

THE REPUBLICATION OF DRACO'S LAW ON HOMICIDE

Διόν[ε]τος Φρεάρριος ἔγραμμάτε[υε].
Διοκλῆς ἔρχε.
ἔδοχσεν τῇ βουλῇ καὶ τοῖ δέμοι· Ἀκα[μ]αντὶς ἐπ[ρ]υτάνευε, [Δ]ιό[γ]-
νετος ἔγραμμάτευε, Εὐθύδικος [ἐ]πεστάτε, . . . Ε . . . ΑΝΕΣ εἶπε· τὸ[ν]
Δράκοντος νόμον τὸμ περὶ τὸ φό[ν]ο ἀναγρα[φ]σά[ν]τον οἱ ἀναγραφῆ- 5
ς τὸν νόμον παραλαβόντες παρὰ τὸ β[α]σιλῆος μετ[ὰ] τὸ γραμματέο-
ς τῆς βουλῆς ἐ' στέλει λιθίνει καὶ κα[τ]α[θ]έντ[ον] πρόσ[θ]ε[ν] τῆς στο-
ᾶς τῆς βασιλείας· οἱ δὲ πολεταὶ ἀπομι[σθο]σάντων κατὰ τὸν νόμο-
ν, οἱ δὲ ἑλλενοταμίαι δόντων τὸ ἀρ[γ]ύ[ρ]ο[ν].

Diognetus from Phrearrus was secretary.

Diocles was archon.

Resolved by the *boule* and the *demos*: Acamantis held the prytany, Diognetus was secretary, Euthydicus was president, ??e???anes made the motion. The *anagrapheis* of the laws shall write up Draco's law on homicide on a stone stele, receiving it from the archon *basileus* with the help of the secretary of the *boule*, and they shall set it up in front of the Stoa Basileus. The *poletai* shall let the contract according to the law, and the *hellenotamiai* shall provide the money.¹

It is widely acknowledged that the terms of this decree, from the archon-year 409/8 B.C., belong to a context of ongoing constitutional reform at Athens during the last decades of the fifth century B.C.² In 411 B.C., the oligarchy of the Four Hundred had had its origins with a board of thirty *syngrapheis* appointed to look into the 'ancestral laws' of Cleisthenes and draft proposals that were in the best interest of the city.³ More pretext than doctrine, their appeal to the notion of an ancestral constitution would have a lasting impact on Athenian political discourse.⁴ Following

¹ IG i³ 104 (= ML 86), lines 1–9. The most useful discussion of these lines is that of R. S. Stroud, *Drakon's Law on Homicide* (Berkeley, 1968), 19–30.

² To cite a single example, M. Gagarin, *Drakon and Early Athenian Homicide Law* (New Haven, 1981), 1: 'In 409/8 B.C., during a period of general investigation into and revision of the laws of their city, the Athenians passed a decree . . .'. The character of this wider project has been the subject of numerous specialist studies, including: P. J. Rhodes, 'The Athenian code of laws, 410–399 B.C.', *JHS* 111 (1991), 87–100; N. Robertson, 'The laws of Athens, 410–399 B.C.: the evidence for review and publication', *JHS* 110 (1990), 43–75; K. Clinton, 'The nature of late fifth-century revision of the Athenian law code', in *Studies in Attic Epigraphy, History, and Topography Presented to Eugene Vanderpool* (Princeton, 1982), 27–37; A. R. W. Harrison, 'Law-making at Athens at the End of the fifth century B.C.', *JHS* 75 (1955), 26–35. On the significance of this process in the development of the Athenian political consciousness, see especially the discussion of M. Ostwald, *From Popular Sovereignty to the Sovereignty of Law* (Berkeley, 1986), 337 ff.

³ *Ath. Pol.* 29.2–3. Cf. Thuc. 8.67.1, with the analyses of A. Andrewes, *A Historical Commentary on Thucydides* 5 (Oxford, 1981), 164–5 and P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981), 373–7.

⁴ For the interpretation of the slogan *patrios politeia* as opportunistic propaganda, see C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford, 1952), 5–7; and K. R. Walters, 'The "ancestral constitution" and fourth-century historiography in Athens', *AJAH* 1 (1976), 129–44, arguing against the views of A. Fuks, *The Ancestral Constitution. Four Studies in Athenian Party Politics at the End of the Fifth Century B.C.* (London,

the restoration of the full democracy, the Athenian *demos* took steps to clarify just what its ancestral laws were. To that end, a commission of *anagrapheis* was inaugurated to 'write up the laws of Solon' (Lys. 30.2: ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος).⁵

The existence of this wider project to review and republish the ancestral laws of Athens during this period might provide sufficient explanation for why Draco's law on homicide was reinscribed by the *anagrapheis* in 409/8 B.C. The homicide law was the only Draconian law to be retained by Solon,⁶ so its republication would seem to be a natural extension of the *anagrapheis*' mandate to republish the ancestral laws enforced by Solon. While uncomplicated, this explanation is nevertheless far from satisfactory. In fact, the procedure outlined in the decree for the republication of Drakon's homicide law is quite different from what we are able to reconstruct of the usual activities of the *anagrapheis* in this period. While a wider public interest in restoring ancestral laws was an important part of the motivation for what was done with Draco's homicide law, more compelling reasons for the republication can be found if we look beyond this general framework of constitutional reform. I would like to suggest that the content of this law took on a special significance in the context of recent events, and that this context explains the particular interest that was taken in its republication.

ANAGRAPHEIS AND NOMOTHETAI

Our best source for the activities of the *anagrapheis* in the period immediately following the fall of the Four Hundred is Lysias' speech *Against Nicomachus* (30). The defendant is a former *anagrapheus* under attack for supposed malfeasance, though the exact nature of the charge is unclear.⁷ The speaker informs us (30.2–4) that Nicomachus served two terms as *anagrapheus*. The homicide law was recopied during the first term, which spanned six calendar years from some point in 410/09 B.C. until the dissolution of the democracy in late 405/4 B.C.⁸ The length of this tenure is significant, because, according to Lysias, 'he was appointed to write up the laws of Solon in four months' (30.2: προσταχθὲν γὰρ αὐτῷ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος). This unsubstantiated assertion goes to support the claim that Nicomachus 'established himself as law-giver (*nomothetes*) instead of Solon, just as he made his term of office six years instead of four months' (30.2: ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν, ἀντὶ δὲ τεττάρων μηνῶν ἐξέτη τὴν ἀρχὴν ἐποιήσατο).

It is difficult to believe, however, that Nicomachus and his fellow *anagrapheis* could have wantonly exceeded their appointed term of office for so long without being called to account. A more balanced interpretation seems to be that Nicomachus and his colleagues were forced to extend the length of their term because of the great

1953). Note also the insightful remarks of M. I. Finley, 'The ancestral constitution', in *The Use and Abuse of History* (London, 1975), 34–59.

⁵ These are not to be identified with the *nomothetai* mentioned by Thucydides (8.97.2), appointed during the intermediate regime of the Five Thousand, as is suggested by Ostwald (n. 2), 407. See Stroud (n. 1), 22–3 and Rhodes (n. 2), 89.

⁶ *Ath. Pol.* 7.1; *Plut. Sol.* 17.

⁷ For an analysis of the possible legal grounds for prosecution, see the discussion by S. C. Todd, 'Lysias *Against Nikomakhos*: the fate of the expert in Athenian law', in L. Foxhall and A. D. E. Lewis (edd.), *Greek Law in Its Political Setting: Justifications not Justice* (Oxford, 1996), 101–31, at 104–6.

⁸ For these dates, Stroud (n. 1), 23. Lysias will have counted the years of Nicomachus' tenures inclusively.

complexity of the task to which they had been assigned.⁹ The task of 'writing up the laws of Solon' involved not just the laws on the original Solonian *kырbeis*, but also a range of later legal texts, found in archives and on stelai located throughout the city.¹⁰ The job of the *anagrapheis* was to bring these various texts together to form a single coherent and readily accessible code. The men appointed to this task were experienced public secretaries, equipped with the skills necessary to locate and sort through the confusing web of fifth-century Athenian law.¹¹ Nicomachus' accuser brands him as an 'under-clerk' (*υπογραμματεύς*), probably a derogatory reference to the secretarial nature of his position (30.27–8).

The task of the *anagrapheis* will have been made more difficult by the inconsistencies inherent in a corpus of law so inadequately organized as Athens' then was. The prosecutor blames Nicomachus for providing opposing sides in a legal case with contradictory statutes (30.3). The existence of such contradictions, however, was a larger constitutional problem and not, as the speaker insinuates, Nicomachus' fault. To resolve these internal inconsistencies, the *anagrapheis* ultimately had to exercise their own judgment in order to decide which laws should supersede others. This no doubt is the process alluded to when it is stated that Nicomachus 'inserted some laws and erased others, while receiving money each day' (30.2: *καθ' ἐκάστην δὲ ἡμέραν ἀργύριον λαμβάνων τοὺς μὲν ἐνέγραφε τοὺς δὲ ἐξήλειφεν*).¹²

The speaker does not mention any particular law recopied by Nicomachus during his first term, but says only that he worked on 'the laws of Solon'. We are better informed about the second term, in which Nicomachus worked on a compilation of sacred laws (30.25). This too was a lengthy tenure, beginning after the second restoration of the democracy and lasting four years, 403/2 to 400/399 B.C.¹³ Here there is another allegation of dilatoriness: 'first of all, he worked as *anagrapheus* for four years, though it was possible for him to accomplish his task in thirty days' (30.4: *ὅστις πρῶτον μὲν τέτταρα ἔτη ἀνέγραψεν, ἐξ ἧδ' αὐτῷ τριάκοντα ἡμερῶν ἀπαλλαγῆναι*).¹⁴ The vagueness of this initial charge raises questions about the previous assertion that Nicomachus had been subject to a four-month term during his first appointment. Given the unique nature of their assignment, there is reason to doubt that formal time limits were ever imposed on the *anagrapheis*, despite Lysias' claim that they were.¹⁵

It is clear that the prosecutor's case depends upon a rhetorical strategy of overstating the simplicity of the task that faced the *anagrapheis*. The subsequent claim that 'the sources from which he was supposed to work were marked out clearly, but he made himself responsible for everything' (30.4: *διωρισμένον ἐξ ὧν ἔδει ἀναγράφειν, αὐτὸν ἀπάντων κύριον ἐποιήσατο*) should therefore be viewed with some degree of

⁹ Harrison (n. 2), 30.

¹⁰ Clinton (n. 2), 29; cf. Rhodes (n. 2), 90–1.

¹¹ Rhodes (n. 2), 92; Todd (n. 7), 115. On the problems associated with locating and obtaining legal texts at the end of the fifth century and the need for a consistent compilation of laws, see J. P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill, 1999), 95–7; A. Boegehold, 'The establishment of a central archive at Athens', *AJA* 76 (1972), 29.

¹² Rhodes (n. 2), 92–3. Lysias insinuates that Nicomachus received payments other than his salary (i.e. bribes) while he performed these tasks: Todd (n. 7), 109. This charge is made explicit at 30.25. Also on this sentence, cf. the provocative interpretation of the phrase *τοὺς μὲν ἐνέγραφε τοὺς δὲ ἐξήλειφεν* proposed by Robertson (n. 2), 47–9.

¹³ S. Dow, 'The Athenian calendar of sacrifices: the chronology of Nikomachos' second term', *Historia* 9 (1960), 270–93, at 271.

¹⁴ On the 'sophistry' employed here, see Todd (n. 7), 110.

¹⁵ Rhodes (n. 2), 89.

scepticism.¹⁶ Particular stelai and *kyrbeis* do appear to have been mentioned in the official enactment of the *demos* charging the *anagrapheis* to compile a schedule of state-sponsored sacrifices (30.17),¹⁷ but the speaker gives no indication of how Nicomachus was expected to bring the regulations he found in these specified sources together into a common code. That, presumably, was left to the discretion of the board of *anagrapheis*. In the end, Nicomachus evidently stands accused of having done his job too thoroughly. The considerable number of sacrifices included in his compilation put a strain on the city's finances, with the alleged result that the treasury ran out of money before some of the most important ancestral sacrifices could be performed (30.19–21). Hence the contention (again unsubstantiated) that Nicomachus included more sacrifices than were warranted by his instructions.

The production of a calendar of sacrifices in Nicomachus' second term may tell us something about the working methods of the *anagrapheis* in both of their terms of service. It appears that they were assigned to gather together laws relating to particular topics, as in this case Nicomachus was entrusted to bring together all the laws regarding public festivals. The larger corpus of 'laws of Solon' compiled by the *anagrapheis* was probably an accumulation of several smaller, unified codes of this sort. Each provided a convenient point of reference for the laws on a particular topic and served to establish an authoritative version of the legal rules it contained.

Some traces of these legal compilations have survived in the epigraphic record.¹⁸ The first is represented by a series of linked opisthographic stelai, surviving fragments of which reveal a compilation of laws pertaining to the maintenance of the fleet, as well as a list of expenditures for public festivals.¹⁹ The second piece of evidence is a set of regulations relating to the powers and responsibilities of the *boule*, which was inscribed on a stele of the same dimensions as that bearing the republication of Draco's law on homicide.²⁰ Linguistic and epigraphical peculiarities suggest that the various laws from which this compilation was drawn have been faithfully transcribed.²¹

It is unfortunate that none of the prescripts to these inscribed law codes have survived. This prevents us from knowing precisely what sort of instructions were given to the *anagrapheis* as they undertook the task of compiling and republishing these various laws. In the case of Nicomachus' religious calendar, the evidence of Lysias

¹⁶ Todd (n. 7), 110.

¹⁷ The reference to stelai depends upon Taylor's emendation of the text, which is corrupt at this point.

¹⁸ On the relationship between these inscriptions and the work of the *anagrapheis*, see Robertson (n. 2), 52–60. It is not clear whether the act of compilation always resulted in a new inscription or not. In the case of Nicomachus' second term, compilation does not seem to have been separate from publication. Although dissatisfied with the outcome of Nicomachus' research, his accuser was unable to hold him accountable until after the laws were inscribed on stelai already, such that he can observe, 'when we make sacrifices according to the stelai which he has produced, many rites are dissolved' (30.21: ἐπειδὴν δὲ κατὰ τὰς στήλας ὡς οὗτος ἀνέγραψε, πολλὰ τῶν ἱερῶν καταλύεται).

¹⁹ *IG* i³ 236–41, the so-called 'Wall of Nicomachus'. The erasure and subsequent reinscription on one side of this wall need not concern us here. For an interpretation, see A. Fingarette, 'A new look at the Wall of Nikomakhos', *Hesperia* 40 (1971), 330–5, along with the physical description of S. Dow, 'The walls inscribed with Nikomakhos' law code', *Hesperia* 30 (1961), 60–8.

²⁰ *IG* i³ 105, the 'charter of the new democracy', on which see H. T. Wade-Gery, 'Studies in Attic inscriptions of the fifth century B.C.', *BSA* 33 (1932–3), 101–35, at 113–22. On the various dates of the laws in this compilation, see P. J. Rhodes, *The Athenian Boule* (Oxford, 1972), 198.

²¹ D. M. Lewis, 'A note on *IG* i³ 114', *JHS* 87 (1967), 132.

30.17 suggests that there was a decree indicating the range of sources that the *anagrapheis* were expected to consult. We might conjecture that similar instructions accompanied the compiled laws of the *boule* and those of the fleet. It is hard to imagine, however, that these decrees could have offered detailed prescriptions for what was to be done with these disparate texts after the *anagrapheis* laid their hands on them. The specifics of the editorial work that went into creating each of these compilations could not have been anticipated by the drafter of the decree, and so were likely left to the discretion of the *anagrapheis*.

While it may seem remarkable for a board of 'under-clerks' to be given such responsibility without strict supervision, it is evident that the *anagrapheis* had a great deal of latitude to decide how the various laws were brought together in the codes they produced. The prosecution of Nicomachus reflects a genuine anxiety about the amount of power that he and his fellow *anagrapheis* wielded.²² What was perhaps initially conceived of as a straightforward clerical task of compiling the laws turned out to involve an implicit grant of authority to decide what the laws of Athens actually should be. As Rhodes has rightly pointed out, there would have been no reason to think that existing laws needed to be validated before being compiled and republished.²³

ANAGRAPHEIS AND DRACO'S LAW

The picture of the working habits of the *anagrapheis* outlined thus far is very different from the procedure defined for them in the prescript to the republication of Draco's law on homicide (*IG* i³ 104, lines 3–9). The bulk of the evidence suggests that the *anagrapheis* in this period functioned as a relatively autonomous board of officials working to compile a wide range of Athenian laws into a series of more or less comprehensive and coherent law codes. The decree of 409/8 B.C., on the other hand, directs the *anagrapheis* to republish a single law in a particular place, following a clearly specified procedure. They have not been instructed to seek out, compile, and publish all currently valid homicide laws, but are directed instead to republish Draco's law alone.²⁴

In contrast to the free rein apparently enjoyed by the *anagrapheis* in other matters, this decree goes so far as to specify the official from whom they were to acquire the text of the homicide law, the *archon Basileus*, as well as who would assist (or perhaps supervise) them in their task, the secretary of the *boule* (lines 6–7). It has been shown already that the *anagrapheis* were themselves individuals with secretarial experience, whose primary qualification for office was a familiarity with the intricacies of the Athenian system of legal record keeping. It would not have been necessary to tell such men how to go about finding one of Athens' most famous ancestral laws, or even to provide them with the assistance of the secretary of the *boule*. The specificity of these instructions suggests that the nature of the task being assigned to the *anagrapheis* was more limited than their usual duties.

Granted, 'the law of Draco' (ὁ Δράκοντος νόμος) could be used as a blanket term

²² See esp. Lys. 30.28–30. Ostwald (n. 2), 415–16 and Clinton (n. 2), 28–9 suggest that the *anagrapheis* were mere copyists, and that any substantive decisions about the laws were made by a more responsible board of *syngrapheis* or by the *boule* itself. The existence of a separate board of *syngrapheis* in this period is, however, far from certain: Stroud (n. 1), 27–8.

²³ Rhodes (n. 2), 93.

²⁴ Robertson (n. 2), 56.

for a wider range of Athenian homicide laws, regardless of their true origin.²⁵ It might be argued that the decree of 409/8 was composed with the tacit expectation that the *anagrapheis* would produce a compilation of all currently valid homicide provisions, and that the detailed instructions it provides were simply a cover for the contested nature of the text they would ultimately produce. In this case, however, the surviving text of the inscribed *nomos* confirms that a compilation of laws of this sort was not intended. The *anagrapheis* followed their instructions carefully, producing a painstakingly accurate transcription of the original Draconian law.²⁶ Most significantly, the text of the law is divided up according to the order of the Draconian *axones*, an illogical point of reference if later laws regarding homicide (taken from stelai, and so on) were incorporated into its fabric as well.²⁷ Furthermore, the language of the law is archaic,²⁸ as perhaps were some of the institutions to which it alludes.²⁹ Even the older orthography of the text has been preserved.³⁰ Portions of the original law superseded by subsequent legislation may have been left out in the republication, but the text that was presented has not been modified to reflect later changes to the homicide code.³¹

The republication of Draco's law on homicide in 409/8 was thus a unique act, distinct from the larger project of the *anagrapheis* to research and compile the laws of Athens in the period 410–399 B.C. The Athenian people were interested in the law of Draco alone, not a compilation of all currently valid homicide statutes. Only measures that were part of the original Draconian law were republished; any later additions or modifications to the homicide code have been ignored. Within the context of a general interest in the 'ancestral constitution', the republication of this law represents a specific appeal to the authority of Draco as lawgiver. Something about Draco's law in particular must have been significant.

²⁵ The classic example occurs in Demosthenes' speech *Against Aristocrates* (23.28), where provisions for a trial before the *heliaia* are anachronistically attributed to Draco. On this as evidence for the revision of the homicide law by later amendments, see Gagarin (n. 2), 23–9.

²⁶ The argument that follows is essentially a restatement of Stroud (n. 1), 61–4.

²⁷ On the restoration of the heading [Δεῦτε]ἔργος [Ἀχσων] in line 56 and its implications, see Stroud (n. 1), 58–60.

²⁸ The law, called a νόμος in the prescript (line 5), is referred to as a θεσμός (line 20), while δ]ικάζειν refers to the act of pronouncing a verdict, an archaic usage (lines 11–12). See Stroud (n. 1), 44–5, 51.

²⁹ The reference to ἀγορᾶς ἐφορ[α]ς (lines 27–8) was antiquated in the middle of the fourth century, leading Demosthenes (23.39) to speculate about what these markets were like. Stroud (n. 1), 53 suggests that they were already a thing of the past in 409/8. It is less certain that courts of *ephetai* (mentioned in line 13) had been superseded by the end of the fifth century, as was argued by G. Smith, 'Dicasts in the ephetic courts', *CP* 19 (1924), 353–8. See now the discussion of E. M. Carawan, 'ΕΦΕΤΑΙ and Athenian courts for homicide in the age of the orators', *CP* 86 (1991), 1–16.

³⁰ Stroud (n. 1), 64. Aspirates are consistently indicated in the text of the law itself, but are left out of the prescript: e.g. *háπαντ[α]ς* at line 14, but *οἱ δὲ ἔλλενοταμίαι* at line 9.

³¹ The question centres on the unusual use of *καὶ* at the beginning of line 11. Either this was the first word of the Draco's homicide law, or some portion of the law (perhaps that concerning intentional homicide) has been omitted. An argument for the latter case is presented by E. Ruschenbusch, 'ΦΟΝΟΣ: zum Recht Drakons und seiner Bedeutung für das Werden des athenischen Staates', *Historia* 9 (1960), 129–54, at 130–1. This line is followed by R. Sealey, 'The Athenian courts for homicide', *CP* 78 (1983), 275–96, at 291–4; Robertson (n. 2), 55; and Rhodes (n. 2), 91. Stroud (n. 1), 37–40 and Gagarin (n. 2), 65–100 offer arguments to the effect that *καὶ* was the first word of Draco's homicide law, but this position has not found wide acceptance.

THE CIRCUMSTANCES OF REPUBLICATION

The reason for this special interest in Draco's homicide law is perhaps to be found in the context of recent events. At the time of the republication of the homicide law, democratic rule had only recently been re-established following the oligarchic revolution of the Four Hundred. According to Thucydides, the oligarchs had seized power in part through the assassination of the democratic leader Androcles, along with other 'troublemakers' (8.65.2). In order to maintain their power, 'they killed some men, but not many, whom they felt it was convenient to have out of the way, and they locked up others and banished some as well' (8.70.2: *καὶ ἄνδρας τέ τινας ἀπέκτειναν οὐ πολλούς, οἱ ἐδόκουν επιτήδειοι εἶναι ὑπεχαιρεθῆναι, καὶ ἄλλους ἔδησαν, τοὺς δὲ καὶ μετεστήσαντο*).³² It is tempting to interpret the republication of the homicide law in 409/8 B.C. as calculated to call attention to the grievous crimes committed under the previous regime. In the atmosphere of the day, it would have made sense to contrast the tyrannical domination of the Four Hundred with the peaceful rule of law under the re-established democracy.

While popular reaction against the evil deeds of the oligarchs might explain placing the homicide laws in general at the head of the list of laws to be republished, it still does not account for the interest shown in Draco's law in particular. For this, it is necessary to consider the manner in which the Four Hundred came to be overthrown. The major turning point at Athens was marked by the assassination of the oligarchic leader Phrynichus on his return from failed negotiations with Sparta. Even the exiled Thucydides recognized the impact his death had on the subsequent course of events. He comments, 'at first unrest was among a few individuals and rather secret, but then Phrynichus, having returned from the embassy to Sparta, was struck treacherously by one of the *peripoloi* in the crowded agora and died at once, having not gotten far from the *Bouleuterion*' (8.92.2: *πρότερον μὲν οὖν κατ' ὀλίγους τε καὶ κρύφα μᾶλλον τὰ λεγόμενα ἦν· ἐπειδὴ δὲ ὁ Φρύνιχος ἦκων ἐκ τῆς ἐς Λακεδαίμονα πρεσβείας πληγεὶς ὑπ' ἀνδρὸς τῶν περιπόλων τινὸς ἐξ ἐπιβουλῆς ἐν τῇ ἀγορᾷ πληθούσῃ καὶ οὐ πολὺ ἀπὸ τοῦ βουλευτηρίου ἀπελθὼν ἀπέθανε παραχρῆμα*). With Phrynichus out of the way, Theramenes became bolder in his opposition to the policies of the oligarchs, and before long the government of the Four Hundred was overthrown following a naval disaster near Eretria (8.89.3–97.1).³³

Thucydides did not know the identity of the assassin, but Lysias (13.71) would later identify Thrasybulus of Calydon as the man who struck the blow and Apollodorus of Megara as his co-conspirator. When the full democracy was restored, both these men were honoured as benefactors of the city. As late as the eighth prytany of 410/09 B.C., Thrasybulus was awarded a gold crown for his good deeds to the Athenian *demos*.³⁴ In an amendment to this motion, Thrasybulus was also made a citizen and granted a share of property. A second amendment called for an inquiry into charges of bribery surrounding an earlier grant of honours to Apollodorus, to whom the *demos* had given a parcel of land seized from the oligarch Peisander (Lys. 7.4). Apparently

³² Thucydides tended to downplay the brutality of the Four Hundred, which he did not witness. Note also his dismissal of the bleak description of the situation at Athens under the Four Hundred that was given by Chaereas to the troops at Samos as incendiary fiction (8.74.3). Cf. Andrewes, *HCT* 5, 266.

³³ See the discussion of R. Sealey, 'The revolution of 411 B.C.', in *Essays in Greek Politics* (New York, 1965), 111–32, at 120–2.

³⁴ *IG* i³ 102 (= ML 85). Note in particular the commentary of M. J. Osborne, *Naturalization in Athens* 2 (Brussels, 1981), 16–21.

nothing came of this, since Apollodorus retained the plot until a little before the Thirty came to power.

Unlike the expeditious killings carried out by the Four Hundred, the murder of Phrynichus was the sort of homicide that the Athenian *demoi* celebrated. The rewards that were lavished on these two assassins reflect the same system of democratic ideals in which Harmodius and Aristogiton were celebrated for ending tyranny and restoring *isonomia* to Athens.³⁵ The names of Thrasybulus and Apollodorus would still be remembered in the late fourth century, when Lycurgus (1.112) gives a somewhat distorted version of their accomplishment. Although not explicitly discussed in any of our sources, the similarities between the two sets of heroic tyrant-killers could not have gone unnoticed as the Athenians once again celebrated the end of tyranny through bloodshed.³⁶

The same strain of anti-tyrannical feeling reverberates in the decree composed by Demophantus, passed soon after the restoration of the full democracy in 410 B.C. (Andoc. 1.96–8). While there is no mention of Thrasybulus or Apollodorus, it seems likely that their deed lies somewhere behind the terms of this decree, which states that anyone who attempts to subvert the democracy at Athens or holds power after the democracy has been overthrown ‘shall be an enemy of the Athenians and may be killed with impunity’ (1.96: *πολέμιος ἔστω Ἀθηναίων καὶ νηποινεῖ τεθνάτω*). The decree goes on to include a solemn oath to be sworn by all citizens, binding them to oppose actively any would-be tyrant and to honour others who oppose tyranny with violence. The Athenians swear not only to hold the killer of a would-be tyrant without guilt, but also to reward him with half of the dead man’s property. The oath goes on to specify that the descendants of anyone killed in the attempt of tyrannicide will enjoy the same honour and privileges as those granted to the descendants of Harmodius and Aristogiton.

As the reference to the traditional privileges granted to the descendants of the Tyrannicides indicates, Demophantus’ decree draws heavily on earlier precedent. The language of the oath in particular seems to derive from an earlier law against tyranny, cited in the *Athenaion Politeia*: ‘if some individuals rise up to form a tyranny, or someone assists in the setting up of a tyranny, each shall be *atimos* along with his family’ (16.10: *ἐάν τινες τυραννεῖν ἐπανιστῶνται [ἐπὶ τυραννίδι], ἢ συγκαθιστῇ τὴν τυραννίδα, ἅμιμον εἶναι καὶ αὐτὸν καὶ γένος*).³⁷ This rule, cited by Aristotle as the ‘established custom and ancestral tradition of the Athenians’ (*θέσμιμα τάδε Ἀθηναίων ἐστὶ καὶ πάτρια*), must antedate Solon, who excluded individuals exiled for attempting to establish tyranny from a grant of amnesty recorded by Plutarch (*Sol.* 19.3).

³⁵ On the privileged place of the Tyrannicides in the ideology of the Athenian democracy, see M. W. Taylor, *The Tyrant Slayers: The Heroic Image in the Fifth Century B.C.* (Salem, 1991²).

³⁶ It is perhaps not surprising that Thucydides does not make the connection, given his attitude towards the popular traditions about Harmodius and Aristogiton (1.20.1–2, 6.53.3–59). Notice, however, the intriguing parallels between his version of the murder of Phrynichus (8.92.2) and that of the murder of Hipparchus recorded in the *Ath. Pol.* (18.4–5). In both cases, one of the conspirators is captured and questioned under torture, but still gives no useful information about the plot. Could Thucydides’ anonymous Argive accomplice in some way be connected to the legend of Aristogiton?

³⁷ Compare Demophantus’ phrase, ‘if someone should rise up to form a tyranny or should assist a tyrant’ (Andoc. 1.97: *ἐάν τις τυραννεῖν ἐπαναστῇ ἢ τὸν τύραννον συγκαταστήσῃ*), described as ‘more than an accidental echo’ by M. Ostwald, ‘The Athenian legislation against tyranny and subversion’, *TAPA* 86 (1955), 103–28, at 112.

Tradition held that Draco was the first to give Athens written laws (*Ath. Pol.* 41.2), so it is only reasonable to attribute this pre-Solonian tyranny law to him.³⁸

As Carawan has demonstrated, the terms of this Draconian law against tyranny would have fitted very easily into the homicide law.³⁹ The penalty of *atimia* for would-be tyrants is consistent with the legal framework of self-help justice provided there. Under Draco's law, an aggressor can be 'killed without penalty' (*IG* i³ 104, line 38: *ν[ε]ποινέ τεθνάναι*) when one is defending against the forcible seizure of oneself or one's property.⁴⁰ The removal of a penalty in these circumstances would have inflicted *atimia* upon the dead man in so far as his family was denied legal recourse against the killer. These provisions for 'lawful homicide' lifted the fear of vendetta from such cases and may have served to encourage the killing of certain undesirable characters.⁴¹

Demophantus' decree does not mention *atimia*, but it does invoke the Draconian terminology of lawful homicide, establishing that tyrants and subversives 'shall be killed without penalty' (*Andoc.* 1.96: *νηποινεί τεθνάτω*). This is significant, because it is generally agreed that the Draconian law against tyranny was superseded in the reforms of Solon, which instituted a more elaborate procedure involving *eisangelia* before the Areopagus (*Ath. Pol.* 8.4).⁴² Although no longer in force, the terms of this Draconian tyranny law were not forgotten.⁴³ In the wake of Phrynichus' assassination, interest in the old law revived. Echoes in the decree composed by Demophantus suggest a desire to return to the provisions of the earlier statute.

Draco's law on homicide was republished in the following year. The precise reason for this can now be established more clearly. In 409/8 B.C. there was an ongoing project to re-establish the 'laws of Solon', represented by the regular activities of the *anagrapheis*, but this in itself is an inadequate explanation for the republication of Draco's law on homicide. Much more was at stake. It turns out that the particular interest in Draco's law had little to do with reestablishing an authentically 'Solonian' constitution. The feature of the law that was perhaps most important to its republication, the tyranny provision, had been superseded in the laws of Solon. By republishing Draco's law on homicide, the Athenian people sought to re-establish a fundamental but long-overlooked legal principle that went to the heart of the values of the new democracy.

This would explain why the decree calling for the republication of Draco's law was so specific and why the latitude that was granted to the *anagrapheis* in the regular exercise of their duties was not granted in this case. It was Draco's homicide law, not

³⁸ Ostwald (n. 37), 106–8. Ostwald's position is challenged by M. Gagarin, 'The thesmothetai and the earliest Athenian tyranny law', *TAPA* 111 (1981), 71–7, who would assign the law's authorship to a pre-Draconian board of *thesmothetai*. However, even if the ancestral *thesmia* cited by Aristotle antedated Draco, there is no good reason to suppose that its terms were not subsequently incorporated into Draco's written law code.

³⁹ E. M. Carawan, 'Tyranny and outlawry: *Athenaion Politeia* 16.10', in R. M. Rosen and J. Farrell (edd.), *Nomodeiktēs: Greek Studies in Honor of Martin Ostwald* (Ann Arbor, 1993), 305–19. For the suggestion that Draco wrote no other fundamental law outside of the homicide code, see Ruschenbusch (n. 31), 149–51.

⁴⁰ Also quoted in *Dem.* 23.60; see Stroud (n. 1), 57.

⁴¹ M. Gagarin, 'Self-defence in Athenian homicide law', *GRBS* 19 (1978), 111–20, at 116–19. Cf. the argument of Lysias 1. Gagarin ([n. 38], 73) later retracted his inclusion of the tyranny law in this category of 'lawful homicide'.

⁴² Ostwald (n. 37), 104–6; Carawan (n. 39), 314–16. Cf. Gagarin (n. 38), 72–3.

⁴³ As part of the homicide law, the tyranny provisions would have been retained on the original Draconian *axones*, which were not altered to reflect later modifications of the homicide code. See Gagarin (n. 2), 23–5; Carawan (n. 39), 309.

Solon's or anyone else's, that provided a legal justification for what the assassins of Phrynichus had done and what Demophantus' decree enjoined future generations to do as well. While the notoriously poor state of preservation of the stele with Draco's law on homicide prevents us from knowing too much about what the *anagrapheis* inscribed, it is almost certain that the provisions making tyrannicide lawful were not omitted in the republication.⁴⁴

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