

THE LAWS OF ATHENS, 410–399 BC: THE EVIDENCE FOR REVIEW AND PUBLICATION

I. THE QUESTION OF A ‘LAW-CODE’ AND ITS ‘REVISION’ AND ‘PUBLICATION’

FROM Draco onwards, if not before, the laws of Athens were preserved in writing, and some of them were also displayed to public view: notably the laws of Solon, written up on objects called *axones* and *kyrbeis*. No other publication of Athenian laws had such renown as this, or these, of Solon’s. In fact it is hard to find any publication at all on the same scale, or any publication but of single documents in scattered places. In the later fifth and the fourth centuries, the period best known to us, each new document is published, if at all, on a separate stele. Moreover, there is no thought of aligning this stele with any existing publication, either of similar laws or of laws in general; instead the stele is set up at whatever spot seems indicated by the business at hand; if the business is urgent, more than one stele is set up at more than one spot. Such episodic publication is the rule for laws as well as other public documents. Or to put it differently, for a long while the Athenians did not distinguish laws from other binding decisions, mainly decrees of the Assembly; if they did not so distinguish when publishing on stone, they did not either in their filing system of papyrus and whitened boards. By the early fourth century a distinction was made, and afterwards insisted on, between ‘laws’ and ‘decrees’; but even then professed laws were published as before, on separate stelae in various places. From these facts we might be tempted to conclude that any general or comprehensive publication of laws, as of Solon’s, was so to speak an accident, occurring only when many so-called laws needed to be published all at once, as will happen at an early stage of society.

But from the picture which has just been drawn one element is missing: the renewal of Athens’ ‘law-code’ in the years 410–399 BC, its ‘revision’ or ‘re-edition’ or even ‘codification’, its ‘publication’ or ‘re-publication’, a thorough-going ‘legal reform’ or ‘constitutional reform’.¹ These terms are all in common use for some undoubted activity which we hear of in the prosecution of Nicomachus in 399, in Teisamenus’ decree of 403/2 and in Andocides’ comment upon it, and which we see also in certain epigraphic remains, above all in the fragments of several joining stelae inscribed on both sides, and in both Attic and Ionic letters, i.e. shortly before and shortly after 403. Nicomachus served as *anagrapheus* from 410 to 399, save in the year of the Thirty, and

¹ This ‘revision’ of the ‘law-code’ figures in every book and article on the history of the period, and the annotation here must be very selective: neither omissions nor inclusions have any disagreeable intent. The following abbreviations are used: K. Clinton 1982 = ‘The nature of the late fifth-century revision of the Athenian law code’, in *Studies in Attic epigraphy... presented to E. Vanderpool* (*Hesperia* Suppl. xix) 27–37. S. Dow 1941 = ‘Greek inscriptions: the Athenian law code of 411–401 BC’, *Hesperia* x (1941) 31–7. Dow 1959 = ‘The law codes of Athens’, *Proc. of the Mass. Hist. Soc.* lxxi 3–36. Dow 1960 = ‘The Athenian calendar of sacrifices: the chronology of Nikomakhos’ second term’, *Historia* ix (1960) 270–93. Dow 1961 = ‘The walls inscribed with Nikomakhos’ law code’, *Hesperia* xxx (1961) 58–73. W. S. Ferguson 1936 = ‘The Athenian law code

and the old Attic trittyes’, in *Classical studies presented to E. Capps* (Princeton 1936) 144–58. A. Fingarette 1971 = ‘A new look at the wall of Nikomakhos’, *Hesperia* xl (1971) 330–5. A. R. W. Harrison 1955 = ‘Law-making at Athens at the end of the fifth century BC’, *JHS* lxxv (1955) 26–35. G. Kuhn 1985 = ‘Untersuchungen zur Funktion der Säulenhalle III. Die Stoa Basileios in Athen’, *JdI* c (1985) 200–26. D. MacDowell 1962 = *Andokides On the Mysteries* (Oxford 1962). J. H. Oliver 1935 = ‘Greek inscriptions: laws’, *Hesperia* iv (1935) 5–32. M. Ostwald 1986 = *From popular sovereignty to the sovereignty of law: law, society and politics in fifth-century Athens* (Berkeley 1986). E. Ruschenbusch 1956 = ‘Der sogenannte Gesetzescode vom Jahre 410 v. Chr.’, *Historia* v (1956) 123–8.

others including Teisamenus served with the same title in the same period; Teisamenus' decree calls for new laws to be enacted and afterwards to be written up on 'the wall'; Andocides says that all the laws were scrutinized and afterwards written up 'in the stoa'. In 409/8 a large stele was inscribed with Draco's law by the *anagraphais*, and set up at the Stoa Basileios; about the same time a similar stele was inscribed with laws pertaining to the Council; the joining stelae just mentioned were inscribed both with laws, as it seems, and with ritual observances.

The conclusion which this material has seemed to justify is that Athens' laws were thoroughly revised and extensively published in 410–399; and that the publication was set up in the Stoa Basileios, and most of it was on the joining stelae, clamped together to form a 'wall'. Where the wall stood is in dispute, or undecided: in the open, or as a screen between columns, or free-standing only in part, and perhaps moved from one setting to another so as to conceal one side. At all events, the joining stelae formed a 'wall'. Until recently this view was universal, but there is now a variant opinion: 'the wall' was the back wall of the Stoa Basileios, and it served for a kind of interim publication, written in ink on a white-washed surface, whether this was the wall itself, made of mud brick, or a set of wooden tablets affixed to the wall. On this outlook one may or may not suppose that a permanent publication was also to be seen at the Stoa Basileios, perhaps in front of the building, on the joining stelae.

Some disagreement exists about some details of the 'revision' and the 'publication': about the competence of the *anagraphais*; about the division of labour between their two terms, before and after the Thirty; about the scope of the new laws in Teisamenus' decree; about the arrangement of the published laws and ritual observances. Yet these are only details, and disagreement does not figure largely in the discussion. Everyone accepts the 'revision' of the 'law-code' and dwells on its significance.

Is this really a satisfactory result? The fragments of the joining stelae have been assembled and studied with admirable care; they undoubtedly derive, at least in part, from the work of Nicomachus, and the recognition of this, more than fifty years ago, opened the whole discussion. But can these fragments, mostly ritual observances with a few secular laws, represent a 'law-code'? The notion of a 'law-code' newly published is imported from a different source, and a very misleading one, Andocides' speech *On the Mysteries*; it is a notion belied by the very document Andocides quotes in support, Teisamenus' decree. And if Athenian laws were published as a body at this time, why is the publication never referred to afterwards by the orators? They cite a great many laws, old and new; when they happen to mention the form of publication, it is always some stele or other, never a general source, 'the stelae in the stoa' or the like.²

These rather general objections are reinforced by others more particular. The relationship between the literary and the archaeological or epigraphic evidence has been misconceived at several points. An attentive reading of Teisamenus' decree shows that 'the wall' in question is not intended for a permanent or even an interim publication of the laws—it is not the joining stelae or the stoa wall; it is a fixture for posting notice boards, such as we always hear of when new laws are being drafted. The fixture that was in use at this time has not been traced archaeologically, but we know roughly where to look, and it is far from the Agora and its stoas. Andocides himself lets us see that the publication 'in the stoa' comprised not a law-code but a few new laws which he quotes,

² The question about the orators has been raised by M. H. Hansen, *GRBS* xx (1979) 29 n. 8, *cf.* 50, and again *CP* lxxx (1985) 60, and by Kuhn 1985, 207. Hansen also gives an answer, *viz.* that 'the new code' was superseded almost at once by further developments, such as the institution of the *pro-*

hedroi—which he thinks of as a step requiring 'innumerable revisions in the code'—so that the publication on 'the wall' was 'abandoned'. The answer does not seem very plausible in itself, and it would not be accepted by most exponents of the revision of 410–399.

and which are also referred to by Demosthenes. The stoa was almost certainly not the Stoa Basileios, but one of the other three contemporary stoas revealed in the Agora. 'The stelae which this fellow inscribed', as Lysias says of Nicomachus, are indeed the joining stelae, but only the earlier inscription in Attic letters, i.e. of 410–404, is due to Nicomachus; the erasure of his work is mooted by Lysias and must have taken place in 399 or shortly after. It is not Nicomachus but his prosecutor who gives us the inscription in Ionic letters, in which we find the stricter ritual observance argued in the speech. A likely setting for the joining stelae can be identified on the south side of the Agora.

'The wall', 'the stoa', the joining stelae stand in the foreground. Behind them we can discern some procedures for compiling and publishing documents which are of interest, though they can hardly be called a 'revision' of a 'law-code'. The *anagrapheis*, of whom Nicomachus was clearly the most able and trusted, were assigned a task requiring special skill, the task of retrieving and arranging related documents after the haphazard accumulation of many years; the documents were sometimes laws and decrees, sometimes ritual observances, but for each kind the texts were scattered and elusive. The documents thus compiled, or some of them, were then studied by others, with the aim of removing contradictions and uncertainties. At the last some important documents were published on stone; the surviving remains show that as the work of the *anagrapheis* proceeded, the results were put to better use. The published texts grow in size and scope from an abbreviated version of Draco's law to a long series of documents authorizing public expenditure.

Thus the task of the *anagrapheis* was clerical, and the publication of documents did not come into it; to inscribe a document on stone was a separate decision, as always. The general purpose for which the *anagrapheis* were appointed will be something quite different. We can scarcely doubt what it was—to provide a full and reliable collection of texts for Athens' central archive, which was installed during these very years. For the first time copies of all public documents were to be kept together in the same form, on either papyrus or boards; those who produced the copies were *anagrapheis*, 'transcribers'.

It is true that Nicomachus was afterwards held responsible for the documents prescribing ritual expenditure. The charge, probably of 'malfeasance', is no more captious than is the rule in Athenian courts. The prosecutor was truly offended not by any dereliction of Nicomachus, but by the freer spending on public festivity which the Athenians allowed themselves in 401–399, after so many years of austerity. The spending happened to be authorized by the miscellaneous texts inscribed on the joining stelae. In the end, part of the work of the *anagrapheis* was repudiated; for the sacrificial calendar which took the place of Nicomachus' compilation goes back to Solon, and discards most of the observances enacted later.

The only source to suggest that the whole body of Athenian laws was called into question, and that scrutiny and publication followed, is Andocides. The suggestion is self-serving; Andocides would have us think that Athens was created anew in 403. It also patently distorts the documents which he quotes; those documents, Teisamenus' decree and several new laws, show that the scope of professed law-making in 403/2 was very modest. And even Andocides gives no warrant for supposing that this legislative effort goes back to the years before 404, or that the crisis of 411 set the Athenians upon a path of 'constitutional reform'.

It is clear that the talk of a 'law-code' revised and published in the years 410–399 comes mainly from the preoccupations of modern scholars and from their preference for tidiness and thoroughness. Without it we return to the picture presented at the outset, and we see it in sharper focus.

The detailed argument runs as follows. The provisions of Teisamenus' decree for displaying the laws

(§ II) and ‘the wall’ as a means of temporary display (§ III) have a general bearing and should be considered first. Then we may proceed chronologically: the work of the *anagrapheis* in 410–404 (§ IV); the old laws published in 410–404 (§ V); the law-making of 403/2 (§ VI); the work of the *anagrapheis* in 403–399 (§ VII). But chronological order will be reversed as between the sacrificial calendar published in c. 399 (§ VIII) and the case against Nicomachus (§ IX).

II. THE PROVISIONS OF TEISAMENUS’ DECREE FOR DISPLAYING THE LAWS

Andocides introduces Teisamenus’ decree as a decision calling first for scrutiny of ‘all the laws’ (it does not) and then for their publication ‘in the stoa’; after the reading of the decree he refers once more to the publication ‘in the stoa’ (*De myst.* 82, 85). The decree has commonly been interpreted in the light of these words of the orator, but we ought to do just the opposite: take the document by itself, then see what Andocides has made of it.³

The decree calls for new laws to be displayed at two stages (*De myst.* 83–4). At an early stage the *nomothetai* chosen by the Council are to ‘display’ any new laws ‘written up on boards at the Eponymi, for anyone to see who wishes’: ἀναγραφέντας ἐν σανίσιν ἐκτιθέντων πρὸς τοὺς ἐπωνύμους σκοπεῖν τῶι βουλομένωι. As everyone agrees, this is the mode of temporary display often mentioned by the orators, in much the same words: public notices are written in ink on whitened boards and affixed to a vertical surface at the monument of the ten eponymous heroes. In the fourth century the same mode of display is required by statute every year for all pending laws.

The last clause of the decree calls for the laws to be displayed once more; we should observe the procedure that has intervened. At the same time as the new laws are posted at the Eponymi, they are transmitted for official scrutiny, whether on papyrus or on boards, to the Council and to another body of *nomothetai*; during the scrutiny the Council is open to suggestions from any private citizen, i.e. from someone who has pondered those boards at the Eponymi. When the law-making is at an end, the Council of the Areopagus is to ensure that the laws are properly administered by the magistrates.

After all this comes the last clause, about ‘the wall’. We might perhaps expect to hear of how and where the laws are to be permanently displayed, though even this provision would come belatedly, after mention of the Council of the Areopagus and its role in supervising the administration of the laws. In any case the drafting of Athenian decrees is not always orderly and consequent. In Teisamenus’ decree the meaning of the last clause is such that it must describe a further step in the work of the Council and the second body of *nomothetai*; it is added at the end as an afterthought.

The last clause runs as follows: τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγράφησαν, σκοπεῖν τῶι βουλομένωι. In English it is convenient to use a passive construction in place of the active infinitive with the subject unexpressed. ‘Those of the laws that are being approved shall be written up on the wall, just where they were written up before, for anyone to see who wishes’. This language cannot possibly describe the permanent publication of the laws. The present participle, τοὺς δὲ κυρουμένους, ‘those . . . that are being approved’, shows that the law-making is still in progress. When Andocides sums up the supposed result of the law-making, the permanent publication in the stoa, he uses the aorist participle, τοὺς δὲ κυρωθέντας,

³ ‘It seems to me improper thus to construe the decree in the light of the speech . . . It is in the words of the orator, if anywhere, that we must look for perversion’: Ferguson 1936, 146, apropos of another provision of the decree. This principle

has never been applied to ‘the wall’, and the prevailing outlook is expressed as follows by Ostwald 1986, 519, cf. 513 n. 60: ‘The τοῖχος is located by Andocides [my emphasis] in “the stoa”, which is to be identified as the Royal Stoa’.

‘those that were approved’ (*De myst.* 85). By adopting the term *κυροῦν* Andocides echoes the last clause of the decree,⁴ but the echo is distorting. It stands to reason that the task of inscribing the laws in question, whether all the new laws or the new laws on any given topic, would only begin when the law-making in question was at an end, when the full extent and the proper arrangement of the laws became known.

The new laws entertained by the first body of *nomothetai* are displayed to public view at the Eponymi. Such new laws as survive the scrutiny of the Council and the second body of *nomothetai*, some of them substantially amended, and no doubt other laws which are wholly new again, deriving from the Council and the second body of *nomothetai*—these are displayed to public view on the wall. The phrase *σκοπεῖν τῶι βουλομένῳ*, ‘for anyone to see who wishes’, used first of the display at the Eponymi and then of the display on the wall, is the phrase regularly used of a temporary display at an accessible place.⁵ It is so used in Athens’ coinage decree, which provides for a tally of converted coins to be displayed at the mint, ‘for anyone to see who wishes’ (*ML* 45 § 14). It is so used in the decree of c. 430 dealing with the revenues of the Anakeion, which are to be recorded on a ‘tablet’, *πινάκιον*, and displayed somewhere or other ‘for anyone to see who wishes’ (*IG* i³ 133.9–11). It is so used in the orators and in fourth-century decrees, most notably in a decree of 303 which refers to laws enacted in the previous year, and honours one Eucharas for ensuring that they were displayed ‘for anyone to see who wishes’ (*IG* ii² 487.6–9). It is so used (occurring also in the form *σκοπεῖν τῶι χρῆζοντι*) in documents of every kind at all times up and down the Greek world.

In Teisamenus’ decree the phrase is first used of a temporary display at the Eponymi, the standard procedure at Athens. When the phrase is repeated shortly after, it must be that the procedure is repeated too.

The procedure in the second instance is described as *ἀναγράφειν εἰς τὸν τοῖχον*, ‘writing up on the wall’. The term *ἀναγράφειν* is used both of inscribing on stone and of writing in ink on a white surface; and different walls may receive either kind of writing, inscriptions or notices in ink. But when a document provides for ‘writing up on the wall’, as ours does, ‘the wall’ is typically a place for the temporary display of public notices: either the wall itself is white-washed as a writing surface, or notice boards are affixed to it.⁶ If any doubt remains, it is dispelled by the words immediately following: *ἵνα περ πρότερον ἀνεγράφησαν*, ‘just where they were written up before’, scil. the laws. The laws were previously written up on the wall, but they are written up no longer; they have been expunged or taken down.

Scholars commonly equate this wall with the joining marble stelae.⁷ They believe that a revision of the laws was in train for some years before Teisamenus’ decree—under the former democracy, from 410/9 onwards; perhaps again under the Thirty, in 404/3. They accordingly observe that one side of the joining stelae was inscribed in old Attic letters shortly before 403; and that the other side, though inscribed in Ionic letters shortly after 403, is in fact the front, and has traces of a large erasure. Now in Teisamenus’ decree the previous writing-up is expressed by the aorist *ἀνεγράφησαν*, ‘where they were written up’, not by the imperfect *ἀνεγράφοντο*, ‘where they were being written up’, nor by the perfect *ἀναγεγραμμένοι*

⁴ Before the decree is read, Andocides speaks of *τούτους τῶν νόμων οἱ ἄν δοκιμασθῶσι*, and thus anticipates the term which the decree uses first, *δοκιμασάτω πρότερον ἢ βουλή κτλ.* These verbal echoes help Andocides to misrepresent the substance of the decree (§ VI).

⁵ A. Wilhelm, *Beiträge zur griechischen Inschriftenkunde* (*ÖstArchI Sonderschr.* vii, 1909) 285.

⁶ Wilhelm (n. 5) 264–6, 325–6; G. Klaffenbach, *Bemerkungen zum griechischen Urkundwesen* (*SBBerlin* 1960, 6) 22–3. Wilhelm 265 cites our

clause as an instance of such temporary writing. Oliver 1935, 8 n. 1, and Ferguson 1936, 145 n. 7, and Kuhn 1985, 216–18 all refer to Wilhelm, but fail to draw the consequences (Kuhn thinks of the back wall of the Stoa Basileios).

⁷ That the joining stelae are ‘the wall’ of Teisamenus’ decree was first stated by Oliver 1935, 8–9, and since then it has seemed self-evident to everyone but those who prefer the back wall of the Stoa Basileios (n. 11 below).

εἰσὶν, 'where they have been written up'. It follows that the earlier text has been removed or otherwise superseded; no laws but those written up hereafter will be seen on the wall.

Various hypotheses have been proposed to account for the joining stelae as equated with 'the wall', some before the large erasure was discovered by Thompson and announced by Dow in 1961. But the wording of the decree is not respected unless they allow that the earlier text in Attic letters, presumably written on the front as well as on the back, had been entirely superseded at the time of Teisamenus' decree, and also that when the later text in Ionic letters was inscribed on the front, only this face was meant to be visible: the back had been visible before, but it was not re-inscribed or even erased. We must accordingly suppose that the earlier text is an extensive set of laws drawn up and inscribed by the Thirty; or that the earlier text was inscribed by the democracy in 410–404, and was partly erased by the Thirty, who meant to inscribe their own laws in the erasure, but were forestalled; or again that the earlier text was inscribed by the democracy in 410–404, but was discarded straightway by the restored democracy of 403, which was bent on making new laws and soon inscribed them on half the wall surface used before.⁸ We must also suppose that in or about 403 the joining stelae were first dismantled and removed from the setting for which they were designed, and then re-assembled in a different setting which had the sole advantage of concealing the back face. No one can be happy with any of these suppositions. In short, even if we could believe that the last clause of Teisamenus' decree refers to a permanent publication, the clause could not be reconciled with the joining stelae.

We conclude that the 'writing up on the wall' is a temporary display. The decree calls for the laws to be so displayed as they emerge from official scrutiny. They were displayed on the wall 'before', πρότερον: when was this? The *anagrapheis* were undoubtedly at work upon the laws in the years 410–404 (§ IV); at that time too laws that were under study may have been displayed to public view. We might accordingly suppose that some wall or other was set aside for the purpose, and that it now returns to use. But in Teisamenus' decree the laws are displayed at two stages, when first proposed and when finally approved.⁹ At the first stage they are displayed at the Eponymi, like other public notices, like all pending laws in the standard fourth-century procedure. Are they not displayed there at the second stage as well?

Consider the first stage. The laws proposed are written up on boards and then displayed, i.e. affixed to a vertical surface: ἀναγραφέντας ἐν σανίσιν ἐκτιθέντων κτλ. When interested citizens consult the boards, they will find the laws arranged in a certain order under certain headings; it is unnecessary for the decree to say so. Now consider the second stage. The laws approved are written up on the wall, just where they were written up before: ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγράφησαν. They are written up on boards, like the laws proposed; it is unnecessary for the decree to say so. The important point is that the laws approved should follow just the same arrangement as the laws proposed, appearing in just the same order under just the same headings, so that citizens returning to the boards will know where to look. In other words, the laws should be written up on the wall, on that vertical surface, just where they were written up before. To postulate a 'wall' at the Eponymi is perhaps at variance with current notions, but these need to be reconsidered in any case (§ III). The upshot is that Teisamenus' decree calls for the laws to be displayed at the Eponymi at two stages.

It is only natural that the laws should be displayed at the second stage, at the end of the law-making process. The process is new, resting with the Council and two bodies of *nomothetai*, not with the Assembly, as heretofore. It was surely designed for economy—life was hard in 403/2, and most Athenians had little time to spare for meetings of the Assembly (§ VI). So they needed to be informed of the new laws by other means. In the

⁸ The earlier text inscribed by the Thirty: Ruschenbush 1956. The earlier text erased by the Thirty: Fingarette 1971. The earlier text inscribed, then erased, by the democracy: Clinton 1982.

⁹ Wilhelm (n. 5) 240, 265, cited here and there both clauses of our decree as illustrating temporary notices; but he did not explain the relationship between them.

fourth century, when laws were regularly made by *nomothetai*, we are not told how the result was publicized. Since the Assembly set the task for the *nomothetai* (as in 403/2), it doubtless received a report. Yet even then the monument of the Eponymi may have served to display laws that were enacted as well as those that were pending. At all events the law-making of 304/3 provides a clear analogy. Eukhares is honoured because 'he took charge of the writing up of the laws, so that all those that were enacted in the archonship of Pherecles should be displayed for anyone to see who wishes and no one at all should be ignorant of the laws of the city' (*IG* ii² 487.4–10). As we saw, this language is distinctive of a temporary display at the monument of the Eponymi—which in 304/3 had just been modified to accommodate the statues of Antigonos and Demetrius.

Now let us hear what Andocides says about the law-making of 403/2. 'You resolved to examine all the laws and then to write up in the stoa those of the laws which were approved. Read me the decree'. And afterwards, 'So the laws were examined, gentlemen, in accordance with this very decree, and those that were approved they wrote up in the stoa'. Andocides points to laws recently published 'in the stoa', and describes them as the result of Teisamenus' decree. He should not in fact have said that Teisamenus' decree provides for scrutiny of 'all the laws', or that it provides expressly for publication 'in the stoa'. The first assertion has often been discounted by readers of the speech;¹⁰ now we see that the second assertion should be discounted too. By the standards of the orators, by Andocides' most of all, these are venial errors. We shall see below why Andocides wished to lead the jurors into error, and which laws these were that gave him a handle, the laws actually published in the stoa (§ VI).

But are we quite sure that Andocides here refers to a permanent publication? The variant opinion already noticed holds that after the law-making prescribed by Teisamenus' decree, the laws were at first written in ink on the back wall of the Stoa Basileios, so as to make them available straightway;¹¹ the task of inscribing stelae began at the same time, we may suppose, but in 400 or 399 BC, the date of Andocides' speech, the stoa wall gave the only full text. This form of interim publication seems very unlikely, all the more when we remember that it will be the second interim publication: the laws 'shall be written up on the wall, just where they were written up before'. The temporary display at the Eponymi that was envisaged above need not be a comprehensive publication of all the new laws, only of those new laws that are proposed day by day and of those that are approved day by day; and at both stages the display is indeed temporary, a matter of days, not of years. This is the usual way with public notices; in the fourth century it is the usual way with all pending laws. For the interim publication of a law-code no parallel is offered. It may be worth noting too that Andocides expatiates on the finality of the 'writing up in the stoa', which forbids recourse to any contrary law (*De myst.* 82, 85, 89). It is indeed a permanent publication, and has nothing to do with 'the wall' of Teisamenus' decree.

III. 'THE WALL' AS A MEANS OF TEMPORARY DISPLAY

As others have remarked,¹² a fixture called 'the wall' is referred to in an Athenian decree some fifteen years earlier than our occasion, the decree of 418/17 that provides for the leasing and improvement of the sanctuary of Neleus and Basile (*IG* i³ 84). The decree calls for the Basileus to 'erase', ἐξσάλεψάτο, the name of the man who buys the mud in the water-course as soon as he pays the price agreed (lines 22–3); after this transaction—the first step in restoring the sanctuary—the Basileus will 'write down on the wall in place of it', ἀντενγραφάσάτο . . . ἐς τὸν τοῖχον, the name of the man who leases the sanctuary and other details of the leasing transaction, 'in accordance with the law which deals with sanctuaries', scil. the leasing

¹⁰ E.g. by Ferguson 1936, 145–6; Clinton 1982, 31–2. Others attempt to mediate between Andocides and the decree: C. Hignett, *A history of the Athenian constitution* (Oxford 1952) 301–2; MacDowell 1962, 194–5.

¹¹ H. A. Thompson *apud* P. J. Rhodes, *A com-*

mentary on the Aristotelian Athenaion Politeia (Oxford 1981), 134–5, 441–2, and again *apud* Ostwald 1986, 519 n. 18; Kuhn 1985, 216–18.

¹² So Thompson (n. 11); D. M. Lewis *apud* M. H. Jameson, *IG* i³ 84.24–5 *adn.*; Kuhn 1985, 217–18.

of sanctuaries (lines 23–5). The next clause provides for inscribing the decree on a stele and posting it at the sanctuary (lines 26–8).

What is ‘the wall’? It is not the enclosure wall of the sanctuary, since that has yet to be constructed. The several terms used of the sanctuary and its parts—*temenos* and *hieron* and Neleion and *ikria*—do not show what buildings, if any, stood there. A temple wall has been deduced from a much later decree, of 239/8 BC, which refers to a cult of Basile and, according to a possible restoration, to a ‘temple’.¹³ This would be wishful even if it were the same cult; but several deities in Athens and Attica are called by the transparent name ‘Basile’,¹⁴ and at our sanctuary the dominant partner is Neleus. It is unlikely in any case that ‘the wall’ referred to so off-handedly is to be sought in the sanctuary; the directions for posting the stele are quite explicit about the sanctuary setting, ‘at the Neleion beside the *ikria*’ (lines 27–8). Furthermore, the decree mentions ‘erasing’ first, then ‘writing down . . . on the wall’, as if these procedures are known to all. We infer that ‘the wall’ is an official means of displaying public notices. The Basileus makes certain entries and erasures on ‘the wall’ because the leasing of sanctuaries is his responsibility ([Arist.] *Ath.* 47.4). There is however no reason to suppose that ‘the wall’ itself belongs to the Basileus. ‘The wall’ here serves much the same purpose as ‘the wall’ in Teisamenus’ decree, or as ‘the wall’ in other cities.

As was said above, documents from cities far and wide speak of posting temporary notices at ‘the wall’, a wall chosen for the purpose. At Athens, however, we hear of ‘the wall’ only twice, in 418/17 and 403/2. Thereafter, and mainly in the orators, notices are always said to be posted at the Eponymi, the monument of the eponymous heroes. In the decree of 403/2 laws at one stage are displayed ‘at the Eponymi’, at another ‘on the wall’. During the fourth century proposed or controverted laws are displayed year by year at the Eponymi, a practice which was traced to Solon (Dem. xx *Lept.* 94, of 355/4 BC; xxiv *Timocr.* 18, 23, of 353/2; Aeschin. iii *Ctes.* 39, of 330). These facts create a strong impression that the same official setting is in view throughout. It is time to consider the monument of the eponymous heroes.

The monument opposite the Metroön (or ‘Old Bouleuterion’), identified with virtual certainty from [Aristotle] and Pausanias, does not concern us; for this monument was not erected until the later fourth century, and nothing of the sort stood here before.¹⁵ The earlier monument is mentioned by Aristophanes, by Teisamenus’ decree, and by the orators,¹⁶ but these sources give no hint of the location. The Agora excavators point to a foundation beneath the west end of the Middle Stoa, a rectangular base like the monument at the Metroön, constructed in the later fifth century, and demolished in the fourth.¹⁷ Yet objections have been raised,¹⁸ and they seem decisive. This base is much shorter and a little broader than the base at the Metroön; the dimensions are ill suited to a row of ten statues, as it must have been. There is no surrounding fence, as at the Metroön, and at its north end the base directly fronts the road, so that any notices affixed to it would suffer badly. Another objection has not been noticed.

The orators always speak of notices displayed ‘in front of the Eponymi’, either πρὸ τῶν ἐπωνύμων (Dem. xxi *Meid.* 103), or πρόσθεν τῶν ἐπωνύμων (Isocr. xviii *Callim.* 61; Dem. xx *Lept.* 94; xxiv *Timocr.* 18, 23 (*bis*); Aeschin. iii *Ctes.* 39), or ἐμπρόσθεν τῶν ἐπωνύμων (Isaeus v *Dicaeog.* 38).¹⁹ These mentions run from c. 402 BC (Isocrates) down to 330 (Aeschines).²⁰ In what sense were the notices ‘in front of the Eponymi’? As to the later monument the excavators suggest, and it can hardly be disputed, that notice boards were affixed to the long high base and were inspected by persons standing at the fence, at a distance of a metre and a half.

¹³ So R. E. Wycherley, *BSA* lv (1960) 63.

¹⁴ Cf. Robertson, *GRBS* xxix (1988) 232.

¹⁵ T. L. Shear, Jr., *Hesperia* xxxix (1970) 145–203.

¹⁶ R. E. Wycherley, *The Athenian Agora* iii: *literary and epigraphical testimonia* (Princeton 1957) pp. 85–8, nos 229–32, 235–9, 241–2.

¹⁷ Thompson, *Hesperia* xxxvii (1968) 63–4; Shear (n. 15) 203–22.

¹⁸ U. Kron, *Die zehn attischen Phylenheroen*

(*AthMitt Beiheft* v, 1976) 229–32.

¹⁹ The restoration πρόσθε[ν τῶν ἡρώων] is now lodged in the text of Cleonymus’ tribute decree, *IG* i³ 68.21, but other restorations are equally possible: *ML* 68.20 *adn.*

²⁰ For the later monument [Aristotle] gives a *terminus ante quem* of c. 325, but Aeschines does not give a *terminus post quem*; the two monuments may have been used concurrently for different kinds of notice.

As long as the monument at the Metroön was thought to be the only such that ever existed, it was inevitable that these phrases should be made to fit.²¹ Now that the base at the Middle Stoa is identified as the earlier monument, the phrases must be made to fit once more. The effort is in vain. The base at the Middle Stoa, like that at the Metroön, has a north–south axis and faces the road at the west. Let us assume that the notices are posted only on the front face of the base: if we read the notices while standing in the road, are not the notices themselves ‘in front of the Eponymi’? No, a notice (say) at the north end of the front face is not ‘in front of’ the ten statues; all the notices together are not in any normal language ‘in front of’ them, no more than any writing on any statue base. A statue base is a usual place for writing; if such writing is not as a rule said to be ‘in front of’ the statue, then the writing on the base of the Eponymi cannot be so described, as in these customary off-hand phrases.

But notices were not confined to the front face. At the later monument the surrounding fence, equidistant from all sides of the base, makes it perfectly obvious that notices were displayed all round. The front face of the earlier base, and indeed the whole circumference, are much shorter, yet Athens’ population was then as large or larger, and business was then as pressing, or more so; if notices were displayed at this base too, they were displayed all round. If so, many of them were not by any reckoning ‘in front of the Eponymi’.

We have seen that notice boards were at one time affixed to a wall, ‘the wall’ mentioned by the decrees of 418/17 and 403/2 BC. There is no such wall at the later monument; the arrangement referred to as ‘the wall’ is different. But the phrases quoted from the orators are a natural description of notices posted on a wall which is itself ‘in front of the Eponymi’. We conclude that the orators refer to the same official setting as the decrees of 418/17 and 403/2. The orators and the decrees happen to use different expressions for the most part, but the decree of 403/2 uses both, ‘at the Eponymi’ and ‘on the wall’.

If the base at the Middle Stoa is not the earlier monument, and if moreover we must look for a wall as well as a statue base, it will be hard to find any suitable remains within the Agora. But should our search be focused on the Agora?

A scholium on Aristophanes, perhaps originating as a comment which distinguished the earlier monument from the later, gives an altogether different location, παρὰ τὸ πρυτανεῖον (schol. Ar. *Pax* 1183). The scholium has nearly always been dismissed out of hand, as was indeed inevitable as long as the monument at the Metroön was thought to be the only such. It is suggested that the Prytaneion is here confused with the Tholos, as elsewhere in the lexical tradition;²² yet why should the Tholos serve to locate a monument which is squarely opposite the Metroön? We may still grant that ancient scholia are sometimes demonstrably confused about Athenian topography, and that a single scholium is slender evidence indeed. But other reasoning will lead us to the same part of Athens.

The earlier monument may or may not go back as far as Cleisthenes; it was certainly in use for much of the time when Athenian democracy was robust and active. The most urgent kind of notice that was posted there, the kind which Aristophanes alludes to (*loc. cit.*), was the list of men called up for military service; the names were arranged by tribe and displayed next to the respective eponym. By the later fourth century, when the monument was erected at the Metroön, Athens’ citizen levies were small and infrequent (Dem. iii *Olynth.*); other tribal business, to be mentioned in a moment, was perhaps reduced as well; many public notices had nothing to do with the tribes. In former days, however, we expect the statues of the ten tribal eponyms to stand at a place where the citizens congregate by tribe.

The citizens congregate by tribe when Council seats and civic offices are allotted to tribal candidates;

²¹ In fact we do not know how notices at the later monument were spoken of. [Aristotle], *Ath.* 53.4, and Lucian, xxxvii *Anach.* 17 Macleod, only refer to a stele and a statue placed ‘beside’, παρὰ, the Eponymi; [Aristotle], *Ath.* 48.4, to officials conducting tribal business ‘at’, κατὰ, the statue of the respective eponym. Libanius, *Decl.* 29.43, is harking back to the fourth-century orators.

²² Wycherley (n. 16) pp. 86, 166, 179, 184; Rhodes (n. 11) 105. Elsewhere, however, the con-

fusion is understandable, for official dining is in view; and this is common to the Tholos and the Prytaneion. An alternative suggestion offered by Wycherley, and rejected by J. Travlos, *Pictorial dictionary of ancient Athens* (New York 1971) 210, is that πρυτανεῖον was mistakenly written for πρυτανικόν, the precinct of the Tholos; this term however is known only from inscriptions, and has no place in literature or learned comment.

whenever jurors are selected; and of course when soldiers actually muster under arms. None of these activities is attested for the Agora (apart from one exceptional muster in 415 BC); most of them are well attested for the Theseion and the adjacent Anakeion, a large open area east of the Acropolis, no doubt the original *agora* or 'assembly-place' of Athens.²³ This is the place for the earlier monument of the eponymous heroes. And since the Prytaneion was in this area, the scholium is vindicated.

Further details of the earlier monument will not be known until the area of the Old Agora is excavated; it is for many reasons the most appetizing site for exploration in all Athens. In the meantime, and it is likely to be a long time, we may console ourselves with a conjecture. The Prytaneion as an official building widely used in Greece sometimes takes the form of a house; naturally so, since its central feature is the same, a hearth. In early days a house often had a court in front, enclosed by a good strong wall.²⁴ If Athens' Prytaneion was of this kind, the statues of the Eponymi may have stood in a row across the court; public notices and pending laws may have been displayed on the front wall of the court.

IV. THE WORK OF THE ANAGRAPHESIS IN 410-404

Scholars have commonly spoken of a 'revision' and a 'publication' of Athens' 'law-code' during the period 410-399, but the details which they elicit from Teisamenus' decree have proved illusory: the decree does not call for a general publication of the laws, and does not refer to a previous publication; 'the wall' is a means of temporary display. What evidence remains for either revision or publication in the years 410-404, and again in 403-399?²⁵ In 410-404 a board of *anagrapheis* are at work upon the laws, and no other body, as of *nomothetai*, comes into question. Yet as we shall see in a moment, the *anagrapheis* do no more than put the laws in order: they assemble the documentary record. Any further study, and any requisite decision, are for the Council and the Assembly, as always.

The title given to Nicomachus and to other members of a board that was active throughout the period 410-399, save in the year of the Thirty, is ἀναγραφεὺς τῶν νόμων (Lysias xxx *Nicom.* 2, cf. 25; IG i³ 104.5-6).²⁶ Lysias says that when Nicomachus first took office in 410/9, 'he was instructed to write up (ἀναγράψαι) the laws of Solon within four months' (*Nicom.* 2),²⁷ and that when he resumed office in 403/2, 'it was open

²³ Robertson, *Historia* xxxv (1986) 163-5.

²⁴ S. G. Miller, *The Prytaneion* (Berkeley 1978) 28, is sceptical of the Prytaneion as a house; but the notion is not belied by the archaeological remains. On Delos and Imbros the Prytaneion has a court, αὐλή, mentioned by inscriptions; four herms stand in the court on Delos, and a stele is set up in the court on Imbros: Miller 30, 185-7, 194.

²⁵ For a maximizing view of this activity see Ostwald 1986, 405-10, 415-20, 511-12; part of it goes back to Harrison 1955, 30-1, who expressed himself more cautiously. According to Ostwald 1986, 405, the regime of the Five Thousand 'ushered in a period of constitutional reform that had no precedent in Athenian history and was to last to the end of the fifth century'. In particular, Ostwald holds that boards both of *syngrapheis* and of *anagrapheis* were first appointed by this regime, being described by Thucydides as *nomothetai*, and that from 411 to 404 they were jointly engaged in the task of reform. The elements other than the *anagrapheis* of 410-404 need no refutation. The *syngrapheis* attested at intervals in this period as in earlier years are special commissioners preparing special reports of various kinds; as we shall see,

some of their reports are held up by Lysias as a counterblow to the work of Nicomachus (§§ VIII, IX). As for the *nomothetai* of Thuc. viii 97.2, whether this is a title or a descriptive term can be disputed, but in either case they are unique to the regime of the Five Thousand. Thucydides regards this regime as the best of his time, and the feature he singles out for mention is the *nomothetai*.

²⁶ R. Sealey, *The Athenian republic* (University Park, Pa. 1987) 157 n. 4, makes it a question whether Nicomachus' title for the second term was *anagrapheus* or *nomothetes*. This is misguided. Throughout the speech *nomothetes* is used of Nicomachus only in mockery, as when we hear that 'he has gone from slave to citizen, from beggar to potentate, from under-secretary to *nomothetes*' (*Nicom.* 27). Cf. Harrison 1955, 29: the phrase αὐτὸν νομοθέτην κατέστησεν (*Nicom.* 2) 'would be meaningless if he had in fact been a *nomothetes*'.

²⁷ 'The laws of Solon', repeated further on (*Nicom.* 26), presumably means, as sometimes elsewhere, the existing laws. The phrase immediately leads to the inane comparison of Nicomachus and Solon (*Nicom.* 2, cf. 28).

to him to be quit in thirty days' (*Nicom.* 4). No one should doubt that the 'thirty days' are a perfectly gratuitous exaggeration,²⁸ but the 'four months' are represented as an authorized term. If such they were, two explanations are possible. It may be that Nicomachus' appointment was envisaged from the start as renewable from year to year for as long as needed, but that his first term began late in 410/9, when only four months were left.²⁹ Or it may be that Nicomachus was indeed first appointed to a task which seemed to require just four months, and that his appointment was renewed when the task was extended, or when its magnitude was perceived.³⁰

Lysias mentions 'the stelae which this fellow inscribed', τὰς στήλας ἃς οὗτος ἀνέγραψε, stelae regulating the expenditure for civic ritual (*Nicom.* 21, *cf.* 19–20). At least part of Nicomachus' work can therefore be recognized in at least some of the fragments of the joining stelae: the texts inscribed before 403 are very largely concerned with ritual expenditure; those inscribed after 403 appear to be exclusively concerned with it. The stele bearing a decree of 409/8 together with Draco's law on homicide was avowedly inscribed by the board of *anagrapheis*, ἀναγραψάντων οἱ ἀναγραφῆς τῶν νόμων . . . ἐστέλει λιθίνει (*IG* i³ 104.4–8). So it is likely that the very similar stele bearing the Council laws was inscribed by them as well (*IG* i³ 105).

To 'inscribe' a stele is a common meaning of ἀναγράφειν, but it is not at all implicit in the title ἀναγραφῆς τῶν νόμων.³¹ At the outset the *anagrapheis* had no authority to inscribe the laws, for it is only in virtue of the decree of 409/8 that they inscribed the law of Draco. No doubt the stele bearing the Council laws was inscribed in virtue of another decree, and no doubt the decree appeared on the stele above the Council laws. The joining stelae, to be sure, were inscribed by different hands at different times, and it is quite unlikely that the enabling decree was included each time; but we may still assume that these stelae like other public records were inscribed in virtue of successive decrees. The inscribing of stelae is only a by-product of the activity of the *anagrapheis*. The primary task reflected in their title was certainly not to 'inscribe' or 'publish' laws and other documents.³²

The title has also been rendered as 'codifier of the laws'.³³ Lysias professes to regard the *anagrapheis*, Nicomachus and Teisamenus and others unnamed, as a modern counterpart, an outrageous one, to the famous law-givers of old, to Solon and Themistocles and Pericles (*Nicom.* 2, 28).³⁴ But the only duties he reports are clerical,

²⁸ Note however that Ostwald 1986, 122 speaks of 'the assigned thirty days', and elsewhere, 520 n. 83, equates these thirty days with the current 'month' of Teisamenus' decree.

²⁹ The 'six years' of Nicomachus' first term are plainly the Athenian years 410/9–405/4; neither the first year nor the last need be complete. Dow 1960, 271 gives the terminal dates as 411/10 and 404/3; but Lysias would then have said 'eight years'.

³⁰ R. S. Stroud, *Drakon's law on homicide* (Berkeley 1968) 28, says of Nicomachus that 'his work was outlined in the form of decrees'; this however is a false inference from *Nicom.* 5, 'you think you need not render accounts or obey the decrees or heed the laws', i.e. you disregard the elementary obligations of any office-holder. Stroud is also wrong to say that Nicomachus was supervised by the archons; it is only that the archons resort to him for texts of the laws, as do litigants in the courts (*cf.* n. 36).

³¹ It goes without saying that in the phrase ἀναγραψάντων οἱ ἀναγραφῆς κτλ. the juxtaposition of verb and noun has no significance; the verb is used in every document that contains a provision

for 'inscribing' the text or indeed for writing it up in any form.

³² Harrison 1955, 30 starts from the meaning 'publish', though in a wider sense than 'inscribe'; *cf.* Ostwald 1986, 416, 'to write up for display in public'.

³³ Dow 1960, 271, and again *HSCP* lxxvii (1963) 38–9.

³⁴ In general, scholars have been strangely ready to endorse the prosecutor's implication that Nicomachus with the other *anagrapheis* was somehow responsible for Athenian law-making and hence even for public expenditure (*Nicom.* 19–22). Harrison 1955, 29–35 is fullest, and describes the charge against Nicomachus in these terms: that he 'usurped legislative functions', that he 'turned an administrative into a legislative function', that 'a superior clerk was producing texts of his own to suit his private purposes', etc. Dow 1959, 24 and 1960, 274 seems to go even further than the prosecutor, for he thinks of Nicomachus as a wholesale innovator in the ritual domain. Here I examine the nature of his work; the substance of the charge against him is considered in § IX.

and these men are clerks by training. Before their appointment as *anagraphēis*, they served as public secretaries, γραμματεῖς (*Nicom.* 28: Lysias scornfully says ‘under-secretaries’, ὑπογραμματεῖς). Public secretaries did all the work, except the actual writing, associated with the keeping of official records on papyrus or on boards: checking the transcript, preserving it safely, arranging the files, finding and producing a relevant document for any purpose.³⁵

The most important records were of decrees and laws, and Nicomachus as *anagraphēus* was required to find and produce laws on many topics. Litigants in the courts, even the archons who presided there and who were assessing penalties, applied to Nicomachus for the laws in question (*Nicom.* 3).³⁶ In 404 Cleophon was tried by the Council and a jury in common session, because Nicomachus produced a law authorizing this unusual procedure (*Nicom.* 10–11; cf. *Lys.* xiii *Agor.* 12). At other times the archons and the Council had secretaries of their own to search out documents as needed; but in the years 410–404 the work of the *anagraphēis* superseded this ordinary practice, at least in part.

The *anagraphēis* were evidently very thorough, Nicomachus most of all; and the result was a surprising variety of laws which had accumulated over many years. Lysias says with the usual exaggeration that opposing parties in the courts were furnished by Nicomachus with laws of opposing tendency; that the archons waited to see what penalties might be prescribed; that the procedure for trying Cleophon was only discovered on the day of the trial (*Nicom.* 3, 11).

As to ritual, Lysias complains that Nicomachus has not respected the traditional observances, those of old time prescribed by the *kyrbeis*, also those enacted more recently after the report of some commission or other, κατὰ τὰς συγγραφάς; by adding items outside these two categories, he has caused the traditional observances to be scanted (*Nicom.* 17–21). What is the range of ritual texts that Nicomachus has assembled? The joining stelae will be considered below (§ V); for the moment a provisional answer must suffice.

Lysias is intentionally vague, but he does not suggest that Nicomachus has invented anything; that is simply inconceivable. Nor does he suggest that Nicomachus has omitted anything, any observances prescribed by the *kyrbeis* or recommended by special reports; these observances have been scanted only because money was spent first on other items (more of this in § IX). In Lysias’ eyes Nicomachus is at fault because he ‘wrote up’ too much: ἀναγράψας πλείω τῶν προσταχθέντων, ‘writing up more rites than those authorized’; πλείω ἀνέγραψεν ἕξ ταλάντοις, ‘he wrote up too many rites by six talents’; λέγων ὡς εὐσέβειαν ἀλλ’ οὐκ εὐτέλειαν ἀνέγραψεν, ‘by his own account he compiled a record which is devout but not cheap’ (*Nicom.* 19–21). It is a massive indiscriminate collection; it includes not only the observances of the *kyrbeis* and the special reports, but all other public observances recorded at Athens. Such observances are legion, for public worship has not stood still since the time of the *kyrbeis*, whenever that was, nor has it always waited for special reports. In the realm of ritual expenditure as in that of criminal law Nicomachus compiled a record of many and diverse

³⁵ For a general description of a secretary’s task, see Rhoades (n. 11) 600–4.

³⁶ The second sentence of § 3, ἐπιβαλλόντων δὲ τῶν ἀρχόντων ἐπιβολὰς καὶ εἰσαγόντων εἰς τὸ δικαστήριον, οὐκ ἠθέλησε παραδοῦναι τοὺς νόμους, I take to mean, ‘And when the archons were imposing fines and bringing cases into court, he was still reluctant to hand over the laws’. I.e., the judicial duties of the archons were impeded by Nicomachus, as were also (in the preceding sentence) the actions at law of private persons. Yet

according to every translation and commentary that I have seen, the archons are punishing Nicomachus: ‘And though the Archons inflicted summary fines on him, and brought his case before the court, he would not hand over the laws’ (Shuckburgh). This cannot be. If Nicomachus had once been dealt with as a manifest wrong-doer, Lysias would harp on it. But the very worst he can say is that Nicomachus did not render his accounts for a long time (§§ 3–5).

enactments; Lysias makes it a reproach that this diversity is reflected in the final result, in the texts approved for publication, in 'the stelae which this fellow inscribed' (*Nicom.* 21).

The task of the *anagrapheis* was therefore to assemble all Athenian enactments of abiding interest—all the secular laws, as we think of them; all the ritual observances which had a claim on public funds. Not surprisingly, contradictions and uncertainties appeared; for these Lysias blames Nicomachus, simply because he is an easy target. It is obvious that the worst contradictions must have been addressed as soon as they appeared. This necessity probably accounts for a strange inconsequence in the publication of 'Draco's law on homicide' (*IG* i³ 104). The decree of 409/8 gives just this title to a text which is plainly incomplete. The *anagrapheis* together with the Council secretary are to obtain the text of the law from the Basileus, then inscribe it on the present stele (lines 4–8). The text follows, under the headings 'first *axōn*' and 'second *axōn*' (lines 10, 56); it is indeed Draco's law on homicide, as it ran in 409/8. But the text begins, 'And if it is not by design, καὶ ἔὰμ μὲ ἔκ προνοίας, that one kills another', or possibly 'Even if it is not by design', etc.; and the opening section deals with involuntary homicide, which is not the homicide that one thinks of first. Given the notion that Athen's law-code was set forth at this time in a single comprehensive publication, scholars were bound to argue that this is a logical beginning for Draco's law on homicide.³⁷ There is no need to argue so. The *anagrapheis* collected and arranged all the laws on homicide, including Draco's, the first and most revered. In the light of their work it was decided by the Council or the Assembly that Draco's law on intentional homicide was superseded, but not his law on involuntary homicide.³⁸ The latter alone was therefore newly published as 'Draco's law on homicide'.

If then the task of Nicomachus and his fellows is to compile documents from the past, why are they styled *anagrapheis*? The documents are waiting to be retrieved; there is nothing for the *anagrapheis* to commit to writing for the first time. The translation 'recorder' or 'registrar' is quite unhelpful. Nonetheless it is clear from Lysias that Nicomachus was busy writing. His work on the laws is scornfully described in a repeated expression: τοὺς μὲν ἐνέγραφε, τοὺς δὲ ἐξήλειφεν, 'he would write down some laws and expunge others' (*Nicom.* 2); τὰ μὲν ἐγγράφεις, τὰ δὲ ἐξαλείφεις, 'you write down some things and expunge others' (*Nicom.* 5). Ἐγγράφειν and ἐξαλείφειν as complementary terms refer to writing in ink.³⁹ Such writing was used for public notices, as we saw, but this was not the domain of the *anagrapheis*. As a public secretary, Nicomachus was accustomed to keeping records in ink on either boards or papyrus—we do not know which was usual at Athens. As *anagrapheus*, he wrote while he compiled: his purpose now was to make copies, not a first-hand record. We might call him a 'transcriber of the laws'. 'Transcribe' would also serve for any of the innumerable epigraphic instances of ἀναγράφειν in which a given text is reproduced either on stone or in ink.⁴⁰

To judge from the decree about inscribing Draco's law, the *anagrapheis* sometimes left the original texts where they found them. The text of Draco's law is to be obtained

³⁷ E.g., Stroud (n. 30) 34–40; M. Gagarin, *Drakon and early Athenian homicide law* (New Haven 1981) 96–110. Harrison 1955, 30, *cf.* 26, wondered if the inscription was no more than a draft copy of work in progress. Rhodes, in *L'educazione giuridica v: Modelli di legislatore e scienza della legislazione ii: Modelli storici e comparativi* (Perugia 1987) 10, thinks as I do.

³⁸ As to how and when the law on intentional homicide may have been changed, *cf.* Sealey, *CP* lxxviii (1983) 275–96.

³⁹ Either term alone would not signify:

elsewhere in the speech ἐγγράφειν is used of submitting one's accounts (*Nicom.* 5), ἐξαλείφειν of erasing stelae (*Nicom.* 21).

⁴⁰ After the mid fourth century the title *anagrapheus* was given to a minor annual office; later still, under Antipater's oligarchy and during the ascendancy of Olympiodorus, to a more important office which appears in the heading of decrees. What the title then connoted we cannot tell. But there is no reason to assert, as scholars often do, that it meant something altogether different from our period.

from the Basileus (*IG* i³ 104.5–6); presumably he had charge of all documents pertaining to the law of homicide. This is one of the few traces of record-keeping in fifth-century Athens; another, from the same year, 409/8, is Andocides' statement that the decree granting him immunity was preserved in the Council-house (*De red.* 23). In the fourth century most public documents were kept in Athens' central archive, the Metroön, a building that was formerly the Council-house. But it is now widely accepted that the central archive was installed during the very years in which the *anagrapheis* were at work.⁴¹ For a new Council-house was constructed about this time to replace the old in its primary function; and in 405 we hear for the first time of documents kept in a general repository, the *dêmosion* (*IG* ii² 1.29; *Andoc. De myst.* 79, the decree of Patrocleides). Surely the mandate of the *anagrapheis* was to provide a comprehensive set of documents for the central archive.

V. THE OLD LAWS PUBLISHED IN 410–404

We turn to the evidence for publication. Nothing but the old law of Draco, or rather the part of it that was retained, was inscribed on the stele in question, as we see from the decree and from the extent of the surviving text.⁴² More recent laws on homicide were inscribed, if at all, on another stele. It is otherwise with the stele bearing the Council laws: they are old laws too, but are drawn from more than one source (*IG* i³ 105).

The Council laws exhibit old-fashioned forms and words and phrases, and at one point the transcription seems to falter, as if the master copy was illegible.⁴³ The same care was taken with the transcription of Draco's law, for as we just saw, the text was obtained directly from the Basileus.⁴⁴ With the Council laws, however, more than one old document has been transcribed. Half-way through the surviving text we encounter the prescript of a decree, 'It was resolved by the Assembly at the Lykeion' (*IG* i³ 105.34); the provisions which follow are similar to those which have gone before in so far as they all restrict the Council's power of independent action. Different texts have been neatly brought together in the publication of the Council laws, as they were not in the publication of the homicide law.

Those joining stelae with texts inscribed on either side, in Attic and Ionic letters, now deserve a closer look. The texts here are likewise copied from earlier documents; for we find the same old-fashioned forms and words throughout. The texts in Ionic letters show a further development, a series of rubrics which identify the earlier source material. For the moment let us take the joining stelae as they appeared in the years 410–404.

They were clamped together to form at least three series of different thickness.⁴⁵ Both sides are inscribed, but one side is better dressed and has a fascia above; this is the front, and the other is the back. All the surviving texts of 410–404 are on the back, but we should expect the front to be used as well, or rather to be used first. The expectation is confirmed by traces of erasure wherever the later texts are inscribed on the front. For some reason the texts of 410–404 on the front proved unsatisfactory, and were replaced with others. Before we ask what these texts may have been, we should consider those that survive on the back.

The texts of 410–404 consist of a 'trierarchic law' (two fragments), a law about certain taxes, and a so-

⁴¹ After A. Boegehold, *AJA* lxxvi (1972) 23–30. Reservations are expressed by Rhoads, *CJ* lxxv (1980) 308 n. 26. Boegehold 29 suggests that the archive was recommended by the *anagrapheis*.

⁴² Stroud (n. 30) 58–60 estimates the original dimensions of the stone. [*Dem.*] xlvii *Everg.* 71 cites 'the laws of Draco' from a single stele.

⁴³ Lewis, *JHS* lxxxvii (1967) 132, on the inter-puncts in line 43. His interpretation is not hard to credit when we remember that the stone-cutter

worked under the supervision of the Council secretary.

⁴⁴ The surviving lines do not include any markedly old-fashioned word or form, although Stroud (n. 30) 44–5 finds an archaic meaning (line 12, δικάζεν), and Gagarin (n. 37) 153–61 thinks the style archaic (but also indicative of a superior mind).

⁴⁵ Dow 1961.

called 'calendar of sacrifice' (five fragments). At first sight these are quite disparate items, and the terms we have just used, the terms in common use, make them definitely so. Yet all the texts are concerned with items of public expenditure, including some which were controlled by the Council. The range is narrower than supposed, too narrow to be described as a 'law-code'.

The 'trierarchic law' does not deal with the appointment and duties of trierarchs, only with a ship's gear (the tackle and the oars and spars and ladders) and trim.⁴⁶ The ships are to be completely fitted (*IG* i³ 236 a 1–2); the gear shall be surrendered by one trierarch to the next, or the defaulting trierarch may be summoned into court (a 2–9); the naval contractors shall supply the trierarch with what he otherwise requires, or they may be summoned into court (a 9–14); prices are set in 'drachmas' for certain goods, and 'the Council', twice mentioned, shall enforce them (b 37–49). Other evidence, mostly from the fourth century, shows that the Council did indeed supervise all these matters.

The prices include an old-fashioned form (δραχμῆσιν, b 37), and are therefore copied from an older document.⁴⁷ If the several provisions as summarized above give a rather disjointed effect, it may be that the 'trierarchic law' has been compiled from different sources; it may be too that a previous decree was cited in line 3 ([-- κατὰ τὸ φσέφισμα ἢ ἐπε --]ιάδες, Lewis). With such a fragmentary inscription one cannot be sure about details; but it is clear that older material is here republished, as on the single stela examined above.⁴⁸

Another fragment, inscribed by the same hand as one of the ritual texts (*IG* i³ 237 ~ 237 bis), gives the taxes on several kinds of farm produce and on leases of land and buildings, doubtless farm land and farm buildings, to be paid both at home and abroad, and by different classes of people. Part of the business takes place 'in the second prytany' and is transmitted from 'the Council to the principal [Assembly]' (lines 12–13). In the fourth century the Council reviewed the taxes that were sold for collection just as they reviewed other public sales and leases ([Arist.] *Ath.* 47.2–3); it is safe to assume that the Council is responsible for the taxes here.

Ritual expenditure, represented by five fragments (*IG* i³ 237 bis–241), was evidently the largest element in the texts on the back, as it appears to be the only element in the later texts on the front. But the arrangement is not so clear as it is on the front, where several fragments include a calendar date and the largest fragment, the obverse of the 'trierarchic law', exhibits a calendar sequence under the general heading of biennial observances. No calendar date is preserved on the back, and none of the rites can be identified at all, save the Dipolieia of mid Scirophorion, mentioned by name (*IG* i³ 241 ii 17). This fragment is compatible however with a calendar sequence, for Apollo appears in the column before the mention of the Dipolieia (i 5), perhaps in virtue of an Apolline festival in Thargelion or Munichion.

Nor is it clear that the individual entries all had the same format. Three fragments show a format similar to the later texts, viz. a table of items calling for expenditure—animal victims, priestly perquisites, and the like, with the cost of each entered in the left margin (*IG* i³ 239–241). With the other two fragments we cannot be sure whether it is a table with figures in the left margin, or a continuous passage (*IG* i³ 237 bis–238).⁴⁹ Since the several texts were inscribed in different hands, and none so carefully as the later texts, the format may well have varied; even the later texts include a semi-discursive passage (*IG* ii² 1357 a 27–31). It is obvious, however—and this is the important point—that in all the entries ritual expenditure is being recorded in summary form.

Once again the texts are drawn from older documents: there is an old-fashioned dative (*IG* i³ 237 bis 4), and certain items have been inserted 'according to the special report', κατὰ τὰς χυσιγραφάς (*IG* i³ 238.4). Yet there is no trace of any of the source rubrics used in the later inscription.

⁴⁶ 'This fragment probably belongs to a collection of all the naval laws then in force': Rhodes, *The Athenian Boule* (Oxford 1972) 156–7. That is a large assumption, all the more since the appearance of the second fragment, *IG* i³ 236 b, which comes from a much lower part of the stela and is still concerned with the *impedimenta*.

⁴⁷ B. Jordan, *The Athenian navy in the Classical period* (Berkeley 1975) 30–40, argues that some provisions of the 'trierarchic law' are already

attested in *IG* i³ 153, 'a. 440–425'.

⁴⁸ Rhodes (n. 46) 156, leaves the question open: 'published or republished in the revision of the laws begun in 410'.

⁴⁹ Lewis calls these two *lex sacra* and *lex incerta*, the three others *fasti sacri*. I do not see why either term should be used for a bare record of ritual expenditure. According to F. Sokolowski on *LSCG* 16 (= *IG* i² 845), *IG* i³ 238 as the obverse is not a *lex sacra*.

Such are the ritual texts in Attic letters. They are much too few and fragmentary for us to judge their scope. We may assume nonetheless that, like the 'trierarchic law' and the law on taxes, these ritual expenditures are somehow distinct for administrative purposes. They might be expenditures controlled by certain magistrates—by boards of treasurers or *hieropoioi*, perhaps; or by the two archons, the Basileus and the Polemarch, who had considerable duties in respect of ritual ([Arist.] *Ath.* 3.3, 57.1, 58.1).

What then were the texts in Attic letters on the front, the texts later erased? Surely the front was inscribed before the back. If so, there is no reason to think that the texts here had a more regular format, a more systematic arrangement, than the texts on the back. The format and the arrangement may have improved as the work proceeded; they can hardly have degenerated. If however the texts on the front were related to those on the back, the texts on the front should be more important: if they were ritual expenditures, they should be larger expenditures.

To go further than this we must anticipate conclusions reached below. It will be argued first that the sacrificial calendar in Ionic letters, which is clearly quite systematic, is also confined to a certain range of sacrifices, those prescribed by the *kyrbeis* and by the *syngraphai*, special reports (§ VIII); next, that this calendar reflects the opposition to Nicomachus and his work which we also find in Lysias' speech (§ IX). The opposition arose when the Athenians increased the number and the cost of their public festivities, as they demonstrably did in the years 401–399, by restoring some which had been suspended before. In 410–404 Athens could ill afford the splendid holiday occasions for which she was famous; later, especially after 401, this austerity was relaxed; later still, in 399, a reaction came, personified for us by Nicomachus' prosecutor.

On this argument the texts inscribed on the front before 404 authorize the large expenditures of 401–399; according to Nicomachus' prosecutor, the large expenditures of 401–399 are authorized by 'the stelae which this fellow inscribed'. The prosecutor now demands a much stricter calendar of sacrifice, authorized instead by the best sources; Nicomachus now proposes to remove offense by simply erasing the stelae. The stelae, or at least the front face, were indeed erased, and the stricter calendar of sacrifice was indeed inscribed in the erasure.

This is to anticipate conclusions, but the logic of the case brings us to the same result. Nicomachus assembled many scattered records, both of secular law and of ritual observance; after these records were studied, some were published on stone; those on the back of the joining stelae were mainly concerned with ritual expenditure; those on the front were presumably of the same kind, but even more important; yet they were afterwards erased. If we were left to guess why they were erased, it would be hard to think of a more likely reason than economy.

In sum, during the years 410–404 the work of the *anagrapheis* led to the publication of material which slowly grew in size and complexity: Draco's law on homicide, now curtailed; a compilation of laws prescribing the duties of the Council; a larger compilation of laws regulating expenditure, including ritual expenditure. The stelae bearing these different items were doubtless set up in different places.

The stele bearing Draco's law was set up 'in front of the Stoa Basileios', as we learn from the prefatory decree (*IG* i³ 104.7–8); it would never have been guessed from the provenance of the stone, half a mile to the east of the Agora.⁵⁰ If the law on homicide is to be separately published, the only place for it is the Stoa Basileios. The text was obtained from the Basileus, who had the original in his keeping; from day to day the Basileus dealt with actions for all forms of homicide ([Arist.] *Ath.* 57.2–4), and he conducted the preliminary hearings at the Stoa Basileios (Pl. *Euthyphro* 2a). There is no presumption that the other documents were published here.

The stele bearing the Council laws is of similar appearance. Indeed the width is exactly the same, and the height may have been so too, though it is not preserved in either case. But the stoichedon lettering is not the same, and there is no reason to suppose that the two stelae were meant as twins, standing side by side.⁵¹ The four battered fragments of the Council laws came to light on the Acropolis, but again no conclusion can be drawn from this. Since the laws are for the eyes of Councillors, we may best suppose

⁵⁰ Stroud (n. 30) 2–3.

⁵¹ For the measurements see *IG* i³ 104–5 (the thickness differs). Ferguson 1936, 148 n. 19 sug-

gested that the *anagrapheis* 'published the laws *stete* by *stete*', first the two single stelae, then the joining stela.

that the stele was set up at the Council-house. The law of 337/6 BC reminding the Council of the Areopagus of their democratic duty was set up in two copies, one at the Assembly and the other at the entrance to the Council-house used by this Council (*Hesperia* xxi [1952] 355–9 no. 5).⁵²

As to the joining stelae bearing laws on expenditure, nearly all the fragments found in the Agora excavations come from the south-west, the area of the Tholos and the Council-house; the largest was re-used in late Roman times as a cover slab for the 'Great Drain'.⁵³ This provenance is undoubtedly significant; the stelae stood somewhere nearby. The physical details of the stones should provide a further clue, but the clue is puzzling. Several fragments, including those best preserved, come from a joining series 0.120 m thick; several small and battered fragments come from another series 0.092 m thick; one large and very battered fragment comes from yet another series, for it was clamped on the right, but this was 0.144 m thick.⁵⁴ The last fragment was inscribed on one side only, in Ionic letters, and the other side seems to have been left unfinished; at the moment there is no explaining this peculiarity.

For the rest, the natural inference is that the stelae formed a screen which was broken at intervals, as by columns; hence the varying thickness. The stelae then belonged to the furnishings of some building or other. On several fragments the lettering is too sharp and fresh for any stone that stood out of doors.⁵⁵ Another consideration points the same way. To erase the front, a very large surface, was an arduous task; to deserve so much trouble the stelae evidently had some use apart from bearing the inscription, a use for which they were designed and which was expected to continue; the only use that one can see is as a screen in a building. If the stelae had stood by themselves in the open, they would have been discarded, not erased and re-inscribed.

It has indeed been argued that the stelae were shifted, or rather were dismantled and then reassembled, midway through the task of inscribing them: that after 403 the texts on the back were superseded no less than those on the front, and that instead of erasing them the authorities moved the joining stelae from a setting in which both sides were visible to a setting in which the back was concealed.⁵⁶ At first the stelae stood either in the open, or as a screen between a row of columns; afterwards they stood nearly flush against a wall, inside a building or outside it. This is not a comfortable hypothesis. If the stelae were specially designed for a certain setting in the city square of Athens, they would hardly be reused again in a markedly different setting.⁵⁷ Moreover, the Athenian way with published documents which are formally revoked is not to find a place of concealment, but to erase the relevant inscription, or to destroy the whole stele; the latter course is usual when everything on the stele is revoked, as is supposed to have happened

⁵² For the location that is meant, see Wycherley, *JHS* lxxv (1955) 118–21.

⁵³ Oliver 1935, 5; Dow 1941, 31–2; Thompson and Wycherley, *The Agora of Athens* (Princeton 1972) 89 n. 30; Kuhn 1985, 215. Note however that *IG* i³ 237 bis (= *Hesperia* xxxvii [1968] 282–3 no. 19), a fragment added by Lewis, was found in 1936 in a Byzantine context at the north-west. Dow 1959, 35 thought that many new fragments might emerge further north, beyond the railway; but the north-west sector has now been largely dug to the fifth-century level, and the hope is belied. Thompson *apud* Rhodes (n. 11) 135 suggests that the joining stelae were moved at a later date from the Stoa Basileios to the area of the Tholos and the Council-house.

⁵⁴ The three series were distinguished by Dow 1961, who described all the fragments then known, and assigned the letter designations A–K (a lettered fragment may itself consist of two or three joining fragments). The series 0.120 m thick: fragments A–D. The series 0.092 m thick: fragments F–K. The series 0.144 m thick: fragment E. Lewis in *IG* i³ adds three other fragments with Attic letters: *IG* i³ 236b, unpublished before, 'cr. o. 032', which belongs below C in the series 0.120 m thick; *IG* i³

237 (= *IG* i² 140), 'cr. o. 07'; *IG* i³ 237 bis (= *Hesperia* xxxvii [1968] 282–3 no. 19), 'cr. o. 016'. The last two are inscribed by the same hand, but it is far from clear what series they belong to: 237 may or may not preserve the original thickness, and of 237 bis, now lost, this detail is not recorded.

⁵⁵ Oliver 1935, 7 ('a singularly unweathered appearance'); Dow 1961, 64 ('so many letters still so fresh'). Of *IG* i³ 237, a fragment found on the Acropolis and added by Lewis, Lolling said that the letters still kept their red paint.

⁵⁶ Fingarette 1971. Ruschenbusch 1956 held that the stelae always stood against a wall of the Stoa Basileios, but were turned round in 403 to conceal the side inscribed by the Thirty; he wrote before the front face was clearly recognized as such.

⁵⁷ Kuhn's theory may be mentioned here (1985, 209–13); on this theory the reuse is more inexplicable than ever. For Kuhn holds that the stelae were at first, when inscribed in Attic letters, set up singly; they were clamped together in a row only when one side of each had been erased and inscribed in Ionic letters. The sole argument is that on the joining faces *anathyrosis* is mostly seen next to the Ionic side.

now with the joining stelae. In short, the hypothesis must be discarded, and we must find a permanent setting which allows both sides to be seen.

There is a building near the south-west corner of the Agora in which the stelae might well be useful, a building moreover which was constructed near the end of the fifth century, just when the stelae came into use. 'South Stoa I' is a very large building with a lower storey fronting the square, and an upper storey fronting the road to the south.⁵⁸ It may or may not be 'the stoa' in which, as we learn from Andocides, some new laws were inscribed in 403/2 (§ VI); in that connexion a little more will be said about the likely purpose of the building. The row of rooms at the back of the lower storey, fifteen in all, were meant for civic business and also for dining on couches, which for magistrates was part of the routine. If a measure of privacy was wanted for certain rooms, the best means (short of closing and locking the door, which perhaps was done only at night) was to erect a screen between the interior columns in front of those rooms.⁵⁹ The interspacing of the columns is 3.49 m, wide enough for several joining stelae at a stretch.

VI. THE LAW-MAKING OF 403/2

Teisamenus' decree provides for the making of new laws. The decree was passed by the Assembly in the autumn of 403, soon after the democracy began to function once more. But steps had been taken even before this meeting of the Assembly. The law-making is entrusted to two bodies of *nomothetai* already chosen, by the Council and by 'the demesmen' respectively. The first body, somewhat obscured by a textual flaw, are very likely the twenty law-makers whom we hear of elsewhere as chosen by the restored democracy (schol. Aeschin. i *Timarch.* 39; Poll. viii 112; cf. Andoc. *De myst.* 81–2).⁶⁰ The second body are 500 strong, perhaps comprising the same quotas for each deme as did the Council.

It was accordingly foreseen from the outset that laws would be enacted not by the Assembly, as heretofore, but by bodies of *nomothetai*. When the Assembly met, its role was to determine the scope of the law-making. The scope is quite restricted. For Teisamenus' decree begins by reaffirming the ancestral constitution and 'the laws of Solon and his weights and measures and the ordinances of Draco, the laws that were observed before' (Andoc. *De myst.* 83). This enumeration is clearly meant to embrace all the existing laws. It also shows that they have not been, and are not about to be, revised and published as a new code, which could be cited in a word. Other sources agree that

⁵⁸ Thompson, *Hesperia* xxxvii (1968) 43–56.

⁵⁹ When 'the nine archons dined in the stoa', the dining area was partitioned by a curtain, περιφραζόμενοι τι μέρος αὐτῆς ἀλλοίαι (Hypereides fr. 139 Kenyon); so the stoa in question had no dining-rooms at the back, and may have been the Stoa of Zeus, which other evidence associates with the archons (§ VI). On the floor of the Stoa Basileios, just behind the front columns, there is a row of limestone bases with post-holes (in which traces of wood are said to have been found), regularly spaced in the intervals of the columns: *Hesperia* xl (1971) 245 fig. 1 and pl. 49b; *Hesperia* xlv (1975) pl. 82a. They obviously supported a temporary barrier. Cf. Shear, *Hesperia* xl (1971) 248; Thompson, *Agora Guide*³ (Athens 1976) 83; Kuhn 1985, 201–2, 225 n. 371. Shear speaks of benches, quite unfeasibly; Kuhn of ropes, but roping-off, *perischoinisma*, was done at some distance from the meetings it protected.

⁶⁰ τοῖδετ' ἡρήμενοι νομοθέται ὑπὸ τῆς βουλῆς. To the conjectures listed by MacDowell 1962, 122 we might add οἱ εἴκοσι (which happens to be the

lemma in Pollux). According to Aeschines' scholiast, twenty citizens were chosen by the *dēmos* to reinstate laws that had been subverted, and a decree was passed, in the archonship of Euclides, to introduce new laws in place of those that were lost. According to Pollux, twenty persons were chosen *aristindēn* to take charge of the *politeia* and the laws. According to Andocides, twenty men were chosen by the *dēmos* to take charge of the city until laws were enacted; afterwards the Council was selected by lot and *nomothetai* were chosen. All these sources appear to be describing, though with some inaccuracy, the same procedures as we see in Teisamenus' decree. Stroud (n. 30) 25 n. 24, following Kahrstedt, wrongly equates the twenty (in Aeschines' scholiast and Pollux) with the *anagrapheis*. Ostwald 1986, 500 thinks of the twenty (in all three sources) as consisting of two boards of ten, from the Peiraeus faction and the city faction; but the sources plainly refer to an undertaking of the restored democracy. I come back to Andocides' version below.

the whole body of law was restored straightway. In his first harangue to the reunited Athenians, Thrasybulus told them to 'observe the old laws' (Xen. *Hell.* ii 4.42). A law enacted soon after 403/2 (and ascribed to one Diocles), defining the moment at which any given law shall have force, says first of all that laws enacted by the democracy before 403/2 are currently in force (Dem. xxiv *Timocr.* 42). Given then the existing laws, the two bodies of *nomothetai* are to consider 'such laws as may be needed in addition', ὁπίσσω δ' ἄν προσδέη. On the face of it, their task is no different from the task of the Assembly at any other time (in the fourth century the task was formalized as an item of the agenda).

The *nomothetai* are instructed simply to consider any new laws that are needed. Was it obvious what sort of laws were needed? Were they drastic measures for unsettled times? We do hear of such measures, but they were all put to the Assembly, not to the *nomothetai*—even those that are unmistakably laws of general application. The Assembly rejected Phormisius' proposal to limit the franchise (Dion. Hal. *Lys.* 32–3); the Assembly reinstated the rule that both parents must be citizens (schol. Aeschin. i *Timarch.* 39 = Eumelus *FGrH* 77 F 2).⁶¹ No law at all is attested as the work of the *nomothetai*; only a few laws mentioned by Andocides can be ascribed to them by conjecture, and these are concerned with procedural details. It does not appear that the *nomothetai* of 403/2 were confronted with any large important task. The reason for appointing them must lie elsewhere.

We should remember the condition of Athens and her citizens in autumn 403.⁶² In the last years of the Peloponnesian War the city lost nearly all accustomed revenues, and some resources were destroyed for years to come. Many citizens lost their accustomed livelihood as farmers or as artisans. Yet the working of democratic government depended on the participation of the citizens, and participation depended on one's means. We know that in 403 citizens were no longer able to serve in such numbers as before. It was a full two years before juries sat to hear private cases (*Lys.* xvii δημ. ἄδικ. 3).⁶³ About the same time a system of tribal judges and public arbitrators was introduced so that juries might be dispensed from hearing smaller cases (*Lys.* xxiii *Pancl.* 2; [Arist.] *Ath.* 53.1). Jury service required several hundred citizens at a time; the Assembly required several thousand, so that Assembly meetings were still harder to arrange. The *prytaneis* who set the agenda could not be sure of a quorum until, soon after 403, payment was conceded for attending the Assembly; the sum was quickly raised from one obol to two, then three, and continued to increase ([Arist.] *Ath.* 41.3, 62.2). Phormisius' proposal to limit the franchise is surprising in the context of the restored democracy; we may conjecture that it was provoked by the inability of poorer citizens to do their share, and especially to attend the Assembly.

In Teisamenus' decree the Assembly does not appear after the prescript. There is no provision for the *nomothetai* to report to the Assembly;⁶⁴ instead their final drafts are posted on 'the wall' (§ II).

It is for the Council of the Areopagus to see that the new laws are administered by the magistrates. This clause has commonly been interpreted in the light of much later developments. During the fourth century a controversy arose about the powers of the

⁶¹ Of this rule Eumelus says that 'Nicomenes proposed a decree', etc., whereas Carystius says that Aristophon 'introduced a law', etc. (*Ath.* xiii 38, 577B = Carystius *fr.* 11 Müller). If the same transaction is in view, Eumelus' terminology is to be preferred as more specific. Hansen, *GRBS* xx (1979) 32, 35 regards Theozotides' decree in favour of Athenian orphans as another virtual 'law'.

⁶² Cf. B. S. Strauss, *Athens after the Peloponnesian*

War (Ithaca 1987) 42–86.

⁶³ Cf. MacDowell, *RIDA*³ xviii (1971) 267–73. T. C. Loening, *The reconciliation agreement of 403/402 BC in Athens* (Stuttgart 1987) 120–1, denies the interval, but without good reason.

⁶⁴ Despite Stroud, *Hesperia* xliii (1974) 162, the decree does *not* show 'that sanction for the revised law code had to be secured from the Ekklesia'.

Areopagus, what they once had been and what they should be;⁶⁵ conservative theorists spoke of a 'guardianship of the laws' which the Areopagus had possessed in the beginning, and in the constitutions of Draco and Solon ([Arist.] *Ath.* 3.6, 4.4, 8.4, 25.2; cf. Plut. *Sol.* 19.2). So if a virtual 'guardianship of the laws' is assigned to the Areopagus in Teisamenus' decree, it must be another instance of a conservative reaction—perhaps the most surprising of all, since the Assembly gave approval at one of its first meetings.⁶⁶ Now we see that the reason for invoking the Areopagus was not ideology, but economy. In normal times any misconduct by a magistrate would be redressed in a jury-court. In 403, however, juries were in short supply, and it was natural to call on the Areopagus, a respected body of experienced men who served without pay.

The appointment of *nomothetai* was likewise dictated by economy. The *nomothetai* are relatively few; perhaps the body of 500 were paid at the same rate as Councillors, if indeed Councillors were paid in 403/2. The modest scale is all the more apparent when we recall that in the fourth century 1,000 *nomothetai* might be appointed to consider a single legislative proposal (Dem. xxiv *Timocr.* 27). Routine law-making could be done far more expeditiously by the *nomothetai*, using the procedures of Teisamenus' decree, than by the Assembly, always open to prolonged debate. Relieved of this chore, the thousands sitting in the Assembly could concentrate their time and effort on more pressing business. The experiment succeeded, for a similar style of law-making was soon adopted as a standard practice. But for this purpose it was necessary first to define a 'law' as distinct from the sort of enactment that was still proper to the Assembly.

Andocides quotes several laws enacted after Teisamenus' decree—but not in virtue of the decree, according to Andocides' version of events. It is probable nonetheless that these laws are the work of the *nomothetai*. Let us note first that certain laws of 403/2 were inscribed together. In the law of Diocles already mentioned, the second category of laws from the past are 'those that were enacted in the archonship of Eucleides and are written up', καὶ εἰσὶν ἀναγεγραμμένοι (Dem. xxiv *Timocr.* 42). 'Written up', we may assume, in the sense of being conspicuously inscribed on stone; for all laws were written up in the sense of being preserved somewhere in writing. Now Andocides repeatedly points to laws that were inscribed 'in the stoa' in virtue of Teisamenus' decree (*De myst.* 82, cf. 89). To be sure, he also says that these are 'all the laws' of Athens, newly revised, again in virtue of Teisamenus' decree: a patent falsehood. It must be true, however, that some recent laws have been inscribed 'in the stoa'; for this is a matter of public knowledge which Andocides turns to his advantage. So we ask, which laws are these? The true answer is to be found beside the false one, in Andocides' narrative.

As we saw, Teisamenus' decree lays down procedures for making any new laws that happen to be needed, while displaying them 'on the wall'. Andocides asserts that it calls for all the laws of Athens to be scrutinized and then published 'in the stoa'. Though false, the assertion is perfectly understandable. To say that Teisamenus' decree, as read out by a secretary, calls for a complete scrutiny of the laws, calls too for an authoritative publication, is to offer documentary proof that Athens made a wholly fresh start in 403, so that nothing that happened earlier can be held against Andocides. Andocides has many such 'proofs', all presented with an air of sweet reasonableness (*De myst.* 71–105). They will have swayed the jurors, as practicalities and personalities will have swayed them too; but they do not survive a reading in the study. It is astonishing that much of Andocides' blague has been credited by scholars. One item is the comprehensive

⁶⁵ It is sometimes held that the controversy goes back to Ephialtes' reform; against this, see Ruschenbusch, *Historia* xv (1966) 369–76.

⁶⁶ Ostwald 1986, 517–19 calls the clause 'baffling' and ponders various explanations without result. Hansen, *CP* lxxxiv (1989) 143, believes in a

'revival' of the Areopagus beginning with Teisamenus' decree, but admits that no other sign of it appears for the next fifty years. Cf. G. L. Cawkwell, *JHS* cviii (1988) 2, 7, 'the new position of the Areopagus under the restored democracy', etc.

publication 'on the wall', 'in the stoa'. Another is the very notion that in 403 the Athenians were somehow uneasy with the existing laws.

We should pause to observe how artfully Andocides has used Teisamenus' decree.⁶⁷ Before it is read out, he mentions the leading details, so that the jurors, on hearing the decree, will nod assent. But the details are rearranged to make a different pattern. The decree calls for the existing laws—the laws of Solon, etc.—to be restored, then for the Council and the *nomothetai*—of whom the first body likely numbered twenty—to make new laws. Not so Andocides (*De myst.* 81–2). Twenty men were chosen to take charge of the city, 'until laws were enacted';⁶⁸ 'meanwhile' (τέως) the existing laws—the laws of Solon, etc.—were to be observed. But after Council and *nomothetai* were in place, it was discovered that under the existing laws 'many of the citizens were liable, because of previous events'.⁶⁹ So Athens embarked on a complete revision of 'all the laws', witness Teisamenus' decree.⁷⁰ In this ascending series Teisamenus' decree comes last and vouches for the rest. But of course it does not vouch for the rest; it expressly reaffirms the existing laws, and only indicates a procedure for making new ones. All the rest comes from Andocides' imagination. There is no reason to think that in 403 the Athenians were uneasy with the existing laws or contemplated any sort of revision.

After the reading of Teisamenus' decree, Andocides proceeds as follows. 'So the laws were scrutinized, gentlemen, in accordance with this decree, and those that were approved they wrote up in the stoa. When they had been written up, we made a law which you all observe', etc. Five new laws are quoted; they form a series linked throughout by δέ (*De myst.* 85–9). Each in turn is represented, not very plausibly, as a further safeguard against any raking over of the past. Andocides then sums up the whole demonstration: 'So you decided to scrutinize the laws, and after scrutiny to write them up' (thus far Teisamenus' decree, as Andocides would have it), 'and to enforce no unwritten law', etc. (the new laws are recapitulated).

Andocides says quite deliberately that the five new laws were enacted after the general scrutiny and publication, as a further step; and no one seems ever to have doubted him.⁷¹ This is most unwise. Teisamenus' decree does not call for a general scrutiny and publication; it provides for the making of new laws, such laws as the five quoted by Andocides. Furthermore, the five new laws were enacted in 403/2—the last of them states that they shall have force from this date. Shall we suppose that Teisamenus' procedures for making new laws were followed to the end; that the laws thus enacted were inscribed 'in the stoa'; and that subsequently, but still in the year 403/2, another series of new laws, including the five quoted by Andocides, were enacted by some other means? It is better to suppose that the five new laws were enacted in virtue of Teisamenus' decree and formed a series, or part of a series, inscribed 'in the stoa'. This supposition accounts for all the elements which Andocides misuses and distorts.

In summary form, the five new laws are these (all are known from other sources). No unwritten law shall have force; no decree shall override a law; no law shall be directed at an individual; verdicts and arbitrations antedating 404/3 shall be valid; the

⁶⁷ The discrepancy between the decree and Andocides' account of it was fully recognized by scholars of an earlier day, notably Droysen and Frohberger; but their methods of resolving it are no longer acceptable. Cf. Ferguson 1936, 145–6.

⁶⁸ ἕως τᾶντ' οἱ νόμοι τεθεῖεν. Of suggested emendations, for which see MacDowell 1962, 120, some keep οἱ, one makes it ἄλλοι instead. Perhaps ἄν took the place of the ethic dative ὑμῖν: 'until you got your laws enacted'.

⁶⁹ 'A perfectly absurd motivation': Ferguson 1936, 145 n. 8; cf. Harrison 1955, 32.

⁷⁰ MacDowell 1962, 121 suggests that the Athenians first thought of enacting a whole new law-code, then decided on 'the more modest legal revision' called for by Teisamenus' decree. But this reverses Andocides' sequence.

⁷¹ MacDowell 1962, 197 goes so far as to speak of two successive 'legal revisions' in the year 403/2.

laws shall have force from 403/2. The series is probably not complete; for Andocides will mention only laws that suggest a fresh start. Yet the laws do have a common tendency, to define what a 'law' will be. We may suspect that the rudiments of fourth-century law-making were devised in 403/2.⁷²

The laws are inscribed together 'in the stoa'; this inscription appears to be cited also in the law of Diocles. Which stoa was it? A definite answer is not possible; but we should assess the probabilities, and refute a prevailing misconception. The search can be restricted to the Agora; this is by far the commonest setting for inscriptions of general interest, and we do not know of any stoa used for civic business that stood outside the Agora. At the time of Andocides' speech (and for long after) the Agora had four stoas: the Stoa Basileios, the oldest; the Stoa Poikile, built in the 460's; the Stoa of Zeus, built in the 420's; and 'South Stoa I', built about the same time.

The choice up to now has almost invariably been the Stoa Basileios. But it is supposed at the same time that this was a comprehensive publication, to be identified with 'the wall' of Teisamenus' decree and with the joining stelae; it is then inferred that the stelae stood as a screen in the stoa wings, or between the interior columns, or against the back wall; or if 'the wall' is not the joining stelae, that the interior back wall of the stoa was used as a writing surface for an interim publication, and that the stelae were placed here afterward. Discarding these notions as we must (§§ II, V), we acknowledge nonetheless that the stela bearing Draco's law on homicide was set up in 409/8 'in front of the Stoa Basileios' (*IG* 1³ 104.7-8), and that the *kyrbeis* bearing all Solon's laws stood within ([Arist.] *Ath.* 7.1). Now the Stoa Basileios is the obvious place for homicide law (§ V), and it does not follow that other laws will be published here. But does not this conclusion follow from the *kyrbeis*?

We should ask why the *kyrbeis* were installed in the Stoa Basileios in the first place. [Aristotle] appears to think that the arrangement goes back to Solon's time. This cannot be, but the arrangement may still be the original one, going back to the time when the *kyrbeis* were fashioned and the Stoa Basileios was built. To be sure, Anaximenes notoriously says that both *axones* and *kyrbeis* were brought down from the Acropolis by Ephialtes (*FGH* 72 F 13). But whereas Anaximenes and [Aristotle] are at work at almost exactly the same date, the one writing a general history in a rhetorical vein, the other an antiquarian account of Athenian law and government, it is irrational to prefer Anaximenes.⁷³ Though the date of the Stoa Basileios has been variously given, and the means of judging the question have not been published,⁷⁴ it is on any reckoning the earliest of the Agora stoas, and about the earliest known public building to survive to later times. We may therefore suppose that when first built, the Stoa Basileios was used not by the Basileus alone, but by all the archons in their administration of the law: in swearing to uphold the laws, they all stood upon the great stone in front ([Arist.] *Ath.* 7.1, 55.5). The Stoa Basileios was therefore the natural place for the *kyrbeis*, at least in early days.

Afterwards two much larger stoas were built nearby, the Stoa Poikile cater-corner at the north, the Stoa of Zeus next door to the south. They were obviously meant to accommodate some of the public business for which the Stoa Basileios had once sufficed;⁷⁵ at some point in the expansion the most

⁷² The relationship between the laws quoted by Andocides and fourth-century *nomothesia* is discussed by Hansen (n. 61) 28-31, 42-3 and *GRBS* xxvi (1985) 360-2; Rhodes, *CQ* 2 xxxv (1985) 59; Sealey (n. 26) 37-41 and *CJ* lxxvii (1982) 294-5.

⁷³ There was however some reason for doubting [Aristotle], as long as the Stoa Basileios was thought to be the same as the Stoa of Zeus, built as late as the 420's.

⁷⁴ Mid 6th century: Shear, *AAA* iii (1971) 300, and *Hesperia* xl (1971) 249-50, and *Hesperia* xlv (1975) 369-70; Thompson and Wycherley (n. 53) 84; Kuhn 1985, 200. Near the end of the 6th century: Shear, *AJA* lxxviii (1974) 178-9. Either then, or just after 479: Thompson (n. 59) 84; J. M. Camp, *The Athenian Agora* (London 1986) 53, 100. Early 5th century: Wycherley, *The stones of Athens*

(Princeton 1978) 30-1. 'A longer talk with L. Shear has revealed that the excavation reports published up till now provide no sufficient basis for discussing these questions': Kuhn 1985, 202.

⁷⁵ The archons like other magistrates dined while at work (Hypereides *fr.* 139 Kenyon; Apollodorus *ἐν δευτέρῳ περὶ νομοθετῶν* *apud* Diog. Laert. i 58: *lege συνδειπνεῖν*). Two large dumps of pottery used for official dining (and so marked with the graffito ΔΕ) have been found near the Stoa Basileios, one dating from c. 480-460, and the other from c. 460-425: L. Talcot, *Hesperia* v (1936) 333-54; Shear, *Hesperia* xlii (1973) 383-5. The earlier dump antedates both the Stoa Poikile and the Stoa of Zeus; the later antedates the Stoa of Zeus.

venerable stoa was reserved solely for the most venerable archon (it is called βασιλεία in 409/8, βασιλείος in c. 392 and often thereafter: *IG* i³ 104.8; *Ar. Eccl.* 685). When this happened, the Stoa Basileios was no longer the natural place for a general publication of the laws, or for publication of any laws but those pertaining to the Basileus.⁷⁶ The other two stoas give far more room and present a far more imposing façade; moreover, the ground is much lower at the Stoa Basileios than it is further south, and the area in front of the little stoa soon became a separate precinct filled with herms dedicated by the Basileus.⁷⁷ Any of the other three stoas is a more likely setting for the laws of 403/2.

The claims of these three can be briefly indicated, before we leave the question in suspense. Since the Stoa Poikile was used both for arbitrations and for trials before a jury of 500 (*Dem. xiv Steph.* 17; *IG* ii² 1641.29–30, 1670.34–5), the laws quoted by Andocides (of which one refers to both arbitrations and trials) might well be published here. At the moment not much more can be said about the official uses of the Stoa Poikile; but this may soon change, when the building is excavated. As for the Stoa of Zeus, there is evidence of several kinds for its use by the archons:⁷⁸ for example, inscriptions relating to the archons, including the late-fifth-century table of eponymous Archons, are rather often found amid material from the stoa re-used in later construction; the stoa design with projecting wings, which seems to be unprecedented, is copied in a Thasian stoa demonstrably used by the local archons for the administration of the law (and is copied too in the re-modelled Stoa Basileios, another sign of related function). The Stoa of Zeus was probably the quarters of the nine archons when they acted jointly, and the special quarters of the Thesmothetae. It too would seem a perfectly suitable place for the publication of laws like ours.

Finally, 'South Stoa I' was constructed near the end of the fifth century for workaday uses which must have continued for at least as long as the stoa lasted, down to the later second century; probably for as long again, after 'South Stoa II' and 'the Middle Stoa' took the place of the earlier building. One of the rooms at the back of 'South Stoa I' was used by the board of *metronomoi*, 'inspectors of weights and measures', to judge from a stone recording their activities, which though not quite *in situ* seemed very close to it (*Hesperia* xxxvii [1968] 73–6). Yet much other business went on here; for the stoa, with an upper storey at the back, is very capacious, and it is also convenient to the Tholos and Council-house. Andocides could as well refer to this stoa as to either the Stoa Poikile or the Stoa of Zeus. It would not do to argue that 'the stoa' without further ado must be some fine monumental building, which 'South Stoa I' was not; Andocides' stoa is simply the stoa known to his audience as the setting of a certain inscription.

These then are the three candidates. Only to mention them, and then to turn away, is not very satisfying; but it was necessary, in order to break the hypnotic fascination of the Stoa Basileios.

VII. THE WORK OF THE ANAGRAPHES IN 403–399

The work of the *anagrapheis* in 410–404 was examined above (§ IV). These 'transcribers of the laws' were professional secretaries who compiled a mass of documents from the past, probably for use in the central archive. The work was not complete when Athens succumbed in 404; for Nicomachus did not render an account at this time (*Lys. xxx Nicom.* 3–5). It took four more years, 403–399. All that is needed

⁷⁶ Two inscribed laws have been found nearby: the law of 375/4 on silver coinage, 'built into the west wall of the Great Drain in front of the Royal Stoa' (*Hesperia* xliii [1974] 157), and a law of 374/3 on taxing grain in the islands, 'built into one of the side walls of the Great Drain, where it passes the northeast corner of the Stoa Basileios' (*ASCS Newsletter*, spring 1987, p. 8). The former had been posted 'at the tables' (line 46), i.e. the banking tables, which were somewhere near the Stoa. We may assume that the latter also comes from the vicinity; the text has not been published.

⁷⁷ Shear, *Hesperia* xlv (1975) 367–9. This is the area called 'the Herms' in literature and documents; the Stoa Basileios can be referred to as 'the stoa of

the Herms' (*Aeschin. iii Ctes.* 183, of 330 BC; *IschrStorEl* 16.43–4, a decree of 281/0). It is true that a scholium makes a series of 'three stoas at Athens' by juxtaposing the Stoa Basileios and the stoa of the Herms, ἡ μὲν Βασιλείος, ἡ δὲ τῶν Ἑρμῶν, and then adding the Stoa Poikile, also called *Peisianakteios* (schol. *Dem. xx Lept.* 112); but since the Stoa of Zeus has obviously fallen out of this enumeration (it appears in other scholia and lexica as one of two or three stoas), the first two names must be alternatives for the same item, like Poikile and *Peisianakteios*. *Lege* e.g. ἡ μὲν Βασιλείος, <ἄλλως> δὲ τῶν Ἑρμῶν.

⁷⁸ Robertson (n. 23) 170–1 and *AJA* lxxxviii (1974) 257.

here is to refute another misconception. It is commonly said that in his first term Nicomachus dealt mainly with the laws, or with secular law, in his second term with ritual, or with sacred law.⁷⁹ Yet this is not a necessary or even a likely inference from Lysias, and it is quite disproved by the joining stelae.

In 410–404 Nicomachus was ‘to write up the laws of Solon (*Nicom.* 2); in 403–399 the range of material was specified again, ἔπειτα διωρισμένον ἐξ ὧν ἔδει ἀναγράφειν (*Nicom.* 4), but Lysias does not say how. The documents of 410–404 have just been characterized by Lysias as a welter of laws which threw the courts and the archons into confusion (*Nicom.* 3); the trial of Cleophon for which Nicomachus obligingly produced a recondite law took place in 404 (*Nicom.* 10–14). Yet Lysias might speak thus even if Nicomachus were dealing with very similar laws in 403–399. The trial of Cleophon was notorious, the only episode he mentions by name. It is likely enough that in the last years of the Peloponnesian War the courts were in some confusion, and that people afterwards had bitter memories. And it is likely again that the courts were more sedate in 403–399, and that the jurors whom Lysias addressed had not been recently distracted by conflicting laws.

Further on Lysias speaks of ritual expenditure, and of how last year the ancestral observances went short by three talents, though in the past two years the observances recorded by Nicomachus have cost twelve talents more than they should, six talents a year; this while the Spartans are demanding their loans, and the Boeotians are making seizures, and the walls and the docks are crumbling, and the Council cannot find essential revenue (*Nicom.* 17–22). Lysias points with indignation to ‘the stelae which this fellow inscribed’, and the inference is drawn that they have just been inscribed, perhaps with new annual and biennial cycles of sacrifice.⁸⁰ It is obvious however that the increased expenditure of 401–399 is an immediate consequence not of Nicomachus’ compiling or inscribing, but of better times: the harsh and dangerous conditions which have prevailed for many years are now improved, despite those Spartans and Boeotians, and the austerity which was entailed is being relaxed; the Athenians are enjoying a few more banquets and processions. One hopes that the jurors who pondered Nicomachus’ fate were more alive to the realities than some modern scholars.

The long list of sacrifices to which Lysias objects may have been compiled by Nicomachus at any time between 410 and 401; the stelae to which he refers may have been inscribed at any time between 410 and 401. The actual remains, the joining stelae, enable us to reduce these limits. For they were inscribed in Attic letters on both faces, front and back, at various times down to 404; most of the content—all the front face, presumably, and much of the back—was ritual expenditure (§ V).

To be sure, the front face was afterwards erased and inscribed with other ritual texts in Ionic letters. These texts then stood out from the rest, superseding half the earlier work and presenting a more uniform and elegant appearance: is it these texts precisely that Lysias has in mind? That would be a very strained hypothesis. Lysias points to the joining stelae, ‘the stelae which this fellow inscribed’, but does not mention the erasing and the re-inscribing that have just taken place (it is reckoned the largest erasure in Athenian epigraphy).⁸¹ It is to Nicomachus’ discredit that the stelae are there at all; whatever the facts behind the erasure, they would certainly be turned to Nicomachus’ discredit. Moreover, Nicomachus himself proposes to the jurors that the stelae should now be erased (*Nicom.* 21); he does not say, ‘for the second time’. The only reasonable inference is that in 399 the earlier work on the front face had not yet been erased, and that Lysias refers to the original inscription in Attic letters.

Our reading of Lysias will be confirmed when we consider the source rubrics of the later inscription on the front face (§ VIII). They are not so diverse as has been thought; all but one refer to the most ancient and authoritative sources, sources that were already incorporated in the *kyrbeis*. The texts in Ionic letters describe just those traditional observances to which Lysias would confine expenditure. They were accordingly inscribed after the prosecution of Nicomachus and reflect the same outlook.

In sum, we cannot tell from Lysias what sort of documents Nicomachus was compiling in 403–399—perhaps more secular laws, perhaps more ritual texts, perhaps both. If the work led to any further inscribing, the stelae have not been found.

⁷⁹ E.g. Ferguson 1936, 147–8, 150–1; Clinton 1982, 34–5; Ostwald 1986, 512, 520.

⁸⁰ Dow 1960.

⁸¹ Dow 1961, 71.

VIII. THE SACRIFICIAL CALENDAR PUBLISHED IN C. 399

The front face of the joining stelae is inscribed in Ionic letters over a large erasure; the later inscription is always taken as the work of Nicomachus in his second term, but this cannot be (§ VII). We shall see next that the later inscription betrays the hand of Nicomachus' prosecutor.

The arrangement on the front is much clearer than the arrangement on the back; for the largest fragment, the obverse of the 'trierarchic law', has a general heading and calendar dates and source rubrics, and three or four other fragments have either dates or rubrics or both. The significance of the rubrics as indicating sources, i.e. earlier collections of ritual observances, was demonstrated thirty years ago and is now acknowledged by everyone.⁸² When we consider the range of these sources, an important conclusion will follow.

The rubrics that now pass current are six, as follows: ἐκ τῶν φυλοβασιλικῶν, ἐκ τῶν κατὰ μῆνα, ἐκ τῶν μή ρητῆι, ἐκ τῶν στήλων, [ἐκ] νέων, [ἐκ τ] ὧν ν[. The first three are indisputable and account for most of the instances; the fourth, occurring once, is another rubric, but the reading and restoration are dubious as given; of the last two, both depending on a single battered fragment, one is illusory beyond question, the other a mere shot in the dark. Let us take them in order.

Τὰ φυλοβασιλικά, the rites appertaining to the chiefs of the four Ionic tribes, are cited four times. They are the source for two successive observances at the biennial Synoecia on 15th–16th Hecatombaeon (*Hesperia* iv [1935] 21 no. 2 col. ii). An Ionic tribe and a *trittys* thereof take part, and since the occasion honours Zeus and Athena as phratry gods, and since the combined 'houses', οἴκοι, of the festival name 'Synoecia' are presumably phratry lodges, we begin to see why [Aristotle] equated *trittys* and phratry in the early system (*Ath. fr.* 2 Chambers). They are also the source for some observance or other, following a sacrifice to Erechtheus, on the fifth of an unknown month (*IG* ii² 1357 a = *Hesperia* iv [1935] 23). Observances on the fifth of any month are rare indeed, and this is arguably the Genesis of 5th Boedromion.⁸³ Finally, they are the source for some observance or other early in an unknown month (*Hesperia* x [1941] 34 fr. E). The Ionic tribes and their chiefs were of moment only in early days, and we should expect their ritual observances to be fixed and recorded no later than in Solon's time. The observances in question appear to be suitably archaic; and the Genesis are elsewhere expressly cited from Solon's *axones* (*fr.* 84 Ruschenbusch = *Antiattic.* 86.20 Bekker).

Τὰ κατὰ μῆνα, the rites prescribed month by month, are cited three times. They are the source for two observances at the end of the year, presumably in the annual series, since it comes just before the biennial series—for offerings of several kinds on 29th Thargelion, which plainly belong to the Plynteria; and for others early in Scirophorion (*Hesperia* iv [1935] 21 no. 2 col. i). They are also the source for the sacrifice to Erechtheus already mentioned, perhaps part of the Genesis (*IG* ii² 1357 a = *Hesperia* iv [1935] 23). The victim offered to Erechtheus is ἄρνεως, an old fashioned word not appearing elsewhere in Athenian or Attic sacrificial calendars, but echoed by Homer in his account of Athenian offerings to Erechtheus (*Il.* ii 550). Civic sacrifices which are designated simply as those occurring 'month by month' must go back to some early record, to one no later than Solon's time; the form ἄρνεως could not well be later.

⁸² Dow 1959, 15–21.

⁸³ So Dow *apud* J. D. Mikalson, *The sacred and civil calendar of the Athenian year* (Princeton 1975) 49. Note that Erechtheus is linked with the Boedromia, a festival of Artemis and Apollo falling on 6th–7th Boedromion. This ancient festival was conducted by the Polemarch ([Arist.] *Ath.* 58.1, speaking of a sacrifice to Enyalios, god of the war-

cry; Cleidemus *FGrH* 323 F 18, speaking of a sacrifice to Phobos, 'battle-rout', by a virtual Polemarch at the Lykeion). If then Erechtheus was honoured on the day before, 5th Boedromion, it is not surprising that the office of Polemarch and the festival Boedromia are traced to the war against Eleusis, when Ion came to help Erechtheus (*Hdt.* viii 44.2; Philochorus *FGrH* 328 F 13; etc.).

Τὰ μὴ ῥητῆι, the rites prescribed for no particular day, are cited once. They appear a dozen lines further down in the fragment that cites the two aforementioned sources for offerings on the fifth of a month; the present offering is due on the sixth, obviously of the same month (*IG ii² 1357 a = Hesperia iv [1935] 23*). We might well ask why and when offerings prescribed for no particular day were assigned to a particular day.⁸⁴ But here we need only observe that the rites so designated are complementary to the rites designated by the previous rubric, those prescribed month by month; they go back to the same early record, to one no later than Solon's time.

These rubrics are assured; now we pass to those which are not. The same large fragment which gives two instances of rites appertaining to the tribal chiefs and two instances of rites prescribed month by month also records several victims for several deities, at least eight of each, from a different source, ἐκ τῶν σ [*Hesperia iv [1935] 21 no. 2 iii 77*]. In publishing the stone Oliver gave this reading without epigraphical comment and suggested ἐκ τῶν σ[υμβολῶν], which would denote the practice of making private contributions to a common festivity;⁸⁵ but this is not wanted in Athens' civic calendar, and of course the rubrics do not denote the source of funds, but the source of authority. While expounding this last point Dow gave the reading ἐκ τῶν στ[] and suggested ἐκ τῶν στ[ηλῶν], a restoration which the reading virtually requires;⁸⁶ since then the reading and the restoration have been accepted on all sides. If Dow had said that the traces on the stone pointed to τ, that would be the end of it. But he did not. Instead he said that 'the dotted letter by itself is a highly uncertain reading', and the published photograph which he called to witness bears out this uncertainty. He also expressly said that 'the trace of another letter after the sigma' suits Oliver's restoration σ[υμβολῶν] just as well as it suits his own.⁸⁷ The experts do not wholly agree on the conventions for epigraphical editing, including the placement of square brackets and the use of dotted letters; in this case a dotted letter has misled all subsequent commentators.

So we start from the reading ἐκ τῶν σ[], and examine the reasoning which might justify ἐκ τῶν σ[τηλῶν]. Lysias, we are told, speaks of two kinds of sacrifice, those prescribed by the *kyrbeis*, ἐκ τῶν κύρβειων, and those prescribed by the stelae, ἐκ τῶν στηλῶν (*Nicom. 17*). But the second category is more exactly 'the sacrifices prescribed by . . . the stelae in accordance with the special reports', τὰς θυσίας ἐκ . . . τῶν στηλῶν κατὰ τὰς συγγραφάς.⁸⁸ Lysias dwells especially on the *kyrbeis*, mentioned three times over (*Nicom. 17–20*); he also suggests that some other sacrifices are of almost equal authority, as in the words quoted and in the similar phrase 'whenever we proceed in accordance with the special reports', ὅταν μὲν κατὰ τὰς συγγραφάς ποιῶμεν (*Nicom. 21*). The issue between Nicomachus and the prosecution will be considered below (§ IX); here it is enough to say that the operative word is not 'stelae', for Nicomachus too inscribed 'stelae' (*Nicom. 21*), but συγγραφαί, 'special reports' commissioned and enacted by the Assembly. Lysias gives us no reason to think that ἐκ τῶν στηλῶν could serve as a source rubric for certain sacrifices.

The context of our rubric may help. Column iii of the fragment records biennial

⁸⁴ According to J. Triantaphyllopoulos, *REG* xcv (1982) 293, it was for the archons or other civic officials to fix the days in question; but he gives no reason for saying so, and it is hard to think of one.

⁸⁵ Oliver 1935, 21, 28–29.

⁸⁶ Dow 1959, 16, 18–20, with pl. I.

⁸⁷ I am indebted to Professor Rhodes for further information on this point. Having inspected a squeeze and photographs at the Institute for Advanced Study, he reports that after σ[] the surface of the stone is lost, and that any traces which might

be taken as either τ or υ are illusory.

⁸⁸ Harrison 1955, 28 n. 24, 34 n. 55 reminds us that στηλῶν in Lysias is Taylor's emendation for εὐπλων or ὄπλων of the mss. But στηλῶν is not 'an insecure foundation for historical deduction', it is a certainty: what else could Lysias have written? 'I should have expected some qualification of στηλῶν to distinguish them from the *stelai* of Nikomachos mentioned later on'. They are so distinguished, in the phrase κατὰ τὰς συγγραφάς.

observances falling a little later than mid Hecatombaeon, most likely in the month Metageitnion. Since the deities and the officiants are mainly Eleusinian, this will be the festival Eleusinia, as others have remarked. Above our rubric, in the upper two-thirds of the column, the *genos* Eumolpidae sacrifice copiously to eleven deities, including Demeter and Persephone and several Eleusinian heroes, and the priestess of Demeter receives a very large emolument. The rubric in question is not preserved; it came in column ii, so that the observances were even more extensive than appears. Surely they belong to the early series of observances prescribed month by month, τὰ κατὰ μῆνα. The offerings which follow our rubric number eight so far as preserved; the divine names are not all securely restored, or enlightening when they are; but they include Athena and the Charites, Athenian deities rather than Eleusinian. One supposes that these offerings are secondary, that they were added to the native Eleusinian observances by some enactment of the city of Athens.

We happen to possess an Athenian decree of *c.* 500 that was inscribed in the sanctuary at Eleusis; it calls for sacrifice to a number of deities, mostly Eleusinian, but again including the Charites (*IG* i³ 5). The deities are almost certainly those of the festival Eleusinia;⁸⁹ some or all of the sacrifices are described as πρῶτόλεια, 'first fruits of the grain';⁹⁰ the sacrifices are performed by one of the boards of *hieropoioi* whom we hear of elsewhere as officiating at Eleusis, both at the Eleusinia and at the Mysteries, though not as performing sacrifice.⁹¹ Yet although the decree names between nine and eleven deities, and although they include some Eleusinian heroes, they overlap very little with either of the two groups in the calendar. Of the first group only Demeter and Persephone recur, but under their usual title 'the two goddesses'; of the second group only the Charites and Hermes recur (it is just possible to restore in the calendar the same epithet of Hermes as he has in the decree, *enagônios*).⁹² We should not be surprised to encounter different lists of sacrifices for the Eleusinia. For there were annual and quadrennial celebrations besides the biennial; and sacrifice was doubtless offered in several quarters—in the sanctuary at Eleusis and at the facilities for the games and in the city of Athens. At all events, the decree of *c.* 500 can hardly be evoked by our enigmatic rubric. The opposite has often been wishfully asserted: we are told that the two lists of deities broadly correspond; and even that the decree is one of the very 'stelae' named in Dow's version of the rubric⁹³—but the decree is inscribed on the base of an offering table!

⁸⁹ This is the normal view. Clinton, *AJP* *c.* (1979) 1–12, assigns the sacrifices to the Mysteries instead; yet he still allows that these are 'principal deities of the Eleusinia' (p. 7), transposed to the other festival.

⁹⁰ In line 2 *init.* the supplement πρῶτόλεια is inevitable; the synonym ἀκρόλεια is too short for the space. For λῆιον, λείον 'grain', see L. Threatte, *The grammar of Attic inscriptions* i (Berlin 1980) 209, 371 (all the instances are from the fourth century). Almost every editor and commentator down to *IG* i³ 5 gives πρῶτέλεια, but the spelling τέλειος does not appear on stone at Athens before the second century BC. 'The Attic form was clearly τέλειος': Threatte 317.

⁹¹ On these boards of *hieropoioi*, see Clinton, *Hesperia* xlix (1980) 281–2.

⁹² Still less do the deities of either the calendar or the decree overlap with the deities who are served by several priests of the *genos* Kerykes, as listed in a decree of 20/19 BC (republished by Clinton, *The sacred officials of the Eleusinian Mysteries* [Philadelphia 1974] 50–2). At this date the *genos* had charge

of a dozen or more cults or rites at Eleusis and Athens, some familiar, others obscure. Only the Charites and 'the two goddesses' are common to the earlier documents (the *genos* cults of Hermes, Athena, and Poseidon all have quite distinctive epithets). Clinton (n. 89) 6–7 has no warrant for supposing that the earlier documents likewise concern the *genos* Kerykes. It is even doubtful whether the same cult of the Charites is in view throughout. In 20/19 the Kerykes possess the joint priesthood of the Charites and Artemis *epipyrgidia*, also known from a theatre seat (*IG* ii² 5050); these are cults of the Acropolis entrance. But the Charites of the earlier documents are more likely to be the premier Athenian cult near the north-west corner of the Agora, at the point where in early days the Sacred Way left the city for Eleusis.

⁹³ 'We actually have the very stele in question [*IG* i³ 5]... it prescribes sacrifices to the first several deities listed' under our rubric: Dow 1959, 20.

A later Athenian decree about Eleusis is perhaps more revealing. The decree calling for the surrender of first-fruits, 'c. a. 422?', also provides for costly sacrifices to some Eleusinian deities and to Athena at a date to be fixed by the Eumolpidae (*IG* i³ 78.36–40). The sacrifices, like the rules governing the surrender of first-fruits, were conceived and drafted by special commissioners, *συγγραφεῖς* (lines 3–4); the decree of the Assembly enacts their special report, *συγγραφαί* (lines 47, 48); another special report about the first-fruits of the olive will be made separately by the seer Lampon (lines 59–60). The sacrifices of the first-fruits decree are a significant addition to the Eleusinian repertory, like the sacrifices at the bottom of column iii, and they are due to a special report, *συγγραφαί*.

This is not the only report of the period concerned with ritual. A very broken stone, dated by the lettering 'a. 430–405', mentions a 'decision of the special commissioners', *[γνόμε τον χσυγγ]ραφέων*, about some ritual or other (*IG* i³ 135.3).

When Nicomachus was compiling documents in 410–404, he did not omit these special reports apropos of ritual. For a ritual text on the back of the joining stela refers to some observance adopted 'in accordance with the special report', *κατὰ τὰς χσυγγραφάς* (*IG* i³ 238.4). Lysias, as we have just seen, uses just the same phrase to describe a whole category of sacrifices outside the *kyrbeis* which deserve to be funded at all times, as the indiscriminate collection of Nicomachus does not. It is noteworthy that the special report, *syngraphai*, is kept distinct from both the decree which enacts it and the stele which records it. Although the first-fruits decree embodies the *syngraphai*, the provision for inscribing it on two stela speaks of inscribing both 'the *syngraphai* and the decree', *τὰς δὲ χσυγγραφάς καὶ τὸ φρέφισμα τόδε ἀναγραφάσάτο κτλ.* (*IG* i³ 78.48–49). The word *syngraphai* is redolent of authority.

On this showing it is reasonable to restore *ἐκ τῶν σ[υγγραφῶν]* as the rubric in column iii.⁹⁴ We have then three early-looking rubrics and one which indicates a later source.

The other two putative rubrics are read on a battered slab found in 1936 in a modern house at the south-west of the Agora.⁹⁵ The same area produced nearly all the other fragments found in the Agora excavations. This fragment is rough on the back, and though part of the roughness comes from mortar peeling off, even the original back was not meant to be seen; yet the shape and size are right, and there is the vestige of a clamp at the top, and of course the lettering, with the remnant of a heading and the outline of an indented column. Though the letters are preserved on the left side for some twenty lines, no line has more than four letters, and some have one or none; not a single word can be restored with assurance, and to see a list of offerings requires the eye of faith. A glance at the photographs and the transcription should convince anyone that nothing can be done with this fragment. But since the two rubrics have figured in discussion,⁹⁶ it may be well to say a few words more.

The first two lines at the top of the column are given as: [. . δ]εκάτ[η] | [ἐκ] νέων [- - -]. If the first line is indeed a calendar date, one might expect a rubric to follow;⁹⁷ but a rubric *ἐκ νέων*, or *ἐκ νέων θυσίων*, is not Greek; in either case the article is required, *τὰ νέα* (ιερά) or *αἱ νέα θυσία*. Half-way down the column, where nothing is intelligible, and there is no indication of a line extending into the margin, as a rubric will, the reading *[ἐκ τ]ῶν ν[]* is suggested. This is the remotest of possibilities. Both rubrics can be dismissed.

The first four rubrics are therefore the only ones attested in the fragments of the joining stela. May we draw conclusions from such limited material? I think we may,

⁹⁴ By the end of the fifth century 'the normal spelling' is *συγ-* rather than *ξυγ-*: Thraette (n. 90) 354.

⁹⁵ Dow 1941, 32, 35, 37, 'fragment F'; Dow 1961, 59, 65–7, pl. 9c–d, 'fragment E'.

⁹⁶ Dow 1959, 16, 20, 24; Dow 1960, 274 n. 3.

⁹⁷ The rule is not invariable, however; on one fragment a calendar date is directly followed by the observances (*IG* ii² 1357b = *Hesperia* iv [1935] 24).

and must. Two rubrics, ἐκ τῶν φυλοβασιλικῶν and ἐκ τῶν κατὰ μῆνα, occur four times and three times respectively, and embrace a large part of the recorded sacrifices. The rites so designated, those appertaining to the tribal chiefs and those prescribed month by month, were surely a large part of the actual public sacrifices in early Athens. Two rubrics, ἐκ τῶν μὴ ῥητῆι and ἐκ τῶν σ[υγγραφῶν], occur once only, the first above a single offering, the other above several which appear to be a later addition to an ancient festival. The rites prescribed for no particular day were surely exceptional and infrequent; the rites prescribed in accordance with the special reports were surely later additions. The picture that emerges is plausible and self-coherent; the range and frequency of the rubrics cannot be very misleading. It would be rash to predict that no other rubrics than these will be found; but it is safe and sober to suppose that the over-all picture will not be much affected.

The first three rubrics, as was said, point to an early period. The Ionic tribes and their chiefs are an early institution, of no importance later. Civic rites which can be designated simply as those occurring month by month are likely to be an early collection of civic rites, perhaps the first collection. To this collection the rites prescribed for no particular day are complementary, and so about as early. Solon's laws included ritual observances (*frs.* 81–9 Ruschenbusch). Were these observances arranged as we see them now, as rites appertaining to the tribal chiefs, etc.? If they were not, then the observances of the joining stelae are drawn from a collection, or more than one collection, that must be older than Solon. To imagine such a thing is to reject it. Solon's arrangement is reproduced on the joining stelae.

Only one rubric, and that occurring only once, is of later origin: ἐκ τῶν σ[υγγραφῶν]. This is surprising, though if later observances are to be severely restricted, Lysias would say they should be restricted to the *syngraphai*. The observances of the joining stelae are very nearly those of Solon; those added later are a minute proportion. To be sure, the evidence is limited; but it appears to be representative.

IX. THE CASE AGAINST NICOMACHUS

The substantive charges against Nicomachus are just barely discernible, a measure of the weakness of the prosecutor's case.⁹⁸ Some commentators think of a γραφή ἀλογίου, a prosecution for failing to render one's accounts;⁹⁹ but Lysias does not give the impression that Nicomachus was obdurate as well as dilatory. He must have rendered his accounts, though belatedly in Lysias' opinion; the charges must have arisen in the examination of his accounts. [Aristotle] mentions three charges which might be brought against any office-holder: κλοπή, 'embezzlement'; δῶρα, 'bribery'; ἀδίκιον, 'malfeasance' (*Ath.* 54.2). As to 'embezzlement', a verdict against Nicomachus will deter others from embezzling public funds, οἱ βουλόμενοι τὰ κοινὰ κλέπτειν (*Nicom.* 23); the verdict will be easy for the jurors because many have already been put to death on charges of embezzlement, ἐπὶ κλοπῆι χρημάτων (*Nicom.* 25); Nicomachus is a shameless thief, ὁ ἱερόσυλος περιτρέχει (*Nicom.* 21). 'Bribery' is imputed off-handedly

⁹⁸ In all the previous discussion of Nicomachus and his work, the question of the charges against him has seldom been clearly put and never convincingly answered. The slanders we have heard from Lysias are conformable with the work of a compiler, of one retrieving and assembling public documents. But do they make a crime?

⁹⁹ E.g., J. T. Roberts, *Accountability in Athenian government* (Madison 1982) 26. The charge is known only from the lexica (citing also Eupolis *fr.* 377 Kassel and Austin), and a financial accounting is specified: λόγον οὐ δόντες τῶν τῆς ἀρχῆς διοικημάτων.

to all the *anagraphais*, δῶρα λαμβάνοντες (*Nicom.* 25).¹⁰⁰ What ‘malfeasance’ might be for Nicomachus is hard to say: perhaps taking too long (*Nicom.* 2, 4), postponing accounts (*Nicom.* 3–4, 28–9), compiling the wrong documents (*Nicom.* 21, 25).¹⁰¹

In a trial like this the penalty was assessed, as [Aristotle] explains, only if and when the defendant was found guilty: tenfold repayment for funds embezzled and for the value of bribes, simple repayment for funds wasted in malfeasance. So it looks as if the substantive charges might be first discussed after a verdict was reached on general grounds; or as if the prosecutor thought so. He seeks to inflame the jurors by poking into some large contentious issues.

An obvious issue is public expenditure. Lysias says that Nicomachus in his work as *anagraphus* has assembled too many ritual texts, so that money is spent on the wrong items, and the traditional observances are scanted.¹⁰² He states the case as follows (*Nicom.* 19–20).

[As for me,] I think it right to sacrifice first according to ancestral custom, then to go on to those rites which are more or less useful for the city, and also to those which the Assembly has voted and we can defray from current revenue. But you, Nicomachus, have done just the opposite, for by writing up more than those authorized, you ensure that current revenue is spent on these, and is wanting for the traditional sacrifices. As of just last year, rites worth three talents have been left unperformed out of those written in the *kyrbeis*. And one cannot maintain that the city had not sufficient revenue. For if this fellow had not written up too many rites by six talents, there would have been enough for the ancestral sacrifices, and three talents would have been left over for the city. On these points I shall even furnish witnesses.

A little further on he comes back to the six talents of extra expenditure, or twelve talents over two years, as if these figures have been established (*Nicom.* 22).

Consider the facts that the witnesses attested. They must have pointed to certain sacrifices in the *kyrbeis* that cost three talents and were not offered last year. They must also have pointed to quite other sacrifices compiled by Nicomachus that cost six talents and were in fact offered last year and, to judge from the sequel, the year before that. The sacrifices compiled by Nicomachus are distinct from those ‘written in the *kyrbeis*’, though the two categories are not at all exclusive.¹⁰³ Nicomachus’ sacrifices are found on ‘the stelae which this fellow inscribed’, ἀνέγραψε, mentioned right after. The phrase ‘written in the *kyrbeis*’, τῶν ἐν ταῖς κύρβεσι γεγραμμένων, is not appropriate to an inscription on stone: Lysias may be thinking of those archaic objects in the Stoa Basileios, whatever they were; or he may be thinking of the ancient record without reference to its physical form.

This way of speaking would be hard to understand if the front face of the joining

¹⁰⁰ On the other hand, when Lysias says that Nicomachus ‘took his money every day while he was writing down some laws and expunging others’ (*Nicom.* 2), these are certainly wages, not bribes, as suggested by Harrison 1955, 30.

¹⁰¹ MacDowell 1962, 108 gives a reasonable interpretation of [Aristotle]: “Malefaction”, as opposed to embezzlement and corruption, no doubt means depriving the state of money by culpable neglect or inadvertence, as opposed to deliberate deception.’ If Nicomachus is found guilty, will he be required to repay those six talents that were overspent on sacrifice?

¹⁰² It is a commonplace among conservative pietists that ancient custom is being displaced by costly new sacrifices (Isocr. vii *Areop.* 29–30).

¹⁰³ Dow 1960, 274–5, followed by Stroud, *The axones and kyrbeis of Drakon and Solon* (Berkeley

1979) 10, holds that the sacrifices worth three talents which were not offered ‘had been omitted from the draft proposed by Nikomakhos and consequently also from the Code as finally adopted and transcribed’. Even if we could reconcile this notion with Nicomachus’ task as a compiler and with Athens’ attitude to ancestral custom, it could not be reconciled with Lysias’ meaning. The reason why these sacrifices were not offered last year is that too much money was spent last year on other sacrifices. If these sacrifices had been ‘omitted . . . from the Code’, the objection against Nicomachus would be very much stronger: not merely that the sacrifices ‘have been left unperformed as of just last year’, αὐτίκα πέρυσιν . . . ἄθυστα . . . γεγένηται; but that they are unrecorded and will be unperformed forever.

stelae were now inscribed with the ritual texts in Ionic letters. It was argued above that these texts are mainly derived from Solon, i.e. the *kyrbeis*, and include little else; the common view is that they comprise both old observances and everything else that Nicomachus cared to add, and that both elements are knit together in a continuous form.¹⁰⁴ The back face still carried the earlier texts in Attic letters; but these expenditures would not be exclusively preferred to those newly inscribed on the front face, nor is this the contrast which Lysias intends. We must conclude that at the time of Lysias' speech the joining stelae are still inscribed front and back with the earlier texts in Attic letters, and that these texts authorize the expenditures which Lysias deems excessive.

We reflected before that when Lysias inveighs against 'the stelae which this fellow inscribed', he could hardly fail to mention an erasure which cancelled half the earlier work (§ VII). As Lysias speaks, the prospect of erasing the stelae has just arisen. Nicomachus professes to have inscribed the stelae with good intentions; 'and if you disapprove, he bids you erase them, ἐξαλείφειν κελεύει, and by this he hopes to persuade you that he does no wrong' (*Nicom.* 21). We do not know whether Nicomachus' excuse was accepted, but we know that the stelae were erased.

There is more about the question of expenditure, about the unwisdom of spending six talents too much in a time of danger and adversity (*Nicom.* 22). Nicomachus however did not control public spending, and so the main objection is that he has assembled too many ritual texts, including the wrong ones, which invite others to spend unwisely. Lysias might have left it there; but he takes some trouble to indicate the precise range of observances to which he would restrict expenditure. This range of observances will disclose the prosecution's point of view and by implication the opposing point of view, which is associated with Nicomachus and the *anagraphais*.

In the words already quoted Lysias passes from the *kyrbeis*, the minimum criterion, to 'those rites which are more or less useful for the city, and also to those which the Assembly has voted and we can defray from current revenue'. Useful rites, and those formally approved, and so with costs which are foreseen. They are the rites elsewhere described as pursuant to the *syngraphai*, 'special reports'. 'One should perform the sacrifices prescribed by the *kyrbeis* and by the stelae in accordance with the special reports, χρῆ θύειν τὰς θυσίας ἐκ τῶν κύρβων καὶ τῶν στηλῶν κατὰ τὰς συγγραφάς . . . you yourselves have voted these' (*Nicom.* 17). 'Whenever we proceed in accordance with the special reports, ὅταν μὲν κατὰ τὰς συγγραφάς ποιῶμεν, all the ancestral sacrifices are performed; but whenever we proceed in accordance with the stelae which this fellow has inscribed, many of the rites are neglected' (*Nicom.* 21).

In the second half of the fifth century special commissioners, *συγγραφεῖς*, were often at work preparing special reports, *συγγραφαί*. The surviving reports concerned with ritual were mentioned above—the Eleusinian first-fruits decree (*IG* i³ 78), and two instances which are obscure (*IG* i³ 135.3, 238.4). Other surviving reports are concerned with overseas administration (*IG* i³ 21, the regulations for Miletus) and with the repayment of Athena's money (*IG* i³ 99, 410/9 BC). More momentous reports than these have entered the literary tradition, reports which recommend large changes in Athenian government, or which counter change—the reports of 411 and 404 in favour of the Four Hundred and the Thirty ([Arist.] *Ath.* 29.2, 30.1, 31.1; Thuc. viii 67.1; Xen. *Hell.* ii 3.2), the report of 410 against subversion and tyranny (*Andoc. De myst.* 96). The cases of

¹⁰⁴ As Dow 1959, 17–18 remarked, there are monthly totals which must refer to all expenditures from all sources. Granting then that the sacrifices of the *kyrbeis* are included (n. 103), the front of the

joining stelae could not assist Lysias' argument or his witnesses at all, unless they were prepared to undertake the most painstaking collation of sums and sources.

the Four Hundred and the Thirty show that conservatives put great stock in such reports, i.e. in the guidance of experts: understandably so.

To be sure, special reports of one sort or another were common, and Lysias implies that they were as common in the ritual domain as elsewhere, much commoner than our evidence discloses. No doubt they were;¹⁰⁵ it would not be surprising if reports were called for whenever the ritual calendar was to be significantly changed—when the festival of Hephaestus was instituted or enlarged, when the cults of Bendis and Asclepius were introduced. Even so it is impossible to believe that people at large thought of such reports as a staple element of civic religion, as the next thing after the *kyrbeis*. After all, this bureaucratic procedure will not go much further back than our earliest evidence, round the mid century; there was much Athenian ritual later than the *kyrbeis* but earlier than any commissioners' report.

In short, to speak of the *syngraphai* as Lysias does, as forming a general criterion for the ritual calendar, is a peculiar notion. It must originate with Nicomachus' prosecutor. Yet the notion succeeded. For Lysias draws an invidious contrast between the *syngraphai* and 'the stelae which this fellow inscribed'; the stelae were soon erased, and the calendar which was inscribed instead exhibits the *syngraphai* beside the material from the *kyrbeis*.

Nicomachus and his prosecutor do not share the same political views. The prosecutor defends himself against the imputation of having been one of the Four Hundred (*Nicom.* 7–8). Nicomachus said this to the Council when the prosecutor first accused him; no doubt he will try the story on the jurors too. Nicomachus, we should remember, had the means of knowing this, since he was particularly versed in public records; and the Council had the means of checking it, since the records were close by. But the prosecutor reassures the jurors (who have no inkling of the records): this slander is so common that the Four Hundred must have been a thousand; they tell it of some who were babes at the time, or out of the country; so far from being one of the Four Hundred, he was not one of the Five Thousand (a question much harder to determine).

It is Nicomachus, says the prosecutor, who is an enemy of the people, ἐπιβουλεύσαντα τῶι πλήθει; the proof is that he furnished the law by which the Council sat with a jury to try Cleophon; Cleophon may have been a bad one, but those who killed him were worse (*Nicom.* 9–14). Nicomachus of course will describe himself as a man of the people, δημοτικός, who went into exile, scil. under the Thirty; but such things happen to everyone (*Nicom.* 15).

What can we believe? To form a truer estimate of both Nicomachus and his prosecutor we should recall that Nicomachus has served as *anagrapheus* continuously, save for the year of the Thirty, from 410 to 399; that throughout this period, month by month and year by year, he was not required to render any accounts at all, unlike every other office-holder (*Nicom.* 3–6);¹⁰⁶ that throughout this period Athens' democratic government was threatened by internal enemies and was therefore vigilant against them, and

¹⁰⁵ According to Stroud (n. 30) 28 n. 41, Lysias blames Nicomachus for omitting the *syngraphai*. But Lysias does not at all imply that Nicomachus omitted the *syngraphai*, no more than he implies this for the rites of the *kyrbeis* (n. 103); and a ritual text on the back of the joining stelae, IG i³ 238.4, shows that he did not omit them.

¹⁰⁶ Lysias says that in 404 affairs came to a crisis 'before this fellow was quit of his office and rendered account of what was done', πρὶν τοῦτον . . . τῶν πεπραγμένων εὐθύνας ὑποσχέιν (*Nicom.* 3); i.e., he did not render any account, though the prosecutor implies that, but for the crisis, he would have been sharply examined. Immediately afterward Lysias calls on the jurors of 399 to bring Nicomachus to book for both terms of office, because he was not brought to book for

the former term, ἐπειδὴ ἐκείνων δίκην οὐ δέδωκεν (*Nicom.* 4). Lysias has often, I think nearly always, been misunderstood. MacDowell, *The law in Classical Athens* (London 1978) 46, makes him say that Nicomachus 'underwent the normal examination . . . in 404'; similarly Harrison, *The law of Athens* ii (Oxford 1971) 211 n. 2; Clinton 1982, 28; Ostwald 1986, 511. According to Harrison, Nicomachus 'managed to avoid a εὐθύνα for a period of four years'. Since Nicomachus was re-appointed in 403 without being asked for a first-term accounting, the Athenians allowed him to continue unexamined for a full ten years. In saying 'managed to avoid' and in the tenor of his note Harrison accepts the prosecutor's malign insinuation, which is implausible in the last degree.

never more so than in 410, when Nicomachus' first term began, and in 403, when his second term began. It is obvious that Nicomachus was uniquely trusted by the supporters of democracy. The prosecutor knows that 'some persons, both among his friends and among those active in public affairs, τῶν τὰ τῆς πόλεως πραττόντων, are prepared to plead for him'; they have indeed already remonstrated with those attacking Nicomachus (*Nicom.* 31–5). No doubt Nicomachus served the longest of all the *anagrapheis*, and that is why he is now singled out for attack.¹⁰⁷

The prosecutor is conservative or reactionary. He is said to have been one of the Four Hundred; he insists on ancient custom, the *kyrbeis*, and on expert guidance, the *syngraphai*; he objects to freer spending on public festivity; he attacks Nicomachus. After such long extensive work, and in the total absence of any evident wrong-doing, the attack is unexpected, and shows the strength of conservative feeling at this time.

Nicomachus' career and its significance can be summarized as follows. In 410/9 he was appointed to 'transcribe the laws', i.e. to compile the scattered record of laws and decrees and other documents, probably with a view to stocking the central archive. His task continued, or perhaps it grew, year by year down to the fall of Athens in 404. The record thus compiled sometimes brought to light contradictions and uncertainties in the existing laws, which were then resolved by the bodies competent to do so, the Council and the Assembly. The results are seen in the publication of certain laws on stone—in the abbreviated law of Draco, in an amalgam of Council laws, in a larger amalgam of laws on public expenditure, especially ritual expenditure, which were brought together on the joining stela.

In 403 Nicomachus was put back in harness and went on till 399. But part of his earlier work now had unexpected consequences. For after years of austerity Athens began to spend more freely on her festivals; in 401–399 she spent too much, or so some observers thought. The texts authorizing this expenditure had been compiled by Nicomachus and inscribed on the joining stela. In 399 Nicomachus was charged with 'malfeasance' and the like; the prosecutor assailed this indiscriminate collection of texts, as he chose to regard it, and urged a return to ancestral custom and expert guidance, to the *kyrbeis* and the *syngraphai*.

The last chapter in the story as we know it is a victory for conservative feeling. Half the laws on expenditure which Nicomachus had compiled, the more conspicuous half on the front face of the joining stela, were completely erased, and the sacrificial laws which replaced them were confined to the *kyrbeis* and the *syngraphai*.¹⁰⁸

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¹⁰⁷ Dow 1960, 271 n. 1 thinks that 'rhetorical effectiveness demanded a single target'. It is hard to see why; often enough charges are preferred against several or all members of a board. Lysias' silence makes it virtually certain that none of the

other *anagrapheis* had been charged at any time.

¹⁰⁸ I am grateful to Professor D. M. Lewis for advice on some epigraphic points, and to Professor P. J. Rhodes for showing me a draft of a forthcoming paper on the same subject as mine.