

Eleni Volonaki

THE RE-PUBLICATION
OF THE ATHENIAN LAWS
IN THE LAST DECADE
OF THE FIFTH CENTURY B.C. ¹

1. INTRODUCTION

The present article aims to examine the process of publication of all the Athenian laws, secular and sacred, during the last decade of the fifth century, based both on literary and archaeological evidence. It will focus on the role of the public officials appointed by the Athenians for the task of publication of the laws, and the authority delegated to them during this period. It will further explore the Athenian conception of law at this period, and, finally, an attempt will be made to draw some conclusions concerning the establishment of the foundations for the fourth century legislation (νομοθεσία) in the restored democracy of 403 B.C.

In late fifth century Athens, an official city archive – the *Metron* – was established to compile the record of official documents that were scattered in different places of the city or outside it, and also in

¹ This article constitutes a revised form of a paper presented at the research seminars in the Department of Classics, Royal Holloway, in March 1996. I would like to thank sincerely my supervisor Professor Chris Carey for his valuable suggestions on the specific topic as discussed in its present form. I would also like to thank the colleagues in the Department of Classics, Royal Holloway, for their useful remarks.

temples. The state archive was in use by 405, but we cannot tell if it was ever completed ².

A process of reforming the statutory texts started in 410 and culminated in the enforcement of several constitutional changes at the end of the century. Firstly, the Athenians prescribed the revision and publication of all their existing laws in use. Secondly, as stated in Andokides' speech, *On the Mysteries*, in the restored democracy after 403, the Athenians formally distinguished laws (νόμοι) from decrees (ψηφίσματα), stating that decrees could not override the laws, and recognized the use of written law over unwritten law (And. 1.85, 87). Finally, new mechanisms of law-making were set up by the end of the fifth century with the panels of *nomothetai* (νομοθέται) (And. 1.83-84).

A reasonable question to ask is why did these reforms take place in the late fifth century. There are some plausible explanations with reference to the broader context of law-reform. The evidence for fourth century *nomothesia* indicates the existence of procedures of repealing obsolete or contradictory laws, and of making new ones (Aisch. 3.39; Dem. 20.94, 24.23). This kind of procedures did not exist in the fifth century. It is reasonable to suppose that the proliferation of the laws on inscriptions (of stone, wood or bronze) scattered at different place inside and outside Attica throughout the fifth century had reached such a chaotic state that it would have been quite unclear what was legal ³. As a result, there must have existed a lot of contradictory laws, or more than one law on the same subject, or laws that had fallen in disuse. The problems this would present in a culture dependent on individual initiation are obvious. Hence, the Athenians decided to put an order in their laws by collecting, revising and republishing them all ⁴. The same concern may have led to the creation of *graphe paranomon* (if our earliest attested use is a reliable guide to the date of its creation).

² The date when the archive was first established in the *Metron* is estimated by scholars as early as 409 (Boegehold 1972, p. 30) or a few years later, in 403 (Kahrstedt 1938, pp. 25-32; Harrison 1955, pp. 27-29).

³ Thomas (1992), p. 13.

⁴ For a further discussion on possible practical difficulties that may have brought a law-reform, cf. Todd (1996), p. 120 ff.

Another important factor contributing to the necessity of revision and publication of the Athenian laws was the establishment of two oligarchic régimes within a short period of time at the end of the fifth century – the Four Hundred in 411 and the Thirty in 404. These two oligarchies appeared to have threatened the traditional constitution of democracy, and because of this, immediately after their fall, the Athenians were concerned primarily with the restoration of the constitution of the laws. The constitutional changes that occurred within the oligarchic revolutions of 412/411 and 405/404 respectively must have caused uncertainty and anxiety to the Athenians for the status of the laws and the safety of the democracy.

A short time before the establishment of the Four Hundred, a group of commissioners named *syngrapheis* (συγγραφεῖς) were chosen to draft laws and proposals allegedly for the best administration of the public affairs ⁵. Thukydides (VIII 67.1) quotes a group of ten *syngrapheis* while *Ath. Pol.* (29.2) reports the number of thirty. Despite their different approaches and details ⁶, both accounts of these sources agree that the so-called *syngrapheis* were to be elected by the Athenian *demos*, were expected to search out the ancestral laws (πάτριος πολιτεία) enacted by Kleisthenes ⁷, and their proposals would be ratified by the Assembly at Kolonos.

However, the proposals of the *syngrapheis* brought up constitutional reforms, which led to the establishment of the oligarchy of the Four Hundred. These involved the suspension of the safeguards against rash legislation (*graphe paranomon*), the denunciations against traitors (*eisangelia*), and the summonses to defendants to appear before the relevant magistrates (*prosklesis*) (Thuk. VIII 67.2; *Ath. Pol.* 29.4) ⁸.

⁵ For a debate on the precise time of their election, see Rhodes (1981), pp. 363-365.

⁶ *Ibid.*, p. 362 ff.

⁷ The appeal to the constitution of Kleisthenes fits in the purposes of the oligarchic propaganda to make their revolution seem respectable by the democrats and give the impression that there was no intent to set up an oligarchy. The constitution of Kleisthenes would seem to trace back the origins of the democracy before any later interventions, such as the reforms of Ephialtes. Further on this point, cf. Rhodes (1981), pp. 376-377.

⁸ On further financial measures introduced during the oligarchic revolution of 412/411 B.C., cf. Thuk. VIII 67.3; *Ath. Pol.* 29.5

The Thirty were initially elected to draft the traditional laws (Xen. *Hell.* II 3.2). On this pretext they allegedly removed from the *Boule* of the Areopagos the laws of Ephialtes and Arcestratus concerning its powers, annulled some of Solon's laws, and gave power to the jurors to amend the constitution (*Ath. Pol.* 35.2). Nevertheless, the only constitutional reform that is attributed with certainty to the Thirty is the introduction of two new laws, which were made to provide a legal basis for the killing of Theramenes (Xen. *Hell.* II 3.51; *Ath. Pol.* 37.1)⁹.

The oligarchic propaganda of 412/411 and 405/404 apparently appealed to the ancestral constitution of democracy, even though the oligarchs made no serious attempt to re-introduce it. Their main concern was not to draft a new constitution, but to reform the existing one for their purposes. The Athenians probably felt the need to reconstruct their democratic constitution by removing all changes in laws, which had taken place during the oligarchic revolutions. They appointed a group of commissioners to revise and republish all the Athenian laws at two stages, in 410 and 403, and such an activity appears to reflect the anxiety of the Athenians toward any alteration and annulments brought on their constitution of laws by the tyrants. Although the number of actual changes made by the oligarchs would have been small, uncertainty about the extent of their intervention may have induced the Athenians to institute a thorough revision.

In 410 a board of *anagrapheis* (ἀναγραφεῖς) – one of whose was Nikomachos – were appointed to «inscribe on stone»¹⁰ the Athenian laws *in use*. Their office lasted six years. In 403 a revision of the Athenian laws was decided by the decree of Teisamenos, involving two kinds of activities, revision of all existing laws and addition of new ones¹¹. The same year the *anagrapheis* were re-appointed to inscribe the sacred laws. The second term of their office lasted four years.

The two stages of inscribing the Athenian laws – the one after the fall of the oligarchy of the Four Hundred and the second after the fall of the Thirty – have been seen together as integral parts of a general process concerning the Athenian laws, called «revision», «codifica-

⁹ According to Xenophon (*Hell.* II 3.11), the Thirty continually delayed framing and publishing a constitution.

¹⁰ For the precise nature of this task, see below section 2.

¹¹ For further details on these two activities, see below section 5.

tion», «publication», or «reform». None of these descriptions, however, gives a clear idea of the precise nature of the process.

In order to characterize the whole process of inscribing the Athenian laws, it is necessary to examine the two stages separately, and as such they will be presented in this paper. The focus of the discussion will be given on the role of the *anagrapheis* of the laws during the two periods, based on Lysias' speech, *Against Nikomachos*, and the archeological evidence of the remains in the Stoa Basileia (Στοὰ Βασιλεία).

2. THE TASK OF THE «ANAGRAPHES» (ἀναγραφεῖς)

The interpretation of the term has caused difficulties and scholars are divided in their approaches. Harrison (1955, p. 30) suggests that the term denotes the task of displaying laws but not necessarily inscribing them. Atkinson (1939, p. 147), MacDowell (1978, p. 46), Clinton (1981, p. 30), and Rhodes (1991, p. 91) argue that the *anagrapheis* were intended to inscribe the laws on stone and display them. Finally Boegehold (1972, p. 29), Robertson (1990, pp. 45, 55), and Sealey (1994, p. 47) describe the *anagrapheis* as transcribers whose task was merely clerical, to collect and copy the texts of the laws for Athens' archive.

It is true that in ancient sources the verb ἀναγράφειν is used with all the above connotations, the inscribing on stone (Aisch. 1.7; And. 1.51, 89; Dem. 20.149; Isok. 4.180), the display of a document without necessarily inscribing it on stone (And. 1.82, 83; Dem. 24.23), and finally the transcription of a law for storing in the records of the archive (Dein. fr. 6.11.2; Lyk. fr. 2.1.2).

In order to define precisely the job delegated to the *anagrapheis*, we need to examine those sources which use the noun *anagrapheus* or *anagrapheis* with particular reference to a group of public officials, appointed by the Athenians in the last decade of the fifth century.

The first evidence is *Ath. Pol.* 29 and 30, where we have two references to commissioners elected to draft proposals for constitutional matters in the period 412-410 B.C.

Ath. Pol. 29.2 says that a total of thirty commissioners, styled *synagrapheis*, were elected by the Athenian *demos* in 412 B.C. to draft

proposals with a view to the city's safety; among their recommendations was the appointment of the Four Hundred, which was ratified without opposition by the Assembly at Kolonos. The same group of *syngrapheis* (though ten in number), authorized with the same jurisdiction, is also mentioned in Thukydides, VIII 67.2-3. Thus, the appointment of the *syngrapheis*, presumably with the aim to establish the oligarchy of the Four Hundred, seems indisputable. Whether they needed to play any role at all after the Four Hundred had come into power remains questionable.

Ath. Pol. 30.1-2 reports that another group of one hundred commissioners was elected by the intermediate régime of Five Thousand, among their number, to draft two constitutions one for the present and one for the future (τοὺς ἀναγράψοντες τὴν πολιτείαν). The task of drafting proposals on constitutional matters recalls the task delegated to the *syngrapheis* mentioned in *Ath. Pol.* 29.2, and therefore the phrasing here seems surprising¹². One would expect τοὺς συγγράψοντες instead of τοὺς ἀναγράψοντες. Nevertheless, the participle τοὺς ἀναγράψοντες seems to indicate that this group refers to the officials called *anagrapheis*, even though the term *anagrapheus* is not actually used in the specific section. It is difficult to explain why a distinct group of commissioners and larger in size, but with a similar task to the *syngrapheis* appointed by the *demos* at Kolonos (*Ath. Pol.* 29) was allegedly elected by the Five Thousand, as indicated in *Ath. Pol.* 30.

Ath. Pol. 30 has been widely recognized as problematic and been given diverse interpretations by scholars. First, many doubts have been raised concerning the existence of the Five Thousand or the so-called «intermediate régime»; some scholars believe that it did not exist at all while others that it did exist but was not allowed to function. The diversity in opinions is due to the incoherent evidence of *Ath. Pol.*, which on the one hand suggests that the régime of the Five Thousand preceded the rule of the Four Hundred (29), and on the other that it existed only in name (31). The most prevalent view among scholars is that the Five Thousand did not exist under the Four Hundred but possibly (if at all) only after their fall¹³. If we

¹² *Ibid.*, pp. 386-387.

¹³ For a review on scholars' views, cf. Rhodes (1981), pp. 385-386.

accept this view, the second problem to consider is who and when appointed the *anagrapheis* to draft the two constitutions, the immediate one and the one for the future. *Ath. Pol.* 31 indicates that these commissioners were primarily concerned with the establishment of the Four Hundred, but *Ath. Pol.* 31.1 gives them a role in the longer term constitution. Some scholars are inclined to view the two constitutions as distinct from each other, while others argue for a combination of the two in a single one, the one of the Four Hundred¹⁴. In any case, it would seem unlikely that the *anagrapheis* were appointed by the intermediate régime of the Five Thousand, on the supposition that this régime followed the fall of the Four Hundred. It is then conceivable that they were elected in the Assembly at Kolonos or immediately afterwards. If so, the *anagrapheis* were appointed almost simultaneously with the board of *syngrapheis*, elected by the *demos* at Kolonos in 412/411 B.C., and were given a similar task to the *syngrapheis*.

Given that *Ath. Pol.* 30.1 is a very dubious and contradictory section, its status as evidence for any real commissioners seems very uncertain. It is difficult to define the connection between the two boards of commissioners referred to in *Ath. Pol.* 29.2 (*syngrapheis*) and 30.1 (*anagrapheis*). Therefore, we cannot be sure whether these two groups were identical or different from each other in their tasks and authority. Nevertheless, with reference to the demanding task of drafting proposals, *Ath. Pol.*'s use of the phrase τοὺς ἀναγράψοντες τὴν πολιτείαν may suggest that the officials, styled *anagrapheis*, were given an authority of higher discretion than that of physically transcribing¹⁵.

Ostwald (1986, pp. 407-408) suggests that the commissioners elected by the intermediate régime of the Five Thousand were the *anagrapheis*, who continued their office until 404. It is unlikely, however, that the restored democracy retained officers appointed earlier by the oligarchic constitution. Furthermore, their task as described in *Ath. Pol.* 30.1 is different than that assigned to the *anagrapheis* by later sources, as will be indicated below; in the other sources the task of the *anagrapheis* appears not to involve the re-

¹⁴ *Ibid.*, pp. 387-388.

¹⁵ Todd (1996), pp. 109-110.

sponsibility of drafting proposals on new laws, but the republication of existing laws.

Ostwald (1986, pp. 408-409) also argues that the board of *syngraphais*, who were appointed to establish the oligarchy of the Four Hundred, was still in existence after the restoration of the democracy, and worked simultaneously with the board of the *anagraphais*. He bases this assumption upon the statement of Harpokration on Apolexis, described as one of the fifty *syngraphais*, and Andokides *On the Mysteries* (1.96), referring to the appointment of the *syngraphais* Demophantos. The evidence is neither adequate nor conclusive for the view that a board of *syngraphais* existed during the period 410-404. If two boards of officials, the *syngraphais* and the *anagraphais*, both existed at the same time, then their job might be complementary, but in any case would need to be different. One might suppose that the *syngraphais* would be entrusted with the drafting of proposals whereas the *anagraphais* would have the clerical task of transcribing the laws, following the orders of the *syngraphais*. However, such an interpretation of the task of the *anagraphais* is not suggested by *Ath. Pol.*'s usage of the participle *τοὺς ἀναγράφοντες* in 30.1, nor in the other sources referring to their job after the restoration of the democracy in 410, as will be shown below.

The second evidence is the inscription of Drakon's homicide law, where it seems clear that the *anagraphais* were concerned with the republication of the law in 409 B.C. They had to get the law from a specific place (*παρὰ τοῦ βασιλέως*), to inscribe it on stone (*ἀναγράφαντων ... ἐν στήλῃ λιθίνῃ*), and then to set it up in the Basileia Stoa (*καταθέντων πρόσθεν τῆς στοᾶς τῆς βασιλείας*)¹⁶. The decree does not include any special process of ratification of the law before its final publication. In this job, however, apart from the *anagraphais*, the secretary of the *Boule* was also involved in the transcribing of the homicide law. The secretary of the *Boule* is quoted in hundreds of inscriptions with reference to the clerical task of inscribing documents on stone (*i.e.* *ἀναγράφαι ἐν στήλῃ λιθίνῃ τὸν γραμματεῖα τῆς βουλῆς*). Therefore, it may be suggested that the *anagraphais* were responsible for the text that was to be inscribed and the completion of the task, whereas the secretary of the *Boule* was to transcribe the

¹⁶ Meiggs - Lewis (1988), p. 264 ff.

actual text and have it inscribed by a stonemason. If this is true, the task of the *anagraphais* was not merely clerical but involved a higher authority than transcribing. They would have to get the existing homicide law, including any alterations and additions made after the original Drakonian one, to reconstruct it excluding any contradictions, and to ensure that it was inscribed on stone. Even though the inscription does not say anything about a process of ratification, it can be assumed that if the *anagraphais* had any difficulties in compiling the existing law, they would have to submit their recommendations to the decision of the Athenian Assembly. The absence of any such reference in the inscription may suggest that the republication of the homicide law was expected to be a straightforward task, given that this law was believed by the Athenians to have remained stable from the seventh century B.C.

Finally, the third evidence of the group of *anagraphais* is Lysias' speech, *Against Nikomachos*. In § 2 (*προσταχθὲν γὰρ αὐτῷ τεττάρων μνηῶν ἀναγράφαι τοὺς νόμους τοὺς Σόλωνος, ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν*), the speaker accuses Nikomachos of taking the place of Solon and becoming a *nomothetes*. Beyond the sarcastic and exaggerating tone, the passage makes clear that Nikomachos' task did not involve any form of legislative authority, such as formulating laws. Lysias manipulates the term *nomothetes* to insult Nikomachos by contrasting his work with Solon's legislation, which was respected by the Athenians as unique and best until the end of the fourth century. The contrast is repeated in § 28, where the speaker uses the term *hypogrammateus* (*ὑπογραμματεὺς*) to contrast Nikomachos and Teisamenos with the famous figures of the past. It is rather improbable that the speaker is prosecuting an under-clerk subordinate to other officials. The term *hypogrammateus* has a pejorative sense and reflects a typical motif in attacks against public figures. It is not used to indicate Nikomachos' clerical position but rather to insult and humiliate him¹⁷. The fact that such an attack could be made in court against Nikomachos shows that the terms *hypogrammateus* or *grammateus* (included in the title preserved in the MSS tradition) do not correspond to the reality of Nikomachos' role but are simply exaggerated for character assassination. Thus, one cannot

¹⁷ For a parallel use of *hypogrammateus*, cf. Dem. 19.237, 249.

conclude from Lys. 30.2 that the *anagrapheis* had any kind of legislative authority nor from Lys. 30.28 that a clerical task was assigned to them.

In § 21 the prosecutor states that Nikomachos inscribed the sacred laws on pillars, *κατὰ τὰς στήλας ὡς οἶτος ἀνέγραψε*. The phrase refers to existing legal enactments and regulations of ritual practice, which were modified according to the new sacrificial calendar and published by the *anagrapheis*¹⁸. The *anagrapheis* were not merely republishing existing laws in this instance, but were editing texts to be published, based on compiled records of sacred regulations.

On balance of the above evidence, the *anagrapheis* were authorized to collect and re-inscribe the laws on stone. The result of this work would be the republication of all the Athenian laws that had been previously enacted. They were not law-makers with wide-ranging authority to propose new laws but nor were they transcribers with a simple clerical task. As will be demonstrated below (sections 3 and 4), they were appointed to republish the laws of Drakon and Solon (secular and sacred), which were in use by the end of the fifth century. That was a task which itself implies some degree of legislative authority in the sense that they presumably had to deal with contradictory or supplementary laws that were in use by the end of the fifth century.

The precise task of the *anagrapheis* during each term of their office, the whole process in the total of ten years of office (continuation or interruption by the oligarchy of the Thirty), and the relation of their activities with the process of ratification, as prescribed by the Teisamenos' decree (Andokides, 1.83), in their second term of office are the issues to be explored in the following sections. Given that our main evidence derives from Lysias' prosecution speech, *Against Nikomachos*, the discussion will be concentrated on the role of Nikomachos, as one of the group of the *anagrapheis*, with the implication that his activities are representative of the whole board.

¹⁸ For a more detailed interpretation of this phrase, cf. section 4, note 32.

3. ΝΙΚΟΜΑΧΟΣ' FIRST TERM (410-404 B.C.)

Lysias' description of Nikomachos' office in the first term suggests that he was appointed to inscribe the laws of Solon within four months, but he extended his work to a period to six years (30.2-3): *προσταχθὲν γὰρ αὐτῷ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοῦ Σόλωνος, ... ἀντὶ δὲ τεττάρων μηνῶν ἐξέτη τὴν ἀρχὴν ἐποίησατο*.

During this period of time, Nikomachos is accused of having given a law on the same day of Kleophon's trial, enabling the *boule* to participate in the process (30.10-14). Even if we are dealing with a false allegation that Nikomachos created a law to support the oligarchic propaganda before the Thirty, it seems reasonable to suppose that he was still in office at the time of Kleophon's condemnation. Kleophon's trial occurred in 405/404, when the negotiations for the peace-terms between Theramenes and Lysander were almost completed, and when the oligarchic tendencies were in a fermentation in Athens. About the same time, just before the establishment of the Thirty, as will be argued later, Nikomachos relinquished his office. Thus, the end of Nikomachos' first term must be dated in 404, and given that his first term had run six years he must have been appointed as an *anagrapheus* in 410 by the restored democracy¹⁹.

In order to define which laws Nikomachos was engaged to inscribe in his first term, vaguely specified by Lysias as Solon's laws (τοὺς νόμους τοῦ Σόλωνος), we shall first examine the epigraphic evidence.

The passages that have been preserved contain: a) the homicide law of Drakon²⁰, b) a collection of laws about the *Boule* of the five hundred, which cannot be earlier than the political reforms of Kleisthenes²¹, c) a *trierarchic* law dated after Solon's legislation, and d) a calendar of sacrifices concerning the festival of Dipolieia²². The parts of the sacred laws involve details for individual festivals, such as lists of deities, offerings, prices, etc. Dow (1960, p. 271 ff.) argues that «in the first term nothing like a systematic calendar of sacrifices was inscribed».

¹⁹ For the improbability that the *anagrapheis* were appointed by the intermediate régime of the Five Thousand, see above (section 2).

²⁰ Meiggs - Lewis (1988), pp. 264-267; IG I³ 104.4-7.

²¹ IG I³ 105.

²² For c) and d), see IG I³ 236-241.

As has been shown, the epigraphic evidence clearly indicates that the *anagrapheis* were involved in the re-publication of the homicide laws of Drakon (a). There is no clear indication that they were also involved in the publication of the rest of the laws attested in the aforementioned inscriptions (b, c, d). Neither is there a reference to another board of commissioners, who worked on the publication of these laws. As will be discussed below, the evidence from Lysias' speech 30 indicates that the *anagrapheis* were working on the publication of the sacrificial calendar in their second term of office (403-399) and were probably responsible for the publication of sacred laws in their first term of office as well. The fact that a body was needed to publish the sacrificial calendar (which would normally fall under sacred law) after 403 makes it unlikely that a distinct body was carrying out the review of sacred law between 410 and 405/404. It can thus be suggested that the calendar of sacrifices concerning the festival of Dipolieia included in the epigraphic evidence (d) was the work of the *anagrapheis* appointed in 410. Finally, concerning the publication of the pre- and post-Solonian laws attested in the inscriptions (b and c), this must have also been accomplished by the *anagrapheis*, since during their first term of office they were to revise all the Athenian secular laws or the so-called Solonian laws (Lys. 30.2).

If we accept that all the laws included in the inscriptions of this period can be attributed to the *anagrapheis*, then the epigraphic evidence suggests that they were engaged in the publication both of secular and ritual law, though more work was completed on the secular law than the sacred. The epigraphic evidence also suggests that in the first term the *anagrapheis* did not republish only the Solonian laws but also the homicide laws of Drakon retained by Solon, and those enacted after the legislation of Solon. In other words, the *anagrapheis* were appointed to republish all the Athenian laws that were in use by 410.

The evidence of Lysias' speech is not conclusive for the nature of the laws published during the first term. Given that the prosecution was concerned with Nikomachos' conduct during his second term of office, more details are offered for that period. And as will become clear in the following section, Nikomachos was engaged with the publication of a systematic sacrificial calendar in his second term. The speaker's statement in § 25, ὃς καὶ τῶν ὀσίων καὶ τῶν ἱερῶν ἀναγραφεὺς γενόμενος εἰς ἀμφοτέρωθεν ταῦτα ἡμάρτηκεν, may be taken

to mean that Nikomachos was in charge of the publication of the secular law during his first term and of the sacred during his second. That would be the case only if one accepts the view that the terms ὀσίων and ἱερῶν refer to the two periods of Nikomachos' office separately rather than to the whole period of his work as an *anagrapheus*. Such an assumption, however, is not fully supported by Lysias' text, where the speaker attempts to persuade the jurors to punish Nikomachos on account of all his offences. Thus, the terms could well refer to both periods.

The clause, προσταχθὲν γὰρ αὐτῷ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος (30.2), seems to reflect the text of the decree which prescribed the appointment of the *anagrapheis* in the first term. It can be assumed that the definition «the laws of Solon» was explicit for the Athenians, and did not need any further specification. Given that all Athenian laws in use by the end of the fifth century were assigned to Solon²³, all these laws were to be republished by the *anagrapheis* in their first term, including both secular and sacred. Nikomachos may have completed, if not all, a large amount of secular law, while his work on the sacred laws may have been only preparatory for the sacrificial calendar, as suggested by the inscriptions as well.

With reference to Nikomachos' authority over the Athenian laws, Lysias is manipulating the task given to Nikomachos and accuses him of having inserted some laws and omitted others (30.2: τοὺς μὲν ἐνέγραφε τοὺς δὲ ἐξήλειφεν). The implication is that Nikomachos inserted any laws he wished or was bribed to, whereas he expunged some laws from those he was asked to publish, at his own discretion. The prosecution's allegation is not necessarily false at this point, since it is conceivable that within the process of republishing all the Athenian laws in use, Nikomachos would need to include alterations and additions or to annul obsolete laws, following presumably the decisions of the Athenian Assembly.

As has been shown, in the first term Nikomachos was appointed to republish all Athenian laws in use until the end of the fifth century, both secular and sacred. It is reasonable to suppose that four months

²³ For the role of Solon as a lawgiver in fifth and fourth century democracy, cf. Thomas (1994), pp. 119-133.

was not an adequate period to complete the work. The time needed for this job could not have been predicted. Although *προσταχθέν* (30.2) reflects a formal term of appointment initially set for Nikomachos, it appears that the office needed to be extended²⁴. The Athenians appointed the *anagrapheis* to inscribe the laws, but did not know what the work was going to be like until it started. The work may have been completed gradually similarly to the publication of the sacrificial calendar in the second term (cf. below, section 4). It is possible that Nikomachos had to deal with various issues throughout the whole process of republication of the laws. Problems on matters of authority among the available texts of laws²⁵, inconsistency within different clauses, and disuse of existing laws may have arisen. In those instances, Nikomachos would obviously need to intervene and draft proposals, subject to the decisions of the Assembly. One would expect immediate issues, such as the scope of laws to be republished or the sources to be used, were dealt with on an *ad hoc* basis through decrees of the Assembly. For example, the decision of republishing Drakon's homicide law was made in a separate decree.

As has been argued, not much progress was achieved on the sacred law in the first term. It can be presumed that a separate decree was made on the publication of the sacrificial calendar toward the end of the first term. The time was not enough for the completion of this task, and therefore it was resumed in 403, when Nikomachos was re-appointed to publish the sacrificial calendar. Nikoma-

²⁴ Many suggestions have been made about the delay: Harrison (1955, p. 30) says: «[...] it is not likely that the office was limited to this period; if it had been, Nikomachos could hardly have clung to it as he did for six years». Boegehold (1972, p. 29 ff.) refers to the political struggles and the consequences of the war, which had retarded other elements of the scheme as well. MacDowell (1978, p. 46 ff.) and Rhodes (1991, p. 91) argue that the office had to be extended because of the difficulties that came up during the work and had not been prejudiced from the beginning. This is the view I share and I would add that this is the first attempt of the Athenians to set an order in the chaotic status of their laws; it is therefore hardly surprising that they miscalculated the time needed for the task. Finally, Ostwald (1986, pp. 407-408) and Robertson (1990, p. 53) suggest that the office was renewable from year to year for as long as needed and the first term began late in 410/409, when only four months were left.

²⁵ There may have been more than one set of the laws, since they were inscribed on different places and scattered inside and outside the city of Athens. On the dispersal of the laws, inscribed on stone (*στῆλαι*), wooden tablets, monuments and other kind of material and apparently referred to as authoritative, cf. Thomas (1989), pp. 45-60.

chos, by implication, had not completed his job when he relinquished his office.

Scholars have suggested that the establishment of the Thirty was the reason for the interruption of Nikomachos' work²⁶, and that consequently he did not render his accounts after his first term. The phrasing, however, in 30.3, *ἀλλὰ πρότερον ἢ πόλις εἰς τὰς μεγίστας συμφορὰς κατέστη, πρὶν τοῦτον ἀπαλλαγῆναι τῆς ἀρχῆς καὶ τῶν πεπραγμένων εὐθύνας ὑποσχεῖν*, implies that Nikomachos *did* eventually render his accounts, even though he delayed doing so, after the defeat at Aigospotamoi in 405²⁷. The implied causal connection of Nikomachos' termination of office with the city's misfortunes aims to associate Nikomachos in a vague way with the disaster and put special emphasis on his desire to extend his job.

It has been indicated above that Nikomachos had not completed his task by the end of 405, particularly his work on the sacrificial calendar. In that case, one might suppose that he could not have undergone *euthyna*, unless he was forced by the Thirty to leave his office²⁸. An alternative explanation is that Nikomachos was asked to relinquish his office and render his accounts before the establishment of the Thirty. During the year 405/404 public affairs were unstable in Athens. The Athenians had been defeated, suffered from the siege of the Spartans and the city was threatened to surrender. Due to the financial crisis of the city of Athens in 405/404, the state money may have been running out, so that the situation was not obviously suitable for the progression of the publication of laws. Furthermore, the covert oligarchic conspirators may have exerted influence to terminate the task of the *anagrapheis* in order to prepare the field for the oligarchy of the Thirty, whose objective was to restore the ancestral constitution (*Ath. Pol.* 34.3). Hence, Nikomachos (and the rest *anagrapheis*) may have been made to stop their work and render their accounts, and, on this view, Lysias is correct to say that they only finished their task when compelled to, but wrong in suggesting that there was impropriety.

²⁶ Dow (1960), p. 279 ff.; Robertson (1990), p. 65; Rhodes (1991), p. 65.

²⁷ MacDowell (1978), p. 46 ff.; Todd (1996), p. 109.

²⁸ MacDowell (1962, p. 197) argues that the only reason for Nikomachos' relinquishing his office, if he was not forced from it by the Thirty, was that he had completed his task.

Nikomachos passed *euthyna*, since otherwise it is difficult to see why he was re-elected in 403 to undertake a similar task. If he had successfully passed his *euthyna*, it seems unlikely that he was charged again in 399 with offences involving the first term of office. The reference to Nikomachos' first term of office in Lysias' speech does not form part of the formal charge but is used for prejudice against the defendant. The speaker attempts to persuade the jurors that Nikomachos is guilty of continuous abuse of the Athenian laws for a period of ten years. He manipulates the fact that Nikomachos had not been convicted at the end of the first term, and presents the trial concerned with the second term as the opportunity to punish him on all accounts (ἐπειδὴ ἐκείνων δίκην οὐ δέδωκεν ~ νῦν ὑπὲρ ἀπάντων γοῦν τὴν τιμωρίαν ποιήσασθαι).

In conclusion, Nikomachos' task in the first term involved the republication of all the Athenian laws *in use* by the end of the fifth century. This job entailed the collection of all copies of existing laws, the incorporation of alterations or additions introduced after the Solonian legislation, the cancellation of laws that had fallen into disuse, the reconciliation of contradictory laws, and finally the inscribing of laws on stone. It is obvious that Nikomachos' work demanded a high level of authoritative discretion; he needed to decide which laws needed to be changed or reconstructed. Of course, the final form of the text of the laws would be subject to the decision of the Athenian Assembly. Nevertheless, his authority to intervene in the status of the Athenian laws in the beginning of the process may have well offered the ground for his prosecution by a group of political figures at the end of his second term.

4. NIKOMACHOS'S SECOND TERM (403-399 B.C.)

Nikomachos's second term of office is presented in Lysias, 30.4-5 and 17-22. The prosecutor accuses him of prolonging his job and he says that, although Nikomachos could have discharged his duty in thirty days, he had been inscribing for four years (4: τέτταρα ἔτη ἀνέγραψεν, ἐξὸν αὐτῷ τριάκοντα ἡμερῶν ἀπαλλαγῆναι). Ἐξόν (= «even though it was possible») does not seem to represent a formal term of appointment, unlike προσταχθέν in 30.2, referring to the first

term. It rather stresses the alleged possibility of completing the task within a month, but surely does not reflect the Athenians' decision nor their expectations. The failure by the speaker to cite a specific term of office suggests that the Athenians did not set a time limit for the second term, presumably because of the experience from the past, when they failed to reckon correctly the time needed for the first term. If so, it is still difficult to explain the speaker's assertion that the work could have been completed within thirty days. It is likely that the speaker deliberately mentions the thirty days, and, having in mind the thirty days prescribed at the same period by the decree of Teisamenos for the revision of the laws, he attempts to confuse the jurors and persuade them of Nikomachos' abuse of authority. On the same view, the speaker later in the speech (30.28) reports the names of Nikomachos and Teisamenos together as if they were working on the same task ²⁹.

Nevertheless, it becomes obvious from 30.29 that it was the Assembly's responsibility for Nikomachos' remaining at his office a longer time (περὶ δὲ τῶν μεγίστων τοὺς αὐτοὺς ἔατε πολὺν χρόνον κυρίου εἶναι). Also, in 30.29, the speaker states that the jurors elected Nikomachos on his office (Νικόμαχον εἴλεσθε ἀναγράφειν τὰ πάτρια). Given that jurors appear here as often to represent the Assembly, it can be concluded that Nikomachos was re-appointed by the restored democracy in 403 ³⁰, and thus his second term ran from 403 to 399.

Lysias' evidence indicates that in the second term Nikomachos was engaged to inscribe the sacred laws, and more specifically the sacrifices. The limited scope of his job becomes clear in 30.4: ἐξ ὧν ἔδει ἀναγράφειν. Nikomachos was given a list of sources, which contained the sacrifices that needed to be republished. The sources are specified in 30.17: χρή θύειν τὰς θυσίας τὰς ἐκ τῶν κύρβειων καὶ τῶν στηλῶν κατὰ τὰς συγγραφάς, whence it can be inferred, firstly, that Nikomachos should publish the ancestral sacrifices found in the *kyrbeis* (κύρβεις) ³¹, and all those enacted after the Solonian legisla-

²⁹ For the differences in their activities, see section 5.

³⁰ As Todd (1996, p. 103) remarks, «it is inconceivable that he was appointed by the Thirty, because Lysias would certainly have said so».

³¹ *Ath. Pol.* 7.1 says that the laws of Solon and the ordinances of Drakon had been inscribed on the κύρβεις (ἀναγράψαντες δὲ τοὺς νόμους εἰς τοὺς κύρβεις ἔστησαν ἐν

tion included in the *stelai* (στήλαι); secondly, that he was engaged to draft a prescriptive document, the *syngraphai* (συγγραφαί), with reference to the ritual practice or further enactments to the calendar³².

τῆ στοᾷ τῆ βασιλείῳ καὶ ὁμοσαν χρῆσεσθαι πάντες). Stroud, in his book *The Axones and kyrbeis of Drakon and Solon* (Berkeley - Los Angeles 1979), argues very persuasively that both κύρβεις and ἄξονες (although distinct from each other as made of different material) carried the same laws of Solon and Drakon, and that after they were removed from the Akropolis the κύρβεις were set up in the Agora while the *axones* were placed in the Prytaneion. He also suggests (*ibid.*, p. 44) that «the ἀναγραφεῖς at the end of the fifth century took those parts of the laws of Drakon and Solon which they republished or revised on monuments at the Royal Stoa from the kyrbeis, which had been set up in the Agora».

³² It is difficult to define the kind of draft proposals that Lysias refers to by the phrase *κατὰ τὰς συγγραφάς*. From § 21 (ὅταν μὲν κατὰ τὰς συγγραφάς ποιῶμεν, ἅπαντα τὰ πάτρια θύεται, ἐπειδὴν δὲ κατὰ τὰς στήλας ἄς οὗτος ἀνέγραψε, πολλὰ τῶν ἱερῶν καταλύεται), it can be inferred that the term *συγγραφάς* refers to a prescriptive document on the ritual of sacrifices, and it seems unlikely that such a document pre-existed the job of the *anagrapheis*, since otherwise the speaker would explicitly say so and present it as evidence in court. Rhodes (1991, p. 95) explains *syngraphai* as the draft of decree that prescribed the appointment of *anagrapheis* to publish the sacrificial calendar and specified the sources to be used. There is no evidence to support the use of the word in such a context, and also there is no obvious reason why Lysias does not use *ψηφισμα* instead. Moreover, the reference to the decree on the publication of the sacred laws would be confusing due to the following *ταῦτα γὰρ ὑμεῖς ἐψηφίσασθε* (30.17). Close to Rhodes's view, is Harrison's rather vague definition (1955, p. 34) of *syngraphai* as instructions made for the *anagrapheis* concerning the calendar. The problem with this explanation is again that it associates *syngraphai* with the job of the *anagrapheis* rather than the regulations for the performance of sacrifices required by the context. Finally, Robertson (1990, p. 70 ff.) explains the *syngraphai* as special reports including later additions and describes them together with *stelai* as a whole category of sacrifices outside the *kyrbeis*. The difficulty with this view is that the context does not distinguish *syngraphai* from the *kyrbeis*, but on the contrary suggests that they contributed to the observance of sacrifices included in the *kyrbeis* (§ 21). Another problem is that one would expect any legislative amendments to be inscribed on the *stelai* together with other sacred laws, unless we are dealing with a completely separate document that was made during the process of publication. There is however a plausible element in Robertson's view. It is possible that edited lists derived from the *kyrbeis*, and *stelai* were to be made by the *anagrapheis* themselves on matters of sacred law concerning certain regulations of ritual practice, alterations, additions or cancellations and further legislative enactments. Such a document would presumably consist of durable material (possibly wood), and constitute a temporary form of the sacrificial calendar that was to be displayed for all the Athenians to review, and in accordance with the established practice of fourth century *nomothesia* was to be ratified for permanent use. On balance, *κατὰ τὰς συγγραφάς* means «according to

Furthermore, from the speaker's statement in 30.17, *ταῦτα γὰρ ὑμεῖς ἐψηφίσασθε*, it can be inferred that a decree was voted by the Athenian Assembly prescribing the publication of the sacrifices and the appointment of Nikomachos and the other *anagrapheis* to undertake this task.

Apart from Lysias's speech, the epigraphic evidence also supports the view that Nikomachos's scope in his second term was restricted to the ritual laws. Oliver (1935) and Dow (1941, 1953-57, 1960, 1961) have published eleven fragments of the inscriptions that have been preserved and are dated to the period 410-399. According to Dow's description of these fragments, they all «come from two walls of different thickness, a Thicker Wall and a Thinner Wall. The broad, thin slabs, which made up each Wall were joined end to end to form a continuous surface. The writing was in columns, so that in effect the Walls were like great papyrus books unrolled. They stood on the floor of the Royal Stoa»³³. Two different sides were inscribed on each Wall; the Earlier side inscribed in the Attic alphabet and the Later in the Ionian. The former is presumed to belong to the years before 404 and the latter to the years after 403 (the date that the Ionian alphabet was adopted).

The passages of the second period contain part of the re-edition of the Solonian sacred laws and part of the sacred calendar³⁴. Dow in his reconstruction of the evidence concludes that Nikomachos was engaged to publish «a systematic, inclusive, month-by-month and day-by-day calendar of sacrifices»³⁵, for which the regulations concerning all the individual festivals were to be put together. In adopting Dow's chronology of the publication of the Calendar, it can be assumed that the Calendar was not all one, but «consisted of parts distinct enough to be adopted and put into operation separately from each other»³⁶.

the edited lists» that were to be made by the *anagrapheis*, and prescribed procedural and legislative terms on the performance of sacrifices. It is unlikely that these lists were made in the first term of office since alterations and additions would have been introduced by the restored democracy of 403.

³³ Dow (1960), p. 277.

³⁴ Oliver (1935), p. 25.

³⁵ Dow (1960), p. 273.

³⁶ *Ibid.*, p. 276.

In Lysias' speech, Nikomachos is accused of having omitted ancestral sacrifices of three talents' worth the year before the trial (30.20: αὐτίκα πέρυσιν ἱερά ἄθυτα τριῶν ταλάντων γεγένηται τῶν ἐν ταῖς κύρβεσι γεγραμμένων). Furthermore, Nikomachos allegedly inscribed more sacrifices than ordered to (30.19: πλείω τῶν προσταχθέντων ἀναγράψας). Because of this, extra twelve talents had to be spent in the last two years of the second term (30.21: ὃς ἐν δυοῖν μὲν ἔτοιν πλείω ἤδη τοῦ δέοντος δώδεκα ταλάντοις ἀνήλωσε). The speaker obviously attempts to distort the activities of Nikomachos, and suggests that he abused the authority given to him by adding more sacrifices than needed. In constructing a calendar containing both the ancestral and more recent sacrifices, Nikomachos would need to omit any sacrifices that had fallen in disuse (*i.e.* non-current) and include all those enacted until 403. In such a process, one might think that new sacrifices were replacing the ancestral ones, but this was not necessarily the case. Moreover, the compilation and publication of all the sacrifices together, ancestral and recent, made for the first time in Athens could give the impression that the ancestral sacrifices were less than the Athenians had thought.

On balance Nikomachos and his colleagues were authorized to publish a systematic sacrificial calendar, consisting of the ancestral sacrifices and all those enacted after Solon's legislation. The *anagrapheis* were not given any authority to introduce new sacred laws. Their work, however, did involve a high level of discretion since they were to compile all existing sacrifices, excluded the ancestral that had fallen into disuse and included the current ones. Furthermore, they were supposed to make the *syngraphai*, which were «edited lists» containing regulations of ritual practice, alterations, additions or cancellations, and further legislative enactments following the Solonian legislation until the restoration of the democracy in 403.

The sacrifices were presumably published section by section, and the decisions that needed to be made concerning practical matters, *i.e.* the stages of such a process, the sources, and the expenses were presumably handed over to the authority of the Assembly. The work of the *anagrapheis* would have been subject to the process of ratification, as prescribed by the Teisamenos' decree; it would be temporarily displayed for the Athenians to review it and would then be scrutinized by special boards (see next section). Although the task of the *anagrapheis* in the second term of office demanded high-

er skills than that of clerical expertise, nevertheless their authority had been significantly reduced from the first term. Their work would be subject not only to the Athenian Assembly but also to other official boards for ratification, such as the *Boule* and the group of *nomothetai* elected by the *demes*.

5. THE BOARD OF «NOMOTHETAI» (ANDOKIDES, 1.83; TEISAMENOS'S DECREE) AND THE BOARD OF «ANAGRAPHESIS» (LYSIAS, 30)

There is no indication in the evidence from Lysias' speech or the inscriptions that Nikomachos *did* republish any secular laws during the second term of office. It is rather improbable to argue that Nikomachos must have worked on secular law in his second term just because he did so in his first one³⁷. On the other hand, the decree of Teisamenos, as quoted by Andokides (1.83), appears to involve the secular law, but does not include any provisions on the publication of the sacred law. Moreover, its main scope focuses on the addition of laws rather than the publication of existing ones, secular or sacred³⁸.

One might argue that the starting clause of Teisamenos' decree that the Athenians should conduct their affairs in the traditional manner, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς, χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, implies that all the Athenian laws then in use (ancestral and recent, secular and sacred) were to be reinforced. If so, it might be further suggested that the activities of the *anagrapheis* in the second term were prescribed by Teisamenos' decree. However, the decree defining the *anagrapheis*' task in the second term cannot be identified with the decree of Teisa-

³⁷ MacDowell (1962), p. 198.

³⁸ As will be shown below, Teisamenos' decree prescribed both a process of a publication and a ratification of the Athenian laws. The process of publication involved the re-enactment of the ancestral laws but more importantly the making of new laws which were then to be validated by special official boards. According to Andokides, 1.83, a board of *nomothetai* elected by the *Boule* was appointed for the process of publication and another board of *nomothetai* elected by the *demes* together with the *Boule* were responsible for the process of ratification.

menos – unless the latter, as preserved by Andokides, is not complete³⁹. It is more likely that two distinct decrees were made on the revision and publication of the Athenian laws by the restored democracy of 403, which are related to each other in that they refer to simultaneous processes⁴⁰. Each decree prescribed a different scope of activities, and by implication two different boards were appointed to undertake these activities, the *anagrapheis* and the *nomothetai*.

A problem for this view may be raised on the basis of Lysias, 30.28, where the speaker classifies both Nikomachos and Teisamenos as *hypogrammateis*, and contrasts them to the lawgivers of the past, such as Solon, Themistokles and Perikles: οἱ μὲν πρόγονοι νομοθέτας ἤρουντο Σόλωνα καὶ Θεμιστοκλέα καὶ Περικλέα, ἡγούμενοι τοιούτους ἔσεσθαι τοὺς νόμους οἷοιπερ ἂν ᾧσιν οἱ τιθέντες, ὑμεῖς δὲ Τεισαμενὸν τὸν Μηχανίωνος καὶ Νικόμαχον καὶ ἐτέρους ἀνθρώπους ὑπογραμματέας. However, the contrast seems to be a rhetorical device designed to insult and humiliate Nikomachos. It cannot be taken as evidence of Nikomachos' and Teisamenos' cooperation, as if they belonged to the same official group. The prosecutor quotes their names together possibly because they had both worked on secular law, even at different stages⁴¹, or more probably because they were contemporary officials engaged on the publication of Athenian laws.

We will attempt now to analyze the decree of Teisamenos, as quoted by Andokides, in order to understand the task delegated to the board of *nomothetai* elected by the *Boule*, and how this differed from the activities of the *anagrapheis* in the second term.

³⁹ Hignett (1952, pp. 300-301) raises the question of the authenticity of the decree of Teisamenos as presented in Andokides' MSS. Although one cannot exclude the possibility that the preserved content of the decree had derived from forgery by later scholars in the Hellenistic and Byzantine times, the fact that it contains details of the process of ratification of the laws, related to the established practice of fourth century *nomothesia*, and not stated elsewhere in the text of the speech, seems to suggest that we are dealing with an original document, or at least part of it. In favour of the authenticity of the decree, Hansen, H. (1990, p. 38) adds that the decree quotes the inscribing of laws on a wall (and this is the only surviving reference to the walls erected in the Stoa Basileia), whereas Andokides in his speech says only that the laws were inscribed in the Stoa.

⁴⁰ Dow (1960), p. 273 n. 2; MacDowell (1962), p. 198; Clinton (1981), pp. 34-35; Hansen, H. (1990), p. 42; Rhodes (1991), p. 100.

⁴¹ MacDowell (1962), p. 198.

The scope of the work assigned to the *nomothetai* must have been limited, since the Athenians expected it to be completed in one month (ἐν τῷδε τῷ μηνί). On the proposal of Teisamenos, it was decided that the Athenians should conduct their public affairs in the traditional manner and employ the laws of Solon, his weights and measures, and the ordinances of Drakon, which they employed in former time (οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ). The phrase οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ is very obscure, and it is difficult to tell which period of the past the decree refers to. The wording of the laws (νόμοις ... τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς, ... καὶ τοῖς Δράκοντος θεσμοῖς) refers to the original laws of Solon, as described in *Ath. Pol.* 10. In that case, this period goes back to the sixth century B.C.

Most scholars have argued that the entire body of the laws (Draconian and Solonian), as this had been revised by the *anagrapheis* in their first term, was reaffirmed⁴². In particular, they take the reference to the original laws of Drakon and Solon to suggest that the ancestral laws were to be observed as *in use* until 405/404, before any constitutional changes had occurred during the oligarchic revolution. An alternative explanation has been offered by Robertson (1990, p. 60), who suggests that Teisamenos' decree was to embrace all the existing laws, even those that had not been published by the *anagrapheis* in the first term. It is difficult to understand which these laws would be, granted that the *anagrapheis* were engaged to re-publish all the Athenian laws *in use* until 410.

The phrase «laws of Solon» could theoretically refer to all laws in existence, since post-Solonian laws are often ascribed in the orators to Solon. However, it would be simpler to designate all the laws in current use with a phrase, such as τοῖς νόμοις οἷς νῦν χρώμεθα. It is likely therefore that the «laws of Solon» are those found on the *kyrbeis* and preserved to be the original body of laws created by Solon. If so, the vague mention of past practice is probably to be understood in context as a reference to the period before Peisistratos. After 403, the Athenians may have become more cautious on constitutional matters and reinforced the ancestral laws (*i.e.* the original laws of Drakon and Solon) in order to secure the safety of the democracy. The Athe-

⁴² *Ibid.*, p. 195; Ostwald (1986), p. 515; Clinton (1981), p. 35; Rhodes (1991), p. 98.

nians would as a temporary measure be using the «uncontaminated» laws of Solon; other laws were to be added, as will be shown below, which would include post-Solonian legislation still in use.

A same attitude of cautiousness may be reflected in the final clause of Teisamenos' decree, which prescribes that the guardianship of the constitution be granted to the Areopagos (And. 1.84: ἐπιμελείσθω ἡ βουλὴ ἢ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται). Its wording recalls the description of the Areopagos' guardianship before the reform of Ephialtes in 462/461 presented in *Ath. Pol.* 4.4: ἡ δὲ βουλὴ ἢ ἐξ Ἀρείου πάγου φύλαξ ἦν τῶν νόμων καὶ διετήρει τὰς ἀρχὰς ὅπως κατὰ τοὺς νόμους ἄρχωσιν. However, it is to be noted that the Areopagos does not regain all its powers. It has no serious power to punish, for instance. Therefore, the final clause of Teisamenos' decree does not seem to imply a complete reversal of Ephialtes' reforms. It rather indicates the necessity to safeguard the constitution of democracy so that it would not be threatened again in the future, and this was to be guarded by the *boule* of Areopagos.

As has been argued, the restored democracy of 403 re-enacted the ancestral constitution. Aiming to restore all the laws, which had been introduced, altered, or cancelled by the oligarchs for the purposes of their propaganda and rule⁴³, the decree of Teisamenos also proposes that «any additional enactments required» (ὀπόσων ἂν προσδέη) should be drafted by the of *nomothetai* elected by the *Boule*. These supplementary laws would be temporarily displayed for all the Athenians to review and then scrutinized by another board of *nomothetai* elected by the *demes* and the *Boule*. Thus, the «additional enactments required» would include all elements of the existing legislation, once these had been checked and probably any further legislation for which a need might be identified.

Some scholars have connected the phrase ὀπόσων ἂν προσδέη with Andokides' narrative (1.82), and argue that the additional laws were those needed to make the Amnesty of 403/402 work⁴⁴. On their view, a revision of the Athenian laws *in use* until 405/404 (*i.e.* most of the laws published by the *anagrapheis* in their first term and

the laws enacted by the oligarchs) was first required in order to draft proposals for supplementary or, if needed, new laws. Then, the final draft of all these laws was to be scrutinized by the process of ratification prescribed in Teisamenos' decree. Other scholars suggest that, apart from the additional laws, all the laws *in use* until 404 needed to be scrutinized, and conclude that the process described in Teisamenos' decree indicates both a «revision of laws» and the «making of new laws»⁴⁵. The problem with the latter view is that a scrutiny of all existing laws does not get any support from the text of Teisamenos' decree. Moreover, there is no reason to suggest that all the Athenian laws *in use* until 405/404, as revised and published by the *anagrapheis*, needed to undergo any form of scrutiny. All of these would certainly need to be checked out by the *nomothetai*, in case they had incorporated enactments by the oligarchs or some of them had been deleted. But it would be reasonable to suppose that only the laws, which needed to be reconstructed, altered or added, would have to be scrutinized.

On balance, the task of the *nomothetai* elected by the *Boule* entailed two kinds of activities. Firstly, they were expected to re-enact and re-publish the original laws of Solon and Drakon. Secondly, they would confirm any post-Solonian laws (including those revised in Nikomachos' first term), which were to become part of the code of laws in use from 403. Furthermore, they may have needed to introduce new or supplementary laws to make the Amnesty agreement work. This should mean that laws contradicting to the spirit of the amnesty and making citizens liable to previous events should be altered or replaced. For their first activity, the *nomothetai* should check the ancestral laws in the *kyrbeis*, and also check the published laws by the *anagrapheis* in the *stelai*, before the establishment of the Thirty⁴⁶. Then, they would make sure that all the original laws of Drakon and Solon were confirmed and published. The second activity of the *nomothetai* was to draft proposals of the additional, reconstructed or new laws and display them temporarily in the *Basileia Stoa* for all the Athenians to see them. It is obvious that particularly

⁴⁵ Dow (1960), p. 273; Clinton (1981), p. 32 ff.; Ostwald (1986), p. 513; Robertson (1990), p. 62.

⁴⁶ The ancestral laws published in Nikomachos' first term would be used as they were; for example the homicide laws of Drakon.

⁴³ For the constitutional reforms of the Thirty and their implications, cf. section 1.

⁴⁴ MacDowell (1962), p. 195; Rhodes (1991), p. 97.

the second activity of the *nomothetai* entailed a high level of legislative authority, since they were not merely transcribing existing laws (*i.e.* the ancestral ones), but reconstructing obsolete or damaged laws, removing others introduced by the oligarchs, and making new ones. The proposals were afterwards ratified by a panel of five hundred *nomothetai* elected by the demes together with the *Boule*. Any citizen who wished (ὁ βουλόμενος) could make proposals before the ratification. The validated laws were to be published permanently at the same place where they had been displayed before, *i.e.* the *Basileia Stoa*.

The procedure of ratification of the laws, as prescribed by Teisamenos' decree, is very similar to the process of scrutiny included in the fourth century legislation⁴⁷. For example, we can recognize the same process held in the case of repealing contradictory or obsolete laws (Aisch. 3.39; Dem. 20.94), and also in the legislation of new laws after the procedure of ratification (Dem. 24.23).

At first sight, the activities of the boards of *nomothetai* elected by the *Boule* and the *anagrapheis* elected by the Athenian Assembly in the restored democracy of 403 appear to be similar⁴⁸. Both the *no-*

⁴⁷ For the procedure of legislation in fourth century Athens, see MacDowell (1975), pp. 62-74; Hansen (1980), pp. 87-104; (1985), pp. 345-371; Rhodes (1985), pp. 55-60.

⁴⁸ Hansen (1990, pp. 68-70) identifies the board of *nomothetai* elected by the *Boule* with the board of the *anagrapheis*, appointed after 403 by the restored democracy to publish the sacrificial calendar. There are some difficulties with this view, which implies that Teisamenos' decree involved both the revision of the secular law and the publication of the sacred law. Firstly, it is difficult to understand why two distinct terms (*i.e.* νομοθέται and ἀναγραφείς) are used of one board of officials delegated with the same task. Secondly, although one cannot exclude the possibility raised by Hansen that in Lysias, 30.28 ff. the reference to the jurors as responsible for the election of Nikomachos can involve the *Boule* and not necessarily the Athenian Assembly, the context of the particular section is used for a broader attack against the decisions of the Athenians concerning their magistrates in contrast to those of their ancestors, and therefore it seems more likely that the speaker refers to the decisions of the Assembly. Thirdly, there is no explicit indication in Lysias's speech nor in the epigraphic evidence that Nikomachos was working on the secular law in the second term. Lysias, 30.25 is not conclusive of which activities involved each term; the secular and sacred law may refer to each term respectively, to the two terms, or both to the first term and the latter to the second. Finally, the fact that the work of the *nomothetai* must have been completed much earlier than the work of the *anagrapheis* indicates that we are dealing with officials entrusted with different activities, and consequently with distinct groups of officials. Another view on the identity of the board of *nomothetai* elected by

mothetai and the *anagrapheis* were involved in a revision of the Athenian laws *in use*, though the former were entitled to work on the secular laws whereas the latter on the sacred. They worked simultaneously on the code of laws that was to be used from 403, and had to deal with contradictory, ambiguous, obsolete laws as well as other matters of authority in the Athenian laws. Finally, they produced drafts of proposals to submit for approval by the Assembly or the *Boule* together with the *nomothetai* elected by the *demes*.

However, the task of the *nomothetai* elected by the *Boule* was much more elaborate and authoritative, even though its scope was more limited since it was expected to be completed within a month. Apart from re-enacting the original laws of Drakon and Solon, their main task was to draft proposals for additional enactments and new legislation needed for the enforcement of the Amnesty agreement. Their work may have been subject to the decisions of the *Boule* and the board of *nomothetai* elected by the *demes*, but it constituted a legislative activity. This might explain their official title, *nomothetai* («law-givers»).

On the other hand, «the *anagrapheis* after the restoration» were concerned only with already existing laws or regulations that needed to be collected, arranged and re-inscribed. They may have needed to draft proposals of laws, such as the «edited lists» of the sacrifices (*syngraphai*; Lys. 30.21), but these involved regulations and alterations that had already been introduced. And in any case, the «edited lists» were to undergo the process of ratification, quoted in Teisamenos' decree. The *anagrapheis* did not have any kind of legislative authority over the sacred laws. Their work would not be that of the publication, as described in the decree of Teisamenos, but merely that of re-publication.

the *Boule* is that it resembles the task given to the *syngraphais* in the recent past; cf. Harrison (1955), p. 33. On the existence of the *syngraphais* after the Four Hundred, and the question whether they worked simultaneously with the *anagrapheis* on constitutional matters, cf. sections 1 and 2.

6. CONCLUSIONS

The last decade of the fifth century, the Athenians decided to have the texts of all their laws consolidated for the first time. Their resolution was mainly dictated by a necessity to insert order into the chaotic situation of the Athenian laws, which were scattered in different places inside and outside Attica, inscribed on various sources of material. Furthermore, the overthrow of the democracy twice at the end of the fifth century, by the two oligarchic régimes of the Four Hundred and the Thirty, urged the Athenians to re-establish more firmly their legal institutions, when restoring the constitution of democracy. As a result, a process of publication was initiated in 410, which aimed to reconstruct the laws of Drakon still in use and the laws of Solon, together with all recent laws that had been enacted subsequently. For this purpose, a board of public officials, named *anagrapheis*, was appointed by the Athenian Assembly for two terms (410-404 and 403-399) and remained in office for a total of ten years.

The job delegated to the *anagrapheis* was not quite similar during the two terms of office, 410-404 and 403-399. In both terms, they were responsible to collect, revise and inscribe on stone the Athenian laws then *in use*, but the scope of their activities as well as their authority were different in each term. The «*anagrapheis* of 410-404» were appointed to re-publish all the Athenian laws that were then *in use*, both secular and sacred. The «*anagrapheis* after the restoration of 403» were engaged to re-publish the sacrificial calendar. In either case, they were not mere transcribers of the laws but their job involved a higher level of discretion.

The activities of the *anagrapheis* during the two terms of office can be seen as integral parts of the re-publication of all ancestral and current secular and sacred laws then *in use*. Obviously, the *anagrapheis* of the first period had an expertise in matters of Athenian law, and were therefore retained at the same office for a long period until the work of publication had been completed. This very fact, however, could raise suspicion of the authority delegated to them, as can be inferred from the attack against Nikomachos in his trial. When the process of publication commenced, it was not clear for the Athenians precisely which laws to publish and which sources to use. Thus, the *anagrapheis* had obviously an extensive degree of authority since they were responsible for the selection and revision of the

laws, and their outcome was only subject to the approval of the Athenian Assembly. However, after 403 the authority of the *anagrapheis* was significantly restricted, when their work became subject to a newly introduced process of ratification (Teisamenos' decree), in which other institutional boards than the Athenian Assembly participated, such as the *Boule*, and a panel of five hundred *nomothetai* elected by the *demes*. Even though the possibilities of abusing authority must have been considerably reduced in the second term, the *anagrapheis* (or at least Nikomachos) were prosecuted by a group of political figures on various charges, amongst which the inappropriate construction of the sacrificial calendar⁴⁹.

In the restored democracy of 403 another board of officials, the *nomothetai*, was appointed by the *Boule* to reaffirm the original laws of Drakon and Solon and draft proposals for additional and new laws. The activities of the «*anagrapheis* after the restoration» and the «*nomothetai* appointed by the *Boule*» were not identical but simultaneous until a certain period of time. The task of the *nomothetai* involved a high legislative authority, especially because they were entitled with the making of new laws. The proposals of the *nomothetai* would undergo the process of ratification included in the decree of Teisamenos. The safeguard of the validated laws was entrusted with the Areopagos.

It has become clear that, toward the end of the fifth century, the Athenians appointed two boards of officials (*i.e.* the *anagrapheis* and the *nomothetai* elected by the *Boule*) delegated with authoritative activities in order to re-establish their legal system and safeguard the constitution of democracy. The period 410-399 B.C. marks the first systematic publication of all Athenian laws then *in use*, and the introduction of a democratic procedure of ratification of laws, which engaged other institutional bodies than the Athenian Assembly (*i.e.* the *Boule*, a panel of five hundred *nomothetai* elected by the *demes*, and the Areopagos) in the constitutional practice. Although we do not hear anything about the process of the publication of laws throughout fourth century, the legal activities of the last decade of fifth century set the foundations for the fourth century legislation (*nomothesia*), with particular reference to the processes of making new laws and repealing old ones.

⁴⁹ The prosecution case does not appear very strong, since not much evidence is provided of the alleged offences against the constitution; cf. Volonaki (1998), pp. 175-195.

BIBLIOGRAPHY

- Atkinson, K.M.T. (1939), *Athenian Legislative Procedure and the Revision of Laws*, «Bull. of J. Rylands Library» 23, pp. 107-150.
- Boegehold, A.L. (1972), *The Establishment of a Central Archive at Athens*, «AJA» 76, pp. 23-30.
- (1990), *Andokides and the Decree of Patrokleides*, «Historia» 39, pp. 149-162.
- Clinton, K. (1981), *The Nature of the Late Fifth-Century Revision of the Athenian Law Code*, in *Studies in Attic Epigraphy, History and Topography*, «Hesperia», Suppl. 19, Princeton, pp. 27-37.
- Dow, S. (1941), *Greek Inscriptions: the Athenian Law Code of 41-404 B.C.*, «Hesperia» 10, pp. 31-37.
- (1955-57), *The Law Codes of Athens*, «Proc. of the Mass. Hist. Soc.» 71, pp. 3-36.
- (1960), *The Athenian Calendar of Sacrifices: the Chronology of Nikomachos' Second Term*, «Historia» 9, pp. 270-293.
- (1961), *The Walls Inscribed with Nikomachos' Law Code*, «Hesperia» 30, pp. 58-73.
- Ferguson, W.S. (1936), *The Athenian Law Code and the Old Attic Trittyes*, «Classical Studies presented to Edward Capps», Princeton, pp. 144-158.
- Fingarette, A. (1971), *A New Look at the Wall of Nikomachos*, «Hesperia» 11, pp. 330-335.
- Finley, M.I. (1986), *The Ancestral Constitution*, repr. in M.I. Finley, *The Use and Abuse of History*, pp. 34-59.
- Hansen, H. (1990), *Aspects of the Athenian Law Code of 410/09-400/399 BC*, New York - London.
- Hansen, M.H. (1980), *Athenian Nomothesia in the Fourth Century B.C. and Demosthenes' Speech Against Leptines*, «C&M» 32, pp. 87-104.
- (1985), *Athenian Nomothesia*, «GRBS» 26, pp. 3445-371.
- (1990), *Diokles' Law (Dem. 24.42) and the Revision of the Athenian Corpus of Laws in the Archonship of Eukleides*, «C&M» 41, pp. 63-71.
- Harrison, A.R.W. (1955), *Law-making at Athens at the End of the Fifth Century B.C.*, «JHS» 75, pp. 26-35.
- Hignett, C. (1952), *A History of the Athenian Constitution to the End of the Fifth Century B.C.*, Oxford.
- Loening, T.C. (1987), *The Reconciliation Agreement of 403/2 B.C. in Athens*, «Hermes Einzelschriften» 53, Stuttgart.

- MacDowell, D. (1962), *Andokides. On the Mysteries*, Oxford.
- (1975), *Law-making at Athens in the Fourth Century B.C.*, «JHS» 95, pp. 62-74.
- (1978), *The Law in Classical Athens*, London.
- Meiggs, R. - Lewis, D.M. (1988), *A Selection of Greek Historical Inscriptions to the End of the Fifth Century B.C.*, Oxford.
- Oliver, J.H. (1935), *Greek Inscriptions: Laws*, «Hesperia» 4, pp. 5-32.
- Ostwald, M. (1986), *From Popular Sovereignty to the Sovereignty of Law: Law, Society and Politics in Fifth Century Athens*, Berkeley.
- Rhodes, P.J. (1972), *The Five Thousand in the Athenian Revolutions of 411 B.C.*, «JHS» 92, pp. 115-127.
- (1980), *Athenian Democracy After 403 B.C.*, «CJ» 75, pp. 305-323.
- (1981), *A Commentary on the Aristotelian Athenaion Politeia*, Oxford.
- (1985), *Nomothesia in Fourth Century Athens*, «CQ» 235, pp. 55-60.
- (1991), *The Athenian Code of Laws, 410-399 B.C.*, «JHS» 111, pp. 87-100.
- Robertson, N. (1990), *The Laws of Athens, 410-399 B.C.*, «JHS» 110, pp. 43-75.
- Sealey, R. (1987), *The Athenian Republic*, University Park.
- Stroud, R.S. (1979), *The Axones and Kyrbeis of Drakon and Solon*, Berkeley - Los Angeles.
- Thomas, R. (1989), *Oral Tradition and Written Record in Classical Athens*, Cambridge.
- (1992), *Literacy and Orality in Ancient Greece*, Cambridge.
- (1994), *Law and the Lawgiver in the Athenian Democracy*, in R. Osborne - S. Hornblower (eds.), *Ritual, Finance, Politics*, Athenian Democratic Accounts Presented to David Lewis, Clarendon, pp. 119-133.
- Todd, S.C. (1993), *The Shape of Athenian Law*, Oxford.
- (1996), *Lysias Against Nikomachos: The Fate of the Expert in Athenian Law*, in L. Foxhall - A.D.E Lewis (eds.), *Greek Law in its Political Setting*, Oxford 1996.
- Volonaki, E. (1998), *A Commentary on Lysias' 13 and 30*, Royal Holloway University of London, unpubl. diss.