τὰ εἰρημένα πανταχόθεν, ὅπου τι ἔστιν ἐν τῷ δημοσίῳ, καὶ εἰ ἀντίγραφόν που ἔστι, παρέχειν τοὺς θεσμοθέτας καὶ τὰς ἄλλας ἀρχάς.[65] At first glance this clause appears to agree with Andocides' statement at 76 (ταῦτ' οὖν ἐψηφίσασθε ἐξαλεῖψαι πάντα τὰ ψηφίσματα, καὶ αὐτὰ καὶ εἴ πού τι ἀντίγραφον ἦν), but Andocides talks about decrees and not lists, whereas the document does not mention any decrees.

The following clause of the document presents other problems: ἃ δ' εἴρηται ἐξαλεῖψαι, μὴ κεκτῆσθαι ἰδίᾳ μηδενὶ ἐξεῖναι μηδὲ μνησικακῆσαι μηδέποτε ('It is not permitted for anyone to acquire privately those records (or copies) which it has been proposed to destroy, or at any time to recall harm done in the past'). The mention of private copies is completely unparalleled in Athenian laws and decrees. Athenian statutes usually did not even order the destruction of copies of an official text kept in the archives, let alone private copies. The famous decree of Aristoteles of 378/7 (*IG* ii^2 43, lines 31–5) provides a good example of the standard practice for destroying official texts. It requires that the Council destroy any stelae containing unfavourable provisions about *poleis* that have concluded the alliance with Athens. The destruction of the official copies inscribed on stelae was all that was needed to show that these regulations contained on them were no longer in force.[66] Private copies were not legally binding.

The cumulative weight of these arguments is decisive against the authenticity of this document.[67] The provisions contained in it do not agree at key points with

[63] Piérart (n. 25), 538–9.

[64] We do not discuss here the survival of Solonian laws, and the authenticity of Solonian laws found in later sources. Aristotle was credited with a treatise of five books on Solon's *axones*, but its circulation has been questioned, and other less scholarly and unreliable works circulated as well, like the one by Hermippus. Cf. E. Ruschenbusch, *Solonos Nomoi. Die Fragmente des solonisches Gesetzwerkes* (= *Historia* Einzelschriften 9) (Wiesbaden, 1966), 31–42 for the sources and a general enquiry (mainly sceptical about an effective diffusion of Aristotle's work). Even more sceptical is G.E.M. de Ste Croix, *Athenian Democratic Origins*, ed. D. Harvey and R. Parker (Oxford, 2004), 306–22, who questions the very existence of Aristotle's work.

[65] We accept here the explanation of the strange phrase καὶ τὰ εἰρημένα given by MacDowell (n. 6), 118–19. The document refers to the names recorded, both those mentioned themselves (that is the lists themselves) and the copies. *Pace* Droysen (n. 6), 16 and Boegehold (n. 27), 53.

[66] Cf. also *IG* ii^2 98, lines 9–12; 116, line 39; *SEG* 26.72, lines 55–6.

[67] At *IG* i^3 82, line 26 Lewis on the advice of MacDowell restores τὸς πράκτορας after ἐκγράφειν ἐς on the basis of Andocides 1.77. Because this document is not authentic, the restoration should be questioned.

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the information provided by Andocides about Patroclides' decree, its grammar and syntax are often clumsy and confused and its language does not conform to the conventions of contemporary decrees. The reliable information in the document derives from Andocides' speech, those of other orators and literary sources. The attempt to combine this information often resulted in errors which reveal an imperfect knowledge of Athenian law and legal procedure.

2. THE DECREE OF TISAMENUS

After the decree of Patroclides was enacted, the Athenians surrendered to the Spartans, tore down their walls, and allowed the exiles to return (80). Then the Thirty seized power, and a period of civil war ensued between oligarchs and democrats, which was ended by a reconciliation agreement.[68] A commission of twenty was elected to rule the city until laws could be enacted. Until then, the laws of Draco and Solon were to remain in force (81). After members of the new Council were selected by lot and *nomothetai* elected by the Assembly (εἵλεσθε), it was voted to examine the laws of Draco and Solon and submit them to the Assembly for approval.[69] Those which received approval were to be inscribed and placed in the *stoa*.

Before turning to the inserted document, it is necessary to examine what Andocides says about this crucial period and to compare his statements with evidence from other sources about the revision of the laws. If his statements are confirmed by other sources, we can accept them as reliable. If the inserted document is authentic, its contents should not contradict the trustworthy information provided by Andocides. On the other hand, any differences between the reliable statements in Andocides' narrative and the inserted document should be considered reasons to question the latter's authenticity.

In his narrative, Andocides outlines two procedures. In the first procedure, *nomothetai* are elected by the Assembly to enact new laws (νομοθέτας τε εἵλεσθε). These *nomothetai* of 403/2 should not be identified with the *nomothetai* from the *nomothesia* procedure for two reasons. First, the latter board did not exist until after the new procedure for legislation was enacted, something which did not happen until after new laws were passed later in 403/2 or in a subsequent year. Second, this board of officials is given the task of enacting the laws, those which Andocides says were to be enacted while the commission of twenty was ruling the city (81: ἕως ἄλλοι νόμοι τεθεῖεν).[70] These should be the laws quoted by Andocides at 85–9. These *nomothetai* are therefore different from the *nomothetai*

[68] E. Carawan, 'The Athenian amnesty and the "scrutiny of the laws"', *JHS* 122 (2002), 1–23 believes that the promise not to recall past wrongdoing (*mê mnêsikakein*) was aimed only at protecting citizens who had lost their rights and had then regained them. See C. Joyce, 'The Athenian amnesty and scrutiny of 403', *CQ* 58 (2008), 507–18, who shows that there is no reason to question the traditional view that the promise prevented prosecution for offences committed during the regime of the Thirty.

[69] The reason Andocides (1.82) gives for the examination of the laws is questionable. The Assembly was merely continuing a process begun but not completed under the democracy in 410/9.

[70] Cf. N. Robertson, 'The laws of Athens, 410–399 BC: the evidence for review and publication', *JHS* 110 (1990), 43–75 at 62–3; Edwards (n. 6), 178.

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who were part of the *nomothesia* procedure and did not draft legislation, but only ratified proposals submitted to them by the Assembly.[71]

The second procedure was an examination of the laws of Draco and Solon (δοκιμάσαντες).[72] Andocides states that this examination was necessary because several citizens were liable under these laws because of previous events. This explanation is tendentious: Andocides is attempting to give the impression that there was a complete break with past laws because he wants to convince the court that the decree of Isotimides, which barred him from the temples of Attica and from the Athenian Agora, was no longer in effect (Andoc. 1.71).[73] A meeting of the Assembly was then held, and it was voted that the Assembly examine all the laws and that those which received approval (κυρωθέντας) be written up and placed 'in the *stoa*', which should be the *stoa basileios*.[74] This should mean that these laws were written on stelae, which were placed in the *stoa*: the verb ἀναγράφειν in publication formulae is normally followed by the phrase ἐν στήλῃ λιθίνῃ or ἐστήλῃ λιθίνῃ followed by the verb στῆσαι or καταθεῖναι. After the decree is read out, Andocides (85) says that this process was carried out and that those laws which were approved were written up and placed in the *stoa*. He then implicitly contrasts this process of examining the old laws with the new legislation (ἐθέμεθα).

The examination of the laws was the continuation of a procedure which began in 410/9 and went on until 405/4 when it was interrupted by the regime of the Thirty.

The most detailed account of this process is found in Lysias' speech *Against Nicomachus* (30.2–5). One must be careful when using this source because it is the account of an advocate who is doing his best to place his opponent's action in the worst possible light. Although many of his statements are clearly slander, several of the details he gives are confirmed by a contemporary inscription (*IG* i^3 104).

The accuser who delivered the speech says that Nicomachus held the office of *anagrapheus* and was ordered to write up the laws of Solon in four months, but he stayed in office for six years (Lys. 30.2). The accuser claims that he took money to add certain laws and delete others. The archons tried to impose a fine on him and bring him to court, but he refused. Before he could be removed from office and forced to submit to examination (*euthynai*), the city met with disaster, an allusion to Athens' defeat by Sparta in 405/4 (Lys. 30.2–3). Despite his failure to pay for his crimes, he was appointed *anagrapheus* again and wrote up laws for another four years although he could have done this in thirty days (Lys. 30.4). He had authority over everything and did not submit to an examination. Unlike other officials who give an account of their office every prytany, he did not do this once during his four years in office (Lys. 30.5).

The charges against Nicomachus are not supported by evidence, and his re-appointment to office after the restoration of the democracy certainly undercuts the allegations made about his conduct during his first term. The title of *anagrapheus* held by Nicomachus is confirmed by the prescript of the republication of Draco's

[71] For the procedure in the fourth century see Dem. 20.89–94 and 24.25–6, 34–8.

[72] We agree with Joyce (n. 68), 516 that the scrutiny was not aimed at measures about *atimia* (*pace* Carawan [n. 68], 12–19).

[73] MacDowell (n. 6), 120–1 does not comment on Andocides' explanation but see P.J. Rhodes, 'The Athenian code of laws, 410–399 B.C.' *JHS* 111 (1991), 87–100 at 97: 'it suits his own case to stress the completeness of Athens' fresh start' in 404/3.'

[74] See Droysen (n. 6), 37; MacDowell (n. 6), 121; Ostwald (n. 47), 513 n. 60, 519. Robertson (n. 70), 46–52 proposes the courtyard of the *prytaneion*, but see Rhodes (n. 73), 99.

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homicide law (*IG* i^3 104, lines 1–8).[75] The accuser's account is misleading, however, because he gives the impression that Nicomachus acted alone. The decree about Draco's law indicates however that the task of writing up the laws was given to a board of *anagrapheis*. The accuser also alleges that Nicomachus was able to add and delete laws at will, but the inscription reveals that the *anagrapheis* had the laws inscribed on stelae and placed in front of the *stoa* only on the orders of the Assembly, which indicates that they approved the text to be inscribed.[76]

The accuser also states that Nicomachus served two terms, the first of six years until the defeat of Athens, which should therefore be from 410/9 to 405/4, the second of four years, presumably starting after the restoration of the democracy, from 403/2 to 400/399.[77] His task was the same during this period, namely to write up (ἀναγράφειν) the laws. There is no reason to doubt that the procedure during his second term differed from that followed during his first term.[78] What one can therefore conclude is that *anagrapheis* were appointed in 410/9 to find the laws of Draco and Solon and to present them to the Assembly for approval.[79] The *anagrapheis* then wrote up each law which was approved by the Assembly on a stele and placed it in the *stoa basileios*. It is possible that the Athenians expected this process to be completed within four months when the *anagrapheis* were initially appointed, but the task took longer than expected and was not finished when the Thirty came to power.[80] This is understandable: as the republication of Draco's homicide law reveals, each law had to be submitted individually to the Assembly for approval. After the restoration of the democracy the Assembly decided to restart the process, which lasted for another four years.

This in part confirms and in part supplements the account given by Andocides about the events of 404/3. Andocides gives the impression that the process of examining the laws started for the first time in this year; the evidence of *IG* i^3 104 and Lysias 30.2–5 shows that the Assembly decided to continue a process interrupted by the regime of the Thirty. Andocides omits the work of the *anagrapheis*, but that does not cast suspicion on his account, which is cursory but not inaccurate. His statement that the Assembly examined the laws (δοκιμάσαντες) and then had those which were approved (τούτους τῶν νόμων, οἳ ἂν δοκιμασθῶσι) inscribed

[75] Rhodes (n. 73), 88. Ostwald (n. 47), 406–10 argues that Thucydides used the term *nomothetai* for the different *syngrapheis* and *anagrapheis*, but see Rhodes (n. 73), 88–9.

[76] For an example of a law of Solon which was not approved and was therefore no longer in effect, see Andoc. 1.95, 99 with the discussion in §4 below. On the use of the statements in the Attic orators as historical evidence see Harris (n. 8), 7–16.

[77] See Rhodes (n. 73), 88. If Nicomachus had continued in office during the period of the Thirty, the accuser would certainly have made an issue of it.

[78] E. Volonaki, 'The re-publication of the Athenian laws', *Dike* 4 (2001), 137–67, at 147–57 argues that the *anagrapheis* dealt with secular law in 410–404 and sacred law in 404–399. However, the evidence adduced from Lysias' speech (Lys. 30.4, 17) is inconclusive. Lys. 30.25, moreover, merely states that Nicomachus dealt with secular and sacred matters but does not assign his work on the two kinds of laws to different periods. Note that Andocides (1.82) does not limit the task of examining the laws undertaken in 403 to sacred laws.

[79] Some believe that the phrase 'the laws of Draco and Solon' means all the laws of Athens passed before 404/3 (e.g. Volonaki [n. 78], 141–6). We prefer the view that the phrase should be interpreted literally. For discussion see K. Clinton, 'The nature of the late fifth-century revision of the Athenian law code', *Hesperia* Suppl. 19 (1982), 27–37, at 28–30 and Rhodes (n. 73), 89–93.

[80] Rhodes (n. 73), 89.

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and placed in the *stoa* (*ἀναγράψαι ἐν τῇ στοᾷ*) is confirmed by the evidence of *IG* i^3 104.[81]

We can now turn to the inserted document, which we present as it appears in the manuscripts of Andocides' *On the Mysteries* (83–4).

ἔδοξε τῷ δήμῳ, Τεισαμενὸς εἶπε· πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς, χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἵσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ. ὁπόσων δ' ἂν προσδέῃ, †οἵδε† ᾑρημένοι νομοθέται ὑπὸ τῆς βουλῆς ἀναγραφέντας ἐν σανίσιν ἐκτιθέντων πρὸς τοὺς ἐπωνύμους σκοπεῖν τῷ βουλομένῳ, καὶ παραδιδόντων ταῖς ἀρχαῖς ἐν τῷδε τῷ μηνί. τοὺς δὲ παραδιδομένους νόμους δοκιμασάτω πρότερον ἡ βουλὴ καὶ οἱ νομοθέται οἱ πεντακόσιοι, οὓς οἱ δημόται εἵλοντο, ἐπειδὰν ὁμωμόκωσιν· ἐξεῖναι δὲ καὶ ἰδιώτῃ τῷ βουλόμένῳ εἰσιόντι εἰς τὴν βουλὴν συμβουλεύειν ὅ τι ἂν ἀγαθὸν ἔχῃ περὶ τῶν νόμων. ἐπειδὰν δὲ τεθῶσιν οἱ νόμοι, ἐπιμελείσθω ἡ βουλὴ ἡ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται, τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγράφησαν, σκοπεῖν τῷ βουλομένῳ.

Resolution of the People, on the proposal of Tisamenus. The Athenians shall conduct their public affairs in the traditional manner, and they shall employ the laws of Solon and his weights and measures, and they shall employ also the ordinances (*thesmoi*) of Dracon, which we employed in former time. Such additions as are needed shall be inscribed on boards by the following *nomothetai*, elected by the Council, and shall be exhibited in front of the tribal heroes for all to see and handed over to the magistrates during this month. The laws which are handed over shall be examined first by the Council and the five hundred *nomothetai* elected by the members of demes, after they have taken the oath. Also any individual who wishes shall be permitted to come before the Council and make any good suggestion he can about the laws. After the laws are passed, the Council of the Areopagus shall supervise (the enforcement of) the laws, so that the magistrates may follow the laws which are in force. Those of the laws which are ratified shall be inscribed on the wall, where they were inscribed previously, for all to see.

(trans. adapted from MacDowell)

The narrative of Andocides, which is confirmed by other sources, mentions two separate processes: 1) the formulation of new laws carried out by *nomothetai* elected by the Assembly, and 2) examination of the old laws of Draco and Solon, which we know was carried out by the *anagrapheis*, who submitted laws to the Assembly, a process started in 410/9 and continued in 403/2. The document does not mention any examination of the laws of Draco and Solon but orders that the Athenians use their laws, which they used in the past.[82] This appears to contradict Andocides' statements, which are confirmed to some extent by the evidence of Lysias 30.2–5. It also contradicts the law read out and quoted by Andocides that the laws are to be enforced from the archonship of Euclides (88–9). There is no reason to doubt Andocides on this point: his statement about this law is confirmed by other sources.[83] The document then specifies a complicated procedure for 'whatever is needed in addition'. These would appear to be the laws proposed by the board

[81] For the meaning of the verbs *δοκιμάσαντες* ('examining') and *δοκιμασθῶσι* ('approved') see MacDowell (n. 6), 121.

[82] Droysen (n. 6) noticed this contrast and claimed that Andocides refers to the decree regulating the revision of the laws of Draco and Solon, but a later editor placed the wrong decree, one about new proposals, in the speech. Even if this were the case, there remain problems with the text, which this hypothesis does not address.

[83] Aeschines (1.39) alludes to this law. At Isae. 6.47 and 8.43 two laws are cited and said to have applied only from the archonship of Euclides.

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of *nomothetai* which Andocides has just mentioned.[84] But the document has two boards of *nomothetai*.[85] The first board appears to write up proposals and place them in front of the Eponymous Heroes for anyone to inspect. The invitation to have citizens inspect these proposals would lead us to expect a discussion and vote on them in the Assembly.[86] But that is not what follows. These proposals are to be examined (and presumably approved or rejected) by the Council and five hundred *nomothetai* elected by the 'demesmen' (on this term see below). Instead of one set of *nomothetai* elected by the Assembly, we encounter two boards of *nomothetai*, one appointed by the Council, another by demesmen.[87] Andocides (1.85) implies that the additional laws were ratified by the Assembly (85 and 86: ἐθέμεθα), but the document does not give the Assembly a role in enacting these laws.

There are thus major differences between Andocides' account and the contents of the document.[88] Andocides states that the laws of Draco and Solon were to be examined and only those approved by the Assembly were to be inscribed, which implies that some might be rejected.[89] The document omits this process and asserts that the laws of Draco and Solon, which the Athenians followed in the past, are to be in force. Andocides says that the Assembly elected *nomothetai*, who appear to have made proposals for new laws, which were ratified by the Assembly. The document mentions two boards of *nomothetai* and assigns to the first the task of proposing laws and to the second that of examining the laws in conjunction with the Council.[90] But neither is elected by the Assembly, and the laws proposed and examined by these two boards are not submitted to the Assembly for approval. Finally, Andocides twice mentions publication of the approved laws of Draco and Solon in the *stoa basileios*. The inserted document omits this procedure, but says that the new laws are to be inscribed on a wall. These differences provide strong grounds against the document's authenticity.

[84] Cf. Rhodes (n. 73), 98; Edwards (n. 6), 178.

[85] M.H. Hansen, 'Diokles' law (Dem. 24.42) and the revision of the Athenian corpus of laws in the archonship of Eukleides', *C&M* 41 (1990), 63–71, at 68–70 identifies the *nomothetai* elected by the Council with the *anagrapheis* appointed in 403, but there are several objections to this view. First, why would the Athenians call the same officials by two different names? Second, the *anagrapheis* were elected by the Assembly, not the Council (Lys. 30.28). Cf. Volonaki (n. 78), 162 n. 48.

[86] This would be similar to the procedure discussed at Dem. 24.25–6.

[87] Droysen (n. 6), 30–1 called this election by demesmen 'permirum et plane novum'. C. Hignett, *History of the Athenian Constitution* (Oxford, 1952), 300 believes that the method of appointment of these *nomothetai* is an example of the procedure laid out in the law at Dem. 24.20–3, but this is another document of doubtful authenticity. For other objections to Hignett's view see MacDowell (n. 6), 123.

[88] Rhodes (n. 73), 98–9 assumes the document is authentic but overlooks the differences between Andocides' statements and the provisions of the document.

[89] For an example of one which was not approved and therefore fell into abeyance see Andoc. 1.95, 99 with the discussion in §4 below.

[90] The cooperation between the Council and the *nomothetai* is found in another inserted document at Dem. 24.27, which is also a forgery as shown by M. Piérart, 'Qui étaient les nomothètes à Athènes à l'époque de Démosthène?' in E. Lévy (ed.), *La codification des lois dans l'Antiquité* (Paris, 2000), 229–56, at 245–50. For instance, the prescript contains only the name of the prytanizing tribe, the date of the prytany and the proposer is defective, and the term διοίκησις ('allocation for costs of a festival') is used incorrectly. See P.J. Rhodes, 'Sessions of Nomothetai in fourth-century Athens', *CQ* 53 (2003), 124–9, at 125 n. 8, who does not rely on this document in his discussion of *nomothetai* in the fourth century B.C.E.

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A study of specific features of the decree adds more arguments against authenticity. First, the document lacks a normal prescript. There is no standard form of prescript in these years, but all those from the period 403/2 to 391/0 contain certain features (archon, prytanizing tribe, secretary, day of prytany, chairman), which are missing from this prescript.[91] The decree is dated to 403/2, but the prescript does not resemble those from this period. In two decrees from the same year (*IG* ii^2 1, lines 41–3, 56–7) we find an enactment formula followed by the name of the prytany, the secretary, the archon, the *epistates* and the proposer.

Second, in the first clause of the inserted document we find the first-person plural form *ἐχρώμεθα*. Decrees and laws from the fifth and fourth centuries B.C.E. always use third-person forms, never first-person forms.[92] The only exception is for oaths (e.g. *IG* i^3 40, lines 4–16, 21–32), but this document does not contain an oath.

Third, the term *δημόται* is normally found in deme decrees or dedications (*IG* i^3 250A, line 14 [decree of Paeania], *IG* i^3 254, line 3 [decree of Icaria]), but never in the decrees of the Council and Assembly (see Appendix 1).[93]

Fourth, the normal expression in instructions for magistrates to act immediately is *αὐτίκα μάλα* (e.g. *IG* i^3 61, 71, 76, 93; *IG* ii^2 28, 43, 111, 174, 204) In this decree we find the unparalleled expression *ἐν τῷδε τῷ μηνί* (*IG* i^3 41, line 90 is not a true parallel because that decree concerns legal procedure for bringing a case to trial).

Fifth, the phrase *καὶ μέτροις καὶ σταθμοῖς* in the clause *νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς* is nonsense. Andocides says that the examination concerned only the *laws* of Draco and Solon, and this is confirmed by the description of the duties of the *anagrapheis* described by Lysias (30.2–5).

Sixth, in all the publication formulae for the period we find the verb *ἀναγράφειν* followed by *ἐν στήλῃ λιθίνῃ* or *ἐστήλῃ λιθίνῃ* followed by the verb *στῆσαι* or *καταθεῖναι* (e.g. *IG* ii^2 1 [403/2], lines 39, 67; 13 [399/8], lines 10–11; 43 [377], lines 64–5).[94] The inserted decree has *εἰς τὸν τοῖχον*, which has no parallel for decrees and laws during the Classical period. The decree *IG* i^3 84 (418/17), lines 23–8, does not provide a parallel.[95] Here the *basileus* writes the name of the person who leases the shrine of Neleus, the amount of the lease and the sureties on the wall of the shrine, but in the next lines the decree is to be written on a stone stele. Note also that during the earlier phase of the republication of laws, Draco's law on homicide was published on a stele and placed in front of the *stoa*

[91] A.S. Henry, *The Prescripts of Athenian Decrees* (= *Mnemosyne* Suppl. 44) (Leiden, 1977), 27–9.

[92] MacDowell (n. 6), 122 does not comment on the form of the verb.

[93] The word may occur at *IG* i^3 82, line 12, but the text is fragmentary. The absence of the term *δημόται* in decrees of the Assembly is not noted by MacDowell (n. 6), 123, who speculates that 'The use of the term *οἱ δημόται* instead of *ὁ δῆμος* means that on this occasion they voted by demes instead of all together as an assembly; it may imply that the 500 nomothetai (like the 500 members of the council) were chosen from the members of the demes in proportion to the population of the demes.' There is no evidence for voting by demes in the Assembly. For the methods of voting attested in the sources see P.J. Rhodes, 'Notes on voting in Athens', *GRBS* 22 (1981), 125–32.

[94] For the publication formula of Athenian documents see A.S. Henry, 'The Attic state secretariat and provision for publication and erecting decrees', *Hesperia* 71 (2002), 91–118. For the places of publication see P. Liddell, 'The places of publication of Athenian state decrees from the 5th century to the 3rd century AD', *ZPE* 143 (2003), 79–93.

[95] *Pace* Rhodes (n. 73), 99; Rhodes (n. 32), 134; Robertson (n. 70), 49–50. None of these scholars note the different publication formulae for the lease and the decree.

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basileios (*IG* i^3 104, lines 7–8). Lysias (30.21) states that Nicomachus wrote up the laws about sacrifices on stelae. When a litigant consulted the law of Draco in the middle of the fourth century, he found it on a stele (Dem. 47.71).[96] Finally, all the epigraphic fragments assigned to the republication of the laws are inscribed on stelae, not a wall.[97]

The only hypothesis which provides a satisfactory explanation for all these problems with the text of the inserted document is that the text is not the document which Andocides had read to the court in 400/399 but a forged document inserted into the text long after the initial publication of the speech.

3. THE NEW LAWS

After the laws were approved in accordance with the decree of Tisamenus, the Athenians enacted a law, which they all follow. Andocides (1.85) requests this law to be read out, then asks if this law makes any exceptions which would allow a magistrate or any Athenian to bring a case to court. He then concludes that because it is not allowed to enforce an unwritten law, it is certainly not allowed to enforce an unwritten decree. A little further on, Andocides repeats this provision: 'it is not allowed for magistrates to use an unwritten law, not even about a single matter' (89: *ἀγράφῳ δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἑνός*). A text of this law is inserted at 85 and 87 with exactly the same wording.[98] This does not mean that the document is genuine; it is more likely that it was simply copied from Andocides' paraphrase.[99]

Andocides next recalls how many citizens had been put in a dangerous position because of earlier laws. As a result, the Athenians enacted laws to protect

[96] Because the text of the decree is not authentic, there is no need to accept the complicated hypothesis of Clinton (n. 79), 32 that the laws of Draco and Solon were first published on stelae, then on a wall which 'in turn was erased and in 403/2 replaced by another revision on the same wall'.

[97] *Pace* S. Dow, 'The Athenian calendar of sacrifices', *Historia* 9 (1960), 292–3 at 277, followed by Volonaki (n. 78), 155. See S.D. Lambert, 'The sacrificial calendar of Athens', *ABSA* 97 (2002), 353–99, at 355–7 ('Dow's attribution of the surviving fragments to two, or perhaps three, walls, while possible, is questionable. Of the published fragments with both faces preserved only two have the same thickness') and L. Gawlinski, 'The Athenian calendar of sacrifices. A new fragment from the Athenian Agora', *Hesperia* 76 (2007), 37–55. Harris has examined several of the fragments in the Athenian Agora and can confirm Lambert's observation.

[98] Several scholars believe that this implies that no statute which has not been inscribed in or next to the *stoa basileios* is valid from this point on. See A.R.W. Harrison, 'Law-making at Athens at the end of the fifth century B.C.', *JHS* 75 (1955), 26–35, at 33; MacDowell (n. 6), 126–7; Ostwald (n. 47), 91–2; Rhodes (n. 73), 97; J.P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill, NC, 1999), 100. But see Clinton (n. 79), 34, who rightly points out that the adjective *ἄγραφος* is more likely to be contrasted with *γεγραμμένος* than with *ἀναγεγραμμένος*. Unwritten laws are contrasted with those written down, not with those inscribed. In fact, Dem. 24.43 explicitly states that laws go into effect when they are enacted, not when they are inscribed, which might occur later. The unwritten laws are not those mentioned by Pericles (Thuc. 2.37.3) (*pace* Joyce [n. 68], 517 n. 47), but either those not passed by the Athenians and therefore not recorded or those which have been repealed and are therefore no longer recorded in the Metroon.

[99] This would explain the use of the particle *δέ* in the inserted document, which otherwise seems out of place in the first clause of a law. Cf. the first clause of the law on silver coinage (*SEG* 26:72, line 3) or the law about grain from the islands (*SEG* 48:96, lines 5–8).

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these people, namely to stop them from being subject to malicious prosecution (*συκοφαντεῖν*). He then instructs that several laws be read out. The text then includes the following document (87):

ἀγράφῳ δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἑνός. ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι. μηδὲ ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις, ἐὰν μὴ ἑξακισχιλίοις δόξῃ κρύβδην ψηφιζομένοις.

It is not allowed for magistrates to use an unwritten law not even about a single matter. No decree, neither of the Council nor of the Assembly, is to have more authority than a law. It is not permitted to enact a law directed against an individual unless the same law applies to all Athenians, except if six thousand decide voting by secret ballot.

Andocides then asks for another law to be read out. There follows the text of another law:

τὰς δὲ δίκας καὶ τὰς διαίτας κυρίας εἶναι, ὁπόσαι ἐν δημοκρατομένῃ τῇ πόλει ἐγένοντο. τοῖς νόμοις χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος.

All judgments in private suits and in arbitrations rendered during the democracy are to be valid. Laws are to be enforced from the archonship of Euclides.[100]

There are five laws in these two documents. As we have already seen, the text of the first law is drawn from the text of the speech; this appears also to be the case with the second (document: *ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι*; text of the speech: *ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι*),[101] fourth (document: *τὰς δὲ δίκας καὶ τὰς διαίτας κυρίας εἶναι, ὁπόσαι ἐν δημοκρατομένῃ τῇ πόλει ἐγένοντο*; text of the speech: *τὰς μὲν δίκας, ὦ ἄνδρες, καὶ τὰς διαίτας ἐποιήσατε κυρίας εἶναι, ὁπόσαι ἐν δημοκρατομένῃ τῇ πόλει ἐγένοντο*) and fifth laws (document: *τοῖς νόμοις χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος*; text of the speech: *τοῖς νόμοις ἐψηφίσασθε χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος*).

The text of the third law found in the document, however, contains a phrase which is absent from the version of the law found in the text of the speech (89). Both passages state that the Athenians are not to enact a law which does not apply to all Athenians, but the document adds 'except if six thousand decide voting by secret ballot' (*ἐὰν μὴ ἑξακισχιλίοις δόξῃ κρύβδην ψηφιζομένοις*). This law is quoted or paraphrased in several other passages from Demosthenes' speeches (Dem. 23.86, 218; 24.18, 59, 116, 188; 46.2), but always without this additional phrase allowing for an exception. The law is also found in two other inserted documents, one at Dem. 23.86, another at Dem. 24.59. In the first document, the additional phrase is absent. In the second there is a similar additional phrase but the wording is slightly different, which gives the law a different meaning: *ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις τιθῇ ψηφισαμένων μὴ ἔλαττον ἑξακισχιλίων οἷς ἂν δόξῃ κρύβδην ψηφιζομένοις* ('unless he enacts the same for all Athenians with not less than 6,000 voting who decide by secret ballot'). In the document in Andocides, the text of the law creates an exception to the general rule that no law can be passed

[100] For the meaning of this law see MacDowell (n. 6), 128–9.

[101] Whether the additions of Blass and Reiske are correct or not does not make any difference. This law is also mentioned at Dem. 23.218, 24.30 and Hyp. *Ath.* 5.22.

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concerning an individual, which does not apply to all Athenians. The document at Dem. 24.59 requires that a law must apply to all Athenians and be passed by no fewer than six thousand voting by secret ballot.[102] It does not allow for an exception.

There are several reasons for rejecting the authenticity of the version of the law found in the document at Andocides 1.87.

1) As we have found, the other laws in the document appear to have been composed from the paraphrases in the adjoining text, not from an independent source. This makes it likely that this law was also composed by a forger, who then added the extra phrase by adapting language from Dem. 24.46 and [Dem.] 59.89.

2) All the passages which quote or paraphrase the law do not mention this exception. Moreover, the arguments in these passages all rely on the premise that there were no possible exceptions to the rule against laws enacted concerning a single person.

3) The text of the law at Dem. 23.86 (which does not contain the exception) is probably genuine. The stichometry of the speech indicates that this text was included in an early edition of the speech, not added later like many of the other documents in Demosthenes' speeches.[103] Furthermore, the reliability of several documents in this speech has been confirmed by the epigraphic evidence.[104] On the other hand, the document at Dem. 24.59 does not lie within the stichometry. Even if one is to accept Petit's emendation to make the text of this document resemble that of Andoc. 1.87 (which one should not), it is clear that the document was added at a later stage and is thus not likely to be authentic. The person who composed the document probably added the extra phrase drawing on Dem. 24.46 and [Dem.] 59.89.

4) As Rhodes has observed, it was the *nomothetai* who in the fourth century gave final approval for laws, not the Assembly, as the document at Andoc. 1.87 implies.[105]

5) In the two passages in which a provision to enact a measure requires a vote of at least 6,000, the measure is a decree passed in the Assembly, not a law. The text of the law at Andoc. 1.87 does not state which body is to pass the measure.

Hansen has drawn attention to three honorary decrees and claimed that they provide evidence for the possibility of passing a *νόμος ἐπ' ἀνδρί*.[106] The first is a citizenship decree for Pisithides of Delos (*IG* ii^2 222). The Treasurer of the People is ordered to pay Pisithides an allowance of one drachma per day. To provide this money, the Assembly orders the *proedroi* at the next session of the *nomothetai* to propose that an extra amount be transferred by the *apodektai* to the Treasurer every

[102] Petit (followed uncritically by Dilts) proposed inserting *ἐὰν μή* before *ψηφισαμένων* to make the wording of the document conform to that found at Andoc. 1.87, but his proposal rests on the assumption that the text of the law in that passage is genuine.

[103] For the stichometry of the speech see F. Burger, *Stichometrische Untersuchungen zu Demosthenes und Herodot. Ein Beitrag zur Kenntnis des antiken Buchswesen* (Munich, 1892), at 9–10.

[104] Compare Dem. 23.37–8, 60–1 with *IG* i^3 104, lines 26–9, 37–8.

[105] P.J. Rhodes, 'Nomothesia in fourth-century Athens', *CQ* 35 (1984), 55–60, at 59; Rhodes (n. 73), 97–8. Rhodes also claims that this law cannot have been contained in the *nomothesia* of 404/3 because the decree of Tisamenus placed the task for legislation in the hands of *nomothetai* elected by the demes, but his argument rests on the assumption that this decree is genuine, which it is not.

[106] M.H. Hansen, 'Did the Athenian assembly legislate after 403/2 B.C.?' *GRBS* 20 (1979), 27–53, at 41–3.

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year to cover this expense (lines 41–6). The second is an honorary decree awarding Phyleus the *hieropoios* a gold crown worth 1,000 drachmas. The Treasurer of the People is instructed to pay this money, and the *proedroi* are instructed to propose legislation about the expense so that the Treasurer is provided with the necessary funds (18–23). The third is an honorary decree for a board of *epimelêtai*. One of the honours voted to them is an amount of 100 drachmas for a sacrifice and votive offering. Once more the Treasurer of the People is to provide the money, and the *proedroi* are instructed to pass legislation so that the money can be given to the Treasurer (lines 35–41). Because the legislation is passed for an individual (or set of individuals in the last example), each measure passed by the *nomothetai* must be a *νόμος ἐπ' ἀνδρί*.

Rhodes rightly objected to this analysis: 'what the nomothetai are asked in the three decrees to do is not to ratify the decrees but simply revise the *merismos*, and I see no reason to believe that these revisions would count as *νόμοι ἐπ' ἀνδρί*'.[107] In fact, in each decree the *nomothetai* are asked to legislate about a sum of money, not about a person.[108] They do not confirm the honours granted to an individual. Furthermore, none of the three decrees cited by Hansen mentions a quorum of 6,000 or a secret ballot. *Pace* Hansen, these inscriptions do not provide examples of *νόμοι ἐπ' ἀνδρί*.

An examination of the three documents inserted at Andoc. 1.85 and 87 reveals that they are not authentic but forgeries composed from phrases in the adjacent text and from Dem. 24.46 and [Dem.] 59.89. There is therefore no reason to believe that there were any exceptions to the general rule against a law directed at a single individual.

4. THE DECREE OF DEMOPHANTUS

After discussing the laws passed following the restoration of the democracy, Andocides attacks his accusers. First, he alleges that Cephisius purchased public contracts to collect rents, then failed to make payments and fled abroad (92). He is now immune from prosecution because the Athenians have decided to enforce the laws only from the archonship of Euclides [403/2] (93). He then turns to Meletus and charges him with having arrested Leon, who was put to death by the Thirty. Like Cephisius, Meletus has benefited from the amnesty, because he is clearly guilty (94). Finally, he accuses Epichares of being a member of the Thirty (95). Here he reminds the judges of a law written on a stele placed in front of the meeting place of the Council: 'Whoever holds office after the democracy is overthrown is to die without compensation. The man who kills him is ritually pure and is to have the property of the deceased.' This means that anyone can kill Epichares and not incur pollution for homicide (95). He then asks for the law of Solon to be read out:

[107] Rhodes (n. 105), 59.

[108] In his reply to Rhodes M.H. Hansen, 'Athenian *nomothesia*', *GRBS* 26 (1985), 345–71, at 361–2 admits that *IG* ii^2 330 and *SIG*^{3} 298 do not support his case, but argues that in *IG* ii^2 222 'the supplementary estimates to be voted on by the *nomothetai* must, in order to be identifiable, have included a reference to Peisitheides; accordingly, the revision of the *merismos* is not simply a *nomos*, but more specifically a *νόμος ἐπ' ἀνδρί*'. We see no need to assume that there must have been a reference to Pisithides in the measure enacted by the *nomothetai*. In fact, the request made to them by the Assembly (lines 43–6) does not contain Pisithides' name.

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ΝΟΜΟΣ. ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ. Αἰαντὶς ἐπρυτάνευε, Κλεογένης ἐγραμμάτευε, Βοηθὸς ἐπεστάτει. τάδε Δημόφαντος συνέγραψεν. ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος ἡ βουλὴ οἱ πεντακόσιοι <οἱ> λαχόντες τῷ κυάμῳ, ὅτε Κλεογένης πρῶτος ἐγραμμάτευεν. ἐάν τις δημοκρατίαν καταλύει τὴν Ἀθήνησιν, ἢ ἀρχήν τινα ἄρχει καταλελυμένης τῆς δημοκρατίας, πολέμιος ἔσται καὶ νηποινεὶ τεθνάτω, καὶ τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ ἐπιδέκατον· ὁ δὲ ἀποκτείνας τὸν ταῦτα ποιήσαντα καὶ ὁ συμβουλεύσας ὅσιος ἔστω καὶ εὐαγής. ὁμόσαι δ' Ἀθηναίους ἅπαντας καθ' ἱερῶν τελείων κατὰ φυλὰς καὶ κατὰ δήμους, ἀποκτείνειν τὸν ταῦτα ποιήσαντα. ὁ δὲ ὅρκος ἔστω ὅδε· 'κτενῶ τῇ ἐμαυτοῦ χειρί, ἂν δυνατὸς ὦ, ὃς ἂν καταλύσῃ τὴν δημοκρατίαν τὴν Ἀθήνησι, καὶ ἐάν τις ἄρξῃ τιν' ἀρχὴν καταλελυμένης τῆς δημοκρατίας τὸ λοιπόν, καὶ ἐάν τις τυραννεῖν ἐπαναστῇ ἢ τὸν τύραννον συγκαταστήσῃ· καὶ ἐάν τις ἄλλος ἀποκτείνῃ, ὅσιον αὐτὸν νομιῶ εἶναι καὶ πρὸς θεῶν καὶ δαιμόνων, ὡς πολέμιον κτείναντα τῶν Ἀθηναίων, καὶ τὰ κτήματα τοῦ ἀποθανόντος πάντα ἀποδόμενος ἀποδώσω τὰ ἡμίσεα τῷ ἀποκτείναντι καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ, καὶ οὐκ ἀποστερήσω οὐδέν. ἐάν τις κτείνων τινὰ τούτων ἀποθάνοι ἢ ἐπιχειρῶν, εὖ ποιήσω αὐτόν τε καὶ τοὺς παῖδας τοὺς ἐκείνου καθάπερ Ἁρμόδιόν τε καὶ Ἀριστογείτονα καὶ τοὺς ἀπογόνους αὐτῶν. ὁπόσοι δὲ ὅρκοι ὀμώμονται Ἀθήνησιν ἢ ἐν τῷ στρατοπέδῳ ἢ ἀλλοθί που ἐναντίοι τῷ δήμῳ τῶν Ἀθηναίων, λύω καὶ ἀφίημι.' ταῦτα δὲ ὀμοσάντων Ἀθηναῖοι πάντες καθ' ἱερῶν τελείων, τὸν νόμιμον ὅρκον, πρὸ Διονυσίων· καὶ ἐπεύχεσθαι εὐορκοῦντι μὲν εἶναι πολλὰ καὶ ἀγαθά, ἐπιορκοῦντι δ' ἐξώλη αὐτὸν εἶναι καὶ γένος.

Law. Resolved by the Council and People, in the prytany of Aiantis, Cleogenes was the secretary, Boethus presided. Demophantus made the following proposal. The period of this decree begins – the Council of Five Hundred selected by lot – when Cleogenes was the first secretary. If anyone destroys the democracy at Athens, or once the democracy is destroyed holds an office, he will be an enemy and let him die without compensation, and let his property be confiscated, and a tenth (dedicated) to the goddess. Whoever kills the person who does this, and whoever plots with him, let him be ritually pure and sacred. Let the oath be as follows: 'I will kill by my own hand, if I am able, whoever destroys the democracy at Athens, and if anyone holds an office once the democracy is destroyed in the future, and if anyone attempts to become a tyrant or collaborates in setting up a tyrant. And if anyone else kills him, I shall consider him to be ritually pure both before the gods and the heroes like a person who has killed an enemy of the Athenians, and I shall sell all the property of the dead man and hand over half to the killer, and I shall deprive him of nothing. If anyone dies while killing one of these people or attempting to, I shall treat him well and his children just as Harmodius and Aristogiton and their descendants. And as many oaths as have been sworn at Athens and in the army-camp or anywhere else contrary to the Athenian people, I renounce and abjure.' Let all the Athenians swear this oath on perfect victims, the legal oath, before the Dionysia. For him who keeps his oath, let there be many blessings; as for him who perjures himself, let him and his family be destroyed.

The proposer is Demophantus, and the enactment formula is the one used in decrees of the fourth century B.C.E. At a trial in 331 B.C.E. Lycurgus (*Leocr.* 124–7) discusses a decree of Demophantus.[109] It was enacted after the overthrow of the Thirty when the Athenians voted that if anyone sees a person attempting to set up a tyranny, to betray the city or to overthrow the democracy, and kills him, he is to be pure (free from pollution for homicide). After Lycurgus has the decree read out, he notes how in most cases punishment follows the crime, but in this one punishment preceded the crime (126). The oath in the decree which the judges

[109] For the date of Leocrates' trial see I. Worthington, C. Cooper and E.M. Harris (trr.), *Dinarchus, Hyperides, and Lycurgus*, vol. 5 of M. Gagarin (ed.), *The Oratory of Classical Greece* (Austin, TX, 2001), 159.

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have sworn requires them to kill the man who betrays his country 'either by word or deed, by hand or by vote' (127). This summary should be reliable because the judges would immediately have noticed any deviation from the text. Demosthenes (20.159) also mentions the stele of Demophantus, in which it is written and sworn that if anything happens to a person (i.e. if he dies) defending the democracy, he is to have the same honours as those given to Harmodius and Aristogiton. Lycurgus and Demosthenes are clearly paraphrasing different clauses from a decree containing an oath about attempts at tyranny and treason.

The document found at Andoc. 1.96–8 purports to be the text of the decree of Demophantus. For the moment, we postpone any discussion of the relationship between the law of Solon mentioned by Andocides and the decree of Demophantus. In what follows we examine the text of the document to determine whether it is a genuine document from the Classical period, to be identified with the decree of Demophantus.

1) There are major problems with the prescript of the decree. According to Lycurgus (*Leoc.* 124), the decree was enacted after the overthrow of the Thirty in 403/2, but the prescript contains elements which are found in no other decrees of the early fourth century B.C.E.

a) In decrees of this period and later, the name of the proposer is followed by the verb *εἶπεν*. In this prescript the name of the proposer does not come at the end and is followed by the verb *συνέγραψεν*, which has no parallel in decrees from this period.[110]

b) In the prescript there is the phrase *ἡ βουλὴ οἱ πεντακόσιοι λαχόντες τῷ κυάμῳ*, which is unparalleled in all prescripts of the fifth and fourth century.[111] In fact, this precise phrase occurs in no extant decrees preserved in inscriptions. The number of members in the Council is never found in inscriptions until the Roman period.[112] The phrase *λαχόντες τῷ κυάμῳ* is also never found in inscriptions where the Council is mentioned. The person who composed the document was not familiar with documentary style and probably drew on a literary source.[113]

c) The secretary of the Council is named twice in the prescript, which is also unparalleled in this period.[114] There are also no parallels in decrees for the formula *ὅτε Κλεογένης πρῶτος ἐγραμμάτευεν*.[115] The invariable formula is the name of

[110] MacDowell (n. 6), 136 adduces the unusual phrase in *IG* i^3 78, lines A3–4, but this is not a true parallel because in this decree the names of the *syngrapheis* are not given and the verb is in the plural, not the singular. For the standard formula see *IG* i^3 21, line 3.

[111] Hignett (n. 87), 372 followed by MacDowell (n. 6), 136, dates the decree to 410/9 and suggests that the number was added to distinguish this Council from the Council of Four Hundred in the preceding year. But there is no reason to date the decree to this year. Besides, if it could be dated to this archonship, why is the phrase not found in the prescripts of other decrees and documents from the same year? See *IG* i^3 99, 101, 102, 103, 375, line 1.

[112] *SEG* 29:127, lines 79–80, 98 and 100 (174/5 C.E.), *IG* ii^2 3959, line 2 (after 128/9 C.E.), *IG* ii^2 3612, line 3 (mid 2nd century C.E.), *IG* ii^2 3958, line 2 (after 128/9 C.E.), *SEG* 33:140, line 2 (2nd century C.E., possibly 130–4 C.E.), *IG* ii^2 3969, lines 3–4 (148–50 C.E.) (cf. Pouilloux, *Forteresse de Rhamnounte* 50), *IG* ii^2 3957, line 2 (after 128/9 C.E.). The phrase is plausibly restored at *IG* ii^2 1111 (180–92 C.E.); *SEG* 21:509, line 14 (178/9 or 182/3 C.E.), *IG* ii^2 1109 (187 C.E.), *IG* ii^2 3668, lines 2–3 (mid third century C.E.), *SEG* 41:143, line 4 (128/9–138 C.E.).

[113] Ar. *Av.* 1022; Thuc. 8.66; [Arist.] *Ath. Pol.* 24.3; 32.1.

[114] *IG* ii^2 2 does not provide a parallel because the secretary is named first in the superscript, then in the prescript, not twice in the prescript.

[115] The phrase *πρῶτος ἐγραμμάτευεν* is found at *IG* i^3 375, line 1, but this is a financial record, not a decree.

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the secretary (with patronymic and demotic increasingly added as time goes on) followed by the verb *ἐγραμμάτευεν*.[116] The temporal conjunction *ὅτε* followed by the name of the secretary never occurs in prescripts; what one finds instead (e.g. *IG* ii^2 18l, lines 2–3) is the name of the tribe in the genitive followed by the participle *πρυτανευούσης* and the relative pronoun *ἧι* followed by the name of the secretary and *ἐγραμμάτευεν*, a very different formula.

d) The syntax of the prescript is faulty. The noun *χρόνος* agrees with the verb *ἄρχει*, but the phrase *ἡ βουλὴ οἱ πεντακόσιοι <οἱ> λαχόντες τῷ κυάμῳ* has no verb and interrupts the flow of the sentence.

e) The phrase *ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος* is otiose.[117] Every law went into effect on the day that it was passed unless it was specified that it would take effect at a later date (Dem. 24.43),[118] and the same principle appears to have applied for decrees.[119] Not surprisingly the phrase has no parallel in decrees from the late fifth or early fourth centuries B.C.E.[120]

f) It has been proposed to emend the name *Κλεογένης* to *Κλειγένης*, who is attested as the secretary of the Council in the year 410/9 (*IG* i^3 375, line 1).[121] There are several objections to this emendation. First, Lycurgus clearly states that the decree was passed after the period of the Thirty in 403/2, not before. Second, it is unlikely that a scribe would have made precisely the same error in two different places. Finally, it would be a *petitio principi* to accept the emendation, then to use the emended passage as proof of the document's authenticity.

2) The text of the decree itself derives in part from the passage quoted by Andocides. In the quoted passage, however, all of the property owned by the person who holds office after the overthrow of the democracy is to belong to the person who kills him. In the inserted decree, his property is confiscated by the state with one tenth dedicated to the goddess Athena (*τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ ἐπιδέκατον*). This part of the document also states that the person who overthrows the democracy or serves in office after the overthrow of the democracy is to be *πολέμιος*, but in the Classical period this adjective is always used for enemies in war (see Appendix 3). It is never employed as the equivalent of the word *ἄτιμος*, which is the standard term in this context.[122]

[116] Henry (n. 91), 27, 31–2 with e.g. *IG* ii^2 28 (387/6).

[117] Droysen (n. 6), 6–8 noticed this but claimed it was not part of the original decree (which in his opinion was passed in 410/9) and added after the regime of the Thirty when the statute was re-enacted. But there is no parallel for such an addition to the text in other Athenian laws and decrees.

[118] For transitional clauses, see E.M. Harris, 'Notes on the new grain-tax law', *ZPE* 128 (1999), 269–72.

[119] Decrees are often said to be in effect 'henceforth' (*τὸ λοιπόν*), indicating that they take effect the moment they are enacted. See Harris (n. 10 [2006]), 425–8.

[120] MacDowell (n. 6), 136 notes that the phrase is restored in *IG* i^3 402, lines 16–17 (434–432), but this is not a true parallel since this comes from a lease, not a decree of the Assembly, and indicates when the period of the lease starts. For examples of the phrase in other leases see *IG* ii^2 2492, line 18 (345/4); *SEG* 33:143, line 8 (324/3); *IG* ii^2 2499, line 43 (306/5). For the phrase used in a treaty see Thuc. 5.19.1.

[121] This emendation was first proposed by A. Boeckh, *Die Staathaushaltung der Athener* 2 (Berlin, 1851^2), 5 on the basis of *IG* i^3 375, lines 1–2 and has been accepted by Droysen (n. 6), 2 and MacDowell (n. 6), 135.

[122] See [Arist.] *Ath. Pol.* 16.10; *IG* i^3 71, lines 32–3; 1453 B, lines 10–11 (plausibly restored); Dem. 23.62; C. Schwenk, *Athens in the Age of Alexander. The Dated Laws and Decrees of the 'Lykourgan Era' 338–322 B.C.* (Chicago, 1985) no. 6, line 20.

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Finally, the law of Solon quoted by Andocides (1.95) says that the person who kills someone holding office during a tyranny is to be ὅσιος. In the paraphrase that follows, Andocides uses the word καθαρός. Lycurgus (*Leocr.* 125) says this person is to be καθαρόν. In the law of Eucrates this person is to be ὅσιος (*SEG* 12:87, line 11). In the text of the inserted document, however, this person is to be ὅσιος ἔστω καὶ εὐαγής (Andoc. 1.97).[123] Although the word ὅσιος is found in public documents, εὐαγής is a literary term never found in laws and decrees of the Classical period.[124]

3) The oath contains several features which militate against authenticity:

a) In his quotation from the oath, Lycurgus (*Leoc.* 127) places the phrase καὶ λόγῳ καὶ ἔργῳ καὶ χειρὶ καὶ ψήφῳ after the pledge to kill the person betraying the city, where it obviously belongs. In the inserted document, the pledge to kill is shorter (κτενῶ τῇ ἐμαυτοῦ χειρί), and the phrase 'by word and by deed and by vote' (καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ) occurs after the phrase 'I will give half of the property to the killer' (ἀποδώσω τὰ ἡμίσεα τῷ ἀποκτείναντι καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ), where it is inappropriate. One might add that the word ἐμαυτοῦ in the phrase κτενῶ τῇ ἐμαυτοῦ χειρί found in the inserted document is otiose – who would use someone else's hand to kill a potential tyrant?[125]

b) There is a contradiction between the decree and the oath. In the oath the property of the dead tyrant is to be confiscated by the state and a tenth given to Athena (τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ ἐπιδέκατον).[126] In the oath the property is to be sold and half given to the tyrannicide (τὰ κτήματα τοῦ ἀποθανόντος πάντα ἀποδόμενος ἀποδώσω τὰ ἡμίσεα τῷ ἀποκτείναντι).

c) The oath promises to 'treat well' the person who kills a tyrant and his children in the same way as Harmodius and Aristogiton and their descendants (ἀπογόνους). The word ἀπόγονος does not occur in inscriptions about honours during the Classical period, and in general does not occur in epigraphic documents before the Imperial period (see Appendix 4).[127] The term for descendants in honorary decrees from this period is ἔκγονος.[128]

d) The phrase 'on perfect sacrificial victims' (καθ' ἱερῶν τελείων) is otiose – what other kinds of victims would one use when swearing an oath? It is therefore

[123] Droysen (n. 6), 9 noted the differences between this document and the paraphrases by Andocides and Lycurgus, but believed that the law was reworded when it was re-enacted after the fall of the Thirty.

[124] The word εὐαγής is not found in the index to *IG* i^3. A search through the PHI database yields no examples in laws and decrees from the Classical period.

[125] It is striking that in a search of the PHI database of Greek inscriptions we could not find another example of the word ἐμαυτοῦ used in any Athenian inscription from the Classical or Hellenistic periods. The only example comes from the second century C.E. (*SEG* 30:86, line C37 [138–161]).

[126] For this phrase in contemporary inscriptions see *SEG* 12:87, lines 21–2. But this should not be used as an argument in favour of authenticity. A person forging the document could have found the phrase in Xen. *Hell.* 1.7.10.

[127] The word occurs *IG* ii^2 716, line 4, but the date of the inscription is probably the third century B.C.E. Moreover, the term is used in a patronymic, not to refer in general to descendants who are receiving honours.

[128] See, for example, *IG* i^3 65, lines 22–3 (*c.* 427/6 B.C.E.); *IG* ii^2 10, line 5 (401/0); 17, line 33–4 (394/3); 32, line 23 (385/4); 49, line 5 (beginning 4th c. B.C.E.); 53, line 3 (before 387/6 B.C.E.); 80, line 11 (before 378/7 B.C.E.); 103, line 32 (369/8); 105, line 11 (368/7); 109b, line 11 (363/2); 141, line 12 (376/5); 152, line 12 (before 353/2) ; 226, line 4 (*c.* 343/2); 237, line 19 (338/7); 240, line 17 (337/6); 276, lines 13–14 (before 336/35); *SEG* 36:139, line 3 (403–400 B.C.E.). See also Dem. 19.310 (in the treaty with Philip concluded in 346).

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not surprising to find that the phrase never occurs in oaths or instructions to swear oaths in Athenian laws and decrees from the Classical period. See Appendix 5.

e) In oaths to be sworn by all Athenians, one never finds the phrase *κατὰ φυλὰς καὶ κατὰ δήμους*. For references see Appendix 5.

f) Lycurgus (*Leocr*. 125, 126, 127) states thrice that the decree applied to those who killed both those attempting to set up a tyranny and those attempting to betray the city. The oath in the inserted document does not include traitors.[129]

This analysis shows that the document inserted at Andoc. 1.96–8 is not a genuine text of the decree of Demophantus.

This leaves the question of the relationship between the law of Solon quoted by Andocides and the decree of Demophantus. There are two possibilities. First, one might argue that they are two separate measures. In support of this hypothesis are the different names of the proposers (Solon vs. Demophantus), the fact that one document is called a law (*nomos*), the other a decree (*psephisma*), and the different locations of the documents (in front of the Council chamber, rather than inside it). The law of Solon was placed in front of the Council chamber (*ἔμπροσθεν τοῦ βουλευτηρίου*). It was thus similar to the law of Eucrates, which was placed at the entrance to the Areopagus (*SEG* 12:87, lines 24–6). Just as the law of Eucrates threatened members of the Areopagus with loss of rights and confiscation of property if they met after the overthrow of the democracy, this law threatened with death and confiscation of property the members of the Council and other magistrates who held office during a tyranny. The law of Demophantus, on the other hand, was placed inside the Council chamber (*ἐν τῷ βουλευτηρίῳ*). Finally, Andocides (1.99) says that the law of Solon was no longer in effect because 'laws should be enforced from the archonship of Euclides' (*τοῖς νόμοις δεῖ χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος*). Andocides is 'speaking loosely' here:[130] the provision simply states that offences committed before the archonship of Euclides could no longer be brought to trial. It does not mean that only laws and decrees passed from the archonship of Euclides onwards were valid. Andocides is misinterpreting the statute here because he wishes the judges to believe that the decree of Isotimides (Andoc. 1.8, 71) is no longer valid. Whether Andocides' interpretation of the statute is correct or not, this statement would apply to a law of Solon if it had not been approved by the Assembly during the scrutiny of the laws of Draco and Solon; it would not apply to the decree of Demophantus, which was enacted after the restoration of the democracy. Even though it was no longer in effect, it was kept in front of the Council chamber as a reminder of the ancient attitude toward tyranny.[131] This would also explain the need to pass the new decree of Demophantus about tyranny and treason. When the Athenians decided to examine the laws of Draco and Solon, they evidently found this law about tyranny outdated, probably because it did not mention Harmodius and Aristogiton or take account of the Thirty. It was therefore not approved by the Assembly and no longer in

[129] This was noted by Droysen (n. 6), 9, who once again explained it as an addition made to the text when the decree of 410/9 was re-enacted after the Thirty.

[130] MacDowell (n. 6), 137.

[131] For another example of a document placed on public display even after it was no longer in effect see Isocrates 4.120. See also S. Bolmarchich, 'The afterlife of a treaty', *CQ* 57 (2007), 477–89.

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force in 400/399. The decree of Demophantus was then passed to replace this law, probably after the trial of Andocides in 400/399.[132]

The second possibility is that Andocides calls the decree of Demophantus a law of Solon in the same way that other orators call any Athenian law a law of Solon.[133] The terms of this decree might have been completely original or might alternatively have incorporated earlier provisions from a law which was Solonian or attributed to Solon such as the one quoted in the *Constitution of the Athenians* (16.10).[134] But if the document which Andocides (1.96) has read out was the decree of Demophantus, it is hard to understand why he then says it is no longer in effect. The first possibility is therefore to be preferred.

5. FINAL REMARKS

Although the conclusions of this essay are generally negative, showing that the information contained in these forged documents is not reliable, these findings have brought some positive benefits. First, there is no longer any need to resort to ingenious speculation to resolve the contradictions between Andocides' summaries of the documents he cites and the texts of the inserted documents. Second, the finding that the text of the decree of Tisamenus is a forgery removes several obstacles to our understanding of the legislation passed after the restoration of the democracy in 403. Third, the analysis has clarified the relationship between the law attributed to Solon about tyranny and the decree of Demophantus. Fourth, this essay has shown that the summaries of documents provided by Andocides in *On the Mysteries* are generally reliable. On the other hand, the information contained in the inserted documents is not trustworthy evidence and should not be used to reconstruct Athenian political history during the important period 410–399 B.C.E.[135]

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[132] *Pace* M. Ostwald, 'The Athenian legislation against tyranny and subversion', *TAPhA* 86 (1955), 103–28, at 117, the law of Demophantus was not passed in 410 only to be rescinded during the legal reforms of 403 B.C.E. and replaced by the law about *eisangelia*. As Demosthenes and Lycurgus clearly imply, it was still in effect in the late fourth century.

[133] Compare for example Demosthenes (20.93–4) calling the law about the *nomothetai*, an office created after 403/2, a law of Solon.

[134] The person who composed the inserted document may have adapted the phrase τυραννεῖν ἐπαναστῇ from the phrase τυραννεῖν ἐπαναστῶνται found at [Arist.] *Ath.Pol.* 16.10.

[135] *Pace* P. Wilson, 'Tragic honours and democracy. Neglected evidence for the politics of the Athenian Dionysia', *CQ* 59 (2009), 8–29, at 23–7, the provisions of the decree of Demophantus found at Andoc. 1.96–8 cannot be used as evidence in the debate about the political function of the City Dionysia. *Pace* J. Shear, 'The oath of Demophantos and the politics of Athenian identity', in A. Sommerstein and J. Fletcher (edd.), *Horkos. The Oath in Greek Society* (Bristol, 2007), 148–60, the decree of Demophantus cannot be used as evidence for Athenian politics after 411 B.C.E.

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APPENDIX 1

The term δημόται in Attic inscriptions (all dates in this Appendix are B.C.E.)

IG i^3
250 (450–30), line A14 (sacred law of deme Paiania)
254 (450–25), line 3 (decree of deme Icaria)
258 (around 420), line 33 (decree of deme Plotheia)
IG ii^2
1156 (334/3), lines 45, 52 (deme decree of Eleusis found in an ephebic monument for the tribe Cecropis)
1174 (*c*. 400), line 34 (decree of deme Plotheia)
1175 (*c*. 360), lines 1–2 (decree of deme Halaieis)
1176 (*c*. 360), lines 4, 12 (decree of deme Piraeus)
1180 with *SEG* 33:143 (324/3), lines 9–10, 11 (decree of deme Sounion)
1182 (mid-fourth century), lines 9, 15, 26 (decree of deme Myrrhinousa)
1183 (after 340), lines 19, 20, 21, 23, 25 (decree of deme Myrrhinousa)
1189 (mid-fourth century), line 7 (decree of deme Eleusis)
1194 (around 300), line 6 (decree of deme Eleusis)
1196 (*c*. 335–330), lines A11, 12, 13, B9–10, 13 (deme decree)
1198 (326/5), line 13 (decree of deme Aexone)
1199 (around 325/4), lines 12–13 (decree of deme Aexone)
1200 (317/16), line 2 (decree of deme Aexone)
1203 (324/3), lines 6, 16 (decree of deme Athmone)
1204 (late fourth century), line 15 (deme decree of Lamptrae)
1205 (end of fourth century), line 1 (decree of deme Epicephisia)
1206 (end of fourth century), lines 11–12, 19 (decree of deme Acharnae)
1207 (end of fourth century), line 2 (decree of deme Acharnae)
1209 (after 319), lines 2, 14 (restored) (decree of unknown deme)
1211 (end of fourth century) line 7 (decree of unknown deme)
1215 (early third century), lines 4, 6, 12–13, 14 (decree of unknown deme)
2493 + 2492 (339/8), line 3 (lease by deme)
2498 (321/0), lines 8, 22 (lease by deme of Piraeus)
2829 (mid-fourth century), line 3 (dedication)
2837 (329/8), right side (dedication)
2965 (400–350) back (dedication)
3202 (344/3) (dedication)
3214 (third century), line 2 (dedication)

SEG
2:7 (330–25), lines 7–8, 9, 16–17 (decree of deme Halimous)
21:519 (fourth century), line 14 (decree of deme Acharnae)
21:520 (331/30 or 330/29), lines 11–12 (decree of deme Tithrasia)
24:151 (mid-fourth century), lines 2–3, (decree of deme Tithrasia)
24:154 (264/3), line 17 (restored) (decree of deme Rhamnous)
28:102 (332/1), lines 7, 10, 15, 20–1 (decree of deme Itea)
28:103 (332/1), lines 6, 12, 13–14, 15, 19, 21, 23, 26, 28, 33–4, 46, 52–3 (decree of deme Eleusis)
32:147 (around 350–300), lines 9–10 (restored) (decree of deme Cephisia)

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34:103 (350–300), line 33 (decree of deme Halae Araphenides)
36:186 (313/12), lines 4–5 (decree of deme Aixone)
36:187 (around 350–300), line 9 (decree of deme Sphettos [?])
36:206 (around 300), lines 7–8 (decree of deme Phrearrhioi [?])
38:124 (around 265), line 6 (decree of deme Halae Aexonides)
41:75 (before 236/5), line 11 (decree of deme Rhamnous)
42:112 (around 360), lines 5, 6, 13 (decree of deme Halae Aexonides)
43:26 (315/14), A lines 4, 10, 12, 21–2, 23, 27; B lines 6–7, 19 (decree of deme Acharnae)
46:154 (around 330–320), lines 7–8, 13 (restored) (decree of deme Aexone)
46:155 (350–300), line 10 (decree of deme Gargettus)

APPENDIX 2

Use of the word polemios *in Attic inscriptions*

IG i^3 6A, lines 39–40 (captured by the enemy); 58, line 26; 62, line 19 (if the enemy attacks Athens); 67, lines 9–10 (restored – marching with the enemy); 75, line 9 (restored – marching with the enemy), line 11 (restored – providing money to the enemy), 83 [= Thucydides 5.47.8–12], lines 8, 10, 13, 15 (enemies of Athens and allies); 93, line 58 (fragmentary – enemy triremes?); 105, line 15 (fragmentary); 109, line 2 (fragmentary); 116, line 7 (fragmentary – against the enemy); 118, line 17 (friend or enemy); 136, line 6 (fragmentary); 511, line 1 (spoils from the enemy); 512, line 2 (restored – from the enemy); 1454, line 53 (fragmentary – if the enemy marches against Athens); 1464 (taking spoils from the enemy); 1465 (fragmentary – spoils from the enemy?).

IG ii^2 29, lines 14–15 (enemy triremes captured); 73, line 9 (restored, but other restorations possible); 222, lines 32–3 (if anyone kills Pisitheides, let him and his city be an enemy. This refers to a foreigner, not an Athenian citizen); 276, lines 7–8 (fighting against the enemies); 365, lines 24–5 (restored); 399, lines 18–19 (plausible restoration – rescued from the enemy); 448, lines 10–11 (plausible restoration – defend the city against enemies); 558, lines 4–5 (restored); 894, line 3 (restored); 2492, line 12 (if the enemy prevent use of land or destroy something); 2789 (Athenians and allies dedicate one tenth of spoils from enemy); 2975 (Tarantines dedicate [spoils] from the enemy).

SEG 19:129, line 15 (spoils from the enemy); 21:524 (attack of the enemy); 21:644, lines 11–12 (if the enemy sets up a camp in Attica).

Raubitschek *DAA* 135; 135a; 135b (for all three: the cavalry dedicates spoils from the enemy); 141.

Agora XVI: 15[1], line 19 (if anyone goes against the Athenians as an enemy); XVI: 114[2], line 13 (having defeated the enemy).

Schwenk (n. 122) no. 12 [= *IG* ii^2 448], lines 11–12 (fighting against the enemy), no. 79, lines 24–5 (too fragmentary), no. 83 (restored; defending Athens against its enemies).

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APPENDIX 3

The term ἀπόγονος in Attic inscriptions (all dates in this Appendix are C.E.*)*

IG ii^2 1112 + *SEG* 24:149 (182–4), lines 17, 28; 1355 (2nd–3rd c.), line 3; 3693 (shortly before 250), line 7; 3704 (*c*. 250), line 10; 3710, (*c*. 250), line 11; 4088 (beginning 3rd c.), lines 9–10.

SEG 21:509 (178/9 or 182/3), lines 10, 13, 32, and 69; *SEG* 30:87 (165), line 10; *SEG* 43:24 (125), line 27.

APPENDIX 4

The oaths in fifth-century and fourth-century laws and decrees

This list gives the number of the inscription, date, lines which discuss or contain an oath, the type of document and (if known) the Athenians who swear the oath. All dates are B.C.E.

IG i^3
3 (490–480), 10–12 (law about supervisors of games for Heracles) supervisors of games
11 (418/17), 1–10 (treaty with Egesta)
14 (around 450?), 16–35 (treaty with Erythrae)
15 (around 450?), 36–42 (treaty with Erythrae)
21 (450–449), 71–2 (treaty with Miletus)
32 (449–447), 17–18 (law about supervisors of Eleusinian Mysteries) supervisors
37 (447/6), 43–56 (treaty with Colophon)
39 (446/5), 2–12 (treaty with Eretria)
40 (446/5), 3–39 (treaty with Chalcis) Council and judges
48 (439/8), 15–46 (treaty with Samos) generals
53 (433/2), 11–16 (treaty with Rhegium) Athenians
54 (433/2), 1–8, 18–32 (treaty with Leontini) Athenians
62 (428/7), 7–9, 18–24 (treaty with Aphytis)
71 (425/4), 9 (decree about tribute) *taktai*
72 (414?), 29–30 (decree about Boeotia)
75 (424/3), 21–30 (treaty with Halieis) Council and generals
76 (422), 16–21, 38 (treaty with Bottiaea)
83 (420) [= Th. 5.47.8–12] (treaty with Argos, Mantinea and Elis) Council and officials
89 (417–413?), 27–45 (treaty with Perdiccas)
118 (408), 28–31 (treaty with Selymbria) generals, trierarchs, hoplites and any other Athenians present
123 (407/6), 21–2 (treaty with Carthage)
150 (440–405) 5, 10 (treaty with unknown community)
155 (440–430), 10 (proxeny decree) generals and Council

IG ii^2
16 (394/3), lines B3–13 (treaty with Eretria) generals, Council, cavalry

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21 (390–389), lines 11–14 (treaty with Seuthes) generals, [hipparchs], taxiarchs, [phylarchs]
34 (384/3), lines 6–8 (treaty with Great King, Sparta and other Greeks) Athenians
35 (384/3), lines 3–6 (treaty with Chios) Athenians
41 (378/7), lines 8–10 (treaty with Byzantium) [Council], [generals], hipparchs
42 (378/7), lines 11–19 (treaty with Methymna) generals, hipparchs
44 (378/7) lines 13–15 (treaty with Chalcis) Athenians
96 (375/4), lines 14–22 (treaty with Corcyra, Acarnania, Cephallenia) Council, [generals], cavalry
97 (375/4), lines 15–38 (treaty with Corcyra)
105 (368/7), lines 30–40 (treaty with Dionysius) Council, [generals], hipparchs, [taxiarchs]
111 (363/2), lines 17–19, 57–82 (settlement with Iulis) generals
112 (362/1), lines 37–40 (treaty with Arcadia, Achaea, Elis Phliasia) [generals], taxiarchs, [hipparchs]
116 (361/0) lines 14–34 (treaty with Thessaly) generals, Council, hipparchs, cavalry
124 (357/6), lines 6–7 (treaty with cities of Euboea) [taxiarchs], [generals], Council
127 (356/5), lines 38–47 (treaty with Thracian kings) not specified

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