

## VIII. The Athenian Legislation against Tyranny and Subversion \*

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The excavations conducted by the American School at Athens on the *agora* brought to light in 1952 a *stele* upon which was inscribed a law against attempts at subversion and the establishment of a tyranny, dating from 337/6 B.C.<sup>1</sup> No references in the surviving literature about the events after the battle of Chaeroneia had warned us to expect a law such as this; and the fact that the penalties prescribed in the law are chiefly directed against the Areopagus raises questions why fear of subversion and tyranny should have been connected with that august body. To answer some of these questions is one of the tasks of this paper.

The language of the law of 337/6 B.C. leaves no doubt that it depends upon earlier Athenian legislation against tyranny and subversion, legislation which, I hope to show, can be traced back as far as Draco. This means not only that our knowledge of the history of this type of legislation has been greatly increased by the discovery of the new law, but also that a knowledge of the earlier legislation against tyranny and subversion provides an essential background of historical development against which the new law has to be seen. Much has been written about the laws against tyranny and subversion, but, to the best of my knowledge, nowhere has this subject received a single comprehensive treatment, and it is perhaps due to

\* The following abbreviations are used in this paper: Bonner-Smith = R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle*, 2 vol. (Chicago 1930-38); Busolt-Swoboda = G. Busolt and H. Swoboda, *Griechische Staatskunde*, 2 vol. (München 1920-26); Hignett = C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford 1952); Lipsius = J. H. Lipsius, *Das attische Recht und Rechtsverfahren*, 3 vol. (Leipzig 1905-15); Makkink = A. D. J. Makkink, *Andokides' eerste rede met inleiding en commentaar* (diss. Utrecht 1932); Schreiner = J. Schreiner, *De corpore iuris Atheniensium* (diss. Bonn 1913); Sondhaus = C. Sondhaus, *De Solonis legibus* (diss. Jena 1909); Swoboda, *Arthmios* = H. Swoboda, "Arthmios von Zeleia," *AEM* 16 (1893) 49-68; Swoboda, *Beiträge* = H. Swoboda, "Beiträge zur griechischen Rechtsgeschichte," *Ztschr. d. Savigny-Stiftung, Romanist.* Abt. 26 (1905) 149-284.

<sup>1</sup> Published with a brief commentary by B. D. Meritt, *Hesperia* 21 (1952) 355-59 with plates 89 and 90. There is no other considerable discussion.

this circumstance that some recent scholarly publications have committed serious errors in peripheral discussions of legislation of this kind. The new law of 337/6 B.C. demands, and the lack of a comprehensive account justifies, that we begin at the beginning of the history of the legislation against tyranny and subversion, even though in some cases nothing essentially new will be added to what is already known.

# I

Although, as we shall see later, the beginning of legislation against subversion antedates Solon, the earliest datable law of this kind is ascribed to him. Aristotle records the fact that Solon enacted a law, presumably among the laws determining the functions of the Areopagites, according to which attempts to deprive the people of their political rights could be the subject of impeachments before the Areopagus.<sup>2</sup> Since Aristotle uses the words *κατάλυσις τοῦ δήμου* to describe the offense and the term *εἰσαγγελία* to define the procedure involved, and since both expressions assumed a great importance in the legislation of the late fifth century and throughout the fourth, some scholars have doubted the accuracy of Aristotle's statement altogether;<sup>3</sup> others, while accepting its content as substantially correct, maintain that these terms could not have been used by Solon;<sup>4</sup> and others again accept both the words and the ascription of the law to Solon as authentic.<sup>5</sup> Although the meagre evidence we possess makes any conclusion of necessity tentative, it must be granted that the nature of Solon's middle-of-the-road constitution makes it improbable that he used an expression such as *κατάλυσις τοῦ δήμου* on the *axones*. On the other hand, Aristotle's words do not warrant the conclusion that the procedure prescribed by Solon was identical with the *εἰσαγγελία* which was to assume such a great importance in the fourth century.<sup>6</sup> The only conclu-

<sup>2</sup> Arist. *Ath. Pol.* 8.4: καὶ τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν (sc. ἡ τῶν Ἀρεοπαγιτῶν βουλὴ), Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν. For the arrangement of the Solonian code see R. Schöll, "Ueber attische Gesetzgebung," *SBMünch. Philos.-philol.-hist. Cl.* (1886) 89-90. Cf. also Soudhaus 75-76.

<sup>3</sup> E.g., C. Gilliard, *Quelques réformes de Solon* (diss. Lausanne 1907) 57, note 2, and 281.

<sup>4</sup> Schreiner 66; Makkink 268; U. Kahrstedt, *Klio* 30 (1937) 19; A. E. Raubitschek, *AJA* 55 (1951) 228, note 22.

<sup>5</sup> Lipsius 1.178-79 with note 7; Busolt-Swoboda 2.848 with note 3; Bonner-Smith 1.298; Hignett 90.

<sup>6</sup> Lipsius, *loc. cit.*; Busolt-Swoboda, *loc. cit.*; Bonner-Smith, *loc. cit.* (all in note 5, above).

sion which the Aristotelian text permits us to draw is that Solon enacted some sort of law, according to which attempts against his constitution could be impeached and were to be tried before the Areopagus. Plutarch corroborates this conclusion,<sup>7</sup> and there seems to be no cogent reason to doubt that it is true.

## II

There is reason to believe that Solon's law for the prevention of subversive activities was not the earliest measure of its kind. Plutarch records what he claims to be a literal transcript of a Solonian amnesty law, according to which "those who had been convicted by the Areopagus, by the *ephetai*, or by the kings in the Prytaneion on charges of murder or homicide or of attempting to establish a tyranny" were excluded from the amnesty.<sup>8</sup> This suggests that a judicial procedure for attempts at tyranny had been used even before Solon. We know of only one attempt at establishing a tyranny before Solon, and the presumption is, therefore, that this procedure had only been used once, to wit, against the followers of Cylon, and that until that time no law existed to cover attempts at tyranny.<sup>9</sup> After Cylon's followers had been starved into submission and had taken refuge at the altar of the Erinyes (Thuc. 1.126.11), they were enticed to leave the altar by the promise of a trial (Plut. *Sol.* 12.1), probably before the Areopagus,<sup>10</sup> and were assured that they would not be sentenced to death.<sup>11</sup> This promise was probably no more than a make-shift expedient to restore peace at Athens and not a regular procedure.<sup>12</sup> Since the beginning of Solon's amnesty law states that *ἄτιμοι* are to be made *ἐπίτιμοι* we may conclude that *ἀτιμία* was inflicted upon any of Cylon's followers who may have escaped

<sup>7</sup> Plut. *Comp. of Solon and Publicola* 2.2.

<sup>8</sup> Plut. *Sol.* 19.3: ἀτίμων ὅσοι ἄτιμοι ἦσαν πρὶν ἢ Σόλωνα ἄρξαι ἐπίτιμους εἶναι, πλὴν ὅσοι ἐξ Ἀρείου πάγου ἢ ὅσοι ἐκ τῶν ἐφετῶν ἢ ἐκ πρυτανείου καταδικασθέντες ὑπὸ βασιλέων ἐπὶ φόνῳ ἢ σφαγαῖσιν ἢ ἐπὶ τυραννίδι ἔφευγον ὅτε ὁ θεσμός ἐφάνη ὁδε.— The arguments, based on the significance of the term *ἄτιμος* and adduced by Hignett 313 against the authenticity of this law, are not convincing, as will be shown below.

<sup>9</sup> G. W. Williams, *Hermathena* 78 (1951) 39, asserts without argument that the law cited by Arist. *Ath. Pol.* 16.10 was already in force at the time of Cylon. The subsequent discussion will show that this is unlikely.

<sup>10</sup> Schol. Aristoph. *Eq.* 445; see also T. Lenschau, *RE* s.v. *τυραννίδος γραφή* 1805–6, with the literature cited there. Although I am inclined to accept Lenschau's conclusion, I do not agree with the changes which he proposes in the text of the Solonian law cited by Plutarch.

<sup>11</sup> Hdt. 5.71: ὑπεγγύους πλὴν θανάτου.

<sup>12</sup> See Schreiner 67.

the slaughter that ensued.<sup>13</sup> What this ἀτιμία involved will become clear in what follows.

There is some evidence that, as a result of the Cylonian revolt, a further step was taken. Without giving us a date, Aristotle quotes *verbatim* an early law which, in its original form, may go back to pre-Solonian times:<sup>14</sup> θέσμια τάδε Ἀθηναίων ἐστὶ καὶ πάτρια· ἐάν τινες τυραννεῖν ἐπανιστῶνται [ἐπὶ τυραννίδι], ἢ συγκαθιστῇ <τις> τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος.<sup>15</sup> That this law is very old is evinced by the use of θέσμια in the introductory formula and in the peculiar archaic change from plural to singular in the verbs ἐπανιστῶνται to συγκαθιστῇ, and the fact that Aristotle quotes directly indicates that the law was written and hence cannot antedate Draco (Arist. *Ath. Pol.* 41.2) in the form in which we have it.

Some key phrases that occur here are found again in the decree of Demophantus of 410 B.C. which, according to Andocides, is based on a Solonian law, and this allegation has recently caused a scholar to assume that it was part of Solon's laws and that, since Solon's laws stipulated an impeachment before the Areopagus, it was enforced by the Areopagus.<sup>16</sup> However, this assumption is not warranted: not only has Andocides' ascription of the law to Solon long ago been proven incorrect,<sup>17</sup> but we have also seen that the procedure prescribed by Solon was an impeachment involving a trial and not a declaration by which the offender was proclaimed an outlaw. Since both the Solonian law on subversion and the amnesty law give the Areopagus jurisdiction in cases of attempted tyranny, it is possible to guess that any pronouncement of ἀτιμία, if indeed such a pronouncement was required, may have been initiated by the Areopagus. But since neither the law under discussion nor the decree of Demophantus prescribes a trial, the ascription of the former to Solon is manifestly incorrect.

That the law quoted by Aristotle cannot be Solonian is further

<sup>13</sup> Plut. *Sol.* 19.3. The law does not prove that the ἀτιμία was pronounced by the Prytaneion, as is asserted by A. Philippi, *Der Areopag und die Epheten* (Berlin 1874) 219–25; G. Busolt, *Griechische Geschichte* 2<sup>e</sup> (Gotha 1895) 159–60, note 1, 208 with note 6; Swoboda, *Arthmios* 59; Busolt-Swoboda 2.800 with note 1. Cf. above, note 10.

<sup>14</sup> Cf. Lenschau (above, note 10) 1806; and F. Jacoby, *Atthis: The Local Chronicles of Ancient Athens* (Oxford 1949) 364, note 68.

<sup>15</sup> Arist. *Ath. Pol.* 16.10. I am citing from the most recent edition of the text, G. Mathieu and B. Haussoulrier, *Aristote: Constitution d'Athènes*, 4th ed. rev. and corr. (Budé, Paris 1952) 18.

<sup>16</sup> Andoc. 1.95 and 97; see Raubitschek, *AJA* 55 (1951) 224–25.

<sup>17</sup> See Makkink 263–64 and the material cited there.

substantiated by the findings of H. Swoboda, who established that ἄτιμον in this context does not yet have its narrow meaning of 'loss of civic rights' but the more severe connotation of 'outlawed' (= 'vogelfrei'), and that, consequently, Aristotle misunderstood the term when he called the law 'lenient' (πρᾶτοι).<sup>18</sup> But what date are we to assume for the law? Swoboda rightly argued that its enactment must have been preceded by an actual experience of tyranny, and therefore concluded that it was first passed in one of the two periods in which Peisistratus was exiled from Athens; he further elaborated on a suggestion by Stahl<sup>19</sup> and stated that the law was renewed after the expulsion of the Peisistratids.<sup>20</sup>

But this raises a difficulty. We know, and Swoboda himself has shown it,<sup>21</sup> that the term ἄτιμος was used in its later narrow sense even by Solon.<sup>22</sup> Some scholars have, therefore, concluded that the law must be pre-Solonian and have rejected Swoboda's date for the first enactment.<sup>23</sup> If the meaning in which Solon used ἄτιμος gives us a *terminus ante quem*, our law can only refer to Cylon's attempt to establish a tyranny. Moreover, the *terminus post quem*, as we saw, is given by the fact that the law is written and cannot, therefore, antedate Draco.<sup>24</sup> Since the judicial procedure promised to the followers of Cylon seems to have been no more than a make-shift measure, it is not impossible that Draco enacted this law as a more general and permanent regulation of cases of attempted tyranny, perhaps in a section dealing with the conditions under which homicide would be justified.<sup>25</sup>

<sup>18</sup> Swoboda, *Arthmios* 58–59; see also the same author's *Beiträge* 149–64. Although this interpretation was at first attacked, notably by G. Kaibel, *Stil und Text der 'Αθηναίων Πολιτεία* (Berlin 1893) 164, note 1, it has now found general acceptance, cf. P. Usteri, *Ächtung und Verbannung im griechischen Rechte* (Berlin 1903) 12 with note 1; Schreiner 65; Busolt-Swoboda 1.234, note 1; Makkink 268; U. Kahrstedt, *Studien zum öffentlichen Recht Athens. Teil I: Staatsgebiet und Staatsangehörige in Athen* (Stuttgart and Berlin 1934) 119; Hignett 161.

<sup>19</sup> J. M. Stahl, *RhM* 55 (N.F. 46) (1891) 615–16.

<sup>20</sup> Swoboda, *Arthmios* 60 and *Beiträge* 163, note 1.

<sup>21</sup> Swoboda, *Beiträge* 153 and 161.

<sup>22</sup> Arist. *Ath. Pol.* 8.5 and Plut. *Sol.* 19.3 with the comments of Schreiner and Busolt-Swoboda cited in the next note.

<sup>23</sup> Kaibel (above, note 18) *loc. cit.*; Schreiner 66–68; Busolt-Swoboda 1.234, note 1.

<sup>24</sup> This has been suggested by Schreiner 67.

<sup>25</sup> That Draco's laws dealt with justifiable homicide is attested by Dem. 20.158. Cf. also Schreiner 67–68. — If this argument is correct, it will lend added weight to the view of U. von Wilamowitz-Moellendorff, *Aristoteles und Athen* (Berlin 1893) 2.55–56, that Draco's legislation was partly aimed at the prevention of attempts, such as Cylon's, at establishing a tyranny. A relation between Draco's legislation and the Cy-

Two serious objections to attributing the law to Draco have still to be met. Aristotle introduces his quotation of the law by the prescript: *θέσμια τάδε Ἀθηναίων ἐστὶ καὶ πάτρια*. This indicates that his source did not attribute the law to Draco or to any other legislator beyond stating that it was an old law. However, in view of the fact that the Solonian legislation enacted new provisions and a new procedure in cases of attempted tyranny, it is more than likely that the authorship of the old pre-Solonian law had been forgotten by the time of the fourth century, if not earlier. Indeed, if even Draco's laws on homicide, which were retained by Solon (Arist. *Ath. Pol.* 7.1; Plut. *Sol.* 17), had to be re-published in connection with the work of the commissions of *συγγραφεῖς* and *ἀναγραφεῖς* in the last decade of the fifth century (*IG* I<sup>2</sup> 115), the presumption is that a Draconian law which was superseded by Solon's legislation would fall into oblivion much more easily.

A second objection to ascribing our law to Draco might be based upon the prescript which Aristotle quotes. The formula *θέσμια τάδε Ἀθηναίων ἐστὶ καὶ πάτρια* shows that the law itself is older than the form in which Aristotle knew it. For if the law was indeed enacted as a result of the Cylonian revolt, as it seems to have been, it was too recent at the time Draco wrote his code to be described as an 'established and ancestral rule.' But even if this is taken to prove that the prescript cannot go back to Draco, it does not necessarily follow that the law itself, too, is un-Draconian. On the contrary, the formulation of the prescript suggests that Aristotle is citing the law in a form considerably later than its first enactment.<sup>26</sup> While thus the first enactment may well have been Draco's, the quotation which Aristotle gives must go back to a time when Draco's authorship was already forgotten and when a Draconian law could well be described as an 'established and ancestral rule.' At what date the Draconian law may have been remembered as such an 'established and ancestral rule' will be suggested by the following considerations.

Although Solon refused to extend his amnesty to those who had attempted to establish a tyranny (Plut. *Sol.* 19.3), the law with which he replaced Draco's was less severe in that it prescribed a

lonian affair has also been recognized by F. Cauer, *Verhandlungen der 40. Versammlung deutscher Philologen und Schulmänner* (Leipzig 1890) 120: Draco's purpose, according to Cauer, was the elimination of the blood-feuds which were rife as the result of the Cylonian affair; cf. also Hignett 87.

<sup>26</sup> Cf. Usteri (above, note 18) 12, note 1, and Swoboda, *Beiträge* 163, note 1.

trial before the Areopagus.<sup>27</sup> To what extent this procedure was actually used in the sixth century during the turbulent periods of anarchy and of Peisistratus' exiles is not known. However, there are strong indications that the Solonian law against tyranny was eclipsed after the fall of the tyranny, and that the measures undertaken against the Peisistratids in effect resembled those stipulated in the old law which we have ascribed to Draco.<sup>28</sup> Our sources do not tell us whether any law was invoked against the Peisistratids; but if they were brought to trial in a judicial proceeding, which is improbable in view of the revolutionary situation in which they were deposed, the trial is unlikely to have been conducted by the Areopagus, which, by that time, must have consisted mainly of men who were well disposed to the tyrants. But we do know that the Peisistratids and their descendants were declared outlaws and that Thucydides was familiar with a *stele* that contained a list of the Peisistratids and presumably also the ban which was pronounced against them.<sup>29</sup> The presumption is strong that it was at this time and in connection with the expulsion of the Peisistratids that the Draconian law was remembered and cited as a *θέσμιον καὶ πάτριον* to add the sanction of what was thought to be customary law to the ban. This view is reinforced by the fact that a few years later a similar ban was pronounced and inscribed upon a *stele* against the followers of Isagoras on the grounds that they had designs *ἐπὶ τυραννίδι*.<sup>30</sup> We may conclude from this that after 510 and 508 B.C. no new legislation was introduced to cope with attempts at establishing a tyranny at Athens, but that the old Draconian law was cited to support the special decrees that were promulgated against any offenders. The only new measure which resulted immediately from the overthrow of the tyranny seems to have been a curse against potential tyrants that was included in the bouleutic oath in 501 B.C.<sup>31</sup>

<sup>27</sup> Arist. *Ath. Pol.* 8.4, as discussed above.

<sup>28</sup> Swoboda, *Arthmios* 60; Usteri (above, note 18) 12, note 1; Busolt-Swoboda 1.233-34 with 234, note 1.

<sup>29</sup> Thuc. 6.55.1. Although van Herwerden's emendation of *ἀδικίας* to read *ἀτιμίας* in *Mnemosyne* 8 (1880) 156 seems attractive, it must be rejected, because the term *ἀτιμία* had been used in its narrower meaning since the time of Solon. — Cf. also Aristoph. *Av.* 1074-75, and Marcellinus, *Life of Thucydides* 32, with Busolt-Swoboda 1.233-34 with 234, note 1.

<sup>30</sup> Schol. Aristoph. *Lysist.* 273. Cf. also Arist. *Ath. Pol.* 20.1: *φίλος ὧν τῶν τυράννων*.

<sup>31</sup> See Wilamowitz-Moellendorff (above, note 25) 1.54 with note 23; Busolt-Swoboda 1.233-34.

There is one further measure which most of the ancient sources relate to the overthrow of the tyrants, and that is the institution of ostracism.<sup>32</sup> Although we know a good deal about the mechanics of ostracism, the problems of its origin and thus of its original intent are far from solved and are perhaps ultimately insoluble.<sup>33</sup> The law on ostracism may indeed have been enacted because the Athenians considered prevention a more effective deterrent than cure after their recent experiences with tyranny; but, on the other hand, it may well be that "it was invented and used from the start as a party weapon by the anti-Persian leaders."<sup>34</sup> At any rate, whatever its intent may have been, ostracism became a powerful tool in the party struggles of the fifth century and, while it remained effective, there was in Athens no further legislation against tyranny and subversion. But, although the law on ostracism remained part of the Athenian body of laws at least through the fourth century (Arist. *Ath. Pol.* 43.5), no Athenian was actually ostracized after Hyperbolus (417 B.C.), and new measures had to be introduced to protect the city against internal enemies.<sup>35</sup>

### III

The temporary and make-shift nature of the reforms by which the Athenian democracy was modified after the failure of the Sicilian venture<sup>36</sup> goes far toward explaining why no ostracisms were held in the years immediately following the ostracism of Hyperbolus and

<sup>32</sup> Arist. *Ath. Pol.* 22.3; Philochorus, fr. 30 (Jacoby); and Diod. Sic. 11.55.

<sup>33</sup> The crux is the discrepancy between Aristotle's ascription of the law to Cleisthenes (*Ath. Pol.* 22.1 and 4) and the contention of Androtion (fr. 6 [Jacoby]) that the law was enacted only in 488/7 B.C. Both authors agree that ostracism was first used against Hipparchus, the son of Charmus, in 487/6 B.C. This has raised a further problem: why should a law which Aristotle ascribed to Cleisthenes and which must, on this assumption, have been enacted soon after the fall of Isagoras, or perhaps as late as 505/4 B.C. if we accept F. Schachermeyr's argument in *Klio* 25 (1932) 346-47, not have been enforced at all for a period of almost twenty years? An unconvincing attempt to solve all these problems by assuming that Cleisthenes lived until after the battle of Marathon and introduced the law on ostracism in 488/7 B.C. has recently been made by Raubitschek, *AJA* 55 (1951) 221-29; see also the reply to this article by C. A. Robinson, Jr., *ibid.* 56 (1952) 23-26.

<sup>34</sup> Hignett 186.

<sup>35</sup> Plut. *Arist.* 7.3; *Nic.* 11.6; Philochorus, fr. 30 (Jacoby). See also O. W. Reinmuth, *RE* s.v. "Ostrakismos" 1684.

<sup>36</sup> The first important step in this direction was the appointment of ten older men as *πρόβουλοι* in order to prepare measures to meet the emergency; see Thuc. 8.1.3. The number ten is supplied by the motion of Pythodorus in Arist. *Ath. Pol.* 29.2 and by Schol. Aristoph. *Lysist.* 421.

why, in spite of the fear of tyranny and oligarchy which seized the Athenians after the mutilation of the Hermae and the profanation of the Eleusinian mysteries (Thuc. 6.53.3 and 60.1), we hear of no new legislation against tyranny and subversion of the democracy nor of any trials on these charges under the old Solonian law, which must, in theory at least, still have been in force.<sup>37</sup> If this is true of the years that stood under the shadow of the Sicilian expedition, it is even more true of the time of the revolt of the Four Hundred, when the *συγγραφείς* who paved the way for the oligarchs suspended all *γραφαὶ παρανόμων, εισαγγελίαι, and προσκλήσεις*.<sup>38</sup> It is interesting to note in this connection that even immediately after the overthrow of the Four Hundred, Antiphon was tried not on the charge of *κατάλυσις τοῦ δήμου*, but on the basis of the *νόμος δὲ κέλεται περὶ τῶν προδόντων*, i.e. for treason.<sup>39</sup>

The first step by which the law on ostracism was superseded was taken in 410/09 B.C. That the decree proposed by the *συγγραφεὺς* Demophantus is genuine, can now be considered as certain.<sup>40</sup> The decree, as it is preserved by Andocides, consists of two parts: the first stipulates measures to be taken against attempts at subversion of the democracy, and the second gives the formula of an oath, to be sworn by all Athenians, to abide by the stipulations of the first part.

Andocides introduces the decree with the words *κατὰ γε τὸν Σόλωνος νόμον*, but there is little in it to remind us of the impeachment before the Areopagus which Solon enacted.<sup>41</sup> However, it has long

<sup>37</sup> It is perhaps significant that, despite the fear that Alcibiades wanted to subvert the democracy (see Thuc. 6.27.3–28.2) neither he nor any of the men accused with him were officially charged with attempting a *κατάλυσις τοῦ δήμου* or the establishment of a tyranny. The *εἰσαγγελία* introduced by Pythonicus (see Andoc. 1.11–14 with J. Hatzfeld, *Alcibiade*<sup>2</sup> [Paris 1951] 165 with note 1) concerned only the profanation of the mysteries and was probably an *εἰσαγγελία κατὰ καινῶν καὶ ἀγράφων ἀδικημάτων* (see *Lex. rhet. Cantabr.* s.v. *εἰσαγγελία*, and Pollux 8.51), possibly lodged on the specific grounds of impiety. Similarly, the *εἰσαγγελία*, brought against Alcibiades by Thessalus (see Plut. *Alcib.* 22 with Hatzfeld, *op. cit.* 176 with note 3, and 203) seems to have been for impiety; this view is corroborated by the phrase *περὶ τῶν μυστηρίων ὡς ἀσεβοῦντων* in Thuc. 6.53.1 and by Alcibiades' defense before the Council and the Assembly on his return to Athens in 407 B.C. *ὡς οὐκ ἡσεβήκει* (see Xen. *Hellen.* 1.4.20). The testimony of Isocrates (16.6), including his statement that the charge *κατάλυσις τοῦ δήμου* was part of the *εἰσαγγελία*, is unreliable; see Hatzfeld, *op. cit.* 176, note 3.

<sup>38</sup> Thuc. 8.67; Arist. *Ath. Pol.* 29.2–4.

<sup>39</sup> [Plut.] *Vit. X orat.* 833E–F.

<sup>40</sup> Andoc. 1.96–98 with Makkink 263; J. R. Grant, *De decretis Atticis quae e memoria scriptorum veterum tradita sunt* (diss. Harvard 1946; typewritten) 163–65.

<sup>41</sup> The mention of Solon's name means no more than that the decree in the form given goes back to earlier regulations; see Makkink 263 and the material cited there; Grant (above, note 40) 164.

been recognized that part of the oath formula is related to the old Draconian law on tyranny, and that the phrase *ἐάν τις τυραννῇν ἐπαναστῇ ἢ τὸν τύραννον συγκαταστήσῃ* in the Demophantus decree is more than an accidental echo of Aristotle, *Ath. Pol.* 16.10: *ἐάν τινες τυραννῇν ἐπανιστῶνται [ἐπὶ τυραννίδι], ἢ συγκαθιστῇ <τις> τὴν τυραννίδα*.<sup>42</sup> Whether the antecedent was Draco's law itself, or the modified form which was remembered as an 'established and ancestral rule' in connection with the expulsion of the Peisistratids,<sup>43</sup> cannot be decided with certainty, in view of the scanty information we possess on the precise nature of the measures taken against the Peisistratids. But since we do know that the Peisistratids were declared outlaws after the fall of the tyranny,<sup>44</sup> and since the oath in the decree of Demophantus contains a promise to bestow upon the slayer of the potential offender the same privileges as were accorded to Harmodius and Aristogeiton and their descendants (Andoc. 1.98), some scholars have related the Demophantus oath to the bouleutic oath which was instituted in the archonship of Hermocreon.<sup>45</sup> The reference to Harmodius and Aristogeiton and their descendants does not necessarily establish the date of a possible original, because the benefactions bestowed upon them enter naturally in this context and are found throughout the fourth century as the privilege *par excellence* granted by the Athenian state.<sup>46</sup> Moreover, Hignett has rightly pointed out that the reference to tyranny in the oath of Demophantus' decree may have been actuated by the fear of tyranny as well as oligarchy which swept Athens after the mutilation of the Hermae.<sup>47</sup> But despite these objections the relation to the bouleutic oath is most felicitous and probable, in view of the fact that inscriptional evidence shows that the oath of the Councillors was investigated and published about the same time that Demophantus submitted his decree.<sup>48</sup>

<sup>42</sup> Swoboda, *Arthmios* 57–58; Wilamowitz-Moellendorff (above, note 25) 1.54, note 23.

<sup>43</sup> This possibility was first suggested by Stahl, *RhM* 46 (1891) 614–17.

<sup>44</sup> Cf. above, note 29.

<sup>45</sup> Wilamowitz-Moellendorff (above, note 25) 1.54, note 23; Busolt-Swoboda 1.234, note 1, and 2.848–49, note 3; Makkink 264. Schreiner 69 refers it to a law of Cleisthenes.

<sup>46</sup> *IG* I<sup>2</sup> 77, lines 5–9; Isaeus 5.47; Dem. 20.18, 29, 127–28, 159–60; 21.170; 23.143; Dein. 1.101; Plut. *Arist.* 27.4.

<sup>47</sup> Hignett 168 with note 2.

<sup>48</sup> *IG* I<sup>2</sup> 114, lines 28–29. Cf. also Aristoph. *Thesm.* 331–51 of the same period, where an oath similar to that prescribed by Demophantus and perhaps also by *IG* I<sup>2</sup> 114 is parodied.

Strangely enough, reference to tyranny in the decree of Demophantus is confined to the passage of the oath which we have just discussed: in the remaining parts of the decree proper as well as of the oath the term *κατάλυσις τῆς δημοκρατίας* is used to define the offense.<sup>49</sup> *Κατάλυσις τῆς δημοκρατίας* is of course a wider concept than 'tyranny' and also embraces the kind of oligarchy against which the decree of Demophantus must have been directed. We do not know whether this term was first introduced into Athenian legislation by the decree of Demophantus,<sup>50</sup> or whether it became a legal term at an earlier period;<sup>51</sup> but there can be little doubt that the kind of subversion against which Solon had introduced some kind of impeachment before the Areopagus is now for the first time placed on a par with attempts to establish a tyranny and is thus extended to all attempts to subvert the democratic constitution. Although this purpose of the Demophantus decree has been recognized before,<sup>52</sup> the way in which this extension was made has never been examined in detail. What such an examination reveals is that the decree of Demophantus makes the extension by going back to the Draconian law and by making explicit, in the language of the fifth century, what is already inherent in it.

The verb *συγκαθιστῇ* in Draco's law carries with it not only the connotation of acting as an accessory before the fact, viz., in the attempt to establish a tyranny, but also as an accessory after the fact, viz., in the government exercised by the tyranny once it has been established.<sup>53</sup> This implication is made quite explicit in both the decree proper and the oath of Demophantus' decree: in order to make all participants in a *coup* such as that of the Four Hundred jointly responsible, not only the potential subverter himself but also the associates of his rule are made liable to the same

<sup>49</sup> Strictly speaking, the term occurs in this decree only in constructions of the verb: *ἐάν τις καταλύῃ τὴν δημοκρατίαν, καταλελυμένης τῆς δημοκρατίας, κτλ.*

<sup>50</sup> This is the view of Schreiner 66.

<sup>51</sup> Although Solon is unlikely to have introduced it (see above, pp. 104–5 with notes 3–5), the term may have become part of legislative or judicial language with the development of the democracy after Cleisthenes. The earliest occurrence of the term which I have been able to find is a restoration in the Athenian decree concerning Colophon of ca. 460 B.C., *IG I<sup>2</sup> 15*, line 37: *καὶ δημοκρατίαν οὐ καταλύσο*. This part of the restoration is retained in the most recent discussion of this inscription by J. J. E. Hondius, *SEG* 3.3, line 39.

<sup>52</sup> Lipsius 2.375; Schreiner 65; Makkink 264; Grant (above, note 40) 138.

<sup>53</sup> The verb is used in this sense also in Aesch. *Prom.* 305 of Oceanus and in Thuc. 8.68.2 of Antiphon's defense speech.

penalty.<sup>54</sup> The same kind of amplification is found again with only one significant difference in the way in which the penalty is defined. Whereas Draco's law made both the offender and his family subject to *ἀτιμία* (which, as we saw above, meant that they were declared outlaws),<sup>55</sup> the decree of Demophantus no longer implicates the family of the offender and, while avoiding the term *ἀτιμία* and its cognates, which had assumed a different meaning long ago, spells out in considerable detail what the Draconian *ἀτιμία* involved. The offender is declared a public enemy of Athens who may be slain with impunity;<sup>56</sup> his slayer and the slayer's accomplices will be free from religious pollution;<sup>57</sup> and his property shall be confiscated, the customary tithe being dedicated to Athena.<sup>58</sup> All these provisions are not much more than an elaboration of the older concept of *ἀτιμία* now expressed in the language of the fifth century: the decree of Demophantus thus constitutes, in a sense, a re-enactment of the old Draconian law, expanded and modernized to fit the conditions of the last decade of the fifth century.<sup>59</sup>

<sup>54</sup> Andoc. 1.96 and 97. Here, and in notes 56–58, below, (A) refers to the decree proper, (B) to the oath. (A): ἡ ἀρχὴν τινα ἄρχη καταλελυμένης τῆς δημοκρατίας; (B): καὶ ἐάν τις ἄρξῃ τιν' ἀρχὴν καταλελυμένης τῆς δημοκρατίας τὸ λοιπόν.

<sup>55</sup> Arist. *Ath. Pol.* 16.10: ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος. For the meaning, see above pp. 106–7.

<sup>56</sup> Andoc. *loc. cit.* (above, note 54). (A): πολέμιος ἔστω Ἀθηναίων καὶ νηποινεὶ τεθνάτω (B): ὡς πολέμιον κτείναντα τὸν Ἀθηναίων. On the terminology here and its relation to that of the fourth century, see also Makkink 268–69.

<sup>57</sup> Andoc. *loc. cit.* (above, note 54). (A): ὁ δὲ ἀποκτείνας τὸν ταῦτα ποιήσαντα καὶ ὁ συμβουλευσας ὅσιος ἔστω καὶ εὐαγής; (B): καὶ ἐάν τις ἄλλος ἀποκτείνῃ ὅσιον αὐτὸν νομιῶ εἶναι καὶ πρὸς θεῶν καὶ δαιμόνων.

<sup>58</sup> *Ibid.* (A): καὶ τὰ χρήματα αὐτοῦ δημόσια ἔστω καὶ τῆς θεοῦ τὸ ἐπιδέκατον; (B): καὶ τὰ κτήματα τοῦ ἀποθανόντος πάντα ἀποδόμενος ἀποδώσω τὰ ἡμίσηα τῷ ἀποκτείναντι, καὶ οὐκ ἀποστερήσω οὐδέν. The difference between these two formulae is explained by the fact that the second is part of an oath to be sworn by each individual Athenian. The tithe would of course be collected by the appropriate officials, in this case the *poletai*, from the confiscated property and not by the individual. The individual, on the other hand, would receive his share of the property from the amount realized by public sale through the *poletai*; see Makkink 269 and the literature cited there.

<sup>59</sup> Some provisions contained in the Athenian decree concerning Erythrae of ca. 455 B.C., which may reflect Athenian law of the middle of the fifth century, may be considered as an intermediate link between the old law and the decree of Demophantus. M. N. Tod, *A Selection of Greek Historical Inscriptions* (Oxford 1946–48) 12. no. 29 (= IG I<sup>2</sup> 10), lines 31–37:

ἐάν δ(ε) τ(ι)ς ἀ(λ)ῶ[ι προδιδ]οῦς . . το<ῖ>ς τυράννοις τῆμ (πόλι)[ν] (τῇν) Ἐρυθραῖ<ω>ν, καὶ [αὐτ]ὸς [νρηπο](ινε)ῖ τεθνάτω [κ](αῖ) [οἱ] παῖδε(ς ἡ)οι ἐχ(ς) ἐ(κ)εῖν(ου), ἐὰ[ν] (μ)ῇ - - - ἐχο(ν)[τε]ς οἱ π(α)ῖδες [η]οι ἐχ(ς) [ἐ]κείν[ου ἐς τὸν δῆμον τὸν] Ἐρυθραῖω[ν] καὶ [τὸ]ν Ἀθηναίων

## IV

The *stèle* on which the decree of Demophantus was inscribed still existed in the fourth century: Demosthenes refers to it in his speech against Leptines in 355/4 B.C.,<sup>60</sup> and Lycurgus in his speech against Leocrates in 331/0 B.C.<sup>61</sup> Yet we know that, at least by the time Lycurgus mentions it, its provisions against *κατάλυσις τῆς δημοκρατίας* had been superseded by the *νόμος εἰσαγγελτικός*.<sup>62</sup> This law, as we find it in Hypereides' *verbatim* quotation, prescribes the procedure of *εἰσαγγελία* for the following four groups of offenses: (1) attempted or actual overthrow of the democracy;<sup>63</sup> (2) foundation of conspiratorial clubs;<sup>64</sup> (3) treason;<sup>65</sup> and (4) acceptance of bribes for the purpose of misleading the people.<sup>66</sup> Three dates have been suggested for the introduction of this law: 411/0 B.C., after the fall of the oligarchic régime;<sup>67</sup> after 403 B.C., in connection with the revision of the laws;<sup>68</sup> and the middle of the fourth century.<sup>69</sup> Our

ἀπο(φ)ανθ<ώσι>ν· τὰ δὲ χρ(ή)ματα [τοῦ χαλόντο]ς κατα<θ>έντ(ε)ς ἄπ(α)ντ(α) [οἱ π]αῖδες τ[ὸ ἥ]μις)ν [ἀπο]λ(λ)αβόντων, τὸ δὲ δημευέσθω.

As in Draco's law and the decree of Demophantus, the offender is declared an outlaw. The words used to describe the punishment, *νηποινεῖ τεθνήτω*, may be an anticipation of those in the Demophantus decree. However, here the children are involved in the crime of the father, as they are in Draco's law; but they are implicated only if they are proved to be disloyal to the Erythraean and Athenian democracy. It is in this respect especially that the Erythrae decree occupies an intermediate position between the two Athenian regulations. Curiously enough, if any judgment can be based on the restorations of a defective text, the Erythrae decree seems to envisage the threat of tyranny as coming from without, whilst the Athenian regulations seem to be concerned with tyranny and subversion respectively only as an internal threat.

<sup>60</sup> Dem. 20.159. For the date, see F. Blass, *Die attische Beredsamkeit*<sup>2</sup> (Leipzig 1887-98) 3.264; also O. Navarre and P. Orsini (edd.), *Démosthène: Plaidoyers politiques* 1 (Paris 1954) 43 and 55.

<sup>61</sup> Lycurg. 1.124-26. On Lycurgus' erroneous dating of the Demophantus decree and addition of treason, see Schreiner 71-72 and Makkink 265. On the date of the speech, see Blass (above, note 60) 3B.111 with note 8.

<sup>62</sup> Hypereid. *Pro Eux.* 7 and 8. That this law cannot be later than the middle of the fourth century is generally agreed; see Lipsius 1.192; Busolt-Swoboda 2.1008 with note 6; Bonner-Smith 1.302-3.

<sup>63</sup> Hypereid. *loc. cit.* (above, note 62): *ἐάν τις τὸν δῆμον τὸν Ἀθηναίων καταλήῃ ἢ συνίῃ ποι ἐπὶ καταλύσει τοῦ δήμου.*

<sup>64</sup> *Ibid.*: *ἡ ἑταιρικὸν συναγάγη.* For the use of *τὸ ἑταιρικόν* in place of the more usual term *ἡ ἑταιρεία* as early as the end of the fifth century, cf. Thuc. 8.48.3.

<sup>65</sup> *Ibid.*: *ἡ ἐάν τις πόλιν τινὰ προδῶ ἢ ναὺς ἢ πεζὴν ἢ ναυτικὴν στρατιάν.*

<sup>66</sup> *Ibid.*: *ἡ ῥήτωρ ὧν μὴ λέγῃ τὰ ἔριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων.*

<sup>67</sup> T. Thalheim, *Hermes* 37 (1902) 342-43; 41 (1906) 304-9; *RE* s.v. *Εἰσαγγελία* 2139; Bonner-Smith 1.303-5.

<sup>68</sup> E. Caillemer, *DarSag* 2.1.499; accepted without argument by G. Colin, *Hypéride: Discours* (Paris 1946) 148.

<sup>69</sup> Lipsius 1.192; Busolt-Swoboda 2.1008 with note 6.

present purpose does not permit us to discuss the complex problem of the history of *εἰσαγγελία* in detail. Rather, we shall confine ourselves to the passage concerning the overthrow of the democracy and examine what light it may throw on the problem of dating the law.

The chief reason for dating the law in the middle of the fourth century was the belief that about that time the penalty was changed from a fine to death.<sup>70</sup> But, as has rightly been pointed out,<sup>71</sup> the passages cited do not offer conclusive proof that the death penalty was inflicted in cases of *εἰσαγγελία*. Moreover, Hypereides himself, who is the chief authority cited in connection with the death penalty,<sup>72</sup> cites cases earlier than 359 B.C. — the date accepted by Busolt-Swoboda as the *terminus post quem* for this law — in which treason and the acceptance of bribes for misleading the people were handled by *εἰσαγγελία* (Hypereid. *Pro Eux.* 1).

It is remarkable that in the various attempts to determine the date of the *νόμος εἰσαγγελτικός* the decree of Demophantus has received so little attention.<sup>73</sup> Only Thalheim, in his second article on the subject, briefly states that Demophantus' decree was passed *ab irato* by the restored democracy in 410/09 B.C., and that this does not exclude the possibility that the *νόμος εἰσαγγελτικός* was passed under the régime of the Five Thousand immediately following the fall of the Four Hundred, i.e., shortly before the passage of the decree of Demophantus.<sup>74</sup> However, since there was apparently no sharp break between the Five Thousand and the restored democracy,<sup>75</sup> it is quite unlikely that two laws against the same offense should have appeared in rapid succession, one prescribing the procedure of impeachment, and the other declaring the offender an outlaw, even though both in effect may have implied the death penalty. The decree of Demophantus itself provides reason strong enough to reject 411/0 B.C. as the date of the *νόμος εἰσαγγελτικός*.

There are further arguments against this date. Thalheim and Bonner-Smith see in the prohibition of the conspiratorial clubs,

<sup>70</sup> Lipsius 1.191–92 with notes 44 and 45; Busolt-Swoboda, *loc. cit.* (above, note 69).

<sup>71</sup> By Bonner-Smith 1.305.

<sup>72</sup> Hypereid. *Pro Lyc.* 20; *Pro Eux.* 14 and 18; cf. also Aeschin. 3.252; Lycurg. 1.149.

<sup>73</sup> Bonner-Smith 1.303–9 ignore it completely, as does Thalheim in his earlier article, *Hermes* 37 (1902) 342–52.

<sup>74</sup> Thalheim, *Hermes* 41 (1906) 308–9.

<sup>75</sup> K. von Fritz and E. Kapp, *Aristotle's Constitution of Athens and Related Texts* (New York 1950) 180–82, note 117.

through whose agency the oligarchy had come into being, a cogent reason for dating the law after the fall of the Four Hundred.<sup>76</sup> Yet on Thalheim's own admission 411 B.C. is no more than a *terminus post quem* and 397 B.C. the *terminus ante quem*.<sup>77</sup> Though probability favours the enactment of a measure against conspiratorial clubs in 410/09 B.C.,<sup>78</sup> there is no need to assume that the same law also contained provisions against the overthrow of the democracy (a measure which, by the way, can hardly have been enacted by the Five Thousand), treason, and misleading the people. On the contrary, since the decree of Demophantus dealt with only one of the offenses committed by the oligarchs, it seems reasonable to assume that any law against conspiratorial clubs that may have been passed also appeared independently. It has further been argued that, since the Four Hundred abolished all impeachments (Arist. *Ath. Pol.* 29.4), the democracy would naturally restore them.<sup>79</sup> While this may well be true of all those cases which had been handled by *εἰσαγγελία* before 411 B.C. and especially of treason, the decree of Demophantus cannot have been part of such a re-enactment. Moreover, even though the concept of treason probably was more closely defined after the fall of the Four Hundred than it had been before in connection with Antiphon's trial,<sup>80</sup> there is no reason to believe that the new concept was embodied in a law at the same time, or that the νόμος ὃς κέλεται περὶ τῶν προδόντων, on the basis of which Antiphon's trial took place ([Plut.] *Vit. X orat.* 833E-F), was more than the re-instatement of a law suspended in 411 B.C.

The evidence which favours the period following the archonship of Euclides as the date of the νόμος εἰσαγγελτικός is, in my opinion, the strongest. The decree of Demophantus may again serve as a point of departure. We learn from Andocides that the decree did not survive the legal reforms of 403 B.C.<sup>81</sup> Indeed, it would have been a clear contradiction to the letter and the spirit of the amnesty

<sup>76</sup> Thalheim, *Hermes* 41 (1906) 305-6; Bonner-Smith 1.303-4.

<sup>77</sup> Thalheim, *loc. cit.* (above, note 76). The latter date is given by Isoc. 16.6.

<sup>78</sup> This must have been the motive behind the law on the new seating arrangement of the Council in that year, recorded by Philochorus, fr. 140 (Jacoby).

<sup>79</sup> Thalheim (above, note 76) 307-8; Bonner-Smith 1.304.

<sup>80</sup> [Plut.] *Vit. X orat.* 833E-F, as cited by Thalheim (above, note 76) 306-7; cf. also Bonner-Smith 1.302.

<sup>81</sup> Andoc. 1.99. Cf. Lipsius 1.187 with note 33; Stahl, *RhM* 46 (1891) 283, note 1. — This view has been opposed by Makkink 264-65 on the ground that the νόμος εἰσαγγελτικός was not introduced until the middle of the fourth century. His argument collapses with the disproof of that date by Bonner-Smith 1.305.

of that year, if all those who had participated in the tyranny of the Thirty had been declared outlaws on the grounds that they overthrew the democracy. True, the Thirty, the Ten, and the Eleven were excluded from the amnesty (Andoc. 1.90; Arist. *Ath. Pol.* 39.6); but even a cursory glance at the speeches of Lysias will show that the Athenians did not easily forget. The adoption of the procedure of *εἰσαγγελία* for overthrow of the democracy to replace the harsher measures prescribed by Demophantus would, therefore, be consonant with the restraint expressed in the amnesty. We have seen that some of the other provisions of the *νόμος εἰσαγγελτικός*, such as the law prohibiting conspiratorial clubs and the law against treason, probably existed independently even after 411 B.C. This means that the *νόμος εἰσαγγελτικός* subsumes under one and the same heading what had existed apart before, thus constituting the kind of unification and simplification which we know to have been undertaken by the commissions who revised the laws after the fall of the Thirty. These same commissions probably classified the *νόμος εἰσαγγελτικός* among the *νόμοι βουλευτικοί*, since the impeachment was usually lodged with the Council which, in most cases, would then bring it before the Assembly.<sup>82</sup> From this point of view, too, a date soon after 403 B.C. seems preferable to 411 B.C.

This result is checked by the references which are found in the different provisions of the *νόμος εἰσαγγελτικός* to the events surrounding the rule of the Thirty. That the first provision, aimed at preventing the overthrow of the democracy, applied to them, has already been stated. Similarly, the prohibition of conspiratorial clubs may refer to them: for, even though legislation against such clubs may have been enacted after 411 B.C., they continued to flourish and were directly responsible for the establishment of the Thirty (Lysias 12.43; Arist. *Ath. Pol.* 34.3). Since the section on treason mentions the betrayal of a city, the advocates of 410 B.C. as the date of the *νόμος εἰσαγγελτικός* have seen here a reference to the allied cities and in particular to the surrender of Oenoe to the Boeotians by the Four Hundred.<sup>83</sup> But although the indefinite *πόλιν τινά* suggests more than one city, the immediate reference may well be to Athens alone, which the oligarchs handed over to Lysander (Lysias 12.71; Diod. Sic. 14.3.4), and which, at the instigation of the

<sup>82</sup> For the classification of the laws, see Dem. 24.20 with Schreiner 9–20. On jurisdiction in cases of *εἰσαγγελία* see Lipsius 1.195–96.

<sup>83</sup> Thuc. 8.98, as cited by Thalheim, *Hermes* 41 (1906) 307; Bonner-Smith 1.304.

Thirty, was occupied by the harmost Callibius and his Spartan garrison.<sup>84</sup> Furthermore, the same oligarchs agreed to hand over the whole Athenian fleet, with the exception of twelve ships, to the Spartans,<sup>85</sup> and the Thirty decided, over the protestations of Theramenes, to disarm all those citizens whose names were not entered on the list of the Three Thousand.<sup>86</sup> It may well be that these measures are reflected in those parts of the νόμος εισαγγελτικός which deal with the betrayal of the fleet and the land army.

We can take a further step forward: the earliest possible reference to the treason clause in our law is found in Lysias' speech against Philon, which was delivered in the years immediately following 403 B.C.,<sup>87</sup> and may, therefore, corroborate our date for this law. A phrase from another speech ascribed to Lysias (20.10) has been taken to indicate that the clause against misleading the people existed as early as 410 B.C.<sup>88</sup> The phrase in itself and in its context is hardly specific enough to warrant such a conclusion. One might see in it also a reference to the debates which must have preceded the establishment of the Thirty, perhaps even an allusion to the motion of Dracontides which brought them to power (Arist. *Ath. Pol.* 34.3). Yet it is equally probable that we are here dealing with the change into a law of an old custom which Deinarchus (2.16) ascribes to the 'earliest lawgivers,' and according to which a curse against bribed speakers was pronounced in each Assembly meeting. Nor is it impossible that the provisions against misleading the people were taken over into the νόμος εισαγγελτικός at this time from the law *περὶ τῆς τῶν ῥητόρων εὐκοσμίας* or from the *δοκιμασία ῥητόρων* which may go back to Solon.<sup>89</sup>

## V

Less than a decade before Hypereides cited the νόμος εισαγγελτικός in his defense of Euxenippus, and only a few years before Lycurgus, in 331/0 B.C., had the decree of Demophantus read into his speech against Leocrates, there existed at Athens, set up at the entrance to

<sup>84</sup> Lysias 12.94; 13.46; Xen. *Hellen.* 2.3.13-14, 20, 42; Isoc. 15.319; Aeschin. 2.77; Arist. *Ath. Pol.* 37.2; Diod. Sic. 14.4.3-4; Plut. *Lysand.* 15.5.

<sup>85</sup> Lysias 13.46; Xen. *Hellen.* 2.2.20; 2.3.8; Plut. *Lysand.* 15.1.

<sup>86</sup> Lysias 12.40, 95; Xen. *Hellen.* 2.3.20, 41; Arist. *Ath. Pol.* 37.1 and 2.

<sup>87</sup> Lysias 31.26. For the date of the speech, see Blass (above, note 60) 1.481.

<sup>88</sup> Bonner-Smith 1.305 with note 2.

<sup>89</sup> Aeschin. 1.23, 28-32; 3.2; [Dem.] 25.30 with Soudhaas 49 and Schreiner 34.

the Areopagus,<sup>90</sup> and in the Assembly, a law against tyranny and subversion which was closely modelled upon the decree of Demophantus.<sup>91</sup>

The date of this law, which was presented by a certain Eucrates, is shown by the prescript (lines 1–3) to be the late spring of 336 B.C.<sup>92</sup> The law falls into two sections. The first of these, which is considerably shorter than the second and takes up only lines 7–11, declares an outlaw any person and his accessories who would attempt to rise up against the people to establish a tyranny, or who would overthrow the Athenian people or the Athenian democracy.<sup>93</sup> The second and longer section, which runs from lines 11–22, is exclusively directed at the members of the Areopagus. Loss of civic rights and confiscation of property is inflicted upon any Areopagite and his descendants who, after the overthrow of the people and the Athenian democracy, would go up into the Areopagus, attend its sessions, or participate in any of its deliberations.<sup>94</sup>

The law of Eucrates provides us with a fine sample of legislative drafting in the fourth century. The echoes which we find here to both the language and the content of the decree of Demophantus are so striking that there can be no doubt that, in spite of many differences, Eucrates modelled his law upon the earlier decree. Moreover, there are some small indications that Eucrates may have

<sup>90</sup> For the topographical problems involved, see H. A. Thompson, *Hesperia* 22 (1953) 51–53; and B. D. Meritt, *ibid.* 129.

<sup>91</sup> See Meritt as cited above, note 1.

<sup>92</sup> That it is a law rather than a decree is evinced by the fact that it has gone through the regular procedure of *νομοθεσία*, see *Hesperia* 21 (1952) 355–56, line 6.

<sup>93</sup> *Ibid.*, lines 7–11: ἐάν τις ἐπαναστήι τῷ δήμῳ ἐπὶ τυραννίδι ἢ τὴν τυραννίδα συνκαταστήσῃ ἢ τὸν δῆμον τὸν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθήνησιν καταλύσῃ, ὅς ἂν τὸν τοῦτων τι ποιήσαντα ἀποκτείνῃ ὅσιος ἔστω. For the juxtaposition of *δῆμος* and *δημοκρατία*, cf. the distinction between *πολίτευμα* and *πολιτεία* drawn by Aristotle, *Pol.* 3.6, p. 1278b.6–16, especially 11–14: κύριον μὲν γὰρ πανταχοῦ τὸ πολίτευμα τῆς πόλεως, πολίτευμα δ' ἐστὶν ἡ πολιτεία. λέγω δ' οἷον ἐν μὲν ταῖς δημοκρατικαῖς κύριος ὁ δῆμος, οἱ δ' ὀλίγοι τοῖναντίον ἐν ταῖς ὀλιγαρχίαις.

<sup>94</sup> *Hesperia* 21 (1952) 355–56, lines 20–22: ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου καὶ ἡ οὐσία δημοσία ἔστω αὐτοῦ καὶ τῆς θεοῦ τὸ ἐπιδέκατον. — Lines 11–16: μὴ ἐξέλαι δὲ τῶν βουλευτῶν τῶν τῆς βουλῆς τῆς ἐξ Ἀρείου πάγου καταλελυμένου τοῦ δήμου ἢ τῆς δημοκρατίας τῆς Ἀθήνησιν ἀνέναι εἰς Ἀρεῖον πάγον μὴδὲ συναθίξειν ἐν τῷ συνεδρίῳ μὴδὲ βουλεύειν μὴδὲ περὶ ἐνός (repeated in very similar language in lines 16–20). To the passages cited by Meritt, *op. cit.* 358, note 37 (Aeschin. 1.92 and Dein. 1.54), as attesting the use of *συνέδριον* to describe the Council of the Areopagus add: Aeschin. 1.81; 3.19; Dein. 1.9, 66, 85–87, 104, 112; 3.7; Isoc. 7.37; Lycurg. 1.12, 54; [Dem.] 59.83. The way in which *συνέδριον* is used in these passages militates against the suggestion of Thompson, *loc. cit.* (above, note 90), that the term here designates a place of assembly.

gone back beyond the decree of Demophantus to the early Draconian law. To take the linguistic resemblances first:

The first phrase in the law of Eucrates (lines 7–8): *ἐάν τις ἐπαναστῇ τῷ δήμῳ ἐπὶ τυραννίδι ἢ τὴν τυραννίδα συγκαταστήσῃ* closely resembles in its construction the oath contained in the decree of Demophantus: *καὶ ἐάν τις τυραννῇ ἐπαναστῇ ἢ τὸν τύραννον συγκαταστήσῃ*, except that Eucrates (1) adds *τῷ δήμῳ*, an addition which can perhaps be explained by the political outlook of its author<sup>95</sup> and by the fact that *ἐπανίστημι* is usually found with an indirect object;<sup>96</sup> and (2) that he uses the abstracts *ἐπὶ τυραννίδι* and *τὴν τυραννίδα* in place of the infinitive *τυραννῇ* and the personal *τὸν τύραννον*. As regards the second point (2), Eucrates is less close to the decree of Demophantus than to the old Draconian law, where we find both *τυραννῇ* and, if the bracketed words are to be retained, *ἐπὶ τυραννίδι*, and the abstract *τὴν τυραννίδα*.<sup>97</sup>

Of the remaining linguistic similarities between the law of Eucrates and the decree of Demophantus, the most striking are best given by means of the following list, where, under the heading *Demophantus*, (A) refers to the decree proper, (B) to the oath.

<i>Eucrates:</i>	<i>Demophantus:</i>
8–10 : ἡ τὸν δῆμον τὸν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθή- νησιν καταλύσει	(A) : ἐάν τις δημοκρατίαν καταλύῃ τὴν Ἀθήνησιν (B) : ὅς ἂν καταλύσῃ τὴν δημοκρα- τίαν τὴν Ἀθήνησιν
10–11 : ὅς ἂν τὸν τούτων τι ποιή- σαντα ἀποκτείνῃ ὅσιος ἔστω	(A) : ὁ δὲ ἀποκτείνας τὸν ταῦτα ποιή- σαντα καὶ ὁ συμβουλεύσας ὅσιος ἔστω καὶ εὐαγής
21–22 : καὶ ἡ οὐσία δημοσία ἔστω αὐτοῦ, καὶ τῆς θεοῦ τὸ ἐπιδέ- κατον.	(A) : καὶ τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ ἐπιδέ- κατον.

<sup>95</sup> See Meritt's note (above, note 1) 357.

<sup>96</sup> Cf. Hdt. 1.89, 130; 3.62; Thuc. 1.115; 8.63, 73; Dein. 1.19.

<sup>97</sup> Arist. *Ath. Pol.* 16.10. Although all editors have followed F. G. Kenyon in bracketing *ἐπὶ τυραννίδι*, it is not impossible that the archaic law did have the pleonasm: *ἐάν τις τυραννῇ ἐπανιστῶνται ἐπὶ τυραννίδι*. Such pleonasms do occur in archaic legislation; cf. *ἀνεφσύττος καὶ ἀνεφσιῶ* in Draco's law on homicide as re-published in 409/8 B.C. in *IG I<sup>2</sup> 115*, lines 15 and 21, and also the Spartan *rhetra* cited by Plut. *Lyc.* 6. If that was indeed the wording of the Draconian law against tyranny, Demophantus and Eucrates may have simplified its language in their legislation by dropping the prepositional phrase and the infinitive respectively.

It will be noticed that the variations in these three passages are relatively minor differences in tense and vocabulary, and not much can be made of the fact that Eucrates (lines 10–11) omits *ὁ συμβουλευσας* and *εὐαγής* which we do find in Demophantus' decree.

Although there are some resemblances to the decree of Demophantus in the intervening passage (lines 11–21) of Eucrates' law, the differences are much more remarkable. Again it will be convenient to list the relevant passages of Demophantus' decree side by side with the text of the law of 336 B.C.

*Eucrates* (lines 11–21):

μη̄ ἐξεῖναι δὲ τῶν βουλευτῶν τῶν τῆς βουλῆς τῆς ἐξ Ἀρείου πάγου καταλελυμένου τοῦ δήμου ἢ τῆς δημοκρατίας τῆς Ἀθήνησιν ἀνιέναι εἰς Ἀρείον πάγον μηδὲ συναθίζειν ἐν τῷ συνεδρίῳ μηδὲ βουλεύειν μηδὲ περὶ ἐνός· ἐὰν δὲ τις τοῦ δήμου ἢ τῆς δημοκρατίας καταλελυμένων τῶν Ἀθήνησιν ἀνίηι τῶν βουλευτῶν τῶν ἐξ Ἀρείου πάγου εἰς Ἀρείον πάγον ἢ συναθίζηι ἐν τῷ συνεδρίῳ ἢ βουλεύηι περὶ τινος ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου.

*Demophantus*:

(A) : ἡ ἀρχὴν τινα ἄρχη καταλελυμένης τῆς δημοκρατίας

(B) : καὶ ἐὰν τις ἄρξη τιν' ἀρχὴν καταλελυμένης τῆς δημοκρατίας τὸ λοιπόν

(A) : πολέμιος ἔστω Ἀθηναίων καὶ νηπιονεὶ τεθνάτω

(B) : ὅσιον αὐτὸν νομιῶ εἶναι καὶ πρὸς θεῶν καὶ δαιμόνων, ὥς πολέμιον κτείναντα τὸν Ἀθηναίων.

The very nature of the differences makes it mandatory to shift our discussion from language to content. While the decree of Demophantus reserves the same treatment, viz., treating the offender as an outlaw, for both the subverter of the democracy and those who would hold office after the overthrow of the democracy, Eucrates declares an outlaw only the potential tyrant and subverter (lines 10–11). Moreover, Eucrates directs his law not at any office holder, but confines it exclusively to the members of the Areopagus. These, unlike the office holders in Demophantus' decree, are not treated as outlaws, but are simply deprived of their civic rights, a penalty which is, again unlike the decree of Demophantus, also extended to their descendants. In this connection, it is interesting

to note that Eucrates again goes back to the old Draconian law, although of course he uses *ἄτιμος* in its later sense.<sup>98</sup>

This brings us to the historical problems raised by the law of Eucrates. The law poses two interrelated questions to which only very tentative answers can be attempted here: (1) What actuated so strong a fear of tyranny and subversion of the democracy at Athens two years after the lost battle of Chaeroneia and only a few months before the death of Philip<sup>99</sup> that the νόμος εἰσαγγελτικός was, temporarily at least, superseded by a new and more severe law? (2) Why is the Areopagus singled out as the chief butt of the law of Eucrates? What was its power in 336 B.C. and what its political tendency that it could be feared so much at this time?

What we know about the political issues that stirred the Athenians during this period centers about the division between pro- and anti-Macedonian sentiment, and the only other piece of evidence we possess concerning Eucrates indicates that he was a staunch anti-Macedonian who, together with Demosthenes and Hypereides, was sentenced to death when Antipater gained control of Athens in 322 B.C.<sup>100</sup> Moreover, it is possible to demonstrate that the activities of Philip did give rise to a fear of tyranny and subversion at Athens. If Demosthenes, in the years immediately preceding Chaeroneia, repeatedly referred to Philip as a tyrant,<sup>101</sup> we might write it off as a rhetorical device to rouse the Athenians to action against Philip. But there can be no doubt that Athenian apprehensions were aroused when, in 343–342 B.C., Philip conquered Euboea, overthrew the democracy at Eretria, and set up the three tyrants Automedon, Hipparchus, and Cleitarchus at Eretria and Philistides at Oreus. Although these tyrannies were short-lived, the speeches of Demosthenes delivered shortly after their establishment and even as late as 330 B.C. bear eloquent witness to the effect which Philip's actions had upon the Athenians.<sup>102</sup>

<sup>98</sup> Compare Eucrates: *ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου* with Arist. *Ath. Pol.* 16.10: *ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος*.

<sup>99</sup> Philip was killed early in the archonship of Pythodelus (= 336/5 B.C.), see Diod. Sic. 16.91.1 and Arrian 1.1.1. Although the name of the archon is given inaccurately as Pythodorus and Pythodemus respectively, the true name is known from inscriptional evidence.

<sup>100</sup> Cf. Lucian, *Dem. enc.* 31 with Meritt (above, note 1) 357.

<sup>101</sup> Dem. 1.5; 6.21, 24, 25; 10.4; 18.66.

<sup>102</sup> Dem. 8.36; 9.17, 27, 33, 58, 62; 10.8; 18.71, 79. Concerning the sequence of events, see F. R. Wüst, *Philipp II. von Makedonien und Griechenland in den Jahren 346 bis 338* (München 1938) 109–11.

The fear of Philip was not allayed by the favourable peace terms which he imposed on Athens after his victory at Chaeroneia. There is some evidence that the anti-Macedonian activities to which this fear gave rise<sup>103</sup> are to be related to a very real fear of tyranny at Athens, and it is particularly interesting for our present purposes that the only two pieces of evidence we possess point to the year 336 B.C., the same year in which Eucrates' law was passed. The first of these is the speech *On the Treaty with Alexander*, which is falsely attributed to Demosthenes, and which almost certainly was delivered in the winter of 336/5 B.C. before Alexander's campaign against Thebes.<sup>104</sup> What characterizes this speech is the insistence of the speaker on identifying the Macedonian régime with a tyranny: not only is the king of Macedon accused of having restored the tyrants of Messene ([Dem.] 17.3–4) and of having overthrown the democracy at Pallene to set up the wrestler Chaeron as a tyrant there (*ibid.* 10), but Alexander himself is called a tyrant (*ibid.* 4, 12, 29); and one passage suggests that the speaker was filled with fear that tyranny was threatening Athens (*ibid.* 14). An even stronger indication of fear of tyranny at this time is contained in the fragments of Hypereides' speech *Against Philippides* that have come down to us. This speech, which must have been delivered either shortly before or shortly after the death of Philip,<sup>105</sup> supports a *γραφὴ παρανόμων*, and was aimed less at Philippides himself than at certain *πρόεδροι* who had proposed in the Assembly to bestow honours upon a number of Macedonians.<sup>106</sup> As Demosthenes had done before him, Hypereides calls the Macedonian rulers 'tyrants,'<sup>107</sup> but he goes a step further: he accuses Philippides of being among those who promote the interest of these tyrants at Athens to lead the city into slavery,<sup>108</sup> and charges that, far from being a democrat, Philip-

<sup>103</sup> The evidence is most conveniently assembled and discussed in A. Schaefer, *Demosthenes und seine Zeit* 3<sup>2</sup> (Leipzig 1887) 74–83.

<sup>104</sup> M. Croiset (ed. and tr.), *Démosthène: Harangues* 2 (Paris 1925) 162. The speech is dated 335 B.C. or earlier by Blass (above, note 60) 3B.146–47 with 147, note 1; and H. Weil, *Les harangues de Démosthène*<sup>2</sup> (Paris 1881) 464–65.

<sup>105</sup> Blass (above, note 60) 3B.78; and Colin (above, note 68) 90–92, cf. *ibid.* 31, note 2.

<sup>106</sup> See Blass (above, note 60) 3B.77 and Colin (above, note 68) 87–89. Colin aptly compares this speech with the action against Ctesiphon, which was actually aimed at Demosthenes.

<sup>107</sup> Hypereid. *In Philipp.* 8, 10, and fr. 1 (Colin).

<sup>108</sup> *Ibid.* fr. 1 (Colin): . . . ἐν] ἐλευθέρῳ πόλει τὰ τοῖς τυράννοις [συμφέρου]ντα πράττοντ[ες, καὶ αὐτῇ]ν εἰς δουλείαν ἐμβάλλοντες. . . .

pides prefers to be a slave to tyrants and to order the people about.<sup>109</sup> Even after making the proper allowance for rhetorical hyperbole, the date of the speech together with the pro-democratic and anti-tyrannical tone of the passages cited make it of one piece with the law of Eucrates. It seems, therefore, safe to conclude that the anti-tyrannical motive underlying Eucrates' law must be related to the fear of Philip and of Macedonian supremacy in general.

It now remains to raise the question why the anti-tyrannical measures contained in the law of Eucrates are focused upon the Areopagus. There is, to the best of my knowledge, no parallel attack upon the Areopagus to be found in what we know of the literature and the inscriptions of the second half of the fourth century B.C.,<sup>110</sup> and it is perhaps not insignificant, as Professor J. A. O. Larsen has suggested,<sup>111</sup> that the present attack is associated with a name that is otherwise practically unknown to us. If Eucrates, in proposing this law, acted as a spokesman for a considerable segment of public opinion, as he must have, since the law evidently had gone through the cumbersome process of *νομοθεσία*, his "party" must have been more extreme than that of Demosthenes, who, in spite of his well-known democratic leanings, had moved a decree at some time before 344 B.C. conferring upon the Areopagus the power to punish any citizen who would transgress the law,<sup>112</sup> and who had on several other occasions used the Areopagus for his own political ends.<sup>113</sup> It is well known that the affairs of the Athenian democracy in the latter half of the fourth century were chiefly in the hands of the comparatively well-to-do citizens;<sup>114</sup> and it may, therefore, well be that the law of Eucrates is the first piece of evidence we have to attest the presence in Athens of a group which may have drawn its strength from the poorer classes. However, even though

<sup>109</sup> *Ibid.* 10: διὰ τί γὰρ <ἀν> τούτου φείσασθε; πότερα διότι δημοτικός ἐστιν; ἀλλὰ ἴστ' αὐτὸν τοῖς μὲν τυράννοις δουλεύειν προερόμενον, τῷ δὲ δήμῳ προσταττεῖν ἀξιούντα.

<sup>110</sup> The only derogatory treatment of the Areopagus in this period is in Aeschin. 1.81 and 84, delivered in 345 B.C., if the interpretation of Wüst (above, note 102) 47-49 is correct. There may also be some unpopularity of the Areopagus at the bottom of Lycurgus' request to his audience in 331/0 B.C. (1.52) not to interrupt his mention of the Areopagus with shouts. However, neither of these passages evinces the kind of open hostility against the Areopagus that we find in Eucrates' law.

<sup>111</sup> *CP* 49 (1954) 9.

<sup>112</sup> Dein. 1.62. For the date, see Busolt-Swoboda 2.926 with note 2.

<sup>113</sup> See Wüst (above, note 102) 47-48.

<sup>114</sup> The most recent contributions to this problem are: A. H. M. Jones, *The Athens of Demosthenes* (Cambridge 1952) 20-24; the same author, *Cambr. Hist. Journ.* 11 (1953) 1-26; and Larsen, *CP* 49 (1954) 7-9.

this may be true, we cannot say what role the law of Eucrates may have played in any "party" struggles, since we have next to no information about actual "party" struggles in the fourth century. For the same reason, too, we know of no agitation or conspiracy in Athens itself at this time which might have given rise to the fear of tyranny and subversion expressed in the law of Eucrates.

But we know that the second half of the fourth century witnessed an increase in the power of the Areopagus not only in sacral but also in political affairs.<sup>115</sup> This power reached its peak in the period immediately following the battle of Chaeroneia. A decree was passed according to which the Areopagus was to inflict the death penalty upon anyone who tried to leave Attica, and there is evidence that it made use of this right.<sup>116</sup> That in spite of these apparently patriotic actions, the Areopagus did oppose the anti-Macedonian extremists and lent its prestige to the peace party is suggested by the fact that thanks to its intervention the supreme command of the defense of the city was entrusted not to Charidemus but to Phocion, who had always advocated coming to terms with Philip.<sup>117</sup> Although we have no indication other than this that the Areopagus acted against the wishes of the most vocal anti-Macedonians, acts such as the intervention for Phocion may have made some people suspicious of the Areopagus and may have motivated them to push through legislation such as the law of Eucrates.

The success of Demades and his associates in bringing about a fairly honourable peace with Philip gave considerable impetus to pro-Macedonian activities at Athens. Several lawsuits, motivated by political enmity, were brought against Demosthenes,<sup>118</sup> including the charge *On the Crown*, lodged by Aeschines against Ctesiphon in 336 B.C.;<sup>119</sup> Philip and Alexander were given Athenian citizenship;<sup>120</sup> on the motion of Demades several Macedonians and

<sup>115</sup> Philippi (above, note 13) 170–83; Thalheim, *RE* s.v. "Ἀρειος πάγος 631–32; and B. Keil, "Beiträge zur Geschichte des Areopags" in *Berichte Verh. sächs. Ak. Wiss. Leipzig*, Philol.-hist. Kl. 71 (1919) 8.59–60, 69–70.

<sup>116</sup> Lycurg. 1.52, 53; Aeschin. 3.252.

<sup>117</sup> Plut. *Phoc.* 16.3 with K. J. Beloch, *Griechische Geschichte* 3<sup>2</sup> (Berlin and Leipzig 1922) 571.

<sup>118</sup> Dem. 18.249, 251; [25].37 with P. Cloché, *Démosthènes et la fin de la démocratie athénienne* (Paris 1937) 204–5.

<sup>119</sup> Aeschin. 3.49, 155, 236–37; Dem. 18.57 and 110 with Cloché (above, note 118) 207–8.

<sup>120</sup> Plut. *Dem.* 22.3; Schol. Aristeid. *Panathen.* 311B in W. Frommel, *Scholia in Aelii Aristidis sophistae orationes Panathenaicam et Platonicas* (Frankfurt/Main 1826) 381.

their friends, among them the notorious Euthykrates of Olynthus were declared *πρόξενoi*;<sup>121</sup> a statue of Philip was set up in the market place (Paus. 1.9.4); men who had been benefactors of Athens at the court of Philip were publicly honoured;<sup>122</sup> and an embassy was sent to Philip at Aegae upon the occasion of his daughter's wedding, which not only presented him with a golden crown, but also read to him an Athenian decree promising to extradite any conspirator against his life who might seek refuge in Athens (Diod. Sic. 16.92. 1-2). However, in the face of all that, the anti-Macedonians were not denied some successes. To Demosthenes rather than to Aeschines fell the honour of delivering the funeral oration upon those who had fallen at Chaeroneia;<sup>123</sup> he was acquitted on all the charges his enemies had brought against him (Dem. 18.249; [25].37); together with Lycurgus he proceeded to rebuild Athens economically and militarily;<sup>124</sup> through the agency of Lycurgus, the Areopagite Autolycus, who had fled from Athens at the time of Chaeroneia, was condemned to death,<sup>125</sup> as was Lysicles who had been one of the Athenian generals in the defeat;<sup>126</sup> and Hypereides brought about the conviction of Demades for his decrees to honour the Macedonians and their friend Euthykrates of Olynthus.<sup>127</sup> It is in the context of these anti-Macedonian measures that we can now also place the law of Eucrates.

The stone upon which the law of Eucrates is inscribed was found at a building which is dated early in the third century B.C. Upon this fact Meritt has based the conjecture that "the law and the man who moved it perished simultaneously in 322 B.C."<sup>128</sup> However, there are indications that the law was abrogated considerably earlier than that. When in his speech against Leocrates in 331/0 B.C. Lycurgus (1.124-26) marshals to his support the most severe Athenian legislation against tyranny and subversion of the democracy, he does not make reference to the law of Eucrates which, as one would expect, was still in the minds of his listeners, but instead goes back to the decree of Demophantus, omitting even the slightest

<sup>121</sup> Hypereid. fr. 76 and 77 (Kenyon); Suidas s.v. Δημάδης; Tod (above, note 59) 2. no. 180.

<sup>122</sup> Tod (above, note 59) 2. no. 181 (= IG II<sup>2</sup> 240).

<sup>123</sup> Dem. 18.285; Plut. *Dem.* 21; [Plut.] *Vit. X orat.* 845F.

<sup>124</sup> [Plut.] *Vit. X orat.* 841C, 842F; IG II<sup>2</sup> 244; Dem. 18.248; Aeschin. 3.27.

<sup>125</sup> Lycurg. 1.53; [Plut.] *Vit. X orat.* 843D; Harpocr. s.v. Αὐτόλυκος.

<sup>126</sup> Diod. Sic. 16.88.2; [Plut.] *loc. cit.* (above, note 125).

<sup>127</sup> Hypereid. fr. 76 and 77 (Kenyon); Plut. *Praec. r. p. ger.* 810C.

<sup>128</sup> Meritt (above, note 1) 359.

allusion to the law of 336 B.C. It is futile to conjecture what his motives may have been; but, in view of the fact that we know nothing about the law except the text itself, it seems almost certain that it had been repealed by the time of Lycurgus' speech, and that at some time between 336/5 and 331/0 B.C. the νόμος εισαγγελτικός, which Hypereides cites in his speech for Euxenippus between 330 and 324 B.C., had again become and henceforth remained the proper procedure in cases of attempted tyranny and subversion of the democracy.