

## THE ATHENIAN CODE OF LAWS, 410-399 B.C.<sup>1</sup>

### I. GENERAL PROBLEMS AND THE FIRST TERM (410-404)

Discussion of the problems must begin with the allegations made in Lysias' speech (XXX) *Against Nicomachus*:<sup>2</sup>

ἐπειδὴ δὲ τῶν νόμων ἀναγραφεὺς ἐγένετο, τίς οὐκ οἶδεν οἷα τὴν πόλιν ἐλυμήνατο; προσταχθὲν γὰρ αὐτῷ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος, ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν, ἀντὶ δὲ τεττάρων μηνῶν ἐξέτη τὴν ἀρχὴν ἐποίησατο, καθ' ἑκάστην δὲ ἡμέραν ἀργύριον λαμβάνων τοὺς μὲν ἐνέγραφε τοὺς δὲ ἐξήλειφεν. εἰς τοῦτο δὲ κατέστημεν, ὥστε ἐκ τῆς τούτου χειρὸς ἐταμιευόμεθα τοὺς νόμους καὶ οἱ ἀντίδικοι ἐπὶ τοῖς δικαστηρίοις ἐναντίους παρείχοντο, ἀμφοτέροι παρὰ Νικομάχου φάσκοντες εἰληφέναι. ἐπιβαλλόντων δὲ τῶν ἀρχόντων ἐπιβολὰς καὶ εἰσαγόντων εἰς τὸ δικαστήριον οὐκ ἠθέλησε παραδοῦναι τοὺς νόμους· ἀλλὰ πρότερον ἢ πόλις εἰς τὰς μεγίστας συμφορὰς κατέστη, πρὶν τοῦτον ἀπαλλαγῆναι τῆς ἀρχῆς καὶ τῶν πεπραγμένων εὐθύνας ὑποσχεῖν. καὶ γὰρ τοι, ὦ ἄνδρες δικασταί, ἐπειδὴ ἐκείνων δίκην οὐ δέδωκεν, ὁμοίαν καὶ νῦν τὴν ἀρχὴν κατεστήσατο, ὅστις πρῶτον μὲν τέτταρα ἔτη ἀνέγραψεν, ἐξὸν αὐτῷ τριάκοντα ἡμερῶν ἀπαλλαγῆναι· ἔπειτα διωρισμένον ἐξ ὧν ἔδει ἀναγράψαι, αὐτὸν ἀπάντων κύριον ἐποίησατο, καὶ ὅσα <οὐδεὶς πώποτε> διαχειρίσας μόνος οὗτος τῶν ἀρξάντων εὐθύνας οὐκ ἔδωκεν, ἀλλ' οἱ μὲν ἄλλοι τῆς αὐτῶν ἀρχῆς κατὰ πρυτανεῖαν λόγον ἀποφέρουσι, σὺ δέ, ὦ Νικόμαχε, οὐδὲ τεττάρων ἐτῶν ἡξίωσας ἐγγράψαι, ἀλλὰ μόνω σοὶ τῶν πολιτῶν ἐξεῖναι νομίζεις ἄρχειν πολὺν χρόνον, καὶ μήτε εὐθύνας διδόναι μήτε τοῖς ψηφίσμασι πείθεσθαι μήτε τῶν νόμων φροντίζειν, ἀλλὰ τὰ μὲν ἐγγράφεις τὰ δ' ἐξαλείφεις, καὶ εἰς τοῦτο ὕβρεως ἦκεις, ὥστε σαυτοῦ νομίζεις εἶναι τὰ τῆς πόλεως, αὐτὸς δημόσιος ὢν.

When he became writer-up (*anagrapheus*) of the laws (*nomoi*), who does not know how he defiled the city? His instructions were to write up the laws of Solon in four months, but he set himself up as a lawgiver (*nomothetes*) in the place of Solon, instead of four months he made his office last six years, and every day he was taking money to insert some laws and wipe out others. (3) We were brought to this point, that the laws were doled out to us by his hand, and opposing litigants in the courts would produce conflicting laws, each claiming to have received them from Nicomachus. When the archons tried to impose fines on him and to bring him to court, he refused to hand over the laws: the city was brought to the direst disaster before he could be removed from his office and made to submit to examination (*euthynai*) for what he had done. (4) And yet, gentlemen, after failing to pay the penalty for those offences, he has done the same thing with his present office. First, he has been writing up for four years, when he could have had done with it in thirty days. Next, when the

<sup>1</sup> Here I elaborate and justify views which I was able only to outline in §§ii-iii of my paper, 'Nomothesia in Classical Athens', in *L'educazione giuridica*, v.2 (Edizioni Scientifiche Italiane for Università degli Studi di Perugia and Consiglio Nazionale delle Ricerche, 1987) 5-26. I cite by short title D. M. MacDowell, *Andokides = Andokides on the Mysteries* (Oxford 1962); MacDowell, *Law = The law in classical Athens* (London 1978); P. J. Rhodes, *Comm. = A commentary on the Aristotelian Athenaion Politeia* (Oxford 1981). I cite by author's name M. Ostwald, *From popular sovereignty to the sovereignty of law* (Berkeley 1986); N. Robertson, *JHS* cx (1990) 43-75; R. Sealey, *The Athenian republic* (University Park, PA 1987). This paper was written during the academic year 1988/9, while I was enjoying the hospitality first of the University of New England, Armidale,

N.S.W., and then of the Institute for Advanced Study, Princeton, N.J. My travel was aided by a Fulbright scholarship. An advance copy of Robertson's paper reached me as I was starting work on mine: he has kindly allowed me to use it and has read a draft of mine; I draw attention to my major disagreements with him; on many other points we agree; but I have not attempted to chronicle every agreement and disagreement. I also thank M. Ostwald and H. A. Thompson for reading and commenting on my draft, and members of the University of New England for listening to and discussing a version of it.

<sup>2</sup> The authorship of the speeches attributed to Lysias is immaterial here. I refer to the author as Lysias, and except when otherwise indicated my citations are of this speech.

sources from which he was to write up had been specified, he gave himself full authority over everything. And, although he had handled such business as no one before him had done, he alone of all officials did not submit to examination: (5) the others present an account (*logos*) of their office each prytany, but you, Nicomachus, did not deign to make an entry for four years. You think that you alone of the citizens are free to hold office for a long time, without submitting to examination or obeying the decrees (*psephismata*) or paying heed to the laws. You insert some things and wipe out others, and you have reached such a pitch of insolence that you regard what belongs to the city as your own property, public slave though you are.

(§§2-5)

Later the prosecutor claims that he is accused by Nicomachus of 'impiety in abolishing sacrifices': this would be possible if the prosecutor were 'enacting laws about writing up', but he wants the city to perform 'the sacrifices from the *kyrbeis* and the *stelai* in accordance with the draft (τὰς θύσιας τὰς ἐκ τῶν κύρβεων καὶ τῶν στηλῶν<sup>3</sup> κατὰ τὰς συγγραφάς) (§17), whereas Nicomachus 'has written up more than he was ordered, and was responsible for the revenue's being spent on those, and for there being a shortfall in the traditional sacrifices': last year Nicomachus' additional sacrifices cost six talents, and three talents' worth of sacrifices in the *kyrbeis* had to be omitted (§§19-20).

Lysias' speech was written for the trial of Nicomachus, and except in one place it is aimed at Nicomachus alone; but in §28 a contrast is drawn between great men of the past and 'Tisamenus the son of Mechanion and Nicomachus and other under-secretary (*hypogrammateus*) persons'. Despite the tendency of some scholars to write of Nicomachus' law-code,<sup>4</sup> Nicomachus was surely one member of a board: in *IG* i<sup>3</sup> 104 (= M&L 86) 3-8, it is 'the *anagrapheis*' who receive the homicide law for publication. Members of the same board in Athens were regularly equal in power:<sup>5</sup> Nicomachus may not have been the only member to be prosecuted, or he may have been singled out for prosecution because of a private enmity between him and the prosecutor; we are not justified in asserting even that he was the most important member of the board.

The title of the office must have been writer-up (*anagrapheus*) of the laws. That is the title found in *IG* i<sup>3</sup> 104, and it is the first label used by Lysias: he calls Nicomachus *nomothetes* only when alleging that he arrogated to himself the powers of Solon (§§2, 27, 28), and we have no reason to think that Nicomachus and his colleagues ever bore the title *nomothetes*.<sup>6</sup>

For Nicomachus' term of office, Lysias' counting is surely inclusive: the first six years are the six years of democracy, 410/09-405/4; the subsequent four years are the first four years of the restored democracy, 403/2-400/399.<sup>7</sup> Thucydides viii 97. 2 writes that after the institution of the intermediate régime of 411/0 the Athenians 'voted for *nomothetai* and the other things for the constitution' (νομοθέτας καὶ τὰλλα ἐψηφίσαντο ἐς τὴν πολιτείαν), and Ostwald has argued that it was at that point that the work in which Nicomachus was involved began: he takes *nomothetai* to be Thucydides' own term for the various *syngrapheis* and *anagrapheis* of the late fifth century, and supposes that Nicomachus served for four months at the end of the intermediate régime and was

<sup>3</sup> στηλῶν Taylor, generally accepted: the manuscripts have εὔπλων or ὄπλων.

<sup>4</sup> E.g. the titles of the articles by S. Dow, *Hesp.* xxx (1961) 58-73; A. Fingarette, *Hesp.* xl (1971) 330-5. The question is raised by Dow, *Hist.* ix (1960) 271 n.1; Ostwald, 418 n.24, wonders if Nicomachus sometimes acted alone.

<sup>5</sup> The classic demonstration is by K. J. Dover,

*JHS* lxxx (1960) 61-77: it is not invalidated by E. F. Bloedow, *Chiron* xi (1981) 65-72.

<sup>6</sup> Sealey, 36, considers the possibility that Nicomachus bore the title *nomothetes* in the second term.

<sup>7</sup> In *Hist.* ix (1960) Dow argued for 411/0-404/3 (p.271) but 403/2-400/399 (p.272). Ostwald, 407 n.249, argues for 411/0-405/4.

reappointed under the democracy;<sup>8</sup> but I think he is mistaken to combine various boards of *syngrapheis* with the *anagrapheis* in a single operation,<sup>9</sup> and as one who believes that there was a clear distinction between the intermediate régime and the restored democracy<sup>10</sup> I do not suppose that the democracy would have taken over the intermediate régime's legislative activity.

Lysias alleges that the *anagrapheis'* instructions in their first term were to complete their task in four months, and that in the second term the task could have been completed in thirty days. Except when a regular succession was envisaged, the Athenians did not normally make appointments for a fixed term of less than a year, and extraordinary appointments tended not to have a time limit set on them: it is widely and surely rightly accepted that neither the four months nor the thirty days were specified in the formal terms of appointment.<sup>11</sup> It may be, however, that Lysias is not simply inventing, but that on each occasion there was an expectation, which proved false, that the job could be done quickly.

Nicomachus never submitted to *euthynai* in the six years of his first term, and he served for four years without submitting to *euthynai* in his second.<sup>12</sup> Powers of enforcement were weak in Athens, but it is hardly conceivable that a man who was required to submit to *euthynai* each year, perhaps even to present interim accounts each prytany (for normal practice cf. *Ath. Pol.* 48. 3-5, 54.2), would be allowed to remain in office so long without satisfying these requirements. If on each occasion the term of office was not defined, but was expected to be short, it is likely that the conditions of appointment referred simply to *euthynai* on laying down office. The first term will have been interrupted by the overthrow of the democracy in 404 (probably that was after the end of 405/4 according to the regular calendar, but no democratic archon was appointed for 404/3<sup>13</sup>); on the restoration of the democracy in 403/2 it would have been inconsistent with the state's fresh start to require *euthynai* for the *anagrapheis* or for any other men who were holding office at the time when the democracy was overthrown; during or at the end of 400/399 Nicomachus and his colleagues laid down their office and submitted to *euthynai*.<sup>14</sup> Lysias' allegation in §3 that during the first term the archons tried to impose fines on Nicomachus and bring him to court may be false.

But the most important questions, and the hardest to answer, are precisely what the *anagrapheis* were intended to do, and what they did do, in their two terms of office. Lysias gives the instructions for the first term as 'to write up the laws of Solon'. A separate decree, in 409/8, ordered the *anagrapheis*, together with the secretary of the council, to 'take over from the basileus Draco's law about homicide, and write it up on a stone *stèle* in front of the Stoa of the Basileus' (*IG* i<sup>3</sup> 104.4-7); another inscription contains a collection of laws about the council of five hundred, which cannot be earlier than the transformation by Cleisthenes of Solon's four hundred into the five hundred and, in the case of some items, the acquisition by the five hundred of judicial powers (*IG* i<sup>3</sup> 105). Finally there are fragments of a connected series of *stelai*, inscribed on both sides:

<sup>8</sup> Ostwald, 406-10, cf. 379-80, 414-9. That interpretation of Thucydides is found in E. S. Shuckburgh, *Lysiae orationes XVI* (London 1893) 336.

<sup>9</sup> On *syngrapheis* see below, p.92.

<sup>10</sup> See Rhodes, *JHS* xcii (1972) 115-27; also A. Andrewes in A. W. Gomme et al., *A historical commentary on Thucydides*, v (Oxford 1981) 323-8; against, G. E. M. de Ste Croix, *Hist.* v (1956) 1-23; Sealey, *Essays in Greek politics* (New York 1967) 111-32, *CSCA* viii (1975) 271-95.

<sup>11</sup> But on the four months see A. R. W. Harrison, *JHS* lxxv (1955) 30; Ostwald, *loc. cit.* (n.8);

Sealey, 45-6; and on the thirty days see Ostwald 122, 520 n.83.

<sup>12</sup> Many have inferred, presumably from Lys. §3 and I believe mistakenly, that Nicomachus did submit to and pass his *euthynai* for the first term, either in 404 (e.g. MacDowell, *Law* 46) or in 403 (e.g. Ostwald, 511). Ostwald 122 suggests that he was excused annual *euthynai*.

<sup>13</sup> See Rhodes, *Comm.* 436-7.

<sup>14</sup> The title of the speech in the manuscripts includes the words εὐθυῶν κατηγορία, but little reliance can be placed on these titles.

on what appears to be the principal side, to be discussed below (pp. 93–5), whatever had originally been inscribed was erased, and in its place a calendar of sacrifices was inscribed, in the Ionian alphabet; on the other side, inscribed in the old Athenian alphabet so presumably before 403/2,<sup>15</sup> we have a naval law recent enough to refer to trierarchs and ‘the *dikasterion*’, a law about taxes (?) which refers to the two kinds of overseas settlement known as *apoikiai* and *klerouchiai* and to the second prytany of the year, and a calendar of sacrifices (*IG* i<sup>3</sup> 236–41). The *anagrapheis* seem therefore to have been concerned in their first term not only with Solon’s laws but also with Draco’s homicide law and (if they were responsible for all these inscribed texts) with some more recent laws.

It is a notorious fact that in fourth-century Athens the current law on homicide was attributed to Draco and the rest of the current body of laws could be attributed to Solon, even in cases where a law was demonstrably much more recent than the time of Solon;<sup>16</sup> and so it is sometimes assumed that what the *anagrapheis* were actually expected to do was to produce a complete collection of all the laws currently valid in Athens.<sup>17</sup> Draco’s homicide law was to be published ‘in front of the Stoa of the Basileus’, and Andocides says that the Athenians voted ‘to write up in the Stoa’ laws approved after the restoration of the democracy in 403 (*And. i Myst.* 82), so it has normally been believed that all the texts collected in the first term were to be published in or very near to the Stoa of the Basileus.<sup>18</sup> However, K. Clinton has calculated that there would not have been room to publish in the Stoa of the Basileus all the laws that were currently valid. He emphasises the wording of a law of Diocles,

τοὺς νόμους τοὺς πρὸ Ἐυκλείδου τεθέντας ἐν δημοκρατίᾳ καὶ ὅσοι ἐπ’ Ἐυκλείδου ἐτέθησαν καὶ εἰσὶν ἀναγεγραμμένοι, κυρίου εἶναι

The laws enacted under the democracy before the archonship of Euclides (403/2), and those which were enacted in the archonship of Euclides and have been written up, shall be valid (*ap. Dem.* xxiv *Tim.* 42);

and, noting that grammatically ‘and have been written up’ applies only to the laws enacted in 403/2, he argues that the *anagrapheis* were not intended in their first term to republish all the laws that were currently valid. He therefore returns to the view of J. H. Oliver that their remit covered the homicide law of Draco and the laws of Solon as modified by subsequent decrees, but did not extend to any measures which neither formed part of nor modified the laws of Draco and Solon.<sup>19</sup> However, Athenian laws were not always impeccably drafted, and I doubt if Diocles did mean to imply that laws enacted under the democracy before 403/2 were to be valid whether they had been written up or not. If there was not room for all the valid laws, that may have been because there were more valid laws than was originally supposed, and we do not know how the problem was dealt with when it became apparent: I prefer to believe, with

<sup>15</sup> In fact Ionian spellings occur before 403/2 and Athenian spellings survive after, but officially Athens adopted the Ionian alphabet on the restoration of the democracy in that year (*Theop. FG<sup>+</sup>H* 115 F 155, *cf.* F 154). The difference between the texts on the two faces is clear, and it is widely accepted that the texts in the Athenian alphabet were inscribed before 403/2.

<sup>16</sup> See J. C. S. Schreiner, *De corpore iuris Atheniensium* (diss. Bonn 1931). Most strikingly, *And. i Myst.* 95–6 writes in the year 400 of a decree of 410 as a ‘law of Solon’ (K. Clinton, *Hesp. Supp.* xix [1982] 29 n.10, suggests that it was ‘Solonian’

because included in the revised Solonian code of 403/2; Ostwald, 415, suggests that the attribution would not have given offence because the decree perpetuated the ‘traditional constitution’ of Solon).

<sup>17</sup> E.g. MacDowell, *Law* 47 (of the second term: for the first term he writes of ‘the laws of Solon and Drakon’ in inverted commas, without giving an explicit interpretation of the phrase).

<sup>18</sup> The argument is spelled out by Ostwald, 513 n.60, 519.

<sup>19</sup> Clinton, *Hesp. Supp.* xix (1982) 27–37; Oliver, *Hesp.* iv (1935) 5–32 at p.7.

MacDowell,<sup>20</sup> that by 'the laws enacted under the democracy before the archonship of Euclides' Diocles meant the laws collected and published by the *anagrapheis* in their first term.

The most recent suggestion, by Robertson, is that the *anagrapheis* were ordered not to publish a complete code of laws in one place but to transcribe for the new central archive 'all Athenian enactments of abiding interest'. Publication was a separate matter; only the decree of 409/8 to publish the homicide law refers to the Stoa of the Basileus, and trials for homicide were the responsibility of the basileus (e.g. *Ath. Pol.* 57. 3-4), so not every text which was published need to have been published in the same place.<sup>21</sup> The connected series of *stelai* Robertson thinks was set up as a screen wall in South Stoa I, and that may (but need not) be 'the Stoa' of Andocides.<sup>22</sup> I do not think the case for a separation of publication from compilation has been made out (*cf.* below, pp.92-3). The Stoa of the Basileus became, perhaps in the time of Ephialtes, the home of the *kyrbeis* or *axones* on which the laws of Draco and Solon had originally been inscribed.<sup>23</sup> It would therefore have been natural, when the laws were being systematically reviewed for the first time since Solon, to put the new collection of texts, and not only those which were the direct concern of the basileus, in what had become the repository of the laws, and the usual view that all the texts collected by the *anagrapheis* were intended to be published in or near the Stoa of the Basileus is to be preferred.

I suspect that the *anagrapheis* were given a task whose nature was not at first fully thought out but was gradually clarified as questions came to be asked and answered. Originally, perhaps, they were instructed simply 'to write up the laws of Solon'. Fairly soon, it was decided that they should not include laws or parts of laws that had become obsolete; in 409/8 it was decided that they should include the homicide law of Draco, or rather the part of it that had not been superseded by more recent measures (whether we translate them 'and if' or 'even if', I am not one of those who can persuade themselves that the words *καὶ εἰ* were the first words of Draco's homicide law<sup>24</sup>). It was evidently decided that at any rate some laws enacted since the time of Solon should be included, and I suggest that, once it had evolved, the intention was that all currently valid written laws were to be inscribed which applied to the whole community of Athenian citizens. The calendar of sacrifices will have formed a part of this, in so far as the sacrifices were considered to be the responsibility of the whole community, and it will not have been a distinct entity but will have been incorporated in the code of *nomoi*:<sup>25</sup> sacrifices which are characterised as 'from the *kyrbeis*' (Lys. §§17-20)<sup>26</sup> are likely to have been prescribed in the *kyrbeis* of Solon; the meaning of the word *nomos* can certainly cover prescriptions of that kind as well as 'laws' in a narrower sense.

From 403/2 Athens was to have a formal distinction between laws (*nomoi*), enacted by *nomothetai*, and decrees (*psephismata*), enacted by the council and assembly.<sup>27</sup> Before then, however, there was no formal distinction: since the legislative activity of Draco and Solon, decrees of the council and assembly had been the only method available for

<sup>20</sup> MacDowell, *Andokides* 197; *Law* 47.

<sup>21</sup> On this point *cf.* Ostwald 519-20 n.82.

<sup>22</sup> Robertson, 52-60. H. A. Thompson tells me that the floor of South Stoa I is well preserved and has no trace of beddings for *stelai*.

<sup>23</sup> Subsequent discussion has not undermined my belief in what I wrote in *Comm.* 131-5.

<sup>24</sup> Contrast, e.g., R. S. Stroud, *Drakon's law on homicide* (Berkeley 1968) 34-40; M. Gagarin, *Drakon and early Athenian homicide law* (New Haven 1981) 65-100.

<sup>25</sup> Contrast Dow, *Hist.* ix (1960) 273 n.2; MacDowell, *Andokides* 197-8, *Law* 47-8; Clinton, *Hesp. Supp.* xix (1982) 34.

<sup>26</sup> 'From the *kyrbeis*' is not among the rubrics preserved in the epigraphic fragments, but 'from those of the *phylobasileis*' (ἐκ τῶν φυλοβασιλικῶν) occurs in *IG* ii<sup>2</sup> 1357, a, 6-7; *Hesp.* iv (1935) 5-32 no. 2, 33-4, 45-6; *Hesp.* x (1941) 31-7 no. 2, 44-5; and Robertson rightly argues that these are likely to be ancient sacrifices prescribed in Solon's laws.

<sup>27</sup> *Cf.* below, p.97 with n.45.

enacting measures binding on the whole community, and measures thus enacted could be referred to either as *nomoi*, to emphasise that they were part of Athens' body of law, or as *psephismata*, to emphasise the way in which they had been enacted. Once it was decided that the *anagrapheis* should look at more recent enactments as well as the laws of Draco and Solon, they could reasonably be expected to concern themselves with all decrees which were intended to be permanently binding on the community; but decrees which embodied a decision to do a particular thing on one particular occasion had served their purpose once the thing had been done, and the *anagrapheis* would presumably not be interested in them.

Nor should I expect the *anagrapheis* to have included in their collection the laws of phratries, demes and other bodies within the community, which applied not to the whole citizen community but only to the body in question. Again, they are not likely to have included 'unwritten laws', whether the general principles of conduct envisaged in Pericles' funeral speech (Thuc. ii 37. 3) or oral traditions such as the 'traditional law' (*patrios nomos*) of the Eleusinian cult which, still unwritten, was to be invoked later against Andocides (And. i *Myst.* 110-6, cf. Lys. vi *And.* 10): there was no need to commit to writing at this stage what had not been committed to writing in the past, and to attempt to do it would give the *anagrapheis* dangerously wide discretion.

These *anagrapheis* were not like the *anagrapheis* appointed after the assembly at Colonus in 411 (*Ath. Pol.* 30-32.1). They were not leading citizens but secretaries (the addition of *hypo-* to *grammateus* in Lys. §§27-8 is no doubt simply derogatory; the description of Nicomachus as a public slave in §5 is an extension of the claim in §2 that his father had been a public slave). They were intended not to enact new laws, or even to propose new laws for enactment, but simply to make a collection of the laws that were currently valid; but in a state which did not keep efficient records it no doubt proved difficult to discover all the laws that were currently valid, and someone who had not taken part in the work could easily accuse the *anagrapheis* of 'inserting some laws and wiping out others' (Lys. §2). Ostwald suggests that boards of *syngrapheis* were required 'to collect facts and materials . . . and then weld them into a coherent whole', while the *anagrapheis*, men of inferior status, 'were entrusted with the final preparation of texts of laws already validated and with their publication'.<sup>28</sup> He arrives at this position by combining all references to *syngrapheis* in the late fifth century, beginning with the board which paved the way for the régime of the Four Hundred (Thuc. viii 67, *Ath. Pol.* 29.2-30.1); but as far as we know *syngrapheis* were regularly, as in that case, drafting committees for new legislation, appointed *ad hoc* to do a single job.<sup>29</sup> *Syngrapheis* were used during the period 410-404, but there is no evidence that they were used to collect laws enacted previously.<sup>30</sup>

Robertson, stressing that the *anagrapheis* were low-grade functionaries who would not have been given more than a low-grade job, argues that they were required merely to collect laws, not to publish them without further validation. Publication in permanent form is not necessarily implied by the words *anagrapheus* and *anagraphein*; in Tisamenus' decree of 403 he takes 'written up on the wall . . . for whoever wishes to inspect' (ἀναγράφειν εἰς τὸν τοῖχον . . . σκοπεῖν τῷ βουλομένῳ) (*ap.* And. i *Myst.* 84) to refer to temporary publication of new laws as they were enacted, prior to final publication; and he suggests that in their earlier term too the *anagrapheis* simply collected texts, which might contain obsolete or incompatible clauses, on which the council and

<sup>28</sup> Ostwald 415-8.

<sup>29</sup> Rhodes, *The Athenian boule* (Oxford 1972) 267 table E. The *anagrapheis* of *Ath. Pol.* 30-32.1 were given work that was otherwise done by *syngrapheis*: *Ath. Pol.* uses only the verb

(*anagraphein*); we cannot be sure whether that is the term that was used in 411.

<sup>30</sup> *ATL* D9 = *IG* i<sup>3</sup> 99; *SEG* x 123 = *IG* i<sup>3</sup> 135; also the decree *ap.* And. i *Myst.* 96-8 (τάδε Δημόφαντος συνέγραψεν).

assembly would then have to make up their minds.<sup>31</sup> That last sentence of Tisamenus' decree will be discussed below (pp.98-9), but there is in any case an important difference between Tisamenus' decree and what we know of the earlier term: Tisamenus' decree is concerned with the enactment of new laws, which naturally would need to be properly validated before final publication, but in 410-404, though some new laws were enacted (such as the law requiring members of the council to sit in the seats assigned to them: Phil. *FGrH* 328 F 140), that appears to have been done in the normal course of events and not to have formed a part of the operation in which the *anagrapheis* were involved. Probably it was assumed that secretaries burrowing in the records would be able to discover which were the currently valid laws, and that these, being valid already, could be published without more ado: there is no evidence that validation was required or occurred in the first term, and in *IG* i<sup>3</sup> 104 we have evidence for permanent publication by the *anagrapheis* of what Robertson<sup>32</sup> like me believes to be only a part of Draco's original homicide law.

In their first term, then, I believe that the *anagrapheis*, men of secretarial status, were originally ordered to republish the laws of Solon, and it was eventually decided that this meant they were to find and republish all currently valid written laws which applied to the whole community of Athenian citizens. As thus defined, the job was by no means short and simple, but outsiders who lacked an intimate knowledge of the material might well feel that the *anagrapheis* were taking too long, and were wilfully suppressing familiar laws and introducing unfamiliar ones. The work was still incomplete when it was brought to a premature end by the overthrow of the democracy in 404.

## II. THE INTERLUDE OF THE THIRTY (404-403) AND THE CALENDAR OF SACRIFICES

According to Xen. *Hell.* ii 3.2 the Thirty were appointed 'to draft the traditional laws in accordance with which the *polis* should be run' (οἱ τοὺς πατρίους νόμους συγγράψουσι καθ' οὓς πολιτεύσουσι); according to *Ath. Pol.* 35. 1-2 they appointed a council of five hundred and other officials, and (at any rate initially) they declared that their objective was the traditional constitution (*patrios politeia*), and embarked on a legal reform which included annulling the laws of Ephialtes and Arcestratus about the Areopagus and removing from Solon's laws clauses which were held to leave room for dispute and therefore to give discretion to jurors. Two laws concerning the body of three thousand who were to have some political rights are mentioned in *Ath. Pol.* 37. 2, and in Xen. *Hell.* ii 3.51 Critias refers to one of these as 'among the new laws' (ἐν τοῖς καινοῖς νόμοις).<sup>33</sup>

It is usually believed that the régime of the Thirty had some effect on the connected series of *stelai*, whose principal face contains a calendar of sacrifices inscribed in the Ionian alphabet in an erasure, and whose other face contains laws and a calendar of

<sup>31</sup> Robertson, 46-9, 52-6. §2 accuses Nicomachus of inserting (*engraphēin*) and wiping out (*exaleiphein*) laws, and Robertson, 55, stresses that these words were used especially of altering temporary records. However, they would be appropriate also for altering texts found in the archives rather than on *stelai*, and in any case an extended use was possible. In Lys. i *Caed. Erat.* 48 *exaleiphein* is used of deleting currently valid laws to enact new ones; Lys. vi *And.* 8 offers Athens the alternatives of wiping out the laws and getting rid of Andocides; *And.* i *Myst.* 76 uses *exaleiphein* of

destroying decrees and any copies that may exist (*cf.* §103, but decree *ap.* 79 refers rather to records which are unlikely to have been inscribed on stone). *Engraphēin* is not used elsewhere in the speeches attributed to Andocides or Lysias.

<sup>32</sup> Robertson 55.

<sup>33</sup> Other texts which refer to revision or enactment of laws by the Thirty are Xen. *Mem.* i 2.31; Dem. xxiv *Tim.* 90; Dio Chr. xxi 3; schol. Aesch. i *Tim.* 33. We have epigraphic evidence for their destroying a number of honorific decrees: e.g. *IG* ii<sup>2</sup> 6 = Tod 98.

sacrifices inscribed in the old Athenian alphabet (*cf.* above, p.90). It was originally suggested by Oliver that what may be called the Athenian texts belong to the *anagrapheis*' first term and the Ionian to their second.<sup>34</sup> E. Ruschenbusch, inferring from Lysias that most of the work of the first term remained unpublished, thought that the Athenian texts were published by the Thirty after they had reviewed the work of the first term.<sup>35</sup> S. Dow announced the discovery of the erasure, and of the likelihood that from the beginning the face with the erasure and the Ionian texts was intended to be the principal face.<sup>36</sup> Since then it has been suggested by A. Fingarette that the texts of the first term were begun on the principal face and overflowed on to the other, that the principal face was erased by the Thirty, and in the second term the principal face was reinscribed and the other was intended not to be seen;<sup>37</sup> by Clinton that the original texts on the principal face replaced *stelai* such as *IG* i<sup>3</sup> 104 and 105, but were still inscribed before the end of the first term, and that the erasure was made not by the Thirty but by the restored democracy of 403;<sup>38</sup> by Robertson that the original texts were inscribed in the first term but the erasure and the Ionian texts belong not to the *anagrapheis* in their second term but to the reaction against the *anagrapheis* after their second term.<sup>39</sup>

Lysias §3 implies that the *anagrapheis* did not complete their work in the first term, but I doubt if we can follow Ruschenbusch in concluding that they published virtually nothing during the first term or in believing that the Thirty did accomplish a major programme of publishing laws. Robertson argues that the surviving rubrics in the Ionian texts reflect not the kind of calendar which Lysias accuses Nicomachus of producing but rather the more traditional kind of calendar which Lysias' own speech advocates;<sup>40</sup> the speech does not mention an erasure that has already been made, but does mention (§21) Nicomachus' offer to have objectionable sacrifices erased; accordingly he believes that the attack on Nicomachus was successful, and that the calendar drawn up by the *anagrapheis* was afterwards repudiated and replaced by a more traditional calendar. Here the problem is that on one side we have Lysias' accusations, and do not know how fair they are; on the other we have limited fragments of what was originally a very extensive text, and do not know how representative of the complete text the surviving rubrics are. I think we can accept from Lysias that the calendar which the *anagrapheis* finally produced required more expenditure than Athens in the immediate post-war years could afford; we can probably infer that they worked on the calendar of sacrifices in their second term,<sup>41</sup> and from §4 that, after experience in solving problems as they arose in the first term, the *anagrapheis* were given a list of sources from which to work in the second. That Nicomachus departed from his instructions, in the second term as in the first, is an accusation which could easily be made by an outsider who had not himself worked on the material and was displeased with the result, but may not have been justified.

<sup>34</sup> *Hesp.* iv (1935) 8-9. For fragments of the Ionian texts see *IG* ii<sup>2</sup> 1357; *Hesp.* iii (1934) 46 no. 34; iv (1935) 5-32 no. 2; x (1941) 31-7 no. 2.

<sup>35</sup> *Hist.* v (1956) 123-8.

<sup>36</sup> *Hesp.* xxx (1961) 58-73.

<sup>37</sup> *Hesp.* xl (1971) 370-5.

<sup>38</sup> *Hesp. Supp.* xix (1982) 32, 35.

<sup>39</sup> Robertson 65-75.

<sup>40</sup> For one of the rubrics, in *Hesp.* iv (1935) 5-32 no. 2, 77, where Oliver restored 'from the *symbolai*' (ἐκ τῶν συμβολῶν) and Dow (*Proc. Mass. Hist. Soc.* lxxi [1953-7] 16, 18-20) 'from the *stelai*' (ἐκ τῶν στῆλῶν), Robertson 68-70, prefers 'from the

*syngraphai*' (ἐκ τῶν συγγραφῶν)], comparing Lys. §§17, 21. C. Habicht and I have examined the squeeze and photographs at the Institute for Advanced Study: to the right of the *sigma* the surface of the stone has been lost, and there is no trace which can reliably be recognised as part of a letter. On the restoration see below, p.95.

<sup>41</sup> But I grant Robertson that Lysias directly states only that in the second term the sources to be used were specified (§4) and that it was after 403/2 that the state was unable to afford all the *anagrapheis*' sacrifices (§§19-22).



It remains the best and most economical view that the Ionian texts, which cite their sources and have been inscribed in the erasure, are the work of the *anagrapheis* in their second term. The Thirty may not have gone far in the enactment and publication of new laws, except to suit their particular political purposes, but they undoubtedly annulled some old laws. Possibly Fingarette is right to attribute the erasure to them; but, since the erasure was used for a new calendar of sacrifices in the second term, it is probably better to believe with Clinton that the erasure was made at the beginning of the second term to make room for the new calendar.

What are the *syngraphai* referred to by Lysias and restored at one point in the inscription by Robertson? Lysias claims that Athens ought to perform 'the sacrifices from the *kyrbeis* and the *stelai* in accordance with the *syngraphai*' (τὰς θυσίας τὰς ἐκ τῶν κύρβεων καὶ τῶν στηλῶν κατὰ τὰς συγγραφάς) (§17); he slides to references to our ancestors' sacrificing 'from the *kyrbeis*' or 'in accordance with tradition' (§§18-20); and he finally shifts *stelai* to the other scale of the balance, saying, 'When we act in accordance with the *syngraphai* all the traditional sacrifices are performed, but when we follow the *stelai* written up by this man many of the rites are abolished' (§21). *Syngraphai* should denote a draft presented to the assembly for approval, in this case presumably the decree which ordered the *anagrapheis* to revise the sacrificial calendar and which specified the sources to be followed. I suspect that §17 is correct, and the sources specified included both the *kyrbeis* of Solon and *stelai* on which more recent enactments had been published; Lysias then conveniently forgets that the *syngraphai* mentioned *stelai* as well as *kyrbeis*, and alleges that the *stelai* of Nicomachus went beyond what was authorised by the *syngraphai*. *Syngraphai* are not a separate source, but the draft of the decree which specified the sources, so in the inscription, whether or not we claim to read the second letter of the word, Dow's reference to *stelai* is a better reconstruction than Robertson's reference to *syngraphai*.

### III. THE SECOND TERM (403-399)

In their first term the *anagrapheis* attempted to publish, but did not finish, a complete collection of currently valid written laws which applied to the whole community, including a calendar of sacrifices; the régime of the Thirty annulled some laws; under that régime, or more probably on the restoration of the democracy, some of the texts published in the first term were erased. On the restoration of the democracy, it appears from Lysias, the *anagrapheis* were reappointed, the sources which they were to use were specified, and the resumed work took four years.

A very different picture is given in Andocides' speech (i) *On the Mysteries*. Extended quotation is again necessary:

ἐπειδὴ δ' ἐπανήλθετε ἐκ Πειραιέως, . . . εἴλεσθε ἄνδρας εἴκοσι· τούτους δὲ ἐπιμελεῖσθαι τῆς πόλεως, ἕως ἄλλοι νόμοι τεθεῖεν· τῶν δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς. ἐπειδὴ δὲ βουλὴν τε ἀπεκληρώσατε νομοθέτας τε εἴλεσθε, εὕρισκον τῶν νομῶν τῶν τε Σόλωνος καὶ τῶν Δράκοντος πολλοὺς ὄντας οἷς πολλοὶ τῶν πολιτῶν ἔνοχοι ἦσαν τῶν πρότερον ἕνεκα γενομένων. ἐκκλησίαν ποιήσαντες ἐβουλεύσασθε περὶ αὐτῶν, καὶ ἐψηφίσασθε, δοκιμάσαντες πάντας τοὺς νόμους, εἴτ' ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἂν δοκιμασθῶσι. καὶ μοι ἀναγνώθι τὸ ψήφισμα,

<ΨΗΦΙΣΜΑ.> Ἔδοξε τῷ δήμῳ, Τεισαμενὸς εἶπε· πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς, χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ. ὁπόσων δ' ἂν προσδέη, ἴοιδε† ἡρημένοι νομοθέται ὑπὸ τῆς βουλῆς ἀναγραφέντας ἐν σανίσιν ἐκτιθέντων πρὸς τοὺς ἐπωνύμους σκοπεῖν τῷ βουλομένῳ, καὶ παραδιδόντων ταῖς ἀρχαῖς ἐν τῷδε τῷ

μηνί. τοὺς δὲ παραδιδόμενους νόμους δοκιμασάτω πρότερον ἢ βουλή καὶ οἱ νομοθέται οἱ πεντακόσιοι, οὓς οἱ δημόται εἶλοντο, ἐπειδὴν ὁμωμόκωσιν· ἐξεῖναι δὲ καὶ ἰδιώτη τῶν βουλομένων εἰσιόντι εἰς τὴν βουλήν συμβουλεύειν ὃ τι ἂν ἀγαθὸν ἔχη περὶ τῶν νόμων. ἐπειδὴν δὲ τεθῶσιν οἱ νόμοι, ἐπιμελείσθω ἡ βουλή ἢ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται. τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περὶ πρότερον ἀνεγράφησαν, σκοπεῖν τῶν βουλομένων.

Ἐδοκιμάσθησαν μὲν οὖν οἱ νόμοι, ὧ ἄνδρες, κατὰ τὸ ψήφισμα τουτί, τοὺς δὲ κυρωθέντας ἀνέγραψαν εἰς τὴν στοάν.

When you had returned from the Piraeus, . . . you appointed twenty men: they were to take charge of the *polis* until other laws should be enacted; meanwhile you were to use the laws of Solon and the ordinances of Draco. (82) When you had allotted a council and had appointed *nomothetai* (law-givers), they discovered that there were many of the laws of Solon and Draco to which many of the citizens were liable on account of what had been done previously. You held an assembly and debated the matter, and you decreed that all the laws should be vetted, and then those of the laws that were vetted and approved should be written up in the Stoa. Read me the decree.

(83) DECREE. Resolved by the people; Tisamenus proposed: The Athenians shall run their *polis* in accordance with tradition. They shall use the laws of Solon, and his measures and weights, and shall also use the ordinances of Draco which we used in time past. Whatever is needed in addition, the (?) *nomothetai* appointed by the council shall write up on boards and shall set out in front of the tribal heroes for whoever wishes to inspect, and shall hand over to the authorities in the course of this month. (84) The laws that are handed over shall first be vetted by the council and the five hundred *nomothetai* appointed by the members of the demes, after they have sworn their oath. It shall also be permitted to any private individual who wishes to go in to the council and give what good advice he can about the laws. When the laws have been enacted, the council of the Areopagus shall take charge of the laws, so that the authorities shall use the laws that are in force. The laws that are being ratified shall be written up on the wall, where they were written up before, for whoever wishes to inspect.

(85) So, gentlemen, the laws were vetted in accordance with this decree, and those that had been vetted they wrote up in the Stoa.

Andocides then proceeds to quote some supplementary laws:

- (a) ἀγράφω δὲ νόμω τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἑνός.
  - (b) ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι.
  - (c) μηδὲ ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι, ἔαν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις, ἔαν μὴ ἑξακισχιλίοις δόξῃ κρύβδην ψηφίζομένοις.
  - (d) τὰς δὲ δίκας καὶ τὰς διαίτας κυρίας εἶναι, ὅποσαι ἐν δημοκρατουμένῃ τῇ πόλει ἐγένοντο.
  - (e) τοῖς δὲ νόμοις χρῆσθαι ἀπ' Ἐυκλείδου ἄρχοντος.
- (a) The authorities shall not use an unwritten law, no, not concerning any single matter.
  - (b) No decree, either of the council or of the people, shall have greater force than a law.
  - (c) It shall not be permitted to enact a law for an individual, unless the same is enacted for all Athenians, unless it is resolved by six thousand in a secret ballot.
  - (d) Judgments and arbitrations which were delivered while the *polis* was under democracy shall be valid.
  - (e) The laws are to be enforced as from the archonship of Euclides (403/2).

(§87: the first also in §85)

There is no indication in Andocides that any work on the laws had been done earlier than 403/2, but it suits his own case to stress the completeness of Athens' fresh start in that year. Tisamenus is presumably Tisamenus the son of Mechanion, mentioned as a man like Nicomachus, presumably a colleague of his, in Lys. §28. Probably, as MacDowell suggests, we should rely more on the text of his decree than on Andocides' commentary on it: Athens is to use the laws of Solon and Draco, that is, the body of currently valid law which the *anagrapheis* were compiling between 410 and 404; and what is envisaged by Tisamenus, as opposed to Andocides, is not that all those laws must be reconsidered and some may be rejected, but that to make the amnesty of 403/2 work some additional laws may be needed.<sup>42</sup>

The supplementary laws quoted by Andocides make sense as measures intended to secure the way in which the code as finally approved is to be applied in the circumstances of 403/2 and after. (a) No 'unwritten law' is to be used. This surely is not intended to rule out the general moral principles of Pericles' funeral oration, but it is intended to rule out such items as the unwritten 'traditional law' of the Eleusinian cult cited by Callias in And. §§115-6: the authorities are not to use any law which purports to be part of the code but has not been written up as part of the code.<sup>43</sup> (d) Legal decisions given in the past under the democracy are to remain valid, even if given in accordance with laws which are not incorporated in the code finally approved in and after 403/2, but decisions given under oligarchic régimes are to be invalid. (e) The code finally approved in and after 403/2 is to be applied to acts performed in and after 403/2.<sup>44</sup> (b) Since Athens is to have a complete code of laws (*nomoi*), and in addition there is to be a procedure for revising the laws in future (see below, p.98), the principle is formally stated for the first time that laws are to be of greater validity than decrees (*pséphismata*) of the council and assembly.<sup>45</sup>

(c) The supplementary law about 'a law for an individual' is puzzling, because the assembly, in which six thousand was regarded as a quorum for certain purposes, was not the body which approved the revised code (see next paragraph) or which was to approve further laws enacted after the completion of the revised code: in each case the laws were enacted by a smaller body of *nomothetai*. Moreover, whether the matters which had to be dealt with by laws rather than by decrees were defined theoretically, as Hansen believes, or pragmatically, as I believe, a decision concerning a named individual ought regularly to have been embodied not in a law but in a decree. I can only repeat the guess which I have advanced before, that when this supplementary law was enacted the implications of this new distinction between laws and decrees had not been fully

<sup>42</sup> MacDowell, *Andokides* 194-9; Ostwald 515. Contrast Harrison, *JHS* lxxv (1955) 33; Clinton, *Hesp. Supp.* xix (1982) 31-2; who believe that revision was contemplated as well as supplementation.

<sup>43</sup> Cf. MacDowell, *Andokides* 125-6; Sealey agrees that the laws enacted prior to 403/2 were not to be valid unless included in the finally revised code (37), and goes on to claim that no kind of unwritten law was to be enforceable against offenders (38-9). However, Clinton, *Hesp. Supp.* xix (1982) 35-6, supposes that this law ought in full to have read, 'The authorities shall not use an unwritten law if there is a written (i.e. γεγραμμένος = formally enacted, not ἀνεγγραμμένος = written up as part of the code) law on the same matter': this depends on his view that what was assembled was not a complete code of currently

valid laws, and is rejected by Ostwald 165.

<sup>44</sup> Cf. MacDowell, *Andokides* 128.

<sup>45</sup> For the principle (that laws should be permanent and of general application, decrees should be ephemeral and/or of particular application) see, e.g., Dem. xx *Lept.* 90-2, xxii *Andr.* 49, xxiii *Arist.* 86-7, 218; xxiv *Tim.* 29-30; Arist. *EN* v 1137b11-34; [Plat.] *Def.* 415b8-11. For the application of the principle see M. H. Hansen, *GRBS* xx (1979) 27-53 = *The Athenian Ecclesia* (Copenhagen 1983) 179-206. Unlike Hansen, I suspect that what was embedded in the code of laws was not the theoretical distinction but a rule that what was in the code could only be changed or added to by a law; but unlike Robertson 60-2 I believe that what underlies the new procedure of enactment by *nomothetai* is the doctrine that laws should be different from decrees.

thought out: the author of this measure perhaps envisaged that if a law for a named individual was enacted by the *nomothetai* it would have to be ratified afterwards by an assembly at which there was a quorum of six thousand present and voting (as it was decided about the 380s that a decree conferring Athenian citizenship should not be valid as soon as it had been carried but would have to be ratified afterwards by an assembly at which there was a quorum of six thousand present and voting<sup>46</sup>); but it came to be realised that a law for a named individual would never be enacted, and so this measure became a dead letter.<sup>47</sup>

What is the actual procedure laid down in Tisamenus' decree? It presupposes at least one earlier measure, which has ordered the appointment of two boards of *nomothetai*<sup>48</sup> (and its provision that Athens is to use the laws of Solon and Draco but to consider the enactment of further laws is probably repeated from that earlier measure). What is meant by 'the laws of Solon and Draco', which are to form the starting-point, is presumably the code on which the *anagrapheis* had been working in their first term. A committee of *nomothetai* appointed by and probably from the council has, if Andocides' commentary may be accepted on this point, been examining that code in the light of the amnesty, and is to make proposals for additional laws, to publish them in temporary form in front of the statues of the tribal heroes, and to hand them over to 'the authorities', probably the *prytaneis*.<sup>49</sup> The final decision on these proposals is to be taken not by the assembly open to all citizens but by an *ad hoc* body consisting of the five hundred members of the council and a further five hundred *nomothetai*, appointed, presumably on the same basis as the council, from the demes, but, if the verb εἶλοντο may be pressed, by election; and before the decision is taken any one who wishes may address this body. ('First' at the beginning of §84 means before the laws become a valid part of the code, not before they are passed to the assembly for that body to have the last word.<sup>50</sup>) The council of the Areopagus is to take charge of the laws, and to see that the code is enforced (this presumably reflects the renewed dispute over the powers to which the Areopagus was entitled, seen in the Thirty's annulment of the laws of Ephialtes and Archestratus, and in Lys. fr. 178 Sauppe, but I do not know, and I am not sure that Tisamenus knew, what the practical effect of the clause was to be.<sup>51</sup>)

Andocides, before and after quoting the decree, refers to the permanent publication of the revised code 'in the Stoa'. The decree refers in §83 to the temporary publication of proposals, for whoever wishes to inspect, by the first board of *nomothetai*, and in §84 says, 'The laws that are being ratified (κυρουμένουσ, present participle) shall be written up on the wall, where they were written up before, for whoever wishes to inspect.' The normal assumption has been that §84 refers to the permanent publication mentioned by

<sup>46</sup> Cf. M. J. Osborne, *BSA* lxxvii (1972) 131 with n.6; *Naturalization in Athens* ii (Brussels 1982) 56-7, 59.

<sup>47</sup> *CQ*<sup>2</sup> xxxv (1985) 59; paper cited in n.1, 15. But Hansen thinks that we have instances of a law for a named individual when decrees award to an individual honours which will involve the assembly in additional expenditure, and therefore call on the *nomothetai* to provide for this expenditure by increasing the annual allocation of funds to the assembly: *GRBS* xx (1979) 39-43 = *The Athenian Ecclesia* 191-5; *C&M* xxxii (1971-80) 98-9; *GRBS* xxvi (1985) 360-2 (citing *IG* ii<sup>2</sup> 222. 41-6; 330. 15-23; vii 4254 = *SIG*<sup>3</sup> 298. 35-41).

<sup>48</sup> Cf. Sealey 35.

<sup>49</sup> These *nomothetai* of the council perform a function similar to that of *syngrapheis* earlier:

perhaps because of the part which they played in ushering in the oligarchic régimes, *syngrapheis* and *syngraphai* in that sense seem to have been avoided after the downfall of the Thirty (cf. Harrison, *JHS* lxxv [1955] 33)—apart from the *syngraphai* which Lysias accuses Nicomachus of departing from in his second term.

<sup>50</sup> I think this is what was meant by Harrison, *JHS* lxxv (1955) 32 with n.49; MacDowell, *Andokides* 123, quotes him without further comment.

<sup>51</sup> For a recent discussion of the problem see Ostwald 517-9. In the present volume, 210, Sealey argues that the fragment attributed to Lysias comes in fact from a speech written in the period beginning about 340.

Andocides in §§82, 85, that 'the wall' is the connected series of *stelai* discussed above, and that 'the Stoa' is the Stoa of the Basileus (I have defended that identification of 'the Stoa' above, p.90-1).<sup>52</sup> However, the present participle in §84, and the phrase 'for whoever wishes to inspect' repeated there from §83, are an embarrassment to that assumption. H. A. Thompson has suggested that §84 refers to the temporary publication of the code of laws immediately after its completion, in ink on the back wall of the Stoa of the Basileus, prior to its being inscribed in permanent form on *stelai* which are not the same thing as 'the wall'.<sup>53</sup> Robertson believes that even that does not do justice to the present participle, and argues that 'the wall' was to be used for the publication day by day of new laws as and when they were ratified, and in fact denotes the same location as 'in front of the tribal heroes' in §83, possibly the courtyard of the prytaneum: that is, 'where they were written up before' refers to the publication of proposals before ratification.<sup>54</sup>

On what was to be published, I think Robertson must be right. If Tisamenus' main concern was not with the *ab initio* revision of the code but with the enactment of additional laws, and the enactment was to be completed not by an assembly open to all citizens but by a smaller body, then the citizens will have needed to be told, quickly, what new laws had in fact been enacted. It is difficult to identify 'the wall', on which laws or proposals had been published before. The only other Athenian reference to publication on a wall is *IG* i<sup>3</sup> 84 22-5, where the wall has normally been thought to be that of the sanctuary with which the decree is concerned, but Thompson and D. M. Lewis have suggested the wall of the Stoa of the Basileus,<sup>55</sup> and Robertson again argues for the wall of whatever enclosure at this time housed the statues of the tribal heroes.<sup>56</sup> It would be perverse if Tisamenus had referred to the same location in the same decree both as 'in front of the tribal heroes' and 'on the wall', but not beyond the limits of perversity in Athenian decrees. If the publication ordered at the end of §84 is to be temporary, the publication in the same place 'before' ought to have been a temporary publication too: Robertson's interpretation of 'the wall' is probably right, but it cannot yet be regarded as certain, and I do not pretend to know where the statues of the tribal heroes stood in the late fifth century.

Finally, how do the revised calendar of sacrifices and the second term of the *anagrapheis* dovetail with the procedure set in motion by Tisamenus? As noted above (p.98), Tisamenus' decree presupposes at least one earlier measure on the laws of Athens in the restored democracy. We do not know how near to completion the work of the *anagrapheis* was when their first term was brought to a premature end; maybe their code was not only incompletely published but also incompletely collected; some of their texts had been annulled by the Thirty, but perhaps copies on papyrus of those texts were still readily accessible. Evidently there was still work for them to do, and it took them four years to do it. (The law quoted on p.90 does not guarantee that the enactment of new laws was completed in 403/2, since it may itself have been enacted before that process was complete and may have been over-optimistic about the time that would be needed.) Apparently the *anagrapheis'* original calendar of sacrifices had caused dissatisfaction, and there must have been a decree of the assembly which ordered the compilation of a

<sup>52</sup> I accepted this normal assumption in the paper cited in n.1, 12.

<sup>53</sup> *Ap.* Rhodes, *Comm.* 134-5 *cf.* 441-2; Ostwald 519-20.

<sup>54</sup> Robertson 46-52. On the location of the statues of the tribal heroes see Rhodes, *Comm.* 105, 259: the case for the site in the south-west of the Agora, though not conclusive, is strong. However, what I said in *Comm.* 103-4 about the location of

the prytaneum has been rendered obsolete by an inscription published by G. S. Dontas, *Hesp.* lii (1983) 48-63 (*cf.* *SEG* xxxiii 115), whose text and find-spot make it clear that the cave of Aglaurus was not after all on the north side of the Acropolis but at the east end.

<sup>55</sup> *Ap.* Rhodes, *Comm.* 134, and *IG* i<sup>3</sup>, respectively.

<sup>56</sup> Robertson 49-50.

revised calendar and specified the sources that were to be used. And there must also have been, as part of the code or as an appendix to it, a law or laws which laid down procedure for the revision of the code in the future—but I have written about that elsewhere.<sup>57</sup>

#### IV. CONCLUSION

This has been an intricate study, and it may help readers if I summarise the main points which I have tried to establish. (i) In 410/09 a board of *anagrapheis* was appointed, to republish the laws of Solon. At first the meaning of this was taken to be self-evident, and it was assumed that the job could be done quickly, but it was eventually decided that the *anagrapheis* were to find and republish in or near the Stoa of the Basileus all currently valid written laws which applied to the whole community of Athenian citizens. Some texts were inscribed on stone, but the work was unfinished when it was interrupted by the overthrow of the democracy in 404. (ii) The Thirty intended to revise the laws in accordance with their own views, but did not get very far with this; they undoubtedly annulled some laws and destroyed some texts. In 403/2 the *anagrapheis* were reappointed. The final calendar of sacrifices of which we have fragments is inscribed in an erasure, in the Ionian alphabet, and cites the source for each sacrifice. Probably this erasure is not to be attributed to the Thirty but both it and the final calendar belong to the second term of the *anagrapheis*, from 403/2 to 400/399: they may be the result of disquiet, similar to that expressed in Lysias' speech *Against Nicomachus*, at items which the *anagrapheis* had included or omitted in their first term. (iii) The intention of Tisamenus' decree of 403, quoted by Andocides, was that the laws assembled by the *anagrapheis* in their first term should be valid, and that additional laws should be enacted to give appropriate effect to the revised code in the circumstances of the amnesty. The additional laws were enacted not by the assembly but by *nomothetai*: the publication in 'the stoa' ordered by Tisamenus is a temporary publication in the Stoa of the Basileus, to announce quickly to the citizens what new laws had in fact been enacted.

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<sup>57</sup> Rhodes, *CQ*<sup>2</sup> xxxv (1985) 55–60. For other recent views see MacDowell, *JHS* xciv (1975) 62–74; Hansen, *C&M* xxxii (1971) 104, *GRBS* xxvi (1985) 345–71.