Athenian Democracy on Paper

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Abstract

Thousands of public records survive from democratic Athens. Nearly all of them are inscribed on stone (or more rarely metal). A century and more of study has revealed that these inscriptions were the tip of the iceberg. Beyond them was an apparatus of public records, kept on perishable media, that were central to the administration of the city. Call it the paperwork of democracy. What remains to be reconstructed are the processes by which this paperwork was created and the significance of those processes for our understanding of democracy. This dissertation examines the paperwork of making decrees, the basic legislative document in Athens, using literature, court speeches, and inscribed decrees to reconstruct the process by which decrees were written and reused in city politics. It argues that paperwork was done in the central institution of democracy, the assembly; that the orators better known in their capacity as masters of speech were also masters of the rules and discourses of decree-making; that in foreign policy these orators and their audience, the masses, brought the same rigor to documentary texts that they brought to giving and hearing speeches. In sum, where earlier researchers have assumed that paperwork had nothing to do with democracy, this dissertation shows that Athenians were as clever with paperwork as they were with oratory.

Dedication

For Archer Robin, who arrived just in time.

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Abbreviations

Ancient authors are abbreviated according to *LSJ*.

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Introduction

Athenian democracy was described by one of its practitioners as "a polity in *logoi*."[1] Modern scholars take him to mean that democracy was "a polity based on speeches."[2] And for an obvious reason: the rhetor and the masses were the central protagonists in the history of democracy from its beginning to its end.[3] As is well-known, "rhetor" ("speaker") is the Athenian word for "politician."[4] And a citizen unable to persuade the masses with his words could not occupy the center stage of Athenian politics[5] (in part because the citizens in the crowd were a raucous bunch and not above booing, interrupting, or heckling a speaker).[6] For these reasons and more, speech is rightly treated as the central mode of politics in Athenian democracy.

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[1] Dem. 19.184: "There is no harm greater that anyone can do to you than telling lies, for how is it possible to run the city securely if, for those whose polity exists in *logoi*, these [sc. *logoi*] are not true. (οὐδὲν γὰρ ἔσθ' ὅ τι μεῖζον ἂν ὑμᾶς ἀδικήσειέ τις ἢ ψευδῆ λέγων. οἷς γάρ ἐστ' ἐν λόγοις ἡ πολιτεία, πῶς, ἂν οὗτοι μὴ ἀληθεῖς ὦσιν, ἀσφαλῶς ἔστι πολιτεύεσθαι;).

[2] Goldhill (2002) 4: "a constitution of speech-making." So too Greenwood (2004) 176: "a constitution based on speeches."

[3] Thus Yunis (1991) 179-180 observes that "[m]erely by making the speeches so prominent, at considerable expense to other aspects of political activity, Thucydides already isolated the public forum in which the speeches were delivered as the key factor in political decision-making."

[4] Ober (1989) 104-112.

[5] Isoc. 5.81.

[6] Booing: Dem. 19.46. Interrupting and heckling: Aeschin. 1.34. Although Hansen (1987) 70 states that "in principle there was no communication from the participants to the speakers or between the participants," he recognizes that communication was not a one-way street, and other scholars envision an active audience. Thus Thomas (2008) 184 emphasizes "the extent of the noise, hubbub, and generally energetic audience participation in the mass citizen gatherings of both the fifth and the fourth century" and stresses "that this was embraced as part of the democratic process." Tacon (2001) 177 argued earlier that "informal banter between the speakers themselves, interruptions of the speakers by the *demos*, and vocal debate between sections of the *demos* aligned behind opposing politician were wholly typical and actually integral features

But if democracy was a "polity in *logoi*," that need not mean that it was a democracy of speeches alone. Greeks (as is well known) used *logos* to refer to a staggeringly wide range of concepts, so wide that Athenians even referred to the texts of documents like treaties and decrees as *logoi*.[7] And, as one of its native observers pointed out, Athenian democracy produced more legal documents and invested far more in the precision of legal texts than other kinds of polity, since it relied on them to govern the city and its citizens.[8] If Athenians relied heavily on documents to govern themselves and

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of Assembly debate, and, by extension, of Athenian democracy." Although this may been permitted (*de jure* or *de facto*) to the masses, a law cited at Aeschin. 1.35 expressly lays down a penalty of 50 drachmas for a rhetor if he "either utters abuse or speaks badly of anyone or interrupts" (Aeschin. 1.35: ἢ λοιδορῆται, ἢ κακῶς ἀγορεύῃ τινά, ἢ ὑποκρούῃ, ἢ χρηματιζόντων μεταξὺ ἀνεστηκὼς λέγῃ περί του μὴ ἐπὶ τοῦ βήματος).

[7] This usage of *logos* does not appear in LSJ but it does in Th. 5.76-77: Τοῦ δ' ἐπιγιγνομένου χειμῶνος ἀρχομένου εὐθὺς οἱ Λακεδαιμόνιοι, ἐπειδὴ τὰ Κάρνεια ἤγαγον, ἐξεστράτευσαν, καὶ ἀφικόμενοι ἐς Τεγέαν λόγους προύπεμπον ἐς τὸ Ἄργος ξυμβατηρίους…καὶ γενομένης πολλῆς ἀντιλογίας (ἔτυχε γὰρ καὶ ὁ Ἀλκιβιάδης παρών) οἱ ἄνδρες οἱ τοῖς Λακεδαιμονίοις πράσσοντες, ἤδη καὶ ἐκ τοῦ φανεροῦ τολμῶντες, ἔπεισαν τοὺς Ἀργείους προσδέξασθαι τὸν ξυμβατήριον λόγον. ἔστι δὲ ὅδε. Καττάδε δοκεῖ τᾷ ἐκκλησίᾳ τῶν Λακεδαιμονίων ξυμβαλέσθαι ποττὼς Ἀργείως…(When the following winter began, straightaway the Lakedaimonians, once they had celebrated the Karneia, went out on campaign, and arriving at Tegea they issued forth texts of alliance to Argos…and after much debate (for Alcibiades happened to be present), the men who were working on behalf of the Lakedaimonians, now daring to be open, persuaded the Argives to accept the text of the alliance. This is it: "in accordance with the following it is resolved by the assembly of the Lakedaimonians to make an agreement with the Argives…"). Lane-Fox (2010) 13 glosses *sumbaterios logos* as "preliminary agreement." Here I have translated it as "the alliance text" to try to capture the breadth of the term *logos* and the fact that the clauses of a decree too can be described as *logoi* (see Aeschin. 3.11-12, discussed at length in the conclusion to this dissertation.)

[8] Thus, according to Isocrates, one alleged difference between the government of the Areopagites and the radical democracy established by Ephialtes in 462 B.C. had to do with the latter's greater reliance on legal documents (Isoc. 7.40-41): Ἀλλὰ γὰρ οὐκ ἐκ τούτων τὴν ἐπίδοσιν εἶναι τῆς ἀρετῆς, ἀλλ' ἐκ τῶν καθ' ἑκάστην τὴν ἡμέραν ἐπιτηδευμάτων· τοὺς γὰρ πολλοὺς ὁμοίους τοῖς ἤθεσιν ἀποβαίνειν, ἐν οἷς ἂν ἕκαστοι παιδευθῶσιν. Ἐπεὶ τά γε πλήθη καὶ τὰς ἀκριβείας τῶν νόμων σημεῖον εἶναι τοῦ κακῶς οἰκεῖσθαι τὴν πόλιν ταύτην· ἐμφράγματα γὰρ αὐτοὺς ποιουμένους τῶν ἁμαρτημάτων πολλοὺς τίθεσθαι τοὺς νόμους ἀναγκάζεσθαι. Δεῖν δὲ τοὺς ὀρθῶς πολιτευομένους οὐ τὰς στοὰς ἐμπιπλάναι γραμμάτων, ἀλλ' ἐν ταῖς ψυχαῖς ἔχειν τὸ δίκαιον· οὐ γὰρ τοῖς ψηφίσμασιν, ἀλλὰ τοῖς ἤθεσιν καλῶς οἰκεῖσθαι τὰς πόλεις, καὶ τοὺς μὲν κακῶς τεθραμμένους καὶ τοὺς ἀκριβῶς τῶν νόμων ἀναγεγραμμένους τολμήσειν παραβαίνειν, τοὺς δὲ καλῶς πεπαιδευμένους καὶ τοῖς ἁπλῶς κειμένοις ἐθελήσειν ἐμμένειν. ("In fact, [sc. the Areopagites thought] that the transmission of excellence does

their city, and these could be considered *logoi*, then we might broaden our sense of what it meant to call democracy a "polity in *logoi*." We might include, in our study of *logoi* in Athenian politics, the documents that were central to the day-to-day workings of politics in Athens. Accordingly, this dissertation posits that Athenians practiced a kind of democracy 'on paper' alongside democracy in speech.

The notion that documents held an importance place in politics at Athens is not a radical one. Scholars have long acknowledged that Athenians left to posterity more inscriptions than any other polity in Classical Greece, among which survive many public documents. But inscriptions were not the only medium of public record in Athens. Epigraphers have recognized for over a century that inscriptions point beyond themselves to records that were never inscribed but were used in the day-to-day work of democratic politics.[9] For much of the twentieth century these documents were largely ignored, but in the past three decades, scholars have begun to collect and study the evidence for public records and archives on perishable materials. Consequently, few still

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not come about from these [sc. τὰ γράμματα], but from daily habits, since many turn out similar to the customs in which they are each educated. And [sc. they thought] that the number and precise details of the laws is a sign that this city is governed badly; for they are compelled to pass many laws as a way of making barriers against wrongdoing. And [sc. they thought] that those who run their city correctly do not fill the stoas with documents, but have justice in their souls, for it is not by decrees but by customs that cities are governed well, and those raised badly dare to transgress even precisely drafted laws, but those educated well are willing to abide by even simply written laws."). That this is an implicit critique of the democracy in Isocrates' day is clear from the fact that democracy in Athens was described by Athenians themselves as government by decree (for sources see below n.14).

[9] Wilhelm (1909) 227-299.

doubt, as some did in the past, that more documents were kept (and kept more systematically) as perishable documents than as inscriptions.[10]

Scholars have approached this material in ways that can be described (in my words, not theirs) as anthropological and antiquarian in outlook. Those inclined to the anthropological approach aim to unpack the habits and beliefs that shaped the culture of literacy at Athens, including the culture of documents and documentation.[11] Those inclined to the antiquarian approach have been concerned in the main with collecting and analyzing the evidence for what kinds of documents existed and what sorts of purposes they served in Athenian government.[12]

The anthropologists and the antiquarians have found each other's work lacking in certain respects. The anthropologists worry that the antiquarians have assembled the evidence for the uses of documents in Athens without integrating that evidence into

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[10] Sickinger (1999) 191 urged, in the conclusion to his study of public records and archives in Classical Athens, that "future studies of ancient literacy and writing must come to terms with the fact that even as early as the fifth century most Athenian documents were recorded and preserved not on stone stelai but on less durable materials that were housed in some type of archives." Although scholars dispute details of Sickinger's work (which this dissertation will engage with in the following chapters), it appears that his stress on the need to consider ephemeral documents has been generally accepted. Nevertheless, Hedrick (2000) 635 thinks that Sickinger's claims (that archives in Athens go back to the sixth or seventh centuries, that they were essential to the administration of the state, and that Athenians used their archives as moderns do) are "wrong on all three counts."

[11] The anthropological bent in scholarship on literacy and orality (and in documents in particular) is bes exemplified by the many books and essays of Rosalind Thomas; for an overview of literacy and orality as concepts in anthropology, history, and ancient history in particular, see Thomas (1992) 15-28.

[12] See, e.g., Sickinger's *Public Records and Archives in Classical Athens* or more recently Christophe Pébarthe's *Cité, démocratie et écriture. Histoire de l'alphabétisation d'Athènes à l'époque classique*, the former of which is praised by Thomas for "its careful trawling through the fragmentary evidence for archival practice" (2003: 230), the latter as "the most thorough and systematic examination of the evidence so far" (2010: 495).

"the larger contexts of Athenian life" (above all the council, the assembly, and the courts).[13] The antiquarians are concerned that the anthropologists have paid too little attention to what Athenians did with documents in favor of how Athenians thought about documents, and that in so doing they have overlooked a rich source for our understanding of the culture of documents in Athenian government.[14]

Little consensus has emerged from this scholarship. And even more recent scholarship on the culture of documents at Athens has struck reviewers as insufficiently rigorous in the collection, interpretation, and contextualization of the evidence for what we might call the paperwork of Athenian democracy: the processes involved in creating and using public documents (inscribed or otherwise).[15] And reviewers of more recent scholarship on the culture of documents and documentation have identified in this research a gap worth filling: though scholars have painstakingly assembled and

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[13] Thomas (2010) 499.

[14] According to Sickinger (1994) 277, "T[homas]'s injudicious reliance on comparative evidence and her failure to treat the Greek sources adequately result in a distorted view of the uses of writing by the Greeks and an overall denigration of its value to record, preserve, and communi- cate information-functions that were clearly recognized and employed from an early date."

[15] Missiou's *Literacy and Athenian Democracy* does not appear to have filled that gap in the eyes of the book's reviewers. Thus Stauner (2012) 153-154: "some of her assumptions, constructions and, occasionally, also her reasoning cause unease: to start with, her limitation of her study to the fifth century is artificial and is not justified, either by the political framework (democracy), which would have necessitated including the fourth century, or, even less, by the subject matter (literacy). Suk Fong Jim (2011) likewise thinks that despite Missiou's work "there are still considerable uncertainties about the actual representation of the Attic population in the council, the precise nature of the tasks in which councillors were involved, and the extent to which information was transmitted orally and/or in writing in the day-to-day running of the boule. It seems unlikely that the councillors would be required to read and write documents themselves as part of their duties in the early days of the democracy; and there was nothing that prevented an illiterate boule member from participating by listening and speaking."

analyzed the evidence for the existence and organization of public records and archives on perishable materials, that evidence has not been integrated into the study of politics and law in democratic Athens; it has rarely been interpreted in its historical or cultural context; it has often been treated with the implicit or explicit assumption that paperwork in Athens was handled in ways that are essentially modern.[16]

Consequently, we have no satisfactory account of how paperwork featured in the daily grind of politics and law in democratic Athens; no idea whether Athenians tended to use texts in politics in ways that were peculiar to the sphere of politics and law, or whether they handled such texts in ways that were similar to the ways they handled texts outside of the institutions of democracy.[17] With a view to filling this gap, this dissertation lays the groundwork for an account of Athenian democracy on paper.

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[16] Hedrick (2000) 645 wished that Sickinger (1999) "had considered the history of the Athenian archives within a framework of larger historical questions. He might, for example, have situated Athenian practices within a comparative context, or considered why the Athenians (or for that matter any state) should have come to keep permanent records at all. He might have integrated his history of record-keeping into an account of Athenian politics or society ('democracy' is another word that does not appear in the index). He might have considered the implications of medium for the meaning of the document."

[17] One of Hedrick's (see above n. 16) chief criticisms of Sickinger is that he "believes that the Athenians used their texts much as moderns do, in ways so familiar as to require little explanation." The same criticism is voiced in a review of Pébarthe's (2006) book on literacy in Athenian democracy (Thomas 2010: 499): "Not all will be convinced by the generally modernizing interpretations of the role of documents here; P. explicitly chooses the „modern epoque" as the suitable model (348). There remain many fascinating questions raised by this work, even if one does not see the Athenian state necessarily as an ordered and efficient bureaucratic machine. The slips and absences are as interesting as the attempts at order. The larger contexts of Athenian life — assemblies, speeches, private deals, corruptions of the democracy — all play a part also and cannot be left out of account."

Scope

The paperwork of Athenian democracy involved many different genres of document: laws and decrees and interstate compacts, public contracts, financial records, legal plaints, court testimony, and lists of demesmen, naval equipment, cavalrymen, infantry, ephebes, to mention just some. Any one of these genres merits a study of its own. But one way to achieve the depth necessarily sacrificed by broader studies of paperwork in Athens is to narrow our focus to a single genre of document. Thus, this dissertation focuses mainly on decrees, for a variety of reasons.

The decree was the most important genre of document in Athenian democracy. Athenians told themselves, on more than one occasion, that the people administered the city through laws and especially decrees.[18] Decrees were the creation of the two main characters in Athenian democracy: the rhetor, whose name was recorded in the decree he proposed, and the people, whose approval was recorded as a guarantee of the legitimacy of the text.[19] The people of Athens communicated with other polities through

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[18] That the decree was the basic legislative instrument of popular rule is clear from *AthPol* 41.2: ἁπάντων γὰρ αὐτὸς αὑτὸν πεποίηκεν ὁ δῆμος κύριον, καὶ πάντα διοικεῖται ψηφίσμασιν καὶ δικαστηρίοις, ἐν οἷς ὁ δῆμός ἐστιν ὁ κρατῶν ("for the people itself has made itself in charge of everything, and everything is administered by decrees and lawcourts, in which it is the people who holds sway). This was democratic ideology, a slogan even, as is evident from Dem. 24.152: ἡ γὰρ πόλις ἡμῶν, ὦ ἄνδρες δικασταί, νόμοις καὶ ψηφίσμασιν διοικεῖται ("for our polis, men of the jury, is administered by laws and decrees"). That Demosthenes here includes laws alongside decrees is unimportant; although no decree could be more authoritative than a law (Andoc. 1.89), the legislative procedure in the age of Demosthenes could only begin by decree of the assembly (Dem. 24.25 on which see Canevaro 2015).

[19] For a typical prescript in a decree see *IG* II² 213.1-6 ἐπὶ Θεμιστοκλέους ἄρχοντος· [ἔδοξεν] | τῆι βουλῆι καὶ τῶι δήμωι· Αἰγ[ηὶς ἐπρυ]|τάνευεν, Λυσίμαχος Σωσιδήμου Ἀχαρνεὺ[ς ἐγραμμ]|άτευεν, Θεόφιλος Ἁλιμούσιο[ς ἐπεστά]|τει· Στέφανος Ἀντιδωρίδου Ἐ[ροιάδης] | εἶπεν· ("In the archonship of Themistocles, it was resolved by the council and the assembly, Aegis was serving as prytany, Lysimachos son of Sosidemos an Acharnian

decrees, and thus the decree, as a genre of document, was the formal and written 'voice' of the people.[20] But Athenians also recognized that the decree, just like speech, was subject to elite capture, because elites could use it to manipulate the people, as in fact happened in the late fifth century, when the people ratified decrees that opened the door to the dissolution of democracy.[21] Thus, in the decree (as in the assembly-speech) we find the same tension between the individual politician and the masses that was characteristic of Athenian politics as a whole.[22]

Decree-making, then, deserves to be considered the most important kind of paperwork in Athenian politics, because to reconstruct Athenian decree-making is to reconstruct a process that belonged to the heart of Athenian democracy and involved its major protagonists. Thus, if one wants to know how the Athenian people exercised

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was serving as secretary, Theophilos a Halimousian was presiding, Stephanos son of Antidorides of Eroia proposed").

[20] In the letter of Philip II transmitted in the corpus of Demosthenes Philip complains (Dem. 12.8): Ἀλλὰ πρὸς τοῖς ἄλλοις καὶ γράφετ' ἐν τοῖς ψηφίσμασιν ἐμοὶ προστάττοντες Τήρην καὶ Κερσοβλέπτην ἐᾶν Θρᾴκης ἄρχειν, ὡς ὄντας Ἀθηναίους. (But in addition to the other things you even write in your decrees ordering me to allow Teres and Kersobleptes to rule Thrace, on the grounds that they are Athenians"). As we shall see below, this is the only instance where "write a decree" is meant figuratively, and the only instance where it is used collectively of the Athenians as a whole, rather than specifically (and literally) of the rhetor drafting a decree.

[21] Lys. 34.1: Ὅτε ἐνομίζομεν, ὦ Ἀθηναῖοι, τὰς γεγενημένας συμφορὰς ἱκανὰ μνημεῖα τῇ πόλει καταλελεῖφθαι, ὥστε μηδ' ἂν τοὺς ἐπιγιγνομένους ἑτέρας πολιτείας ἐπιθυμεῖν, τότε δὴ οὗτοι τοὺς κακῶς πεπονθότας καὶ ἀμφοτέρων πεπειραμένους ἐξαπατῆσαι ζητοῦσι τοῖς αὐτοῖς ψηφίσμασιν, οἵσπερ καὶ πρότερον δὶς ἤδη. ("when we considered, men of Athens, that the disasters that had befallen us were left behind as sufficient reminders, such that we would not desire the changes in the polity that did befall us, at the same time these men here seek to deceive you, who have suffered badly and experienced both changes, with the exact same decrees as they have deceived you twice before now.").

[22] See Ober (1989) 104-159.

power through documents, how Athenian elites wielded influence through documents, how Athenians as a whole used documents to jockey for position on the international stage, then the decree ought to be a central concern of anyone interested in Athenian politics at home and abroad.

Therefore, though we will occasionally touch upon other kinds of paperwork, the paperwork of the Athenian decree will be the main character of this dissertation, which argues that by the early years of the Peloponnesian war, Athenians did the paperwork of decree-making in the council and even the assembly; that the paperwork of decree-making formed a part of the rhetor's craft and that rhetors brought to this paperwork the same rigorous and careful attention to the possibilities of language that they brought to crafting their speeches; that Athenians in the audience were as attentive to the intricacies of documentary texts as they were to the sophistications of speech.

Sources and Method

Though we know that decrees were proposed by rhetors and ratified by the masses, there are no ancient accounts of how the text of a decree was drafted and there are no surviving copies of decrees from the city archives from which we might divine their composition.[23] But we do have thousands of decrees as they survive on stone, glimpses of particular steps in the process of decree-making in literature, oratory, and paraliterary

[23] Here I follow Hansen (1991) 9-12 in dividing evidence into *accounts* of Athenian democracy and *survivals* of Athenian democracy, according to which the *Athenaiōn Politeia* would be an account of Athenian democracy, while an inscription or a speech would be a survival.

texts like scholia and lexica, and even some explicit accounts, in these works, of how decrees and other kinds of document were used to negotiate and to legislate in matters of diplomacy. Thus, we are not lacking for sources. They are merely fragmentary and incomplete, and that is nothing new to classicists and ancient historians. It does mean, however, that our task is to find a method by which we can piece together a process that does not survive from the products that do.

The basic methodological outlook adopted in this dissertation was expressed two decades ago:

> "it is primarily the careful application of philological method that gives us the ability to put hypotheses to the test. In some cases this is precisely a matter of falsifying statements, of showing that a generalization or an explanation cannot be correct. In other cases it may actually be a matter of proving that something is true, of deploying interlocking pieces of evidence to demonstrate a point."[24]

My approach in all three chapters of this dissertation is philological in this sense. It aims to test old generalizations about paperwork in Athens and (where necessary) to argue for new explanations in their place. It does so not by introducing fresh evidence, but by reconfiguring familiar evidence in new ways.

That evidence is perhaps not best described as 'interlocking', since in all but a few cases it comprises speeches and texts produced during different meetings of the council or assembly. But it is marked by a fuzzy intertextuality that can be taken to exist between the surviving corpus of speeches and the corpus of surviving decrees inscribed

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[24] Bagnall (1995) 109.

on stone (both of which provide the bulk of the evidence in this dissertation), by virtue of the fact that the giving of speeches and the proposing of decrees formed the main activities of councils and assemblies. Thus, in a sense, they deserve to be treated as products of the same processes, and of course scholars past have brought speeches and decrees to bear on particular questions of fact and to reconstruct the institutions of democracy. Here they are brought together to reconstruct the paperwork of the council and assembly from its products.

Chapter Descriptions

The first chapter addresses the long-held and widespread assumption that the explosion of epigraphy in late fifth and fourth-century Athens reflected Athenian democrats' commitment to the dissemination of public records. That assumption has come under intense scrutiny in the past few decades, and scholars are increasingly of the view that the impulse to inscribe had nothing to do with democracy. What, then, of the idea that writing (especially in the form of public documents) was fundamental to Athenian politics, especially to legislation, the engine of democracy?

That very idea has been questioned on the basis of scholarship that has shown how weak the link is between the epigraphic habit and democratic ideology.[25] The first chapter of this dissertations argues that if we are looking for what kind of writing

[25] Thus, Papakonstantinou suggests (in a review of Pébarthe 2006): "of late, the "writing = democracy" thesis (at least as far as the Greek world is concerned) has been largely abandoned."

mattered to the workings of democracy, then we will find it it in the fact that by the last decades of the fifth century there was a nascent 'papyrological' habit that arose alongside the better-known (because better attested) epigraphic habit. It is, of course, well-known that a culture of tablet and bookroll in the field of private life sprung up in these decades. In this chapter it is urged that Athenian politics shared in this historical development, especially (though not exclusively) in the matter of legislation, in which the making of decrees was part of this nascent papyrological habit.

The second chapter builds on the conclusion that paperwork was central to the legislative process in Athens. Legislation happened primarily in the council and assembly until the fourth century, when the procedure was split between decree-making (which happened in the council and assembly) and law-making (which took place in the body called the *nomothetai*). The paperwork involved in law-making of the fourth century has received much attention from scholars.[26] The paperwork involved in decree-making has not. Thus, this second chapter will reconstruct how words got on the page (so to speak) of an Athenian decree.

It has long been consensus that policy was framed in speech by a *rhetor* but then drafted in an official document after the fact by the secretary of the council or one of his assistants, such that the process of legislation entailed different media, different contexts, and more than one hand. Here it will be argued that the secretary had nothing

[26] See Canevaro (2015).

to do with drafting the main body of the decree, which was instead prepared (in writing) by the rhetor who proposed it. Rhetors, on this view, were as adept at drafting the decrees that served as the basic instrument of popular power as they were at crafting the speeches through which Athenians deliberated. And that facility with the paperwork of the council and assembly gave them a power to shape Athenian politics that lay outside the reach of ordinary Athenians.

The third chapter takes the idea that rhetors were skilled in handling the paperwork of the council and assembly and extends it to another domain of politics dominated by rhetors: diplomacy. Here too speech is thought to have been the dominant mode of political interaction. And diplomatic speech, it has been argued, concerned itself with the same sorts of moral and ideological arguments that we find in speeches given in the council, assembly, and courts.

In this third chapter, it is argued that Athenian diplomacy was also marked by the same rigorous and even clever attention to documentary texts that we find in democratic politicking in the council and assembly. Interstate legislation at Athens bears the traces of this attention, insofar as this legislation is studded with references to other documents, especially but not exclusively decrees, in ways that suggest these other documents were involved and perhaps even cited on the floor of the assembly.

Prospectus

This dissertation is in dialogue with scholarship on democracy, law, and literacy in Athens. Since it aims to reconstruct practices and texts that, had they survived, would fall under the purview of papyrology, that dialogue is undertaken in the spirit of *amicitia* characteristic of papyrologists. Consequently, readers interested in particular scholars and works of scholarship referred to in the body of the dissertation will find that information exclusively in the footnotes. In order to let those scholars and their work speak for themselves, as far as is possible, the footnotes often contain more substantial quotation of ideas and arguments that are paraphrased in the body of the dissertation. Likewise, since the argument progresses through rigorous attention to the details of literary and documentary texts, the footnotes contain substantial amounts of Greek and accompanying translations in order to grant readers easy access to the texts out of which the text of this dissertation is fashioned. This rigorous and exacting attention to the details of Greek texts, and especially to documents, is a methodological choice that reflects to some extent the same rigorous and exacting attention to the possibilities of documents and documentary texts that was, I urge, a feature of Athenian politics from the Peloponnesian war onward.

Chapter 1. Toward a Papyrology of Athenian Democracy

1.1 Beyond the Epigraphic Habit

Aristotle, a resident of Athens for half his adult life and a sharp-eyed observer of Athenian democracy, claims in the *Politics* that his predecessors considered reading and writing useful "for business, for the administration of the household, for learning, and for many civic practices."[1] Such sweeping statements about the uses of reading and writing are rare in ancient sources.[2] Consequently, scholars have been cautious to build their own claims atop them, perhaps because the kinds of materials used for reading and writing in the first three categories, like tablets of wax and wood or scrolls of papyrus or vellum, have (with one exception) not survived the ravages of weather, time, and reuse.[3]

Nevertheless, there is an ever-growing body of indirect evidence, from archaeology and literature and art, that texts made from these sorts of materials were known even in early Classical Athens.[4] A rich body of scholarship has grown up around

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[1] Arist. *Pol.* 1338a15-17: διὸ καὶ τὴν μουσικὴν οἱ πρότερον εἰς παιδείαν ἔταξαν οὐχ ὡς ἀναγκαῖον (οὐδὲν γὰρ ἔχει τοιοῦτον), οὐδ' ὡς χρήσιμον ὥσπερ τὰ γράμματα πρὸς χρηματισμὸν καὶ πρὸς οἰκονομίαν καὶ πρὸς μάθησιν καὶ πρὸς πολιτικὰς πράξεις πολλάς. Note the attribution to "predecessors"; it is unclear which of his predecessors is meant. But in *Metaph.* 1002a "predecessors" seems to mean the pre-Socratics, and so he may be reporting a fifth or even a sixth century opinion. Note too that Aristotle is not obviously making an Athenocentric statement, but that his fourfold division seems to reflect the same divisions of life in which Athenians saw writing as particularly useful, on which see Morgan n.2 below.

[2] Morgan (1999) 54.

[3] Pöhlmann and West (2012) 1-16 publish a collection of wax-tablets and a fragment of papyrus from an Attic grave dated to 430-20 B.C., noting that (3) "[t]he writing on the tablets "is not the gross lettering found on later school tablets; on the contrary it is neat, well-formed, and microscopically small, clearly the work of a practiced hand, and the amount of text written must have been considerable."

[4] Degni (1998) 15-18. Birt (1907) remains, to my knowledge, the only comprehensive study of the bookroll in ancient art.

this evidence, and although scholars do not agree on every detail of interpretation, there is general agreement that merchants were early adopters of writing[5]; that reading and writing were practiced in the households of wealthy Athenian men and women[6] for practical matters and for pleasure[7]; and that boys (mainly wealthy ones) were privately taught reading and writing as part of their elementary education from the early fifth century onward.[8] Thus, scholars have found backdoors into some of the practices and

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[5] Harvey (1966) 606 n. 1 reviews a body of work on literacy and traders that even then could be described as divided; discussing the evidence for contracts, receipts, accounts, and inventories, he concludes that documents were used, but that (615) "exactly how much was committed to writing, how often, is a question that cannot be answered." A steady stream of letters on lead that concern trade has emerged from the shores of the Black Sea. The material is collected and reviewed in Faraguna (2002) 237-254, Dana (2007) 67-97 and Eidinow & Taylor (2010) 30-62, who conclude that writing "was more common in a wider range of circumstances than was previously thought." In one of those letters the sender requests that his boss (or owner) send διφθέρια; Dana (2004) 8 suggests that "dans le contexte de notre lettre, le terme διφθέρια ne peut signifier que «registres.»"

[6] Glazebrook (2005) 3-4 n.8: "most historians today agree that some Athenian women of the elite class were at least semi-literate. but that they did not attend school; see Golden (1990) 73; Harris (1991) 96, 107-108; Cole (1981) 223-224; Pomeroy (1977) 51-52." Pébarthe (2006) 59 n.200 observes: "Les tragédies ne fournissent pas d'éléments complémentaires, voir Ibid., p. 224-225. Si Phèdre sait écrire (EUR., Hipp., 856-881), Iphigénie demande qu'on lui écrive une lettre (EUR., I. T., 582-587). Pour des exemples de femmes parfaitement alphabétisées, LYS., Diog., 32.14-15 et XÉN., Ec., 7.5 et 9.10."

[7] Glazebrook (2005) 1 points out that, on Attic vases, "[a]lthough male figures, such as youths, boys and slaves, hold book rolls, the majority of figures shown with such rolls are female," and after a systematic review of the vases concludes that "[e]arly scenes of the female figure with book roll resemble school scenes that place an emphasis on the roll as a tool for recitation and for learning, but not as a method of composition or as symbolic of a high level of education and increased social status." Dillon (2013) 398-406 covers much of the same ground but concludes that these images are not "stereotypes of women as engaged in reading and music rendition, but actual portrayals of living women" (404). Vatri (2017) 53: "In order to appear on vases, school and reading scenes must not have been an unusual sight in fifth-century Athens. However, vases picturing them are relatively rare in comparison with other popular themes, and their quality is generally high, which suggests an elite audience, and ultimately, that such scenes were more familiar (but not necessarily exclusive) to the upper class."

[8] Morgan (1999) 46-61, but note that M. is cautious throughout about the exact chronology of literacy in education, and those pessimistic about the extent of literacy in fifth-century Athens are primarily focused on literary evidence. Epigraphers tend to be a bit more optimistic about the extent of literacy in Archaic and Classical Athens, because there is clear and unambiguous evidence of writing by non-elites. Thus Langdon (2005) 175-182 published a complete abecedarium cut into a cliff face in Vari by a passing shepherd. So too

values attached to reading and writing on tablets and bookrolls in the private lives of fifth-century Athenians, even though none of these survives.

It is all the more ironic, then, that scholars disagree about whether reading and writing were useful for many of the civic practices of Athenian democracy, even though thousands of texts generated in the course of politics survive in the form of inscriptions which (being of metal or more often stone) have survived antiquity.[9] That fact has attracted a great deal of attention from modern scholars, some of whom have seen, in the intensity of the epigraphic habit at Athens, a sign that "widespread ability to read and write is the basic assumption of Athenian democracy."[10] On this view,

> The principal reason for the abundance of such documents was the democratic form of government of the Athenian people. The business of government was everybody's business, and the publication of the many details of all sorts of transactions shows a general desire to let everybody know the acts of government.[11]

Lang (1976) B1 is a sherd from a skyphos with a brief message written on it: "Thamneus, put the saw under the threshold of the garden gate." On the basis of these and other short texts West (2014) 64 suggests: "[l]iteracy made no distinction between elites and ordinary people."

[9] Thus Meyer (2013) 454 (citing Pébarthe (2005) 169–82, at 169 n. 2): "That Athens produced more inscriptions on stone than any other Greek city-state is by now an accepted fact, not fundamentally affected by cautious queries about the comparatively large extent of excavation or the comparatively extensive use of marble." So too Hedrick (1994) 160: "what sets Athens apart from other ancient Greek city states is not the simple, all too common fact of its erection of inscriptions, but the *quantity* of inscriptions it erected" (emphasis original). Hedrick (1999) 390 estimates that about 20,000 Athenian inscriptions survive (i.e. 10% of the entire surviving corpus of Greek inscriptions); Pébarthe (2005) 169 n.2 offers the only slighty more cautious 15,000 ("chiffre largement inférieur à la réalité").

[10] Turner (1952) 9.

[11] Meritt (1940) 89.

For a long time this has been the consensus explanation for the epigraphic habit.[12] It is, as scholars have noted, an intuitive explanation for those of us who live in modern democracies, where freedom of information is a cultural norm enshrined in law.[13] And scholars have almost universally argued that there is confirmation of an analogous norm in Euripides' *Suppliants* (422 B.C.), in which Theseus, the mythical founder of Athens (and in this play the founder of democracy), declares: "where laws are written down the weak and the wealthy alike possess equal justice."[14] The same norm, it has been proposed, is reflected by those public records that appear to contain instructions to publish documents "for anyone who wishes to examine" or "in order that all may know" their contents; "[s]uch expressions," it is claimed, "imply a sense of public responsibility which must also have been felt in the publication of many documents

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[12] As Pébarthe (2005) 170 points out, Meritt was preceded by Austin (1938) 25: "[the profusion of inscriptions] was doubtless intimately connected with the rise of Athenian democracy, which probably insisted that the laws by which it was governed should be accessible to everyone." And Turner (1952) 9: "widespread ability to read and write is the basic assumption of Athenian democracy. No other explanation will account for the costly engraving on marble of the transactions of the sovereign people." The idea is widely accepted. Thus Musti (1986) 22: "È vero tuttavia, inversamente, che la democrazia promosse la scrittura; che questa ebbe con essa una diffusione nell'uso e nel numero degli utenti, uno sviluppo nelle finizioni assolte, una definizione negli stessi aspetti formali, che della democrazia, intesa sia come forma di regime politico, sia come cultura, furono un caratteristico apporto."

[13] Hedrick (1994) 158.

[14] E. *Supp*. 433-37; Sickinger (2009) 98 n.8 notes that Theseus "contrasts the secretive nature of tyrannical rule, especially in matters of law, with the equality made possible when laws are written and more widely known." Cartledge (1978) 36: "[i]t is of course true that written definition of rights and duties will not automatically secure their effective exercise for all alike, whether rich or poor, strong or weak. But there seems equally to be something approaching a general rule that, to paraphrase Euripides, written definition marks an indispensable step on the road towards achieving this objective. Burns (1981) 377: "the dramatists practically identify written laws and decrees with democratic government." Harris (1989) 76: "undoubtedly meant by the poet to be authoritative, and it must have reflected the feeling of much of the audience." Thomas (1992) 146 suggests: '[t]he identification of written law exclusively with justice and the democracy seems more likely to have been a product of late fifth-century developments in Athens."

where these express reasons were not formally stated."[15] If most citizens could not read and write, it is suggested, then these so-called "formulae of disclosure" would be at best superfluous, at worst a "pious fraud."[16] Perhaps that is why many are still drawn to explain the epigraphic habit as the visible effect of a deeply felt link between democracy and literacy.[17]

Nevertheless, this explanation of the epigraphic habit has come under intense scrutiny in the last few decades, and in light of that scrutiny it has become harder to maintain that inscriptions were published primarily as records meant to be read and consulted. Many of them, like funerary monuments and dedications to gods, had nothing obvious to do with democracy. It has always been maintained that inscriptions

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[15] Meritt (1940) 90; Nieddu (1982) 239 suggests that the formula be taken as evidence that "l'iscrizione stessa, attraverso il generico riferimento al viandante, evoca i propri lettori, in altri casi solo indirettamente, ma non meno chiaramente, postulati dalla natura, dal contenuto, dalla collocazione del testo scritto." Steiner (2015) 229 suggests that such inscriptions were "cut and set up where it is possible for anyone to see it (τῷ βουλόμενῳ σκοπεῖν) so that even those who cannot attend the meeting are implicitly invited to take their part in the law-making process."

[16] Harvey (1966) 600.

[17] Missiou (2011) xi: "Athenian democracy emerged as the driving force behind extensive literacy in Attika, since the production of both public inscriptions and ostraka involved citizens of all social classes." Davies (2003) 338: "for public documents, the driving force was the need to record major community acts or to account in real or symbolic ways for the handling of community monies. That force was far stronger in the republican microstates where the free adult males regarded themselves as a bounded group which was the state because all were partners in 'the common thing' (*to koinon*) and all could 'share in the polity' (*metechein tes politeias*) like the shareholders in a company. The further a polity travelled down that road, the firmer was the collective view that shareholders needed an accessible record of their decisions, both to provide consistency and to check unauthorized acts by, as it were, the company's managers and directors. Hence, the frequency with which a polity set up public documents reflected the 'advancedness' of its democracy." Thomas (1992) 149-50: "Athens certainly used written records more than her contemporaries largely because of the democratic ideal of publicity, accountability, and then the explicit identification of written law with democracy and justice; cf. Hedrick (1999) 25: "writing publicly displayed must be regarded as a manifestation of that state's ideology. The Athenians, who claimed to be democratic, erected many inscriptions. *Ipso facto* the inscriptions should be considered democratic."

"had symbolic purpose as well as providing information and enabling justice to be done."[18] But recently it has been argued extensively that public documents were inscribed for the same reason monuments and dedications were inscribed: to memorialize men and glorify gods.[19] Indeed, if the point of inscribing public documents was for citizens to read them, then a large number of citizens must have been able to read (and perhaps write), which, "although surmisable, cannot be substantiated."[20] And while some scholars have surmised that most of the citizen body could read and write,[21] others have estimated that hardly more than one in ten could.[22]

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[18] Thomas (1992) 144.

[19] Meyer (2013) 453-505. No summary can do justice to this article, but the thesis will do (p. 453-54): "both democratic usefulness and visual impressiveness were important in developing Athens' epigraphic habit on stone, but specifically because over time, and especially in the 430s and 420s and then again at the end of the fifth century, the democratic polis for particular historical reasons embraced the preserving, memorializing, and (above all) honor-bestowing capacities of inscribing, and extended them to new genres of document and locations of display. It thereby exploited attitudes and qualities already manifested in the sixth century in inscribed monuments like dedications and laws pleasing to, and contributing to the honor of, divinities. It was not the day-to-day practice or growth of democratic government that in itself directed Athens' inclination to inscribe, but the Athenians' close relationship with their gods and, thereafter, the self-conscious, honor-conscious culture of the Athenian democracy – which shifted in its focus, gathered strength over time, and changed the appearance and atmosphere of the city."

[20] Meyer (2013) 455.

[21] Turner (1952) 9: "widespread ability to read and write is the basic assumption of Athenian democracy. No other explanation will account for the costly engraving on marble of the transactions of the sovereign people."

[22] Harris (1989) 86; those scholars optimistic about widespread literacy in Athens never claimed to have a rigorously-acquired sense of how many could read and write. Thus, Robb (1994) 125: "a fair portion of the free males in the city achieved what for antiquity was an impressive degree of literacy, although just how many is a number that will always elude us."

Anyway, even if every citizen was able to read and write, both reading and writing were as easily associated with tyrants and oligarchs as with democrats.[23] Moreover, it has been shown, Athenian democrats did not invent the idea that written legislation facilitates equality before the law, and those who were not particularly sympathetic to democracy believed in the same idea no less.[24] Thus, there is no neat ideology of writing to be discovered in which reading and writing were by themselves considered part of a core democratic worldview. And (therefore) no reason to think that democratic ideology is behind the epigraphic habit for which Athens is rightly famous.

Moreover, there is an even greater blow to the idea that the epigraphic habit reflects a consciously or unconsciously articulated link between reading, writing, and democracy: on closer scrutiny of formulae of disclosure, scholars have realized that "expressions that could be characterized as fundamentally democratic in nature are largely absent from the declared grounds for inscribing documents on stone."[25] It turns out that barely one in four formulae of disclosure "are directly associated with the publication on stone of state documents," and in all but one case the reason to inscribe the document is to honor past benefactors, to encourage future benefactors, and to set up a memorial of the Athenians' gratitude to those who did Athens a good turn.[26] Even the

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[23] Steiner (1994) 216-226.

[24] Pébarthe (2005) 170.

[25] Sickinger (2009) 94.

[26] ibid.

formula of disclosure that unambiguously expresses the intent to disseminate information turns out, on close study, to have nothing to do with the publication of inscriptions: every reference to publication of a text "for anyone who wishes to see" refers to publication of financial or legal documents on a perishable material (usually wood).[27]

But these tablets were important to the daily grind of politics. If reading and writing were useful for many civic practices, then what we really want to know is not just whether "a fair portion" of Athenian citizens "could read, or even write, with enough competency to fulfill their political – and especially legal – obligations and opportunities,"[28] but whether the ability to read and write was "even required for the assembly, boule or heliaia."[29] These institutions were, like the documents published "for anyone who wishes to examine," concerned with law and finance.[30] Thus it might be surmised that attention to documents published on perishable material (like tablets) "for anyone who wishes to examine" might shed a better light on the uses of reading and writing in the work of politics than inscriptions do. This chapter suggests that we can begin to construct a clearer picture of what reading and writing were useful for in

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[27] idem 88-90.

[28] Robb (1994) 125.

[29] Thomas (1995) reviewing Robb above n.31.

[30] Kallet-Marx (1994) 229 suggests that "[s]ervice in the Council offered the best chance to acquire knowledge about public finances given the Council's oversight of all important financial administration, including its supervision of the receipt of the annual tribute from the Empire." Pébarthe (2006) 45-51 discusses evidence for the financial knowledge of citizens in the assembly.

Athenian politics by looking beyond the epigraphic habit at the creation, conservation, and consultation of public records kept on perishable materials like tablets and bookrolls.[31]

1.2. Tablet and Bookroll in the Culture of Athens

Scholars agree that by the turn of the fifth century Athenians were familiar with the use of tablets and rolls of papyrus for records. Citizens in public and private capacities are depicted, in sculpture and on pottery, using tablets to keep records.[32] And both tablets and bookrolls are invoked in early Attic drama as a metaphor for memory, which is thought to suggest an early association between tablets, bookrolls, and records.[33] Indeed, that very association is made explicit in a scene from Aeschylus' *Suppliants*, in which the

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[31] This is a suggestion with a long scholarly history. Wilhelm (1909) 227-299 emphasized that much more recordkeeping happened on perishable material than on stone, a proposition that is accepted in general, though particular details have been disputed and refined. In recent years scholars have called for greater attention to the processes of recordmaking and recordkeeping. Thus Faraguna (2005) 71: "Come ha tuttavia sottolineato il Nicolet, l'aspetto della produzione dei documenti, ossia l'insieme dei meccanismi e delle procedure istituzionali e amministrative che portano alla redazione ed eventuale pubblicazione di documenti pubblici, non può in nessuna maniera essere disgiunto da quello della loro conservazione e cconsultabilità, ciò che ci porta al problema, centrale nella nostra analisi, dell' organizzazione e della funzione degli archivi nelle poleis greche."

[32] Bookrolls on vases: Immerwahr (1964) 17-48; in sculpture and pottery: Birt 1907.

[33] Observing that the mind is often imagined, metaphorically, as a tablet, Degni (1992) 16 suggests: "La diffusa rappresentazione dell'anima e della mente come una tavoletta, si presta a più considerazioni. Gli studiosi che si occupano del problema della scrittura nel mondo antico, colgono nell'immagine un segno della diffusione dell'alfabetismo nella Grecia del V see. a.C.'. Certamente la scrittura doveva essere una pratica conosciuta ed estesa se gli strumenti attraverso i quali si realizzava, intervengono fin nelle rappresentazioni delle attività della mente…La forza dell'espressione metaforica doveva fondarsi naturalmente su una reale funzionalità ed un uso collaudato delle tavolette cerate." The evidence (including fragments of drama) was previously reviewed by Nieddu (1982) 234-249, who concludes (248): "l'assunzione del simbolo della parola scritta caratterizza una forma di fissazione mnemonica che si vorrebbe pari a quella garantita dalla scrittura, e sottende evidentemente una connotazione dei segni scritti altamente positiva nella rappresentazione corrente." As Harris (1989) 109 points out, the metaphors need not be taken as evidence of particularly widespread literacy.

Argive king Pelasgos rebuffs a herald, sent to bring the suppliant women back to Egypt, by citing a decree of asylum passed by the Argive assembly for the women:

> This single people-made vote has been ratified by the city, never to give up the band of women to violence. The nail is driven clear through this so as to remain strong; it is not written on tablets or sealed in the folds of bookrolls, but you hear it clear from a free-speaking tongue.[34]

The lines assume an audience familiar with the use of tablets and bookrolls for records. Thus, for some scholars this is evidence that documents in Athens were both published on wooden tablets and archived in papyrus as early as 463/2 B.C.[35] Others see, in Pelasgos' words, a contrast between the inscriptions of Athenian democracy and the tablets and bookrolls of the eastern kingdoms,[36] and thus evidence that "book rolls were not commonly associated with the citizen culture of the period."[37]

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[34] A. *S.* 942-949: τοιάδε δημόπρακτος ἐκ πόλεως μία/ψῆφος κέκρανται, μήποτ' ἐκδοῦναι βίαι/στόλον γυναικῶν· τῶνδ' ἐφήλωται τορῶς/γόμφος διαμπὰξ ὡς μένειν ἀραρότως. ταῦτ' οὐ πίναξίν ἐστιν ἐγγεγραμμένα/οὐδ' ἐν πτυχαῖς βύβλων κατεσφραγισμένα,/σαφῆ δ' ἀκούεις ἐξ ἐλευθεροστόμου/γλώσσης.

[35] Turner (1952) 9-10 suggests that Pelasgos refers to "the piece of papyrus carrying the official version for preservation in the Metroon—a piece of papyrus which after being written on, was folded horizontally several times and sealed, as we know letters and documents later were." Lewis (1972) 68 suggests that the "folds of bookrolls" refers to the column in a papyrus, on the evidence of Hesychius s.v **σελίς**· πτυχίον, καταβατὸν βιβλίου (**selis**: fold, column of a bookroll).

[36] Longo (1981) 122: "le tavolette e le pieghe del papiro sono viste qui come strumento di occultazione, non di propalazione del testo"; Vasunia (2001) 145 suggests the image of "the nail driven through" is "surely an allusion to notices 'nailed up' in the Athenian agora for all residents to see…[w]ritten texts that are publicly discussed and displayed, visible to all citizens in the democracy, and unanimously sanctioned before publication are preferred to the private, hidden writings on wax tablets or sheets of papyrus." So too Faraguna (2015) suggests that "[t]he implied opposition is…between the openness of publicly displayed documents and the secrecy of written texts that, being sealed, are not visible and cannot be freely consulted"; but we might instead draw a contrast between the inscription as public record and the tablet or book-roll as archive, hidden away, not recited aloud as law.

[37] Glazebrook (2005) 36.

Both interpretations of Pelasgos' words are hard to corroborate because contemporary evidence for the use (or not) of tablets and bookrolls is thin on the ground. Clerks of some sort are depicted writing on tablets in sculpture and in pottery.[38] But the adult men who jealously guarded the rights of citizenship are rarely shown (on pottery) writing on tablets or reading bookrolls.[39] Those who are depicted with stylus and tablet are thought by scholars to represent schoolmasters (a trade for the lowly and the enslaved).[40] And in Herodotus bookrolls are the medium of choice for eastern potentates to communicate their will in writing, a fact taken by some scholars to indicate that bookrolls were associated with easterners.[41] On the other hand, it is clear from Herodotus that the Ionian Greeks had been using bookrolls for a long time.[42]

It is true, then, that tablets and bookrolls, in art and literature, were associated with women and easterners (who often served as generic others of the Athenian citizen

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[38] Though a painting of a scribe registering knights in a tablet in *CVA* 2 pl. 56 might have something to do with the administration of the city; according to Cahn (1973) 8 "[l]es frises extérieures illustrent la dokimasia, c'est-et-a-dire le recensement des cavaliers et des chevaux à Athènes."

[39] Glazebrook (2005) 1 and 25 n.64.

[40] Glazebrook (2005) 26 n.66: "Any adult males who appear with rolls…are schoolmasters teaching students and thus of low status or even slaves." So too Dillon (2013) 404: "in the vase painter's construction of male reality, men never read, they never write, and there is definitely never a stylus and writing tablet floating on the wall behind them—except in the classroom context."

[41] Steiner (1994) 130-32.

[42] Hdt. 5.58: Καὶ τὰς βύβλους διφθέρας καλέουσι ἀπὸ τοῦ παλαιοῦ οἱ Ἴωνες, ὅτι κοτὲ ἐν σπάνι βύβλων ἐχρέωντο διφθέρῃσι αἰγέῃσί τε καὶ οἰέῃσι ("and the Ionians from ancient time called bookrolls skins, because once upon a time, due to a shortage of papyri, they used rams' and sheeps' skins").

in the fifth century).[43] And it might be right that Athenian men consciously avoided imagining themselves as bookish sorts and that they preferred to think of themselves as bold speakers.[44] But that need not mean they avoided using tablets and bookrolls in their everyday lives; we know, for example, that Athenians professed a deep distrust and even dislike of Persians even as they readily adopted elements of Persian culture in their public and private lives.[45] Thus, we need not conclude, from the fact that tablets and bookrolls tend to be associated in art and literature with women and easterners, that they had no material role in the lives of citizens.

Even if that were true of the first half of the fifth century, tablets and bookrolls appear to have become more widely used by last few decades of the century. Eupolis mentions a part of the marketplace "where bookrolls are for sale."[46] The works of the

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[43] Steiner (1994) 167-169.

[44] Glazebrook (2005) 36: "[t]he cultural meaning of the book roll in ancient Athens is quite different. To judge from the literary evidence, rolls have a mixed reputation and only gradually become more common, since they are opposed to the oral nature of male culture and identity."

[45] Thus Miller (1999) 257: "The Achaemenid world supplied models of behavior and social distinction to the demos as well as to its elite in a critical period of Athenian history. The fact that at the same time the Persians were the greatest external enemy and provided a considerable threat to the Athenian state did not inhibit and may even have caused the phenomenon of *Perserie*…[a]t the same time, late in the fifth century there is ample indication that the Athenians claimed to despise Persians as weak, luxurious, effeminate slaves, and set them up in a series of contrasts with the sturdy, moderate, manly, freedom-loving Greek."

[46] Eup. F 304 [Kock]: χοῦ τὰ βυβλί' ὤνια. "Booksellers" are mentioned by Aristomen. F 9 [Kock] and Nicophon F 19 [Kock]. The references are obscure, but it seems clear that there was a recognized place where Athenians bought books, and Athenians were said to have customarily named places after the wares sold there, according to Poll. 9.47: οὕτω γὰρ τὸν τόπον 'τὰ βιβλία' οἱ Ἀττικοὶ ὠνόμαζον, ὥσπερ καὶ τοὺς ἄλλους τόπους ἀπὸ τῶν ἐν αὐτοῖς πιπρασκομένων, ὡς εἰ φαῖεν 'ἀπῆλθον ἐς τοὖψον καὶ ἐς τὸν οἶνον καὶ ἐς τοὔλαιον καὶ ἐς τὰς χύτρας ("hence Attic writers used to call the place "the bookrolls", just as [they called] other places from the the things purchased there, as if they would say "I went away to the fish and to the wine and to the oil and to the chytras.") Dover (1993) 35 suggests that this is the earliest reference to book-

sophists seem to have circulated in bookrolls, perhaps for sale,[47] or perhaps distributed among friends.[48] And even a man like Socrates, who left no work in writing, is said by his students to have gone through bookrolls with his conversation-partners, picking out whatever seemed good to them,[49] and to have hunted for knowledge in bookrolls with his schoolmates as a boy.[50] Likewise, in Aristophanes' *Frogs* (405 B.C.), the citizens who formed the bulk of the audience at the dramatic festivals are said (probably tongue-in-cheek) to learn the clever bits of drama from bookrolls,[51] and Euripides, mocked for his bookishness,[52] is accused of turning Athens into a city full of secretaries.[53]

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stalls, though Slater (1996) 99 n. 3 points out that "since the play title is not known it could just conceivably date after Aristophanes' *Birds* [414 B.C.] and before Eupolis' possible death in 412."

[47] Pl. *Ap*. 26e (Anaxagoras' works available for a drachma per *biblion*).

[48] Burns (1981) 379-80.

[49] X. *Mem*. 1.6.14; Pl. *Phd*.97b-98b.

[50] X. *Smp*. 4.27: αὐτὸν δέ σε, ἔφη, ἐγὼ εἶδον ναὶ μὰ τὸν Ἀπόλλω, ὅτε παρὰ τῷ γραμματιστῇ ἐν τῷ αὐτῷ βιβλίῳ ἀμφότεροι ἐμαστεύετέ τι, τὴν κεφαλὴν πρὸς τῇ κεφαλῇ καὶ τὸν ὦμον γυμνὸν πρὸς γυμνῷ τῷ Κριτοβούλου ὤμῳ ἔχοντα. ("You yourself, I said, I saw, by Apollo, when both of you used to hunt something down in the same bookroll, holding your head to his head and your bare shoulder to the bare shoulder of Kritoboulos.").

[51] Ar. *Ra.* 1113: βιβλίον τ' ἔχων ἕκαστος μανθάνει τὰ δεξιά. Harris (1989) 87 suggests "[t]his comment does not provide us with any precise facts about cultural history (and we have no reason to suppose that the audience was made up of a cross-section of the Attic population), but the function of the remark is clear enough. The forthcoming contest sounds as if it may be something of a strain for the audience, and the playwright offers an excuse. The excuse is an exaggeration at least, a rather fantastic one, but it makes sense since books are a growing phenomenon in contemporary Athens." Woodbury (1976) 353 finds "wild exaggeration in the claim that their learning is proved by the fact that each one has his book in hand. The phrase probably means no more than that they are bookish to the extent that they have been to school and have acquired the skill of reading."

[52] Ar. *Ra.* 1407-1410: εἰς τὸν σταθμὸν/ αὐτός, τὰ παιδί', ἡ γυνή, Κηφισοφῶν,/ ἐμβὰς καθήσθω, ξυλλαβὼν τὰ βιβλία·/ ἐγὼ δὲ δύ' ἔπη τῶν ἐμῶν ἐρῶ μόνον. ("Let him jump into the scale and sit there, himself, his children, his wife, and Kephisophon, once he has gathered up his book-rolls, and I will speak only two lines of mine").

Indeed, in Euripidean tragedy tablets and papyri are not just metaphors for memory (as they are in Aeschylus and Sophocles) but instruments of communication and even plot devices.[54] Nor were tablets and bookrolls solely used for literature or, in any case, by sophists and dramatists and philosophers. A letter sent in a tablet or a bookroll is casually mentioned in a murder trial of the late fifth century as though sending letters was no extraordinary thing.[55] And in the beginning of Aristophanes' *Clouds*, the protagonist, an old man, orders a slave to fetch a tablet or bookroll so that he can calculate his debts.[56]

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[53] Ar. *Ra.* 1083-84: κᾆτ' ἐκ τούτων ἡ πόλις ἡμῶν/ ὑπογραμματέων ἀνεμεστώθη. The thrust of the joke is obscure. Σ Aristophanes *Ranae* 1084 [Dübner] suggests: τῶν γραμματεύειν βουλομένων καὶ μὴ στρατεύεσθαι. ἐπὶ κακοπραγμοσύνῃ δὲ διαβάλλει τοὺς γραμματεῖς. ("of those wanting to serve as secretaries and not to go on campaign. He slanders the secretaries for their evil-doing."). Or the joke is simply that Athenians have now got their noses in books.

[54] Rosenmeyer (2001) 63: "Euripides used letters in his dramas primarily as a means to vary the conventions of tragic narrative." Similarly Mueller (2016) 188: "characters use writing to pursue the agendas they themselves desire, or feel compelled to see enacted."

[55] Antiphon 5.53-56. Ceccarelli (2015) 270 comments: "This passage shows that the fact of sending a written note, a letter, was not in itself extraordinary: the prosecution must have produced the note with the rest of the evidence. However, what Antiphon makes of this note is interesting. The fact that he accuses the prosecution of having forged the letter (an accusation that resonates with the contemporary debates of tragedians and sophists, as shown by the one developed around the story of Palamedes) cannot be taken to show that letters were not used for long-distance communications — the readiness to attempt a forgery might almost be interpreted in the opposite sense." Cf. Eidinow & Taylor (2010) 31 on lead curse tablets and the lead letters that have washed up on the shores of the Black Sea in recent years: "What will become clear is that both these genres seem to have been used in situations of crisis, when their writers were facing significant risks."

[56] Ar. *Nub.* 18-20: ἅπτε, παῖ, λύχνον/κἄκφερε τὸ γραμματεῖον, ἵν' ἀναγνῶ λαβὼν/ὁπόσοις ὀφείλω καὶ λογίσωμαι τοὺς τόκους. ("light the lamp, boy, and bring the document, so that once I have it in my hands I can read how many I am indebted to and reckon up the interest.").

Thus, we can be reasonably confident that by the last quarter of the fifth century tablets and bookrolls were used by citizens (and non-) for the circulation of literature and philosophy, for edification, and for the management of the household; in other words, in spheres wherein Aristotle said reading and writing were useful. Granted, the citizens known and mocked for their bookishness were not model citizens, and they were perhaps unlikely to have been among the poorer citizens (though we have no way of knowing for sure).[57] Many of them were elite, some had retreated from the duties of citizenship or were not well disposed toward democracy, a few participated in the oligarchic revolutions of the final decade of the fifth century, and one was executed under the suspicion of being hostile to democracy. But that need not lead to the conclusion that tablets and bookrolls had little role in the daily work of civic life in Athens. All the more so because there are traces of a papyrological habit in the literature and epigraphy of the late fifth century.[58]

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[57] Woodbury (1976) 354: "Books containing literary texts, on the other hand, must have been in much less general use, though the reading of Dionysus and Socrates' reference to the book of Anaxagoras (Apol. 26d) show that book-texts were available for those who wanted them and could afford them. But the accumulation of books is likely to have been restricted to intellectuals." Denniston (1927) 118 likewise had suggested: "while books were not excessively rare, they were still rare enough to be the hall-mark of a type."

[58] Steiner (1994) 193-227 suggests that the kind of writing done in tablets and bookrolls seems to be associated with members of the citizen elite who either retreated from public life or disdained and even agitated against the democracy.

1.2.1: Tablet and Bookroll in Athenian Recordkeeping

The idea that there was a papyrological habit beyond the epigraphic habit is not exactly new. But it remains contentious. For one tradition of scholars it has always been obvious that legislation was only inscribed in exceptional cases, that the archival registration of particularly important documents like laws and decrees was automatic and done on tablet or bookroll, and that these constituted the archive copy (though either the inscribed or the uninscribed copy could be cited in council, assembly, or court).[59] According to another tradition of scholars most if not all documents were either recorded on stone or not recorded at all until the city archive known as the Metroon was established in the last decade of the fifth century.[60]

But there are a pair of texts that are difficult to square with the idea that legislation was not, as a rule, recorded on perishable materials before the Metroon was

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[59] Robert (1961) 141: "La transcription sur pierre pouvait avoir la même «authenticité » que l'original dans les archives ; étant conservée sur un matériel plus durable et étant plus facilement accessible que les archives, elle acquit une autorité qui égalait celle de l'original ou même la dépassait ; mais elle était toujours la copie d'un original et ne fut jamais la transcription originale." Notice that the Roberts did not claim, as Thomas (1989) 42 implies, that "the inscriptions are inferior copies of archive originals, the archive versions, the authoritative texts." On the other hand Sickinger (1994) 286: "[t]he original and authoritative texts of public documents, written on wooden tablets or rolls of papyrus, were regularly deposited in an archival repository, such as the Athenian Metroon."

[60] Kahrstedt (1938) 25-32. So too Hedrick (1994) 174: "[The Metroon's] establishment marks a vaguely sinister watershed in the history of political reading and writing in Athens. No longer were *all* public texts kept in monumental format, preserved as a matter of course as a part of the urban environment, where any casual passer-by can see them, walk around them, or lean on them. The consolidation of texts in the Metroon may usefully serve to mark the beginnings of a new and particular way of using texts." And Todd (1996) 123: "[i]t is dangerous to assume that there must always have been a central archive at Athens…indeed, the evidence suggests that when such an archive was set up in 403 in the *metroon*, the temple of the mother of the gods, this was an innovative and revolutionary step."

established. Several decrees passed in the early 420s B.C. were inscribed a few years after their passage but contain no resolution to be inscribed (and were probably only inscribed as a stipulation of a later decree).[61] Likewise, a decree passed in 422/1 B.C. was first inscribed (or perhaps reinscribed) in 403 B.C., with what appears to be its original prescript.[62] If these decrees were not immediately inscribed in an era when inscriptions are alleged to have been the only records of legislation, then how did they survive to be eventually inscribed or cited in court?

The simplest explanation, as scholars have long recognized, is that copies of these decrees were kept on wooden tablets or in bookrolls.[63] Thus, most scholars (even

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[61] *IG* I³ 61, the so-called "Methone Decrees." Sickinger (1999) 76 observes that "[n]one of these decrees contains a clause ordering their publication on stone, and a fourth decree, once inscribed on a portion of the stele now lost, presumably included some such instructions. Evidence for the fourth decree appears in the form of the secretary, Phainippos, who is named in the heading above the entire text but who is not named in any of the three preserved decrees. Phainippos is mentioned by Thucydides (4.118.1) as the secretary when the one-year truce was concluded between Athens and Sparta in 423, so this year should provide the date at which all the decrees were published together. But the earliest of the Methone Decrees was passed between 430-426, while the second and third decrees were probably ratified in 426/5 and 425/4." The first decree, then, was preserved for at least a few years, at most seven.

[62] *IG* I³ 227bis.1-5: [ἐπὶ] Ἀλκαίο ἄρχοντος | [ἐ]νάτηι καὶ δεκάτηι τῆς πρυτανείας | ἔδοξεν τῆι βολῆι καὶ τῶι δήμωι· Ἀκαμαντὶς ἐπρυτά|νευεν, Ἀρχικλῆς Ἀ̣λ̣αι[ε]ὺ̣[ς ἐγρ]αμμάτευεν, Διδυμίας | ἐπεστάτε, Ἀλκιβιάδης εἶπε· ("in the archonship of Alkalis on the nineteenth of the prytany, it was resolved by the council and the assembly; Adamants served as prytany, Archikles of Halys was secretary, Didymias the epistates, Alcibiades proposed.") This prescript is far more detailed than the prescripts of decrees passed and inscribed in its day, which is taken to indicate that decrees on perishable materials had fuller prescripts than the versions on stone. As Sickinger (1999) points out, "[t]he reference to both an archon and a prytany date is highly unusual but also extremely significant. Alkaios was archon in 422/1, a year before the earliest secure attestation of an archon name in the prescript of an Athenian decree on stone, and nearly half a century before precise prytany dates find routine mention." This is perhaps evidence, as he proposed on p.64, that "behind the stone texts there lay fuller and more complete documents, including ones stored in archival collections."

[63] The earliest to draw this conclusion, to my knowledge, is Lalonde (1971) 25: "it is difficult to envision the possibility of this type of delayed publication without reference to a system of documents preserved on

some former skeptics)[64] now agree that the establishment of the Metroon reflects an evolution (not an outright innovation) of earlier recordkeeping habits,[65] and that even before the establishment of the Metroon documents were recorded on perishable materials like tablets and bookrolls and kept in the council-house.[66] Nevertheless, some still worry whether the deposition of decrees in archives was done automatically in fifth-century Athens or left to the whim of the proposer of a decree and the citizens who ratified it[67]; whether it is obvious that archives in Athens were not much different and not used much differently from archives in the modern world[68]; whether the very idea of

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some material such as papyrus or wood." See now Sickinger (1999) 76-80 (though S. is agnostic on the material used).

[64] Thomas (2010) 497 (reviewing Pébarthe 2006): "P. restates the view, obviously correct, that documents were stored or kept in the 5th century in what he would call 'archives'."

[65] Stroud (1968) 29: "[i]f 403 is a pivotal year in the history of Athenian record-keeping, then it is better regarded as marking the origin of centralized state archives in the Metroon where the records of the several smaller archives were now concetrated." Sickinger (1999) 193: "the preservation and upkeep of archival records, not published on stone, was not an innovation of the fourth century." Pébarthe (2006) 159: "Du reste, la fonction d'archives que remplissait le Bouleutérion au Ve siècle amène à privilégier une transition à la fin du Ve siècle plutôt qu'une centralisation brutale. Aussi, il semble vain de chercher l'origine des archives du Métrôon et d'en faire les archives civiques uniques de la cité."

[66] Thus Sickinger (1999) 138: "the keeping of uninscribed documents was not a practice invented with the Metroon's foundation."

[67] Thomas (2003) 231.

[68] Recent scholarship on public records and archives in Classical Athens has tended to assume that documents were used in Athens the way they are now. Thus Pébarthe (2006) 348 concludes: "[c]ette histoire de l'alphabétisation d'Athènes se décline en réalité en plusieurs étapes. Aucune d'entre elles ne semble vraiment correspondre au modèle historique retenu par R. Thomas dans ses travaux, celui de l'Angleterre médiévale établi par M. T. Clanchy. Si un modèle doit être cherché, il est préférable de s'orienter vers l'époque moderne qui, en dépit du développement de l'imprimerie, semble offrir des concepts à même de décrire la réalité athénienne." Thomas (2010) 499 is skeptical of this claim. A similar worry is voiced by Hedrick (2000) 645 in his review of Sickinger's (1999) *Public Records and Archives in Classical Athens*: "he

distinguishing between an original in the archive and a copy on stone would have made any sense to Athenians, on the grounds that Athenians had no word for "archive" and were as likely to cite the inscribed copy as the perishable one on tablet or bookroll.[69]

These are big-picture concerns. They are unlikely to be completely resolved in the space of a single chapter. But we can begin to address some of them, I urge, by paying close attention to how tablets and bookrolls were used as records in matters of legislation and finance.[70]

1.2.2 Keeping Track: Tablets and Bookrolls of Athenian Legislation

On one view, decrees recorded on wooden tablets were not really archival records in part because these tablets are thought to have had the same function as *stelai*, are thought to be have been bulky in size, and are thus thought to have been more fittingly described as a kind of publication than as a form of archival conservation.[71]

That decrees were (at least on occasion) recorded both on stone and on wooden boards has long been known to scholars because a proxeny-decree passed sometime

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believes that the Athenians used their texts much as moderns do, in ways so familiar as to require little explanation."

[69] Thomas (2003) 230.

[70] The need for closer attention to the material element of tablets and bookrolls was pointed out more than fifteen years ago, in a review of scholarship on recordkeeping in ancient Greece, by Del Corso (2002) 171: "[i]l volume di Sickinger non dedica, invece, sufficiene attenzione ai fattori materiali che caratterizzivano (e in qualche modo condizionavo) le pratiche documentaria antiche."

[71] Thomas (1989) 77: [t]he documents preserved must have been extremely bulky; in fact, rather than 'of storage' one could better speak of 'enclosed display.'"

around 430 B.C. calls for the secretary of the council to record the honorands "as *proxenoi* and benefactors on a stone stele in the *polis* and in the council-house on a wooden tablet at their own cost."[72] It has struck some as unlikely that the Athenians would stipulate payment for an archive copy,[73] and on that basis it is urged that "the second copy of the decree, written on a wooden tablet, represented not archival deposition but public display of the decree for a temporary period of time."[74] But we need not understand the decree to have stipulated that both the stone and the wooden tablet were to be purchased out of the honorands' own funds, because the payment-clause in decrees is occasionally separated from the publication-clause by other clauses.[75]

Indeed, the language of publication-clauses in Athenian decrees is often loose and the meaning implicit: thus, for example, the stipulation "to record X as proxenos and benefactor" was apparently taken to be equivalent to the stipulation "to record this very decree."[76] It is plausible, then, that in the decree above, the language of which is

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[72] *IG* I³ 155.1-9: [ἔδοχσεν τε͂ι βολε͂ι καὶ το͂ι δέμοι· ..] | [....]ὶ[ς ἐ]πρυτ[άνευε, ...7... ἐγραμ]|μά[τε]υε, Μέλετ[ος ἐπεστάτε, ...7...]|ν εἶπε· Κρίσονα̣ [.....16.....]|δελφος καὶ δεκ[...7... γράφσαι πρ]|οχσένος καὶ εὐ[εργέτας ἐν στέλει λ]|ιθίνει ἐμ πόλει [καὶ ἐν το͂ι βολευτε]|ρίοι ἐς σανίδα τ[ὸν γραμματέα τε͂ς β]|ολε͂ς τέλεσι τ[οῖς .....14.....].

[73] Klaffenbach (1957) 24.

[74] Sickinger (1999) 82 citing Wilhelm (1909) 229-238. Lalonde (1971) 26-27 suggests that "the placement of duplicate wooden copies of proxeny decrees in or near the Bouleuterion in the Agora, unless they were strictly archival copies, would seem to have been motivated by the desire to supplement the permanent text on the acropolis with added exposure in the crowded civic center. An alternate possibility is that these wooden copies were set up to serve as interim publications while the stele were being prepared."

[75] Lalonde (1971) 27.

[76] So *IG* I³ 227.8-11 (424/3 B.C.): Ἡρακλείδην [τὸν Κλαζομένιον ἀν]|[αγρ]άψαι τὸγ γραμμ[ατέα τῆς βολῆς πρόξ]|[ενο]ν καὶ εὐεργέτη[ν καθότι ἂν τῶι δήμω]|[ι δο]κῆι καὶ θε͂ναι ἐ[ν πόλει…([sc. resolved] "that the secretary record Heracles the Klazomenian as a proxenos and benefactor however seems best to the people

admittedly not very explicit, it was understood that the money was for the purchase and inscription of the *stele* only. And in fact, in a proxeny-decree passed around the same time, payment was explicitly stipulated only for the purchase and inscription of the stone:

> Let the secretary of the council, having recorded this very decree on a stele of stone, deposit it on the acropolis in the finest place possible, and in the council on a tablet where the other decrees are and let the *kolakretai* give the money for the stele and the inscription.[77]

No mention is made of payment for the tablet. The simplest explanation for that, I urge, is that the secretary already had a tablet (or the funds for such) at his disposal, on which

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and put it on the acropolis…). Note that even though a stone is not specified it was apparently assumed (the entire decree does not survive and the payment-clause may have been recorded in the rest of it, which is an amendment). Such suggests, perhaps, that some things could be left implicit. This was not just a sign that earlier Atheniand decrees were sloppily drafted but evidence that the formulary of Athenian decrees was less strict than we tend to acknowledge. Thus *IG* II² 80.5-7: [καὶ ἀναγ]ράψαι αὐτῶι τὴμ προ[ξενίαν] | [ἐν στήλ]ηι λιθ[ί]νηι τὸν γραμμα[τέα] | [τῆς βολῆ]ς κα[ὶ σ]τῆσαι ἐν ἀκροπ[όλει] ([sc. resolved] "that the secretary of the council inscribe the proxeny for him on a stone stele and stand it on the Acropolis"). And *IG* II² 149.17-23: ἀ|[ναγράψαι δὲ καὶ τὴ]ν προξενίαν, ἐὰν καὶ τῶι δήμ|[ωι δοκῆι, τὸν γραμμ]ατέα τῆς βουλῆς ἐν στήληι λ|[ιθίνηι καὶ στῆσαι] ἐν ἀκροπόλει δέκα ἡμερῶν· εἰ|[ς δὲ τὴν ἀναγραφὴν] τῆς στήλης δοῦναι τὸν ταμί|[αν τοῦ δήμου ..6…] δραχμὰς ἐκ τῶν κατὰ | ψηφίσ|[ματα ἀναλισκομέν]ων τῶι δήμωι. ([sc. resolved] "that the secretary inscribe the proxeny, it it be resolved by the assembly, and stand it on the Acropolis within ten days. That the *tamias* of the assembly give, for the inscribing of the stele…drachmas from the money spent by the people in accordance with decrees.").

[77] *IG* I³ 165.7-12: τὸ δὲ φσ|έφισμα τ[όδε ἀναγρ]άφσα[ς ὁ γραμματεὺς τ]|ε̃ς βολε̃ς [ἐν στέλε]ι λιθίνε[ι |καταθέτο ἐμ] πόλει ὸς [ἐν καλλί]στοι καὶ ἐν̣ [τo͂ι βολευτ]|[ε]ρίοι ἐν̣ [σανιδί]οι ἵναπερ τὰ ἄλλ[α φσεφί]|[σμα]τα· ο̣[ἱ δὲ κολ]ακρέται δόντον τὸ ἀρ̣[γύρ]|[ιον ἐ]ς̣ [τὲν στέλ]εν καὶ τὲν ἀναγραφέν. The editors of *IG* I³ dated it between 430-420; Mattingly (1999) 118 has suggested that because the poletai are not mentioned in the payment clause it is to be dated "in the neighborhood of 420." Note that this argument will be refuted if Mattingly's reedition of *IG* I³ 56.4-8 is correct (*SEG* XXV 30.4-8): ἀ̣|[ναγράψαι ..5.. τὸν Χ]ῖον ἐν τῶ|[ι βολευτηρίωι ἐν σαν]ίδ[ι] πρό|[ξενον καὶ εὐεργέτη]ν Ἀθηναί|[ων τέλεσιν τοῖς ἑαυ]τo͂· . But Mattingly's restoration requires final-nu in τέλεσιν, which is not paralleled until seventy five years later in *IG* II² 130. 15-19: τ]|[ὸν δὲ γρα]μματ[έα] τῆς βο[υλῆς] ἀναγρ[ά]|[ψαι ἐν] στήλ[ηι] δέκα [ἡμερῶ]ν [ἐν ἀκρ]|[οπόλ]ε[ι] τέλεσ[ι]ν το[ῖς Λαχ]ά[ρου τό]|[δε τὸ ψήφισμα. Moreover, there is another restoration that fits the stoichedon better in *SEG* XXXIII 4.4-7: τὸν Χ]ῖον ἐν τῶ|[ι βολευτηρίωι ἐν σαν]ίδ[ι] πρό|[ξενον καὶ εὐεργέτη]ν Ἀθηναί|[ων καὶ τὸν πατέρα αὐ]τo͂·

he was to record the decree, which was to be placed "where the other decrees are." What did the tablet look like, where was it placed, and what other decrees?

The tablet was a called *sanidion*. The diminutive may suggest that it was not necessarily a large board. We need not suppose, then, that the tablet was large or bulky in the manner of a *stele* and thus meant to be posted in the council in the manner of a *stele*. A smaller tablet would better make more sense given the use of the diminutive, *sanidion*, than something that looked like a stone *stele*, especially since *sanis* was used to describe boards as large as ten feet in length. Thus, it is plausible that the tablets used to record decrees would fit in the hand and that they would have been less bulky and easier to store than some scholars have imagined.

As far as the place "where the other decrees are" there is little evidence to go on. The only parallel is a decree in which the secretary is ordered to inscribe "this very decree and the other grants on a stele where the prior acts passed for him are recorded" (which appears to have meant in the same place, not on the same *stele*).[78] Thus, we can

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[78] *IG* II² 17.28-31: [τ]ὸ ψήφισμα τόδε [καὶ τὰς ἄλλας δωρεὰ]|ς ἐν στήληι [ἵ]ναπερ αὐτῶι τὰ π[ρό]τερ[ον γενόμενα ἀ]|ναγέγραπται·. None of the epigraphers who have studied the stone mentions whether it appears to have been cut by one hand or two. But Osborne (1972) 156 n.26 observes that "the first decree seems to be an amendment to the second, and makes a direct reference to it," and since this apparently later decree was inscribed above the earlier one, both ought to have been inscribed at the same time. Moreover, to indicate that a decree was to be inscribed on the same stone as another decree, Athenians tended to use language like that found *IG* I³ 118.42-43 (408 B.C.): όμ[α]χον δὲ τὸν Σελυμβ[ρια]νὸν ἀναγρά|[φσαι ἐν τ]ῆ̃ι [αὐ]τῆ̃ι στέλει πρόχσε[νον Ἀθ]εναίον· ([sc. resolved] "to record -omachos the Selymbrian on the same stele as an Athenian proxenos"). Likewise *IG* I³ 98.12-15 (411 B.C.): τὸ ψήφισμα τ[ὸ πρὸψηφισμένον α]|ὐτῶι ἀναγράψαι ἐν σ[τήληι λιθίνηι τὸ]|ν γραμματέα τῆς βολ[ῆς τὸν νῦν γραμμα]|τεύοντα καὶ καταθῆ̃ν[αι ἐν πόλει. (([sc. resolved] "that the secretary of the council now serving as secretary inscribe the previously decreed decree on a stone stele and set it up on the acropolis"). In ll.26-28: προσανα]|[γ]ράψαι δὲ καὶ τόδε τὸ ψή[φισμα ἐς τὴν α]|[υ]τὴν στήλην τὸγ γραμμ[ατέα τῆς βολῆς] ([sc. resolved] "that the secretary of the council

infer that the secretary was instructed to record the decree on a distinct tablet (hence "on a *sanidion*" rather than "on the same *sanidion*"), and that he was instructed to place that tablet in the same location in the council-house were the other decrees were. The other decrees must have been either other decrees pertinent to the individuals granted *proxenia* by this decree; or other proxeny-decrees (if decrees were organized by genre); or, construed broadly, in the council in the same place as the other decrees, i.e., wherever decrees were deposited once they had been recorded.

It is anyone's guess which of these three is right. But Athenians specified when they meant other decrees relating to an individual or even his kin, and thus we can probably exclude the possibility that the other decrees were decrees pertinent to the honorand of this decree.[79] Likewise, when Athenians called for a decree to be recorded alongside a prior enactment, they identified the prior decree by its subject, but this one does not, and thus we can justifiably exclude the possibility that "the other decrees"

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inscribe additionally also this decree onto the same stone."). So too in the decree of Pandionis *IG* II² 1138.12-14 (403/2 B.C.): ἀναγράφεν δὲ καὶ τὸ λοιπὸν ἐάν τις τούτων | τι νικήσηι τὸς ἐπιμελητὰς ἐφ' ὧν ἂν νικήσηι | ἐν τῆι αὐτῆι στήληι. ([sc. resolved] "that also in the future if any one of these should win anything the *epimeletai* under whom he wins is to record it on the same stele").

[79] *IG* II² 196.3-7 (before 353/2 B.C.): ἀναγρά]|ψαι δὲ τόδε [τὸ ψήφισμα ἥιπερ τὰ ἄλλα ψ]|ηφίσματα περὶ [τῶν δωρειῶν τῶν προγό]|νων αὐτο͂ τὸν γρ[αμματέα τῆς βολῆς ἐν] | στήλει λιθίνει ([sc. resolved] "that the secretary of the council inscribe this very decree where the other decrees concerning the grants of his ancestors on a stone stele"). And *IG* II³ 375.44-48: ἀναγράψαι δὲ τόδε τὸ ψήφισμα τ[ὸν γραμ]|ματέα τῆς βουλῆς εἰς τὴν στήλη[ν τὴν ἐν ν] | ἀκροπόλει, ἐ[ν] ἧι γέγραπται Ἐχεν[βρότωι] | Κλεωναίωι τῶι προ<γό>νωι τῶι Λαπύ[ριδος] | ἡ προξενία. ([sc. resolved] "that the secretary of the council inscribe this decree onto the stele the one on the acropolis, on which is written the proxeny for Echenbrotos Kleonaios the ancestor of Lapuris.").

refers to other proxeny decrees (it remains curious that our only evidence for decrees recorded on tablets in the council-house concern proxeny-grants, though that can be chalked up to the fact that such grants were one of the likelier decrees to get inscribed).[80]

It is plausible, then, that the reference to "the other decrees" is broad and general because it refers to the place in the council-house where other decrees were kept. If right, then the secretary was here instructed to record a decree on a tablet that had already been purchased and to deposit it in that part of the council-house where other decrees were housed. That need not be taken to mean that the secretaries had worked out a complicated and organized system of reference.[81] But it does seem to indicate that there was a dedicated place for decrees inside the council-house. Thus, although this particular text is a keyhole into the council-house, not a window, it can be construed in a way that suggests we be cautious in assuming that records in the council-house were organized haphazardly on tablets made of wood that differed from *stelai* not in form or function but only in material.[82]

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[80] *IG* II² 182.3-6 (before 353/2 B.C.): ἀναγράψα]|[ι δὲ αὐτίκα μά]λα τόδε τὸ ψήφ[ισμα πρὸς τὸ] | [πρότ]ερον ψήφι[σ]μα ὃ Φιλοκρά[της εἶπεν π]|[ερὶ τ]ῆς προξενίας· ([sc. resolved] "to inscribe forthwith this decree next to the prior decree which Philokates proposed concerning the proxeny.").

[81] Sickinger (1999) 159 concludes, after reviewing evidence for the personnel and organization of the archives: "we have no evidence that a lack of organization hindered consultation of its documents." But see Thomas (2003) 231 (reviewing Sickinger 1999): "The Athenian archives and archival team c. 450, in S.'s vision, are extremely complex - suspiciously so, given the slight antecedents. He gives an oddly flat picture with little development in types of document and in sophistication of document-making or archival practice during the period of democracy."

[82] Thomas (1992) 144: "the archives were very likely to be merely collections of documents, kept fairly haphazardly."

Tablets are never again mentioned as the material on which a decree is recorded in Athens. But bookrolls are. In 403/2 B.C., it was resolved by the council and subsequently by the people

> To praise Poses the Samian because he is a good man concerning Athenians, and in exchange for the good things he has done the people, that the people give him a gift of five hundred drachmas for the making of a crown, and let the *tamiai* give the money; to lead him before the people, and that he is to find what good he can from the people; that the secretary of the council is to give to him the bookroll of the decree forthwith; and to call the Samians to dinner in the *prytaneion* on the morrow.[83]

This part of the decree is followed by an amendment proposed and ratified in the assembly. Thus it is certain that the text of the main resolution belonged to a preliminary decree drawn up in the council, put to the councillors, and resolved by the councillors to introduce it to the assembly. And by the councillors it was resolved to give Poses a copy of a decree on papyrus. If the decree that the secretary is to give to Poses is the preliminary decree of the council in which he is honored, which seems likely, then this preliminary decree of the council entered the assembly as a document written on papyrus. If the decree meant is the final decree after discussion, amendment, and ratification by the assembly, then it follows that by 403 the secretary was making copies of decrees on papyrus, probably for the archive. In the former case papyrus was part of

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[83] *IG* II² 1.58-63: [ἐπαινέσαι Ποσῆν τὸν] Σάμιον ὅτι ἀνὴρ ἀγαθός ἐστιν περὶ Ἀθηναίος, καὶ ἀνθ' ὧν | [εὖ πεπόηκε τὸν δῆμον δ]όναι αὐτ[ῶι τὸν δῆμο]ν δωρειὰν πεντακοσίας δραχμὰς | [ἐς κατασκευὴν στεφάνο, οἱ δὲ ταμί]αι δόντων τὸ ἀργύριον· προσαγαγεῖν δὲ αὐτὸ|[ν ἐς τὸν δῆμον καὶ εὑρέσθαι πα]ρὰ τοῦ δήμο ὅ τι ἂν δύνηται ἀγαθόν· τὸ δὲ βιβλίον | [τοῦ ψηφίσματος παραδοῦναι αὐτ]ῶι τὸγ γραμματέα τῆς βολῆς αὐτίκα μάλα· | [καλέσαι δὲ ἐπὶ ξένια Σαμίος τὸ]ς ἥκοντας ἐς τὸ πρυτανέον ἐς αὔριον.

the documentation involved in legislative process; in the latter papyrus was used for the record of the outcome of that process.

Moreover, it was resolved, in the amendment proposed in assembly, to inscribe the decree, and that the treasurers were to provide the money for that inscription.[84] Yet it was apparently not necessary for the council or the assembly to vote on how to pay for the bookroll, just as it had apparently been unnecessary to stipulate payment for a tablet a few decades earlier. Again, the lack of payment suggests that the work was done in-house, by the secretary, an undersecretary, or one of the public slaves who served as clerks, and that it was done on papyrus that was already available for just that purpose.

The evidence is too thin to state with confidence that decrees were regularly filed on tablets in the early years of the Peloponnesian war and that tablets were replaced by bookrolls by the end of the war. Nor do we have any idea what Athenians used to record decrees that they intended to send abroad, as when the decree sentencing the Mytileneans to death was sent to the general Paches, who was on the verge of reading and executing its orders when the second ship carrying the revised orders arrived.[85] On

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[84] *IG* II² 1.64-67: εἶπε· τὰ μὲν ἄλλα καθά]περ τῆι βολῆι, ἐπαινέσαι δὲ Ποσῆν τὸν | [Σάμιον καὶ τὸς ὑε̃ς ἐπειδὴ ἄνδρες ἀγ]αθοί ἐσιν περὶ τὸν δε̃μον τὸν Ἀθηναίων | [καὶ κύρια ἔναι τὰ ἐψηφισμένα πρότε]ρον ὑπὸ το̃ δήμο το̃ Ἀθηναίων· καὶ ἀναγρά|[ψάτω ὁ γραμματεὺς τὸ ψήφισμα ἐστήλ]ηι λιθίνηι ([“so and so proposed: everything else exactly as was resolved by the council, but praise Poses the Samian and his sons since they are good men as regards the Athenian people, and valid be that which was decree previously by the Athenian people, and let the secretary inscribe the decree on a stone stele…).

[85] Th. 3.49: ἡ μὲν ἔφθασε τοσοῦτον ὅσον Πάχητα ἀνεγνωκέναι τὸ ψήφισμα καὶ μέλλειν δράσειν τὰ δεδογμένα (“the latter [sc. trireme] got to Paches only so far he had read the decree and was about to execute its resolutions.”).

the other hand, there are parallels in public and private finance that suggest the use of tablets and bookrolls for public records was more widespread and more regularized by the end of the fifth century than we would gather from the evidence for recordkeeping in legislation alone.

1.2.3: Keeping Count: Tablets and Bookrolls in the Erechtheion Inventories

By the late fifth century it appears that some magistrates had begun to keep working documents on tablets and copies in bookrolls. Thus, in 407/6, the treasurers of the Erechtheion erected an inscribed copy of their yearly expenditures, among which were purchases for "two tablets (*sanides*) onto which we are recording the account" and "two bookrolls (*chartai*) in which we entered the copies."[86] Given the present tense, and the fact that other magistrates kept working accounts on tablets,[87] these tablets must have

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[86] *IG* I³ 476.189-191: σα|[νί]δες δύο ϝες ἃς τὸν λόγον ϝα|[ν]αγράφο[μ]εν, δραχμῆς ϝεκατέ|[ρα]ν, ΗΗ; *IG* I³ 476.289-91:χάρται ϝεονέθεσαν δύο ϝες | ἃ τὰ ἀντίγραφα ϝενεγράφσαμ|εν, ΗΗIIII. ("two *sanides* onto which we are recording the account, a drachma each"); ("two bookrolls were purchased onto which we recorded the copies."). Schubart (1922) 21 had suggested that *chartai* here referred to sheets of papyrus, but Lewis (1974) 70-78 showed that *chartai* refers to a roll sometimes upwards of fifty sheets in length, and that since these papyri were for the final accounts, "and as each *sanis* can be calculated to have afforded space for writing totalling some 3,000 letter or more, it clearly would have been impossible to to transcribe the contents of four such *sanides* (*a fortiori* as such preliminary records are likely to have been written in abbreviated form) on to two χάρται if these were single sheets of papyrus."

[87] *AthPol* 49.2: τοὺς δ' ἱππέας καταλέγουσι μὲν οἱ καταλογεῖς, οὓς ἂν ὁ δῆμος χειροτονήσῃ δέκα ἄνδρας· οὓς δ' ἂν καταλέξωσι, παραδιδόασι τοῖς ἱππάρχοις καὶ φυλάρχοις, οὗτοι δὲ παραλαβόντες εἰσφέρουσι τὸν κατάλογον εἰς τὴν βουλήν, καὶ τὸν πίνακ' ἀνοίξαντες, ἐν ᾧ κατασεσημασμένα τὰ ὀνόματα τῶν ἱππέων ἐστί, τοὺς μὲν ἐξομνυμένους τῶν πρότερον ἐγγεγραμμένων μὴ δυνατοὺς εἶναι τοῖς σώμασιν ἱππεύειν ἐξαλείφουσι, τοὺς δὲ κατειλεγμένους καλοῦσι, κἂν μέν τις ἐξομόσηται μὴ δύνασθαι τῷ σώματι ἱππεύειν ἢ τῇ οὐσίᾳ, τοῦτον ἀφιᾶσιν, τὸν δὲ μὴ ἐξομνύμενον διαχειροτονοῦσιν οἱ βουλευταί, πότερον ἐπιτήδειός ἐστιν ἱππεύειν ἢ οὔ. κἂν μὲν χειροτονήσωσιν, ἐγγράφουσιν εἰς τὸν πίνακα, εἰ δὲ μή, καὶ τοῦτον ἀφιᾶσιν ("the cataloguers, whichever ten men the assembly elects, catalogue the cavalrymen: whomever they catalogue, they hand over to the hipparchs and the phylarchs, and these, once they have taken the catalogue over, bring it before the council, and, having opened the tablet, in which the names of the cavalry are under seal, they erase those previously

been used to keep a working draft of the treasurers' expenses.[88] What purpose, then, did the bookroll copies serve?

The Erechtheion accounts are long (nearly five hundred lines from the surviving fragments alone); a bookroll, though perhaps no more difficult to write on than a tablet, would perhaps have been more difficult to revise on the fly.[89] It has been proposed, then, that the bookrolls were meant to be "the fair copy."[90] But other magistrates were perfectly fine with using wooden boards for the financial documents that would be curated by a public slave and read in the council, so it is unlikely that the bookroll was purchased to make it easier to read the account when necessary.[91] And the wooden tablets that served as working documents were also the ones used as reference copies in

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registered who now swear that they are physically incapable of serving as a cavalryman, but they call those catalogued, and whoever does not swear a demurrer the councillors vote on, as to whether he is fit to serve as a cavalryman or not. And if they vote yes, they register him on the tablet, but if no, then this man too they release.").

[88] *IG* I³ 386.168-69: σανὶ[ς ἐφ' ἕ]ι λ̣ό̣[γον — — —] | Γ καὶ γρ[άμματα ἐγγράφσαι.

[89] Little is known about the posture in which Greeks wrote on papyrus, but Parassoglou (1979) 10 discusses a sarcophagus of the Roman imperial era on which a figure appears to be writing on a papyrus in one hand while standing. But also catalogued are figures writing on the left or the right knee, so perhaps there was no standard posture.

[90] Thompson (1912) 22 and Dziatzko *RE* ii 558.

[91] *AthPol* 48.2: τῇ μὲν οὖν προτεραίᾳ δέχονται τὰς [πάσα]ς καὶ μερίζουσι ταῖς ἀρχαῖς, τῇ δ' ὑστεραίᾳ τόν τε μερισμὸν εἰσ[φέρου]σι γράψαντες ἐν σανίδι καὶ καταλέγουσιν ἐν τῷ βουλευτηρίῳ ("on the prior day, then, they accept all [sc. the payments] and allot them for the magistracies, and on the next day they introduce the allotment, having written them on a tablet, and recount it in the council-house"). For καταλέγουσιν as "read" see Rhodes *ad loc.*

the daily administration of public finance.[92] Instead, the bookroll may have filled, I suggest, the function that we attribute to an archival record, since that seems to be what papyrus was used for in private records of the late fifth century.

Thus, a few years before the Erechtheion accounts were published, a citizen named Diodotos was called up for service under Thrasyllos,[93] but before he departed, he summoned his brother (who was also his father-in-law), and gave him a will along with instructions about how to execute that will, and then

> Having done these things, and having left copies at home, he went off to serve under Thrasyllos. When he died in Ephesus, Diogeiton hid the death of her husband from his daughter and took the documents which he had left under seal (τὰ γράμματα λαμβάνει ἃ κατέλιπε σεσημασμένα), saying that it was necessary to recover the money from the bottomry loans from these documents (γραμματείων).[94]

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[92] *AthPol* 47.4-5: εἰσφέρει δὲ καὶ ὁ βασιλεὺς τὰς μισθώσεις τῶν <τε>μενῶν, ἀναγράψας ἐν γραμματεί[οις λελ]ε[υ]κωμένοις. ἔστι δὲ καὶ τούτων ἡ μὲν μίσθωσις εἰς ἔτη δέκα, καταβάλλεται δ' ἐπὶ τῆς [θ′] πρυτανείας. διὸ καὶ πλεῖστα χρήματα ἐπὶ ταύτης συλλέγεται τῆς πρυτανείας. εἰσφέρεται μὲν οὖν εἰς τὴν βουλὴν τὰ γραμματεῖα κατὰ τὰς καταβολὰς ἀναγεγραμμένα, τηρεῖ δ' ὁ δημόσιος· ὅταν δ' ᾖ χρημάτων [κατα]βολή, παραδίδωσι τοῖς ἀποδέκταις αὐτὰ ταῦτα καθελ[ὼν] ἀπ[ὸ τῶν] ἐπιστυλίων, ὧν ἐν ταύτῃ τῇ ἡμέρᾳ δεῖ τὰ χρήματα καταβληθ[ῆν]αι καὶ ἀπαλειφθῆναι· τὰ δ' ἄλλα ἀπόκειται χωρίς, ἵνα μὴ προεξαλει[φθῇ] ("The king-archon also introduces the leases for the sacred precincts, first having recorded them on whitened documents. And the lease for these is for ten years, and the money is paid in the ninth prytany. Wherefore the majority of money is collected in this prytany. He introduces to the council the tablets recorded by payments, but the public clerk keeps them. Whenever there is payment of money, he hands over to the receivers the documents themselves, having taken them down from the epistylia, of what must be paid on this day and erased. The rest are stored separately, in order that they not be prematurely erased.").

[93] The specific date is unclear, but since Diodotus is said to have died at Ephesus (i.e. in the battle of Notium in 406 B.C.), and Thrasyllos was executed for his role in the disaster at Arginusae (shortly after Notium), it seems likely that he was enrolled by c. 408/7.

[94] Lysias 32.5-7: διαθήκην αὐτῷ δίδωσι…ταῦτα δὲ πράξας καὶ οἴκοι ἀντίγραφα καταλιπὼν ᾤχετο στρατευσόμενος μετὰ Θρασύλλου. ἀποθανόντος δὲ ἐκείνου ἐν Ἐφέσῳ Διογείτων τὴν μὲν θυγατέρα ἔκρυπτε τὸν θάνατον τοῦ ἀνδρὸς καὶ τὰ γράμματα λαμβάνει ἃ κατέλιπε σεσημασμένα, φάσκων τὰ ναυτικὰ χρήματα δεῖν ἐκ τούτων τῶν γραμματείων κομίσασθαι.

Diogeiton successfully hid the money from his daughter and grandchildren for nearly a decade. But eventually a family meeting was called, at which his daughter proved that he had recovered the debts owed on the bottomry loans, the records of which she was able to offer as proof because "in the move, when he was moving from Kollytos to the house of Phaidros, her children happened upon a bookroll that had been cast aside and brought it to her."[95] The bookroll was neither the will nor the account of the bottomry loans itself, but a copy of these documents, made and left under seal to serve as a record, and since that looks a lot like what papyrologists reserve the word archive for, it seems unobjectionable to think of this as part of a family archive of the sort with which papyrologists of Greco-Roman Egypt are familiar.[96]

Thus, we have an example of a bookroll used as an archive in private life right around the time that the treasurers of the Erechtheion purchased tablets on which to record their account and bookrolls on which they recorded copies thereof. And since the terminology used to describe the documentation is identical, it does not seem unreasonable to conclude that the bookroll purchased by the treasurers of the Erechtheion was to serve as an archive, kept for an indefinite point in the future at which it might be needed (in all likelihood the treasurers' year-end audits).

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[95] Lysias 32.14: ἔτι τοίνυν ἐξήλεγχεν αὐτὸν ἑπτὰ τάλαντα κεκομισμένον ναυτικὰ καὶ τετρακισχιλίας δραχμάς, καὶ τούτων τὰ γράμματα ἀπέδειξεν· ἐν γὰρ τῇ διοικίσει, ὅτ' ἐκ Κολλυτοῦ διῳκίζετο εἰς τὴν Φαίδρου οἰκίαν, τοὺς παῖδας ἐπιτυχόντας ἐκβεβλημένῳ βιβλίῳ ἐνεγκεῖν πρὸς αὐτήν.

[96] Vandorpe (2009) 218.

Indeed, the treasurers had no less motivation than Diodotos to keep a double record of their expenses. The money spent on the Erechtheion was public. They were liable to be sued for mishandling it, and would have to submit their accounts at the end of their term, upon which anyone could prosecute them for malpractice (and Athenians took the management of sacred funds seriously enough that even a politician like Perikles had to watch out for charges of embezzlement).[97] The question, then, is how extensively magistrates used papyrus to keep archival copies of texts, and how early Athenians developed the habit of keeping duplicate records.

The first question is impossible to answer. But the idea of keeping duplicate records of the same text was not an innovation of the last decade of the fifth century. A decree dated to 434/3 or 422/1 B.C.,[98] which calls for payment of a debt to the Other Gods, further stipulates (*IG* I³ 52.7-13):

> "let the thirty *logistai* who are now serving count up the monies owed to the gods accurately, and let the council be authorized for the convocation of the *logistai*.

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[97] Even Perikles at the height of his power was not beyond the charge of defrauding sacred funds, according to D.S. 12.39.1-2: τῶν δὲ συνεργασαμένων τῷ Φειδίᾳ τινὲς διενεχθέντες ὑπὸ τῶν ἐχθρῶν τοῦ Περικλέους ἐκάθισαν ἐπὶ τῶν τῶν θεῶν βωμῶν· διὰ δὲ τὸ παράδοξον προσκαλούμενοι ἔφασαν πολλὰ τῶν ἱερῶν χρημάτων ἔχοντα Φειδίαν δείξειν ἐπισταμένου καὶ συνεργοῦντος τοῦ ἐπιμελητοῦ Περικλέους. διόπερ ἐκκλησίας συνελθούσης περὶ τούτων, οἱ μὲν ἐχθροὶ τοῦ Περικλέους ἔπεισαν τὸν δῆμον συλλαβεῖν τὸν Φειδίαν, καὶ αὐτοῦ τοῦ Περικλέους κατηγόρουν ἱεροσυλίαν. ("Some of those working alongside Pheidias being prevailed upon by the enemies of Perikles sat on the altars of the gods, and because of the paradox, being called upon they declared that they would show that Pheidias was in possession of much of the sacred funds and Perikles was aware and working with him as *epimeletes*. Wherefore, an assembly convening about these matters, the enemies of Perikles persuaded the people to arrest Pheidias, and they charged Perikles himself with temple-robbery.").

[98] Mattingly (1961) 148-188 argued for a later date, c.418. But see Meiggs and Lewis (1969) 158: "[t]here is little doubt that Kallias moved his decrees in 434-3." And see now Papazarkadas (2013) 69: "there is no serious reason to dissociate the first decree of Callias from this period, although scholars still dispute the exact year: 434/3, or 433/2? It really makes little difference."

> Let the *prytaneis* pay the monies with the council and erase whenever they have paid it, first seeking out both the tablets and the documents and anywhere else it be written. Let the priests and the *hieropoioi* make known what is written and anyone else who knows."[99]

It is clear from the syntax that two distinct sets of records were envisioned by the drafter of the decree, since the *prytaneis* are to erase both the tablets (*pinakia*) and the documents (*grammateia*). Clear too that the reference to these two kinds of record is not just a way of stipulating that all records of the debt be canceled, since that is covered by the clause "anywhere else it be written." And clear that these records were not in the council, since if they were the *prytaneis* would require only the assistance of the *epistates* and the secretary of the council to locate the documents.[100] The documents were in the care of the priests and temple-wardens of whatever temples the records were stored in.[101] But if we are dealing with two sets of records, what are the "documents" (*grammateia*) and what was their purpose?

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[99] *IG* I³ 52.7-13: λογισάσθον δὲ ϝ|[οι λ]ογισταὶ ϝοι τριάκοντα ϝοίπερ νῦν τὰ ὀφελόμενα τοῖς θεοῖς ἀκρ|[ιβῶ]ς, συναγογῆς δὲ τῶλ λογιστῶν ἑ βολὲ αὐτοκράτορ ἔστο. ἀποδόντον | [δὲ τ]ὰ χρέματα ϝοι πρυτάνες μετὰ τῆς βολῆς καὶ ἐχσαλειφόντον ἐπει|[δὰν] ἀποδῶσιν, ζετέσαντες τά τε πινάκια καὶ τὰ γραμματεῖα καὶ ἐάμ π|[ο ἄλ]λοθι ἦι γεγραμμένα. ἀποφαινόντον δὲ τὰ γεγραμμένα ϝοί τε ϝιερ|[ῆς κ]αὶ ϝοι ϝιεροποιοὶ καὶ εἴ τις ἄλλος οἶδεν.

[100] *AthPol* 44.1: τηρεῖ δ' οὗτος τάς τε κλεῖς τὰς τῶν ἱερῶν, ἐν οἷς τὰ χρήματ' ἐστὶν καὶ <τὰ> γράμματα τῇ πόλει, καὶ τὴν δημοσίαν σφραγῖδα. ("he [sc. the *epistates*] guards the keys of the temples in which the polis' money and documents are, and the public seal.").

[101] Cf. Pébarthe (2006) 227-228, where it is claimed both that "les πινάκια et les γραμματεῖα a mentionnés ici ne sont pas les archives des logistes qui ont travaillé sur d'autres documents mais des archives conservées par le Conseil" and that "tout montre que les temples conservaient les archives découlant de leurs activités financières."

The word is often taken to mean "tablets" or "boards",[102] and it is applied to the whitened tablets called *pinakia*.[103] But "tablets" (*pinakia*) are already mentioned. It is not likely that here *grammateia* means *sanis*, the other name for a wooden tablet, because *pinax/pinakion* and *sanis/sanidion* were used for the same purposes and were synonyms (Greeks even used both words to refer to the same individual document).[104] Two options remain: either the reference is to wax tablets,[105] or, like the *grammateion* left under seal by Diodotos, the *grammateia* mentioned in the decree were made of papyrus.[106] Whatever the material, it is clear that these documents were distinct from the tablets called *pinakia*. Since *pinakia* appear to have been used primarily as working documents or as temporary

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[102] Sickinger (1999) 70 describes the two kinds of texts as "tablets and boards".

[103] See n.124.

[104] See Apion s.v. πινάκιον· πίναξ. ἡ σανίς. And Hesych. s.v. πίνακας· τὰς σανίδας.

[105] Poll. 10.59: μάλθην ἔφη, Ἀριστοφάνης δὲ ἐν τῷ Γηρυτάδῃ τὴν μάλθαν ἐκ τῶν γραμματείων ἤσθιον. (Wax, said Aristophanes in Gerutades: "I ate the wax from the tablets."). Demosthenes 46.11: Ἔτι τοίνυν κἂν ἀπὸ τοῦ γραμματείου γνοίη τις, ἐν ᾧ ἡ μαρτυρία γέγραπται, ὅτι τὰ ψευδῆ μεμαρτύρηκεν. λελευκωμένον τε γάρ ἐστιν καὶ οἴκοθεν κατεσκευασμένον. καίτοι τοὺς μὲν τὰ πεπραγμένα μαρτυροῦντας προσήκει οἴκοθεν τὰς μαρτυρίας κατεσκευασμένας μαρτυρεῖν, τοὺς δὲ τὰς προκλήσεις μαρτυροῦντας, τοὺς ἀπὸ ταὐτομάτου προσστάντας, ἐν μάλθῃ γεγραμμένην τὴν μαρτυρίαν, ἵνα, ἐάν τι προσγράψαι ἢ ἀπαλεῖψαι βουληθῇ, ῥᾴδιον ᾖ. ("Moreover one could recognize even from the document, in which the testimony is written, that he has born false witness. For it is whitened and has been prepared at home. Yet those witnessing challenings, those who stand forth of their own will, witness a testimony written in wax, in order that it be easier, if he wishes to add or erase anything.")

[106] Etymologicum Magnum s.v. Γραμματεῖον: Ἰστέον ὅτι τινες γραμματεῖον λέγουσι τὸ μικρὸν βιβλίον· ὁ δὲ Ὦρος λέγει, ὅτι οὐ λέγεται τὸ μικρὸν βιβλίον γραμματεῖον, ἀλλ' ἡ μικρὰ δέλτος. Καὶ δῆλον, εἴγε εἶπεν ὁ Δημοσθένης γραμματεῖον καὶ βιβλίον. ("It is to be known that some call a small bookroll a grammateion; but Horos says, that a small bookroll is not called a grammateion, but a small tablet. And it is obvious, if, at any rate, Demosthenes said grammateion and bookroll."). A lead tablet (μολίβδινον γραμματίδιον) is mentioned by Plu. *Moralia* 254d; the only literary evidence from the Classical era for bronze *grammateia* is Plato *Min.* 320c: ὁ γὰρ Τάλως τρὶς περιῄει τοῦ ἐνιαυτοῦ κατὰ τὰς κώμας, φυλάττων τοὺς νόμους ἐν αὐταῖς, ἐν χαλκοῖς γραμματείοις ἔχων γεγραμμένους τοὺς νόμους, ὅθεν χαλκοῦς ἐκλήθη ("for Talos went round three times a year throughout the villages, guarding the laws in them, having the laws written in bronze tablets."). But bronze tablets are recorded in *IG* II² 1469.100-102 (320 B.C.): γρα|[μματεῖα δύο χαλ]κᾶ, τὸ μὲν σεσημα|[σμένον, τὸ δὲ ἀ]ν[ε]ωιγμένον· (note that even when made of bronze the *grammateion* may be a diptych).

publications, and since *grammateion* is often used of a document (like a contract or a will) put under seal and deposited under public or private guardianship,[107] it is reasonable enough to infer that the distinction here is between a working text, kept on a *pinakion* and used both as a draft and possibly for publication, and an archive copy kept for future reference. And since wax was easily erasable, and thus unlikely to have been used for anything but the most immediate purposes, it is possible, perhaps even plausible, that these *grammateia* were, like the copies of the Erechtheion accounts, made of papyrus.

Is the fact that they were to be erased a sign that Athenians typically erased records when they were no longer needed – a sign that Athenians lacked "an archive mentality"?[108] It need not be. It is possible that there were other records of these debts that were not erased, since the *logistai* would have had to calculate the monies owed to the other gods on the basis of some record, and these are evidently not the tablets and records to be sought out by the *prytaneis*.[109] Even if there were no other records, it had to be explicitly stipulated that both the tablets and the records were to be erased, and thus this decree cannot be taken as evidence for a general habit among those who were

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[107] E.g. Is. 1.25: Ἀνελεῖν μὲν γάρ, ὦ ἄνδρες, οὐχ οἷός τ' ἦν ἄλλο γραμματεῖον ἢ τὸ παρὰ τῇ ἀρχῇ κείμενον. ("For he was unable to annul, men, any other document than that deposited with the magistrate."). cf. Aeschin. 1.163 (in which Aeschines pretends to read out a prostitution contract written up for Timarchos: "ἐμισθωσάμην, ὦ Ἀθηναῖοι, Τίμαρχον ἑταιρεῖν ἐμαυτῷ κατὰ τὸ γραμματεῖον τὸ παρὰ Δημοσθένει κείμενον·" ("I hired, Athenians, Timarchos to prostitute for me in accordance with the document deposited with Demosthenes.").

[108] Thomas (1989) 54 n.132.

[109] Sickinger (1999) 70; Pébarthe (2006) 227: "[t]outefois, les logistes ne calculent pas les dettes contractées par la cité à l'encontre des dieux à l'aide de ces documents" [sc. the records sought ought by the *prytaneis*].

responsible for public records at Athens. It is unclear whether the distinction between working documents and archival records was widespread and rigorously policed. But if the interpretation of the tablets and *grammateia* above is right, then the simultaneous use of working texts and copies predated the treasurers of the Erechtheion by more than two decades.

It is difficult to know with much confidence whether the evidence gathered above reflects a historical development, in the last few decades of the fifth century, from exclusive reliance on tablets to the simultaneous use of tablets for working documents and papyrus for clean copies – in the field of finance, at any rate. But in legislation what we see (if dimly), I urge, is the disappearance of the tablet as a material for records of decrees, and the appearance of papyrus either for the draft of the resolution put forward for the people to consider, or for the archival record, or perhaps, in the light of the decree for Poses, for both.

1.2.4: Tablets and Bookrolls in Athenian Archives

Was the version on tablet or bookroll treated as merely another copy, or did Athenians think of it as the original (and the inscription as the copy)? On one view, "to apply the concept of original and copy to ancient documents is anachronistic," on the grounds that "the term *antigraphon* ('copy') is used of both an archive version and the public version

on stone."[110] But the archival text of a document is never described as a 'copy', though on occasion temporary copies of inscriptions were made.[111] On the other hand, inscribed versions of documents like decrees were explicitly described as copies.

It is clear, from a passage in Demosthenes' *Against Leptines* in which the rhetor cited decrees for Leukon king of Bosporos, that the inscribed text of a decree was considered a copy of the decree itself (the decree itself simply counting as the original before there was a particular word or name for such):

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[110] Thomas (1989) 47.

[111] For perishable copies of stelae there are two items of evidence. Between 357-354 B.C., a public clerk was ordered, in conjunction with the secretary of the council and other secretaries, to make a list of all the dedications in the Chalkotheke and then to inscribe it on stone. The secretary of the council was further ordered (*IG* II² 120.17-24): ἐπειδὰν δὲ ἐξετασθῆι πάντα κ|[αὶ] ἀναγραφῆι, τὸγ γραμματέα τῆς βουλῆς ἀναγράψαντα | [ἐν] στήληι λιθίνηι στῆσαι ἔμπροσθεν τῆς χαλκοθήκη[ς]. | [ἐς] δὲ τὴν ἀναγραφὴν τῆς στήλης δοῦναι τοὺς ταμίας [τῆ]||[ς] βουλῆς : ΔΔΔ : [δρ]αχμὰς ἐκ τῶγ κατὰ ψηφίσματα ἀναλ[ισ]||[κο]μένων τῆι βουλῆι. ποιήσασθαι δὲ τὸγ γραμματέα τ[ῆς] ||[β]ουλῆς ἀντίγραφα ἐκ τῶν στηλῶν τὰ ἀναγεγραμμένα [πε]|ρὶ τῶν ἐν τῆι χαλκοθήκει. ("Whenever everything is examined and recorded, [be it resolved] that the secretary of the council, having inscribed it on a stone stele stand it in front of Chalkotheke. For the inscription of the stele the *tamias* of the Council is to give thirty drachmas from the monies spent in accordance with decrees. The secretary of the council is to make as copies from the stelae the things inscribed concerning that which is in the Chalkotheke"). This is a remarkably opaque text. But the copies made "from the *stelai*" cannot refer (or refer only) to the stele that the secretary was ordered to inscribe in the prior clause of the decree by virtue of the plural *stelai*. It must be inferred, then, that what is meant is either the newly-ordered stele and another stele which already contained an inventory of the Chalkotheke, or two other stelai on which the inventory of the Chalkotheke had been inscribed. I am inclined to the former solution, since the point of inscribing is "so the having hearing everything the people may take council as to how what is left out can be fulfilled, so that the matter stand as fine and reverent as possible toward the goddess" (*IG* II² 120.29-32: ὅ[πως] | [ἂ]ν ἀκούσας ὁ δῆμος βου[λεύσηται πῶς πληρ]ωθήσετ[αι τὰ] | [ἐ]λλείποντα, ὅ[π]ω[ς] ἄ[ν] ἔχ[ηι κάλλιστα καὶ ε]ὐσεβέστ[ατα τ]||[ὰ π]ρὸς τὴν θεόν). The second item of evidence for perishable copies of inscriptions are copies, cited in court, of inscriptions on which the descendants of Harmodios and Aristogeiton are awarded tax-immunity (Demosthenes 20.127-28): λαβέ μοι πρῶτον μὲν τῆς στήλης τἀντίγραφα, εἶτα τὴν ἀρχὴν τοῦ νόμου τοῦ Λεπτίνου. λέγε. ΑΝΤΙΓΡΑΦΑ ΣΤΗΛΗΣ. Ἀκούετε τῶν ἀντιγράφων τῆς στήλης, ὦ ἄνδρες Ἀθηναῖοι, ἀτελεῖς αὐτοὺς εἶναι κελευόντων πλὴν ἱερῶν. ("Take for me first the copies of the stele, then the beginning of the law of Leptines. Read. You hear the copies of the stele, men of Athens, stipulating that they be immune from taxes except in sacred matters."). Even if we could be sure that a decree this old had survived in a perishable form into the mid-4th century, it may have struck the speaker as rhetorically more effective to emphasize that the text was taken from the *stele* since Harmodios and Aristogeiton were lionized and the inscription a dedication.

> Take and read for them the decrees, the ones concerning Leukon. DECREES. How reasonably and justly Leukon has acquired tax immunity from you, you have heard from the decrees, men of the jury. Moreover, you and he set up *stelai* as copies of all these (τούτων δ' ἁπάντων στήλας ἀντιγράφους), one in Bosporos, one in Peiraeus, one in Hieron.[112]

The antecedent of "these" must be "the decrees" (*psephismata*), and this identification of perishable records by their genre reflects a broader habit. Andocides, in *On the Mysteries*, reminded the Athenians that in 405/4 they had voted, on behalf of those citizens who had lost their civic rights, "to erase all the decrees, both themselves and if there was any copy anywhere."[113] Here, then, is a clear distinction, one that smells like a division between originals ('themselves') and copies.

Moreover, it is clear that the reference to copies included inscribed versions, because Andocides repeated himself later in the speech in slightly different terms, when he reminded the dikasts that for the sake of the citizens whose rights they restored "you removed *stelai*, annulled laws, and wiped out decrees."[114] This habit of referring to the original by its genre was widespread and applied to documents besides decrees.[115] We

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[112] Dem. 20.36: ἀνάγνωθι λαβὼν αὐτοῖς τὰ ψηφίσματα τὰ περὶ τοῦ Λεύκωνος. ΨΗΦΙΣΜΑΤΑ. Ὡς μὲν εἰκότως καὶ δικαίως τετύχηκεν τῆς ἀτελείας παρ' ὑμῶν ὁ Λεύκων, ἀκηκόατ' ἐκ τῶν ψηφισμάτων, ὦ ἄνδρες δικασταί. τούτων δ' ἁπάντων στήλας ἀντιγράφους ἐστήσαθ' ὑμεῖς κἀκεῖνος, τὴν μὲν ἐν Βοσπόρῳ, τὴν δ' ἐν Πειραιεῖ, τὴν δ' ἐφ' Ἱερῷ.

[113] Andoc.1.76: Ταῦτ' οὖν ἐψηφίσασθε ἐξαλεῖψαι πάντα τὰ ψηφίσματα, καὶ αὐτὰ καὶ εἴ πού τι ἀντίγραφον ἦν.

[114] Andoc.1.103: καὶ στήλας ἀνείλετε καὶ νόμους ἀκύρους ἐποιήσατε καὶ ψηφίσματα ἐξηλείψατε.

[115] *IG* II² 1176.18-21 ἀναγράψαι δὲ τὸν δήμαρχον καὶ τοὺς ταμίας ἀντί|γραφα τῶν συνθηκῶν εἰς στήλην λιθίνην καὶ στῆσα|ι ἐν τῆι ἀγορᾶι τῶν δημοτῶν· παραγράψαι δὲ καὶ τὸ | ὄνομα, παρ' ὧι ἂν κείωνται αἱ συνθῆκαι. (That the demarch is to inscribe along with the *tamiai* copies of the agreement onto a stone stele and stand it in the marketplace of the demesmen; inscribe along with it the name of the person in whose care the agreement is deposited."). Similarly *IG* II² 1237.18-24: ὃς δ' ἂν δόξηι μὴ ὢν φρατὴρ ἐσα|χθῆναι, ἐξαλειψάτω

can therefore take it as reflecting an Athenian idiom, not a peculiarity of Demosthenes, Andocides, or speech in the lawcourts more broadly.

If Athenians bothered to distinguish between original and copy, what was the nature of that distinction? The perishable record was apparently not felt to be more appropriate than the inscription for citation, since Athenians were happy to cite the inscribed copies of documents, and of decrees in particular, even after the Metroon was established.[116] Nor was it a matter of consultation, since there is unambiguous evidence that Athenians consulted inscribed legislation.[117]

But in the matter of conservation there seems to have been a fuzzy distinction between the inscribed copy and the archival text. Public records, inscribed or not, were

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τὸ ὄνομα αὐτοῦ ὁ ἱερ|εὺς καὶ ὁ φρατρίαρχος ἐκ τοῦ γραμματεί|ο ἐν Δημοτιωνιδῶν καὶ τοῦ ἀντιγράφ|ο δὲ ἐσαγαγὼν τὸν ἀποδικασθέντα ὀφε|ιλέτω ἑκατὸν δραχμὰς ἱερὰς τῶι Διὶ τ|ῶι Φρατρίωι ("whoever is decided to have been introduced even though he be not a *phrater*, let the priest and the phratriarch erase his name from the record in the keeping of the Demotionidai and from the copy and let the person who introduced the one so adjudged owe a hundred drachmas sacred to Zeus of the Phratry…").

[116] Thomas (1989) 73 n.187 citing Kahrstedt (1938) – but note that many of the sources there are not citations of *stelai* but citations of documents in which it is stipulated that the text be inscribed on a *stele*. A new study of what kinds of record were cited, inscribed or not, is a *desideratum*.

[117] Andoc.1.116: Ὦ Καλλία, πάντων ἀνθρώπων ἀνοσιώτατε, πρῶτον μὲν ἐξηγῆ Κηρύκων ὤν, οὐχ ὅσιον <ὄν> σοι ἐξηγεῖσθαι· ἔπειτα δὲ νόμον πάτριον λέγεις, ἡ δὲ στήλη παρ' ᾗ ἕστηκας χιλίας δραχμὰς κελεύει ὀφείλειν, ἐάν τις ἱκετηρίαν θῇ ἐν τῷ Ἐλευσινίῳ. Ἔπειτα δὲ τίνος ἤκουσας ὅτι Ἀνδοκίδης θείη τὴν ἱκετηρίαν; κάλεσον αὐτὸν [τῇ βουλῇ], ἵνα καὶ ἡμεῖς ἀκούσωμεν. Ἐπειδὴ δὲ ἀνεγνώσθη ἡ στήλη κἀκεῖνος οὐκ εἶχεν εἰπεῖν ὅτου ἤκουσεν, καταφανὴς ἦν τῇ βουλῇ αὐτὸς θεὶς τὴν ἱκετηρίαν. ('O Kallias, most impious of all men, first, although you are a Keryx you have acted as exegete when it is not sanctioned for you to act as exegete. Then you call a law ancestral, but the stele beside which you stand urges that he owe a thousand drachmas, if anyone places a branch of supplication in the Eleusinion. Then you heard from someone that Andokides placed the branch? Call him to the council, in order that we may hear him.' When the stele was read, and he was not able to say from whom he heard it, it was exceedingly obvious to the council that he himself had placed the branch of supplication."). So too Lysias 1.30 (where the litigant asks the clerk: "please read for me this law from the stele on the Areopagos.").

not erased or destroyed as a matter of course, but only if such was stipulated by an enactment of the council and assembly.[118] Still, Athenians took some care to erase or destroy inscribed copies of decrees if they conflicted with new legislation. The end of a law passed in 375 B.C. stipulates that "if any decree is written anywhere on a *stele* contrary to this law, let the secretary take it down."[119] A treaty established a few years earlier stipulated that "if there happen to be *stelai* at Athens that are unmeet for any of the cities establishing the alliance, the council shall be authorized to take them down."[120]

Granted, in both cases the secretary is not ordered to search out any inscription that is in conflict with the new law or treaty, but merely instructed to take it down if such exists (and presumably if such is noticed). But the statement is broad and general and indicates that the inscribed copies were consciously curated in a way that the perishable records were apparently not. Except for the decree of Patrokleides that granted a limited amnesty to certain citizens convicted of specific kinds of transgressions

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[118] Bolmarcich (2007) 487: "The removal of stelae was not an automatic procedure, but one that had to be legally authorized for individual stelae or stelae that recorded a specific type of document." Cf. Sickinger (1999) 80: "searching for, copying, and erasing uninscribed texts may have occupied much of a secretary's time."

[119] *SEG* XXVI 72.55-56: εἰ δὲ τι ψήφισμα γέγραπται πο ἐστήλη̣ι πα̣[ρὰ τ]|όνδε τὸν νόμον, καθελέτω ὁ γραμματεὺς τῆς βολ[ῆς].

[120] *IG* II² 43.31-35 (378/7 B.C.): ἐὰν δέ τωι τ]υγχάν[η]|ι τῶν πόλεων [τῶν ποιομένων] τὴν συμμαχ|ίαν πρὸς Ἀθην[αίος σ]τῆλαι ὅσαι Ἀθήνησ|ι ἀνεπιτήδειο[ι, τ]ὴμ βολὴν τὴν ἀεὶ βολε|ύοσαν κυρίαν ε[ἶν]αι καθαιρεῖν. See also *IG* II² 116.39-40 (361/) B.C.): τὴ]ν δὲ στ[ή]λ[ην τὴ]ν πρὸ[ς] Ἀλ[έξα]νδ[ρ]ον [κα]θελ[εῖ]ν τὸς | [ταμία]ς τῆς θεο̃ [τὴν π]ερ[ὶ τῆ]ς [σ]υμμαχία[ς] ("that the *tamias* of the goddess taken down the stele the one with Alexander the one concerning the alliance.").

in 405/4 and called for copies and originals of decrees to be destroyed,[121] there is no evidence that decrees in perishable form were destroyed or thrown out when they were no longer valid (although laws were inspected and amended regularly in the fourth century).[122] Moreover, at least one decree that was neither inscribed nor in force remained, in writing, in the council-house, even before the establishment of the Metroon, to be cited in court nearly a decade after its passage and despite its

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[121] Stipulatons to erase a broad array of texts are (appropriately) broad in language. Thus *IG* II² 1.27-30: τὰ δὲ ὀνόματα τῶν τριηράρχων, ὧν ἦσαν αὗται αἱ νῆες, ἀπογράψαι | [τὸς πρέσ]βες τῶι γραμματεῖ τῆς βολῆς καὶ τοῖς στρατηγοῖς, καὶ τούτων εἴ πό | [τί ἐστι ὄφλημ]α γεγραμμένον ἐν τῶι δημοσίωι ὡς παρεληφότων τὰς τριήρες, | [ἅπαντα ἐξαλειψά]ντων οἱ νεωροὶ ἁπανταχόθεν ("that the envoys register the names of the trierarchs whose ships these are with the secretary of the council and the generals, and of these if there be any debt written anywhere in the public domain that they have taken over the triremes, let the superintendents of the naval yards erase everything from everywhere.")

[122] Laws (*nomoi*) in the fourth century (which were distinct from decrees) are a separate matter. The *Thesmothetai* were tasked with scrutinizing the laws for contradictions annually, according to Aeschines 3.38-40: ἀλλὰ διαρρήδην προστέτακται τοῖς θεσμοθέταις καθ' ἕκαστον ἐνιαυτὸν διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους, ἀκριβῶς ἐξετάσαντας καὶ σκεψαμένους εἴ τις ἀναγέγραπται νόμος ἐναντίος ἑτέρῳ νόμῳ, ἢ ἄκυρος ἐν τοῖς κυρίοις, ἢ εἴ που εἰσὶ νόμοι πλείους ἑνὸς ἀναγεγραμμένοι περὶ ἑκάστης πράξεως. Κἄν τι τοιοῦτον εὑρίσκωσιν, ἀναγεγραφότας ἐν σανίσιν ἐκτιθέναι κελεύει πρόσθεν τῶν ἐπωνύμων, τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας, τὸν δ' ἐπιστάτην τῶν προέδρων διαχειροτονίαν διδόναι τῷ δήμῳ, καὶ τοὺς μὲν ἀναιρεῖν τῶν νόμων, τοὺς δὲ καταλείπειν, ὅπως ἂν εἷς ᾖ νόμος καὶ μὴ πλείους ἑκάστης πράξεως Καί μοι λέγε τοὺς νόμους. Νόμοι Εἰ τοίνυν, ὦ ἄνδρες Ἀθηναῖοι, ἀληθὴς ἦν ὁ παρὰ τούτων λόγος καὶ ἦσαν δύο κείμενοι νόμοι περὶ τῶν κηρυγμάτων, ἐξ ἀνάγκης οἶμαι τῶν μὲν θεσμοθετῶν ἐξευρόντων, τῶν δὲ πρυτάνεων ἀποδόντων τοῖς νομοθέταις ἀνήρητ' ἂν ὁ ἕτερος τῶν νόμων, ἤτοι ὁ τὴν ἐξουσίαν δεδωκὼς ἀνειπεῖν ἢ ὁ ἀπαγορεύων· ὁπότε δὲ μηδὲν τούτων γεγένηται, φανερῶς δή που ἐξελέγχονται οὐ μόνον ψευδῆ λέγοντες, ἀλλὰ καὶ παντελῶς ἀδύνατα γενέσθαι ("but it has explicitly been enjoined upon the *Thesmothetai* to correct the laws, each year, in the assembly, first having accurately scrutinized and examined if any law is recorded that is in conflict with another law, or if a invalid law is recorded among the valid, or if anywhere there are more than one law recorded for each action. And if they find anything of this sort, then the law stipulates that they, having recorded it on a tablet, publish it in front of the Eponym, and that the *prytaneis* hold an assembly having titled it on the program 'for nomothetai', and that the chairman of the proedroi give the people a deciding vote, and some of the laws they annul, others they leve be, so that there be one law and not many for each action. Read, please, the laws for me. LAWS. If, then, men of Athens, the argument from these men was true and there were two laws established concerning proclamations, I think it is necessary that, if the Thesmothetai found it and the prytaneis gave it over to the Nomothetai one of the laws would have been annulled, either the one granting the power to declare or the one forbidding it. Since neither of these has happened, obviously they are proven not only to be speaking falsely, but also that it is absolutely impossible.").

cancellation.[123] So too, enactments from the reign of the Thirty survived well into the fourth century, and were cited as evidence in court, even though the Athenian democrats went to great lengths to erase the memory of the oligarchs from the monumental landscape of the city.[124] Even some of the working documents created under the Thirty, like the cavalry registers recorded on wooden tablets, survived into the fourth century.[125] And the Thirty themselves, who destroyed a number of inscribed laws and decrees of the fifth century, seem to have left the perishable records be, since the

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[123] Andoc. 2.23: τὸ ψήφισμα ὃ Μενίππου εἰπόντος ἐψηφίσασθε, εἶναί μοι ἄδειαν, πάλιν ἀπόδοτε. Ἀναγνώσεται δὲ ὑμῖν αὐτό· ἔτι γὰρ καὶ νῦν ἐγγέγραπται ἐν τῷ βουλευτηρίῳ (the decree which you decreed, on the proposal of Menippos, that there be immunity for me, give to me again. It will be read to you; for still even now it is written in the council-house."). Sickinger (1999) 82 points out: " generally the verb *eggraphein* refers to information recorded or registered on documents that were stored away and not set out in public, and Andokides' use of the same verb to describe the disposition of the decree of Menippos should indicate that's its text was not published or displaed on stone, but recorded and preserved in the Bouleuterion, probably among the records and archives kept by the secretary of the Boule."

[124] Lys. 13.50: πρῶτον μὲν γὰρ τὰ ψηφίσματα αὐτοῦ τὰ ἐκ τῆς βουλῆς καὶ <τὸ> τοῦ δήμου καταμαρτυρεῖ, διαρρήδην ἀγορεύοντα 'περὶ ὧν Ἀγόρατος κατείρηκεν'. ἔπειτα ἡ κρίσις, ἣν ἐκρίθη ἐπὶ τῶν τριάκοντα καὶ ἀφείθη, διαρρήδην λέγει, 'διότι' φησίν 'ἔδοξε τἀληθῆ εἰσαγγεῖλαι'. καί μοι ἀνάγνωθι ("For first of all, the decrees from the council and assembly bear witness against him, insofar as they explicitly say "regarding those whom Agoratos has denounced." Then the judgment upon which he was judged and released in the time of the Thirty explicitly says 'because he seemed to have made true reports.' Please, read for me."). On the democrats' programmatic erasure of the memory of the oligarchs from the cityscape see Shear (2011) 163.

[125] Lys. 16.6: ἔπειτα δὲ ἐκ μὲν τοῦ σανιδίου τοὺς ἱππεύσαντας σκοπεῖν εὖηθές ἐστιν· ἐν τούτῳ γὰρ πολλοὶ μὲν τῶν ὁμολογούντων ἱππεύειν οὐκ ἔνεισιν, ἔνιοι δὲ τῶν ἀποδημούντων ἐγγεγραμμένοι εἰσίν. (Next, it is foolish to examine those having served in the cavalry [sc. under the Thirty] from the tablet. Many of those who admit to having served in the cavalry are not in this tablet, and some of those living abroad have been registered.). This is usually thought to be the same tablet referenced at Lys 26.10: εἰ μὲν βουλεύσων νυνὶ ἐδοκιμάζετο καὶ ὡς ἱππευκότος αὐτοῦ ἐπὶ τῶν τριάκοντα τοὔνομα ἐν ταῖς σανίσιν ἐνεγέγραπτο, καὶ ἄνευ κατηγόρου ἂν αὐτὸν ἀπεδοκιμάζετε ("if someone now who was going to serve as a councillor was undergoing scrutiny and his name had been registered on the boards as having himself served as a cavalryman under the Thirty, even without a prosecutor you would dismiss him."). But it is curious that the prior passage speaks of one tablet, the latter of tablets, though *pinakion* is sometimes used of a diptych, and so perhaps *sanis* is as well.

texts of these documents were reinscribed in the fourth century after the restoration of democracy.[126] Why?

The different treatment of the perishable record and the inscribed copy is not rooted in a perceived difference between the authority of the original and the copy, I suggest, but between the value of the monumental and the mundane. If inscriptions were understood to be honors for divinities and mortals, as dedications, as symbols, then it makes sense that the epigraphic landscape would need to be remodeled in times of regime-change: the *proxenoi* whose proxeny-decrees (the inscribed ones) were destroyed under the Thirty were made *proxenoi* because they supported the Athenian democrats; the laws of Ephialtes and even some of Solon (Athenians thought) were laws that fostered democracy; the dedications were gifts given to the gods by democrats. No doubt the oligarchs recognized that these signs of democracy had to be removed. But the tablets and bookrolls that served as records of legislation, finance, and military registrations were comparatively mundane stuff. They were useful for the many political activities that constituted the day-to-day administration of the city. But they were records only, not monuments that happened to serve occasionally as a record, and not

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[126] *IG* II² 6.7-16: Ἀ|μύντορι καὶ Εὐρυπύλωι κ|αὶ Ἀργείωι καὶ Λόκρωι κα|ὶ Ἀλκίμωι τοῖς Ἀπημάντο | παισί, ἐπειδὴ καθηιρέθη | ἡ στήλη [ἐ]πὶ τῶν τριάκοντ|α ἐν ἦι ἦ[ν α]ὐτοῖς ἡ προξεν|ία, ἀναγράψ[αι] τὴν στήλην | τὸγ γραμμα[τ]έα τῆς βολῆς | τέλεσι τοῖς Εὐρυπύλο ([sc. resolved] "that the secretary of the council inscribe, with the funds of Eurypylos, the stele for Amyntor and Eurypylos and Argeios and Lokros and Alkimos the children of Apemantos, since the stele on which there was proxeny for them was destroyed in the time of the Thirty."). Alternatively, it is possible that copies survived in the hands of the honorand.

associated, to judge from their survival under the regime-changes of the late fifth century, with a particular form of government.

This is, of course, a less exciting vision of public records than the notion that the epigraphic habit reflects a burning commitment, in the hearts of Athenian democrats, to recording and publishing public acts for all to examine. But Aristotle never said that reading and writing were useful for democratic politics, only that they were useful for many civic practices.

1.3 Tablet and Bookroll in the Council and Assembly: A Comic Perspective

What kind of civic practices did Aristotle have in mind? So far, tablets and book-rolls have mainly appeared as part of the day-to-day documents of magistracies. But if the bookroll to be handed over to Poses the Samian was the preliminary resolution of the council, as was argued above, then bookrolls featured at the heart of the legislative process itself. The same conclusion can be drawn from a few of the many scenes in Aristophanes' *Birds* that imagine bookrolls in the civic landscape of democratic Athens. Aristophanes gets a lot of comedy out of what Athenians did with bookrolls, and it has been argued that the premise of all of this comedy is the common Athenian's "suspicion of the written word and in particular the illiterate's suspicion of the appeal to the authority of documents he cannot verify."[127] But the Athenians depicted in *Birds* are not

[127] Anderson and Dix (2013) 79.

suspicious of book-rolls, at least not the ones containing decrees. They are obsessed with them. And the logic of the comedy suggests why: book-rolls occupy a central place in Athenian politics.

1.3.1 The Decree of Teleas

The protagonists of *Birds* have left Athens in search of a city where the *Salamis*, the ship of state that brought messages and officials from Athens, cannot reach; so they build a city in the sky, Cloudcuckooland. Naturally, an Athenian official called an 'overseer' (*episkopos*) shows up shortly after Cloudcuckooland is founded and asks[128]:

> **Episkopos**: "Where are the *proxenoi*?"
> **Pesetairos**: Who is this Sardanapallos?
> **Episkopos**: I come here as overseer to Cloudcuckooland, having obtained it by lot.
> **Pesetairos**: An overseer? And who sent you here?

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[128] Aristophanes' caricature bears the trace of the real overseers, who were elected by lot and given orders via decree. It is resolved in *IG* I³ 34.5-11: τὲ]μ β|ολὲν καὶ τὸς ἄρχ[οντας ἐν] τε͂σ|ι πόλεσι καὶ τὸς [ἐπισκό]πος ἐ|πιμέλεσθαι ϝό[πος ἂν χσ]υλλέ|γεται ϝο φόρος κ[ατὰ τὸ ἔ]τος ϝ|έκαστον καὶ ἀπά[γεται] Ἀθένα|ζε· ("that the council and magistrates in the cities and the overseers take care that the tribute is collected each year and conveyed to Athens."). A scholiast doubted the existence of the *episkopos* but recognized the meaning of τῷ κυάμῳ λαχὼν (Σ *Birds* 1022 [Dübner]): Πλάττει καινὴν ἀρχήν. οὐ γὰρ ἦν Ἀθήνησι. λαχὼν δὲ, ἀντὶ τοῦ κληρωθεὶς ταύτην τὴν ἀρχήν. ("he is making up a new office. for it did not exist at Athens. 'obtaining by lot, for 'sorted this office by lot'.). There is, to my knowledge, no other evidence besides this pasage that the *episkopoi* were chosen by allotment but the procedure of selecting magistracies by allotment was common enough in Athens that there is little reason to be skeptical. That the *episkopos* existed early in the Athenian empire and that he was an essentially temporary figure in the allied cities is shown by *IG* I³ 14.14-16: κυαμεῦσα[ι δ]ὲ καὶ κατασ[τ]ε͂σαι [τ]ὲν μὲν ν[ῦν] βολὲν [τ]ὸς [ἐπισκ]||[όπ]ος καὶ [τὸν] φρ[ό]ραρχον, τὸ δὲ λοιπὸν τὲν βολὲν καὶ τὸν [φρόρ]|αρχον (the *episkopoi* and the *phrourarch* are to allot and install the present council, in the future the council and the phrourarch."). Balcer (1976) 286, reviewing the evidence, literary and epigraphic, for the *episkopos* and other imperial magistrates), concludes that there was an "extensive distribution of Episkopoi, Archons, Phrourarchoi, and Heralds"; of *episkopoi* he calculates that there was "one per every ten confederate states, or even one per every five."

Episkopos: Some cheap papyrus of Teleas.'[129]

Who is Teleas and what was in his scrap of papyrus? He must have been a well-known figure in Athenian politics in the year *Birds* was staged; earlier in the play he is referred to as "*the* Teleas."[130] He is certainly the same Teleas mocked by other comedians at the same festival, alongside some of Athens' best-known politicians of the day, as a coward, a glutton, a bastard, and an embezzler.[131] He may be the same Teleas son of Telenikos of the deme Pergasai who served that year as secretary to the treasurers of Athena.[132] Or not. In either case, he was identified in antiquity as the Teleas reputed to be above all a flatterer (*kolax*), an insult that could be leveled at the *rhetor* who proposed decrees in the assembly.[133] 'Teleas' is likely meant to refer to the proposer of the decree in accordance

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[129] Ar. *Av.* 1020-24: ποῦ πρόξενοι;/Πε. τίς ὁ Σαρδανάπαλλος ούτοσί;/Επισκ. ἐπίσκοπος ἥκω δεῦρο τῷ κυάμῳ λαχὼν/εἰς τὰς Νεφελοκοκκυγίας./Πε. ἐπίσκοπος;/ἔπεμψε δὲ τίς σε δεῦρο;/Επισκ. φαῦλον βιβλίον/Τελέου τι.

[130] A scholiast seems to have recognized that Aristophanes had a well-known individual in mind; hence Σ*Aves* 167 [Dübner]: πρὸς γὰρ τῇ κιναιδίᾳ καὶ δειλίᾳ καὶ ὀψοφαγίᾳ (καὶ νοσφισμῷ) καὶ πονηρίᾳ ὀνειδίζουσι τὸν Τελέαν ("in addition to sexual deviance, they rebuke Teleas for his cowardice and fish-eating and peculation and wickedness."). On the use of the article to identify someone "specially marked as well-known" see Smyth 1136.

[131] The same Teleas was mocked in Phrynichos' *Recluse* staged at the very same city Dionysia, according toΣ Ar. *Av.* 1136 Dübner: Φρύνιχος Μονοτρόπῳ: μεγάλους πιθήκους οἶδ' ἑτέρους τινὰς λέγειν, / Λυκέαν, Τελέαν, Πείσανδρον, Ἐξηκεστίδην. / ἀνωμάλους εἶπας πιθήκους / ὁ μέν γε δειλὸς, ὁ δὲ κόλαξ, / ὁ δὲ νόθος. ("I know that Lykeas calls certain others great apes: Teleas, Peisander, Exekestides/ - you meant capricious apes, the one, at any rate, a coward, the other a flatterer, the other a bastard."), On Teleas' as a *kolax* see Σ Ar. *Aves* 168 [Dübner]: Πλάτων Σύρφακι ἐπὶ τοῦ Τελέου νοεῖ μὲν ἕτερ', ἕτερα δὲ τῇ γλώττῃ λέγει. (Plato in *Syrphax* about Teleas: 'he thinks one thing, and says another with his tongue'.).

[132] *IG* I³ 331.32-33 (416/5 B.C.): π[α]ρέδο[σ]α[ν τοῖς ταμί]αις, ϝοῖς Τελέας Τελ|[εν]ίκο Περγασε͂θεν ἐγ̣ρ̣αμμάτε[υε (they handed [sc. these things] over to the *tamiai* for whom Teleas son of Telenikos of Pergase served as secretary"). Sommerstein (1987) *ad.loc.* suggests Teleas is "[a] politician who served as secretary of Athena's treasury."

[133] E.g. Pl. *Grg*. 466a: ΠΩΛ. Τί οὖν φῄς; κολακεία δοκεῖ σοι εἶναι ἡ ῥητορική; ΣΩ. Κολακείας μὲν οὖν ἔγωγε εἶπον μόριον. ἀλλ' οὐ μνημονεύεις τηλικοῦτος ὤν, ὦ Πῶλε; τί τάχα δράσεις; ΠΩΛ. Ἆρ' οὖν δοκοῦσί σοι ὡς κόλακες ἐν ταῖς πόλεσι φαῦλοι νομίζεσθαι οἱ ἀγαθοὶ ῥήτορες; (Polos: what do you mean? Does rhetoric seem to you to be

with which the *episkopos* was sent to collect money from Cloudcuckooland.[134] The upshot of the scene, then, is that an Athenian overseer, when asked on what authority he arrived to collect tribute, invokes not a *stele* or a tablet but a papyrus in which a decree was written. And that decree is attributed not to the council or the assembly or the secretary who was responsible for making a record of it, but to the citizen who proposed it.

1.3.2: The Rhetor as Decree-Seller

That decree meant nothing to Pesetairos, who answered the overseer with a slap, upon which a character who identifies himself as a "decree-seller" appears on stage with a bookroll and reads out statutes written in prose, not verse:

> **Decree-Seller**: If a citizen of Cloudcuckooland wrongs an Athenian –
> **Pesetairos**: What evil is this now, the papyrus?
> **Decree-Seller**: I am a decree-seller and I come here to you to sell new statutes.
> **Pesetairos**: Which one?
> **Decree-Seller**: That the citizens of Cloudcuckooland use the same measures and weights and decrees as the Olophyxians.
> **Pesetairos**: You will soon enjoy the same things as the Ototyxians.
> **Decree-Seller**: Hey now, what is the matter with you?
> **Pesetairos**: Will you not carry off your laws? I will show you some sharp laws today.
> **Episkopos**: I summon Peisetairos for hubris in the month Mounichion.

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flattery? Socrates: I said that, as far as I am concerned, it is a branch of flattery. But do you not remember that, being the age you are, Polos? What will you do now? Polos: Do the good rhetors in the cities really seem to you to be esteemed as cheap flatterers?").

[134] So Anderson and Dix (2013) 78: "a scrap of paper apparently bearing the text of a motion made by the Athenian politician Teleas."

> **Pesetairos**: Really, man, are you still here?
> **Decree-Seller**: If anyone drives out the magistrates and does not accept them in accordance with the stele –
> **Pesetairos**: Ah, you ill spirit, are you still here too?
> **Episkopos:** I will destroy you and I shall write you a fine of a thousand drachmas!
> **Pesetairos**: And I will break up your urns![135]

The decree-seller, on one view, must be a comic invention, because "[u]nlike the Inspector (ἐπίσκοπος) of the preceding scene, the Decree-seller does not, as far as we know, represent a real profession known to [Aristophanes'] audience."[136] That there was no such creature in Athens as a decree-seller is certain. The word occurs only here.[137] What beast of Athenian politics is he meant to represent?

It has been suggested that he is a parody of the heralds sent out by the Athenian people to report their decisions to their allies.[138] But heralds were not, so far as we know, famed for their venality. Rhetors were. And the decree-seller looks and quacks like a *rhetor*. Thus, it has been observed that "the caricature indicates a suspicion of self-interest in the creation of [decrees]"[139]; that "he is a demagogue who has made his way

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[135] Ar. *Av.* 1036-53: ΨΗΦΙΣΜΑΤΟΠΩΛΗΣ ἐὰν δ' ὁ Νεφελοκοκκυγιεὺς τὸν Ἀθηναῖον ἀδικῇ— Πε. τουτὶ τί ἐστιν αὖ κακόν, τὸ βυβλίον;/ Ψη. ψηφισματοπώλης εἰμὶ καὶ νόμους νέους/ ἥκω παρ' ὑμᾶς δεῦρο πωλήσων./ Πε. τὸ τί;/ Ψη. χρῆσθαι Νεφελοκοκκυγιᾶς τοῖς αὐτοῖς μέτροισι/ καὶ σταθμοῖσι καὶ ψηφίσμασι καθάπερ Ὀλοφύξιοι./ Πε. σὺ δέ γ' οἷσίπερ ὠτοτύξιοι χρήσει τάχα./ Ψη. οὗτος, τί πάσχεις;/ Πε. οὐκ ἀποίσεις τοὺς νόμους;/ πικροὺς ἐγώ σοι τήμερον δείξω νόμους./ Επισκ. καλοῦμαι Πεισέταιρον ὕβρεως εἰς τὸν Μουνιχιῶνα/ Πε. ἄληθες, οὗτος; ἔτι γὰρ ἐνταῦθ' ἦσθα σύ;/Ψη. ἐὰν δέ τις ἐξελαύνῃ τοὺς ἄρχοντας καὶ μὴ δέχῃ/ ται κατὰ τὴν στήλην— / Πε. οἴμοι κακοδαίμων, καὶ σὺ γὰρ ἐνταῦθ' ἦσθ' ἔτι;/ Επ. ἀπολῶ σε γράψομαί τε μυρίας δραχμάς—/ Πε. ἐγὼ δὲ σοῦ γε τὼ κάδω διασκεδῶ.

[136] Dunbar (1995) 567 *ad loc*.

[137] Ibid.; so too Jackson (1919) 89.

[138] Balcer (1976) 267.

[139] Fletcher (2012) 130.

overseas" who is "not just selling copies of decrees…but proposing to gain their passage"[140]; he "represents one aspect of the class of professional politicians" and "the satire in this scene is aimed at the venality of these politicians and their traffic in legislation."[141]

All of this must be right, since rhetors were regularly accused in the fifth and fourth centuries of taking money to propose decrees.[142] And although it has been suggested that the decree-seller is hawking his wares to Pesetairos and the citizens of Cloudcuckooland for the foundation of their city,[143] all of his new laws sound as though

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[140] Figueira (1998) 208.

[141] Jackson (1919) 90.

[142] Lys. 13.72: καίτοι εἴπερ ἀπέκτεινε Φρύνιχον, ἔδει αὐτὸν ἐν τῇ αὐτῇ στήλῃ, ἵνα περ Θρασύβουλον καὶ Ἀπολλόδωρον, Ἀθηναῖον πεποιημένον <ἐγγεγράφθαι>· μέντοι ὀνόματα διαπράττονται σφῶν αὐτῶν, δόντες ἀργύριον τῷ ῥήτορι, προσγραφῆναι εἰς τὴν στήλην ὡς εὐεργέτας ὄντας. καὶ ὡς ἀληθῆ λέγω, τοῦτο τὸ ψήφισμα ἐλέγξει. ("and yet had he killed Phrynichos, he must needs be on the same stele where Thrasyboulos and Apollodoros have been made Athenians; but they conspired that their own names, by having given money to the proposer, be written onto the stele as being benefactors. That I speak the truth, this decree will prove.") That bribery was involved in the passage of a decree for Apollodoros is suggested in *IG* I³ 102.39-44: περὶ] δὲ το͂ν δοροδοκεσ|[άντον ἐπὶ το͂ι φσεφίσματι], ὃ ἐφσεφ[ί]σθε Ἀπολλ|[οδόροι, τὲν βολὲν βολεῦσ]αι ἐν τε͂ι πρότει ἡέδ|[ραι ἐν το͂ι βολευτερί]οι, καὶ κολάζεν, το͂ν [δ]ορο|[δοκεσάντον καταφσ]εφιζομένεν καὶ ἐς δικασ|[τέριον παραδιδο͂σα]ν, καθότι ἂν δοκε͂ι αὐτε͂[ι]· ("[sc. it is resolved]regarding those who accepted bribes for the decree which was decreed for Apollodoros, that the council decide in its first sitting in the council-house and punish those accepting bribes if they convict them and transfer them to the court, however seems best to it."). For an accusation of a rhetor taking bribes to write motion that benefited foreigners see Aeschin. 1.103-104: Ὑπόλοιπον δ' εἰπεῖν ἐστί μοι ὅτι λαβὼν τρία τάλαντα μισθὸν τὴν γνώμην ταύτην ἔγραψε Δημοσθένης, τάλαντον μὲν ἐκ Χαλκίδος παρὰ Καλλίου, τάλαντον δ' ἐξ Ἐρετρίας παρὰ Κλειτάρχου τοῦ τυράννου, τάλαντον δ' ἐξ Ὠρεοῦ…καὶ τόκον ἤνεγκαν Δημοσθένει τοῦ δωροδοκήματος δραχμὴν τοῦ μηνὸς τῆς μνᾶς, ἕως τὸ κεφάλαιον ἀπέδοσαν ("it remains for me to say that Demosthenes wrote this proposal having taken three talents as pay, a talent from Chalkis from Kalias, a talent from Eritrea from Kleitarchos, and a talent from from Oreus…and they (the Oreites) paid as interest to Demosthenes for his acceptance of the bribe a drachma per mina each month until they paid off the capital.)

[143] Figueira (1998) 208 suggests the the decree-seller is attempting "to sell imperial decrees to the founders of the new city. Essentially, he is hawking a selection of legislation that would establish in general terms the relations between the hegemonic state and any new community that fell, for the first time, under the shadow of its military and political power."

they were written in service of the overseer: they concern what is to happen if a citizen of Cloudcuckooland assaults an Athenian citizen, what weights and measures and decrees are to be used (recall that the overseer has arrived in search of money), and what is to happen if anyone refuses to accept an Athenian magistrate.

The joke, I urge, is not that a decree-seller has shown up to help establish the laws of Cloudcuckooland, but that as soon as an Athenian overseer appears, a comic version of the rhetor is right behind him on the scene ready to make a buck either selling his services to the subjects of the Athenian empire or their subjugators. He is no different from Teleas in that regard, and like Teleas, his decrees are written on bookrolls, but this time they are not a decree proposed and ratified but essentially a proposal.

1.3.3: Book-Rolls in Athenian Legislation

This is comic exaggeration, of course, but close attention to jokes in another scene suggests that it is not quite fiction, that there was nothing unusual about the idea that a proposed decree would be written on papyrus. Two hundred lines later, a herald arrives from Athens to deliver a crown to the founders of Cloudcuckooland and to report that the Athenians "are imitating every aspect of bird life":

> First, right away as soon as they are up from bed
> They would fly at dawn just like us to field (ἐπὶ νομόν),
> And then they would land on the papyri,
> Where they would then graze on decrees.[144]

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[144] Ar. *Av.* 1286-89: πρῶτον μὲν εὐθὺς πάντες ἐξ εὐνῆς ἅμα/ἐπέτονθ' ἕωθεν ὥσπερ ἡμεῖς ἐπὶ νομόν·/κἀκεῖθεν ἂν κατῆραν εἰς τὰ βιβλία·/εἶτ' ἂν ἐνέμοντ' ἐνταῦθα τὰ ψηφίσματα.

Scholars have noted, of course, the wordplay built into these lines. The phrase "to field" could equally be taken to mean the Athenians fly "to law." The "papyri" here simultaneously refer to bookrolls and the reeds that served as food for birds.[145] And, as a scholiast points out, "they were grazing" (ἂν ἐνέμοντ') will mean "they were reading" (ἀνενέμοντο) if one chooses to divide the word as written in the manuscript differently.[146] In other words, in these lines the Athenians, in their habitual consumption of decrees written on papyrus, are likened to birds in the field.

Thus, it has been suggested that the lines allude to copies of decrees publicly displayed in the Agora[147]; "to the place in the city, presumably in the *agora*, where these could be bought"[148]; to the fact that "a private person who wanted a copy of his own (whether for purposes of litigation, or because the decree affected his business or other interest) would normally buy one from a bookseller."[149] But there is elsewhere no evidence of decrees being sold in bookstalls. And this interpretation misses, I urge, the

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[145] Thomas (1992) 13 n.22 is skeptical: "Aristophanes *Birds* 1283ff, evidence for the 'book-sellers' quarter, is hopelessly full of punning (*biblia* puns on books/rinds of papyrus), and *biblia* does not only denote 'books.'"

[146] Σ *Aves* 1289 [Holwerda]: διελόντι δὲ τὸ μέν ἐστιν "<ἂν> ἐνέμοντο", τὸ δὲ "ἀνενέμοντο", τουτέστιν ἀνεγίνωσκον. (by dividing the word it is, on the one hand, 'they would graze,' but also 'they were browsing', i.e. they were reading.") Sommerstein (1987) *ad.loc.* points to "Hdt.1.173.5, where the compound means 'recite'." Dunbar (1995) *ad.loc.* suggests that "since ἀνανέμειν/ἀνανέμεσθαι does not occur in Attic (Hdt.1.173, Epich. fr. 224, Theok. 18.48), more probably Ar[istophanes] wrote "<ἂν> ἐνέμοντο (Kappeyne van de Coppello), suggesting that Athenians drew positive nourishment from decree-rolls." A third option: εἶτ' ἂν ἐνέμοντ' ἐνταῦθα τὰ ψηφίσματα means "there the decrees are recited", since the people elected a secretary each year to do nothing but recite documents to them (*Ath.Pol.* 54.3).

[147] Pébarthe (2005) 43.

[148] Sommerstein (1987) *ad loc*.

[149] ibid.; affirmed by Slater (1996) 100: "if we look beyond the pun we see evidence in this passage for a private trade at Athens in copies of assembly decrees."

joke about the Athenians flying off at dawn "to field" or "to law"; the pun is usually understood to refer to a section of the Agora where copies of decrees were sold,[150] but to go "to law" was another way to say to make law.[151] What we are meant to laugh at, I suggest, is the idea of Athenians flocking to the assembly at dawn to "graze on" (or: read) decrees the way birds flock to fields to eat reeds of papyrus.[152] In other words, this is a joke about the people legislating in the assembly, not a glimpse at citizens shopping for decrees at a bookstall in the Agora. All the more reason to suspect that the texts useful for civic practices were tablets and bookrolls, not the inscriptions or the

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[150] Dunbar (1995) 639 *ad loc.*: "Between the νομός/νόμος word-play and the following reference to ψήφισματα, τὰ βιβλία here clearly refers to rolls containing decrees (glossed in Σ by εἰς τα ψήφισματα; Cf. 1024-5, 1037nn.), or more precisely, to the place in the city, presumably in the *agora*, where these could be bought; cf. 13n. This seems to be our only evidence (ctr. the travelling Decree-seller, 1035-55) for a place in Athens where private citizens could expect to obtain copies in roll-form of decrees they wished or needed to examine, but Athenian enthusiasm for legislation and litigation makes its existence unsurprising; not all the many ψήφισματα could be displayed publicly (1050n), and the copies of all decrees kept in the city's record-office would hardly be accessible to private individuals." Thomas (1992) 13 n.22 is skeptical: «Aristophanes *Birds* 1283ff, evidence for the 'book-sellers' quarter, is hopelessly full of punning (*biblia* puns on books/rinds of papyrus), and *biblia* does not only denote books."

[151] Pl. *Leg.* 874e: Τραύματα δὴ καὶ πηρώσεις ἐκ τραυμάτων τά γε δεύτερα μετὰ θανάτους καὶ ὁ φαυλότατος ἂν τάξειεν τῶν ἐπὶ νόμον τρεπομένων ("even the worst of those turning themselves to law would arrange wounds and maiming from wounds second after homicides."). So also Pl. *Leg.* 719d: Πότερον οὖν ἡμῖν ὁ τεταγμένος ἐπὶ τοῖς νόμοις μηδὲν τοιοῦτον προαγορεύῃ ἐν ἀρχῇ τῶν νόμων, ἀλλ' εὐθὺς ὃ δεῖ ποιεῖν καὶ μὴ φράζῃ τε, καὶ ἐπαπειλήσας τὴν ζημίαν, ἐπ' ἄλλον τρέπηται νόμον, παραμυθίας δὲ καὶ πειθοῦς τοῖς νομοθετουμένοις μηδὲ ἓν προσδιδῷ; (whether, then, the one appointed by us over the laws should announce anything of the sort in the beginning of the laws, but straightaway what it is necessary to do and not he should indicate, and, laying down the threat of the penalty, turn himself to another law, and not even give in addition, to the things legislated, one bit of encouragement and persuasion?"). In a scholion to a later line in the *Birds* it is suggested that "fly" and "turn" are equivalent (Σ Ar. *Aves* [Holwerda] 1373): πέτομαι] τρέπομαι. One wonders whether the audience made a similar connection.

[152] Pébarthe (2005) 43, assembling evidence for information posted in public before assemblies, suggests: "les Athéniens prenaient connaissance des propositions de décret qui allaient être discutées a l'assemblee par ce biais. Aristophône décrit ses concitoyens comme des oiseaux qui chaque matin se jettent sur des biblia et se nourrissent de decrets." But the only references to the posting of legislation beforehand suggest that this was a feature of the legislative procedure established *after* 403/2 B.C. and applied only to the proposal of laws, not, so far as we know, to decrees (see Dem. 20.93-94).

epigraphic habit once thought to be the clearest evidence that Athenians relied heavily on writing to carry out their tasks as citizens.

1.4 Conclusion

The epigraphic habit ramped up in the last few decades of the fifth century for reasons that had nothing to do with democracy.[153] The same decades saw a culture of tablet and book-roll develop in literature, education, and administration. As this chapter has shown, a culture of tablet and book-roll in government also developed in these years. The faintest traces of it appear in the epigraphic record, from which it is clear that tablets and bookrolls formed part of the mundane world of city administration. But the most vivid expression of that nascent culture is found in Aristophanes' *Birds*, in which book-rolls provide fodder for a series of jokes about Athenian politics.

The comedy of these scenes asks us to make a series of assumptions that, taken collectively, put bookrolls at the center of Athenian politics. We are asked to imagine that when Athenians went to the assembly to deliberate, they deliberated about decrees already written on bookrolls (or perhaps cut into single sheets of papyrus). We are asked to imagine that the rhetors who proposed decrees were the authors of those decrees, and that they even incorporated references to prior enactments into their proposals. We are

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[153] Meyer (2013) 454: "especially in the 430s and 420s and then again at the end of the fifth century, the democratic polis for particular historical reasons embraced the preserving, memorializing, and (above all) honor-bestowing capacities of inscribing, and extended them to new genres of document and locations of display."

asked to imagine that an Athenian representative abroad, when asked on what authority he acted, cited the decree by which he was authorized to act on behalf of the people, presumably a copy of the decree registered in an archive at Athens, but one that he attributed to a politician, not to the secretary of the council who was in charge of records inscribed and otherwise, and who would have made the official record of the decree.

If *Birds* were our only evidence for the creation, conservation, and citation of law at Athens, then we would infer, perhaps with some caution given that the evidence is from comedy, that papyri belonged at the heart of Athenian democracy: passing decrees in the assembly. We would envision the rhetor not only as a speaker but as an author of the decrees that served as the basic instrument of popular rule. And we would think of decrees not as simple records of what was decided but as texts that were intimately wrapped up in other texts, such that one decree could only be understood in light of another.

Such a conclusion, however, would be at odds with current consensus about how decrees were created, conserved, and consulted. It is thought that tablets were for writing and papyrus for reading,[154] that it was not the rhetor but the secretary ("a dangerously powerful figure")[155] who did the heavy lifting of drafting the official

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[154] Degni (1992) 25-27.

[155] Thomas (2003) 231, citing Ruzé (1988) 82-94.

decree,[156] that decrees were recorded on stone if such was stipulated or on wooden tablets but more rarely on papyrus,[157] and that records (inscribed or otherwise) were consulted far more rarely than moderns would expect.[158] And it must be admitted that the Athenians' papyrological habit is presented in the *Birds*, rather confusingly, as both a return to old ways and an innovation.[159] Thus, the following chapter will examine how far we can make out the edges of historical reality in what are, after all, scenes from a comedy.

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[156] Guarducci (1969) 9: "[p]ersonaggio molto importante del consiglio era il segretario (γραμματεύς), il quale redigeva i protocolli delle sedute, stendeva il testo dei decreti, si occupava sia della loro deposizione nell'archivio sia, eventualmente, della loro publicazzione." A fuller array of scholarship outlined below ch.2 nn.12-20.

[157] Thomas (1992) 83 :"[w]hitened boards (*leukomata*) were common, used traditionally in Athen for proposals of decrees to go before the assembly; they may also have been the tablets which eventually went into the state archive." The posting of proposals on wooden tablets is only attested for the proposal of laws from 403/2 B.C. onward (for which see the decree of Teisamenos cited at Andocides 1.83). I am convinced by Canevaro and Harris (2012) that the document cited there is a creation of ancient editors and that its text is not to be taken as genuine.

[158] Thomas (1989) 68: "[s]till less is there evidence that ordinary Athenians, or even the rich Athenians of the court cases, consulted the records in the Metroon. We can only assume that, just as orators could cite decrees which the clerk found and read out, one could consult the records when it was necessary for administration and government. But that may not have been as necessary as we would think." Likewise (81): "Public inscriptions were consulted: but our evidence suggests that apart from the lists of public debts, traitors or benfactors consultation was rare." On the archive of lead-tablets that served as a cavalry register (Kroll 1977: 83-120), Thomas (1989) 83 suggests that "the nature of the documents, their content, or their context amidst much oral transmission meant that they did not actually need to be consulted. I suspect the same was true of other ancient records, an expression of the incipient nature of classical record keeping."

[159] Aristophanes Birds 1280-85 πρὶν μὲν γὰρ οἰκίσαι σε τήνδε τὴν πόλιν, / ἐλακωνομάνουν ἅπαντες ἄνθρωποι τότε, /ἐκόμων, ἐπείνων, ἐρρύπων, ἐσωκράτων, / σκυτάλι' ἐφόρουν, νυνὶ δ' ὑποστρέψαντες αὖ / ὀρνιθομανοῦσι, πάντα δ' ὑπὸ τῆς ἡδονῆς / ποιοῦσιν ἅπερ ὄρνιθες ἐκμιμούμενοι. ("for before you founded this city here, back then all mankind used to go crazy for Lakonian ways, wearing their hair long, fasting, rubbing dust on themselves, acting like Socrates, bearing skutalia; but now, returning again they are crazy for birds, they do everything, under the urge of pleasure, by imitating what birds do."). Dunbar *ad loc* notes that ὑποστρέψαντες αὖ "turns out to be a joke, for the herald throughout his report describe *present* Athenian practices."

Chapter 2. Drafting Decrees in Democratic Athens

The Athenian assembly met four times a month on a hill near the center of the city, where upwards of six thousand citizens gathered to have elections, to hold trials, and above all to pass the decrees through which they administered their affairs.[1] The business of passing decrees began when a herald read a preliminary decree ratified by the council and asked: who wishes to address the assembly?[2] "At that point,"

> any citizen in attendance could get up to speak to the issue – advocating a negative vote, revisions to the Council's proposal, or a completely new proposal – for as long as his fellow citizens were willing to listen to him. When the Assemblymen tired of listening to a speaker, they would shout him down. After everyone willing to undergo this gauntlet had had his say, the president conducted a vote, usually by show of hands. A simple majority determined the issue, and the president turned to the next item. In this manner, the Athenians conducted all important business, including foreign policy and taxation. The language of many preserved decrees demonstrates that the debate in the assembly had substantial effect; frequently the actual decree had been proposed at the Assembly by a volunteer speaker.[3]

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[1] The number of meetings per month: Hansen (2007) 45. The physical meeting space: Thompson (1982) 133-147. The oligarchs who took over the city in 411 B.C. claimed (Th. 8.72) that no more than 5000 citizens ever attended the assembly, but "that number is tendentiously low and must be used with caution" (Hansen 1991: 130). The quorum of 6000 for particular procedures is documented by Hansen (1991) ibid. For the three basic competencies of the assembly and the primacy of passing decrees see Hansen (1991) 155-160.

[2] Hansen (1987) 91; Osborne (2010) 64. The herald used to ask, in accordance with a law of Solon, according to Aeschines 1.23: τίς ἀγορεύειν βούλεται τῶν ὑπὲρ πεντήκοντα ἔτη γεγονότων ("who wishes to speak of those who are beyond fifty years old?"). But apart from Aeschines, Athenian authors from the 420s onward do not mention an age-requirment. Kapparis (1998) 258 suggests: "[w]hen exactly the simplified formula replaced the older, fuller form cannot be exactly specified, but it seems clear that 462 is the latest probably date of this change, while it is not unlikely that this law had ceased to be strictly enforced even before that date. Aeschines refers not to a law which was still in practice only shortly before his time, but to a very old Solonian text which had been out of use for over a century."

[3] Ober (1993) 483, citing Hansen (1987) and Ober (1989).

Many scholars agree with the idea that decrees were shaped by speech in the assembly, with some even going so far as to suggest that decrees are "bare bones summaries of speeches delivered by Athenian politicians."[4] Thus, they widely agree that decrees reflected "the policies of individual men,"[5] that the speakers who proposed them were "the architects of the political framework and the makers of policy,"[6] and, since the decree was the written instrument of popular rule, that "[p]ublic policy was forged through persuasive speeches."[7] Yet scholars have also observed that surviving decrees bear little resemblance to surviving assembly speeches,[8] and that in those speeches "discussion of substantive proposals did not dominate."[9] How is that possible, if the

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[4] Canfora (1990) 197: "quando ad esempio is discorsi avevano preso corpo in decreti, e i decreti stati approvati; nella stesura epigrafica del decreto rimaneva, sia pure in drastico compendio, traccia per sommi capi degli argomenti svolti dall'oratore; già Platone nel *Fedro* prende in considerazione questo dato e vi scherza zu (257e-258); è plausibile che Tucidide abbia fatto ricorso a questi <<promemoria>>, a questi scheletrici sommari dei discorsi pronunciati dai politici ateniesi."

[5] Rhodes (1972) 81.

[6] Finley (1962) 23.

[7] Wohl (2009) 162, following Ober (1989) 104-155. Ober (1989) 79: "all major matters of state policy were decided on the basis of speeches delivered in the assembly." Sinclair (1988) 100 had previously suggested that "[t]he final decision in the assembly depended, *as did the processes of formulating policies* (emphasis mine), on persuasion."

[8] Low (2013) 74, commenting on *IG* I^3 110 (a decree honoring Oiniades of Skiathos because he "is a good man with respect to the Athenian people") observes that "decrees are presented as a record of words spoken in the assembly, and the inscription [sc. of a decree] must reflect, to some extent, the shape of the assembly debate," but, on her view, "it is clear that a huge amount must have been omitted from this record. Above all what is missing is any sense of dispute or disagreement, or even any material which would allow us to reconstruct what disagreement would have looked liked…[i]n order to justify the award, [the proposer] would surely have had to provide more details of Oiniades' status and services than those recorded [in the inscription]; the bland assertion that Oiniades is a 'good man' is hardly persuasive."

[9] Ober (1989) 124.

policies written in decrees were effected by debate, architected by speakers, forged in speech?

Scholars have long thought that much of the paperwork of Athenian government was done by clerks attached to various magistracies and institutions, and it has long been a matter of consensus that a city official, the secretary of the council, did the heavy lifting when it came to drafting the official texts of decrees.[10] Thus, early scholars of Athenian epigraphy agreed that proposers either submitted their proposals in writing or dictated them to the secretary, that the secretary kept minutes of council and assembly meetings, and that he drew on these to compose decrees of the people.[11] None, however, could agree on the extent to which these minutes duplicated or departed from what particular citizens proposed. Some thought that the secretary deviated from his minutes where he saw fit (though perhaps without departing from the general sense of what individual citizens proposed).[12] Others rejected the possibility that decrees reproduced

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[10] Thus Davies (2003) 323 notes that "much (but not all) public and private business could be carried on by non-literates"; ostracism, in his view, assumed that much of the citizen body could write, but where public documents were concerned (324 n.3) "a literate assembly secretary could do most of what was needed."

[11] The hypothesis appears to originate with Hartel (1879) 269-294. Hartel took no explicit position, though it seemed clear to Swoboda (1890) 3 that he "lässt gelegentlich an verschiedenen Stellen als seine Meinung deutlich erkennen, dass die Psephismen nichts Anderes seien, als Auszüge aus den Protokollen des Rathes und der Ekklesia." The idea was quickly picked up by others. Kirchhoff (1880) 834-854 assumes throughout that decrees derived from minutes kept by the secretary, and Ferguson (1915) 396 stated that "[i]n a state organized like Athens the official who kept the minutes of the boule and ecclesia wrote them up in βιβλία or γραμματεῖα for permanent record, transcribed them on stone if ordered to do so."

[12] Miller (1885) 9: "quaecumque et in senatu et in comitiis pertractabantur in commentarios referebantur. in illis autem commentariis infuerint necesse est singulae quae ad populum senatumve venerant rogationes simulque ex eis perspici potuisse sumendum est quid senatui populove de singulis rogationibus placuisset.

minutes in any detail, on the grounds that the language of decrees is so standardized that it would be unthinkable if they were not specially drafted by the secretary.[13]

Despite the lack of consensus, the merits of either view were never examined. Instead, by the middle of the twentieth century the authors of handbooks to Greek epigraphy simply stated that the secretary kept minutes and drafted decrees,[14] and the idea has since hardened into widespread scholarly consensus.[15] Thus, we read that "the

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quae cum ita essent, scribis exempla rogationum a latoribus ipsis aut in commentarios addenda aut ad verbum in eos transcribenda aut summatim in eis comprehenda erant. qua ex tribus his rationibus quas sequi licuit singuli scribae usi sint cum dici nequeat, tamen id consentaneum est, scribae non licuisse graviora quae ad sensum ipsius rogationis pertinebant mutare aut de suo addere." See also Penndorf (1897) 137-138 (nearly identical, without citing Miller). Meyer (1899) 117 thought that "wurde ein attischer Volksbeschluss in Stein gehauen, so musste er genau dem Protokoll entsprechen, das der Schreiber der Prytanie aufgenommen hatte, und es durfte kein Wort an diesem geändert werden."

[13] Swoboda (1890) 3, who was skeptical of the notion that decrees closely reflected the minutes, nevertheless agreed that "[n]un ist ja gewiss nicht zu bestreiten, vielmehr selbstverständlich, dass die Psephismen, die in Stein gehauen aufgestellt wurden, in Letzter Linie auf die Protokolle der beschliessenden Körperschaften zurückgehen." But on the next page he suggests that although decrees "sind von dem Standpunkte des Antrages oder vielmehr des Antragstellers aus concipiert," "dass sich ein so ausgesprägter Stil ohne die nöthige Unterlage unmöglich hätte fixieren können, und diese gaben die blosse Protokolle von Rathe und Volksversammlung nicht," following Gilbert (1879) 228-231, who thought that the basis of every decree was the preliminary decree of the council and the modifications suggested and approved in the assembly, which the secretary used to draft the official document.

[14] Thus Klaffenbach (1957) 69-70 suggested (of decrees in the archive) "daß es sich bereits bei diesen [sc. den Originalurkunden] um ein auf Grund der Verhandlungsprotokolle von dem verantwortlichen Schreiber angefertiges Dokument handelte." Though Klaffenbach did not describe the process envisaged, Guarducci (1969) 9 has offered a brief account of the production of the text: "[p]ersonaggio molto importante del consiglio era il segretario (γραμματεύς), il quale redigeva i protocolli delle sedute, stendeva il testo dei decreti, si occupava sia della loro deposizione nell'archivio sia, eventualmente, della loro publicazzione."

[15] Sickinger (1994) 294-95: "Proposed decrees, and probably laws as well, were submitted in writing by their proposers, and their texts were recorded in the minutes kept by the chief secretary of the state (or one of his assistants) of those sessions of the Boule, the assembly, and/or the nomothetai at which proposals were discussed and ratified. These minutes formed the basis of, if they did not actually constitute, most of the records preserved in the Metroon." Hedrick (2000) 645 worries that the description of the records kept by the secretary as minutes "is ill-advised."

prescripts of decrees are to be interpreted as a kind of running headline from the secretary's minute-book,"[16] that these minutes "provided the basis of the archival texts of decrees,"[17] that the secretary "did much of the actual drafting"[18] and was "crucial in framing the resultant *psephismata*."[19]

We know little about the duties of the secretary,[20] but there is no evidence that he kept minutes or wrote decrees.[21] The bureaucratic process wherein a citizen made a proposal, which the secretary recorded in his minutes and from which he produced (after the fact) a text that would be called a decree of the people is, I urge, a modern fiction. Athenians were accustomed to say that the citizen who proposed a decree wrote it, in the council[22] or assembly,[23] for the simple reason, I argue here, that he (not the

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[16] Rhodes (1972) 135.

[17] Sickinger (1999) 155.

[18] Burstein (1979) 42.

[19] Osborne (2012) 42.

[20] Ferguson (1898) 7 points out that from *AthPol*, our only source for what the secretaries of the city did, we learn "that there were three secretaries of the senate and assembly; we do not learn, however, the distinguishing title of each. The γραμματεὺς κατὰ πρυτανείαν is, indeed, designated pretty clearly, and his duties would seemingly make his identification easy; but his name is not the only one connected with the ψηφίσματα"; *IG* II² 223 C.4 mentions a secretary ἐπὶ τὰ ψηφίσματα but we have no idea what he did.

[21] De Laix (1973) 168 points out that "the only 'evidence' for the existence of recorded minutes, therefore, is inferential. *A priori* one must assume that the grammateus kept some account of each day's transactions." He does not say why.

[22] Aeschin. 2.19: οὕτω δ' ἦν πρόθυμος εἰς τὰ πράγματα ὥστε ἐν τῇ βουλῇ γράφει, ἵνα ἀζήμιος ὢν ἡμῖν ὁ Ἀριστόδημος συμπρεσβεύῃ, ἑλέσθαι πρέσβεις ἐπὶ τὰς πόλεις, ἐν αἷς ἔδει τὸν Ἀριστόδημον ἀγωνίζεσθαι, οἵτινες ὑπὲρ αὐτοῦ παραιτήσονται τὰς ζημίας ("so eager was he for this business that he writes in the council, in order that Aristodemos serve as envoy with us without being subject to a fine, "to choose ambassadors to the cities in which Aristodemos was required to perform, whichever ones will demand fines on his behalf.").

[23] Din. 1.89: ἔγραψεν αὐτὸς ἐν τῷ δήμῳ Δημοσθένης, ὡς δηλονότι δικαίου τοῦ πράγματος ὄντος, φυλάττειν Ἀλεξάνδρῳ τὰ εἰς τὴν Ἀττικὴν ἀφικόμενα μεθ' Ἁρπάλου χρήματα ("Demosthenes himself wrote in the assembly to keepsafe for Alexander the monies arriving in Attica with Harpalos").

secretary) had. If right, then perhaps decrees and speeches bear little resemblance to each other because Athenians reserved one kind of talk for giving speeches and another for drafting decrees.

2.1: Prior Consideration by the Council

The path to a decree began in the council (*boule*), for "[i]t was a basic principle in Athens, that no decree might be enacted by the ecclesia without prior consideration by the boule."[24] Prior consideration was initiated by the *prytaneis*, a subcommittee of councillors who prescribed when the council and assembly met and what they were to deliberate about.[25] The council was under no obligation to issue a decree.[26] But if it did, then the

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[24] Rhodes (1972) 52. The only explicit statement of the principle is *AthPol* 45.4: [sc. the council] προβουλεύει δ' εἰς τὸν δῆμον, καὶ οὐκ ἔξεστιν οὐδὲν ἀπροβούλευτον οὐδ' ὅ τι ἂν μὴ προγράψωσιν οἱ πρυτάνεις ψηφίσασθαι τῷ δήμῳ ("[the council] presents preliminary resolutions to the people, and it is not possible for anything to be ratified by the people which is not the subject of a preliminary resolution and which the *prytaneis* have not prescribed"). While there is no explicit statement of the rule from the fifth century, such would be compatible with *IG* I^3 78a.59-51 (c.422 B.C.): περὶ δὲ τõ ἐλαίο ἀπαρχẽς χσυγγράφ|σας Λάμπον ἐπιδειχσάτο τẽι βολẽι ἐπὶ τẽς ἐνάτες πρυτανείας· | *h*ε δὲ βολὲ ἐς τὸν δẽμον ἐχσενενκέτο ἐπάναγκες ("concerning the first-fruit offerings of oil let Lampon, having drawn up a draft, show it to the council in the ninth prytany, and let the council issue it forthwith to the assembly.").

[25] Osborne (2012) 35 suggests that "it is unlikely that the full texts [sc. of preliminary decrees] were set out in the *programma*." In fact the *programma* cannot have contained the texts of the preliminary decrees, because it was drafted before the council met. According to *AthPol* 43.3, the *prytaneis* "prescribe what business the council must transact, both what is to be done on each day and where it is to sit" (ὅσα δεῖ χρηματίζειν τὴν βουλήν, καὶ ὅ τι ἐν ἑκάστῃ τῇ ἡμέρᾳ καὶ ὅπου καθίζειν, οὗτοι προγράφουσι). The *AthPol* adds further (43.4): προγράφουσι δὲ καὶ τὰς ἐκκλησίας οὗτοι. This seems to mean only that the *prytaneis* prescribe the date an assembly will be held. Compare *AthPol* 59.1: οἱ δὲ θεσμοθέται πρῶτον μὲν τοῦ προγράψαι τὰ δικαστήριά εἰσι κύριοι, τίσιν ἡμέραις δεῖ δικάζειν ("the Thesmothetai are, first of all, in charge of publishing on what days the courts are to try cases").

[26] Negative answers were unlikely to have been recorded in writing; that no decree was passed when the council answered in the negative is clear enough from Xenophon. In 371 B.C., the Thebans, after defeating the Spartans at Leuktra, sent a messenger to Athens to announce their victory at and to encourage the Athenians to send an expedition to help them finally crush the Spartans, but although the messenger found the council in session on the Akropolis, the council was bothered by his request and did not pass a decree (X. *HG* 6.4.20): οὔτε γὰρ ἐπὶ ξένια τὸν κήρυκα ἐκάλεσαν, περί τε τῆς βοηθείας οὐδὲν ἀπεκρίναντο. καὶ Ἀθήνηθεν

resulting decree of the council could be forwarded as a preliminary resolution to the assembly, and thus every decree of the people was, in principle, preceded by a decree of the council drafted by a councillor.[27]

That preliminary resolution could be ratified verbatim by the people. In fact, perhaps half of all surviving decrees of the people contain formulae like "be it resolved by the council" and "float the motion of the council to the people that it is resolved by the council,"[28] or an amendment that begins "everything else exactly as was resolved by the

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μὲν οὕτως ἀπῆλθεν ὁ κῆρυξ ("for they did not invite the herald to dinner, and they did not answer about the matter of assistance, and the herald thus went away from Athens."). The council's answer would have been set down in a decree, as in *IG* II² 141.4-9: **ἀποκρίνασθαι τῶι ἥκοντι** π|αρὰ τοῦ Σιδωνίων βασιλέως ὅτι καὶ | ἐς τὸν λοιπὸν χρόνον ὢν ἀνὴρ ἀγαθ|ὸς περὶ τὸν δῆμον τὸν Ἀθηναίων οὐ|κ ἔστι ὅτι ἀτυχήσει παρὰ Ἀθηναίω|ν ὧν ἂν δέηται ("answer the one arrived from the king of Sidonians that in the future as well, as he is a good man as regards the Athenian people, that it will not be the case that he will fail to get whatever he asks from the Athenians."). The invitation to dinner would be made in the same decree, as in *IG* II² 141.25-28: **καλέσα|ι δὲ καὶ ἐπὶ ξένια τὸν ἥκοντα** παρὰ | τοῦ Σιδωνίων βασιλέως ἐς τὸ πρυτα|νεῖον ἐς αὔριον ("and invite him who is arrived from the king of Sidonians to the prytaneion tomorrow for dinner").

[27] Thus [Dem.] 59.4: ἔγραψε ψήφισμα ἐν τῇ βουλῇ Ἀπολλόδωρος βουλεύων καὶ ἐξήνεγκε προβούλευμα εἰς τὸν δῆμον λέγον διαχειροτονῆσαι τὸν δῆμον εἴτε δοκεῖ τὰ περιόντα χρήματα τῆς διοικήσεως στρατιωτικὰ εἶναι εἴτε θεωρικά ("Apollodoros wrote a decree in the council when he was serving as councillor and he brought it as a preliminary decree to the assembly proposing that the people vote whether it seems best that the remaining money of the administration be stratiotic or theoric"). It is clear from inscribed decrees too that a preliminary resolution was simply a decree of the council forwarded for the assembly to consider. Thus *IG* II² 330.23-25: ἀναγράψαι δ||ὲ τόδε τὸ ψήφισμα τὸν γραμμα[τέα τὸν κατὰ πρυτανείαν ἐν σ||τήληι λιθίνηι καὶ τὸ τῆς βουλ[ῆς ὃ εἶπε Ἀγασίας ("inscribe this decree on a stone stele and that of the council which Hagasias proposed."). The decree of Hagasias, recorded in lines 29-46, must have been a preliminary decree, for in lines 43-46 we read his proposal: τοὺς προέδρους οἳ ἂν λ[άχωσι προεδρεύειν εἰς τὴν πρώτ]||[ην] ἐκκλησίαν, χρηματίσαι π[ερὶ αὐτοῦ, γηώμην δὲ ξυμβάλλεσθ]||[αι] τῆς βουλῆς εἰς τὸν δῆμο[ν ὅτι δοκεῖ τῆι βουλῆι, εἶναι αὐτῶ]||[ι ε]ὑρέσθαι παρὰ τοῦ δήμου ἀγ[αθὸν ὅτι ἂν δύνηται] ("that the *proedroi* whoever happen to serve as *proedroi* at the next meeting introduce the matter concerning him, and that the motion of the council be floated to the people that it seems best to the council that it be possible for him to find from the people whatever good he can.").

[28] Decrees that appear to be simple ratifications of decrees previously passed by the council typically contain an enactment formula indicating that the decree was "resolved by the council and assembly" and either a motion-formula and/or an amendment-formula that indicates the decree originated in the assembly. For the former, see *IG* II² 107.7-12*:* [ἔδο]ξεν τῆι βουλῆι καὶ τῶι δήμωι· | [Διό]φ[αντος ε]ἶπεν· [π]ερὶ ὧν οἱ πρέσβεις οἱ ἐχ Λέσβου ἥκοντ[ες] λέ|[γο]υσιν, [ἐψηφ]ίσθαι τῆι βουλῆι προσαγαγεῖν αὐτοὺς εἰς τὸν δῆ|[μον τοὺς] προέδρους οἳ

council,"[29] and these decrees must have been ratified by the assembly more or less as passed by the council.[30] But the other half, particularly those decrees containing formulae like "be it resolved by the assembly,[31] are thought to show that "alternate motions could be proposed in the ecclesia" or that "a motion might finally be carried in amended form."[32]

Scholars, however, disagree on the origin of these "alternates." On one view, any eligible citizen could propose from the floor of the assembly a decree that had not been

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ἂν λάχωσιν προεδρεύειν εἰς τὴν πρώ[τη]||[ν ἐ]κκλησίαν, γνώμην δὲ ξυββάλλεσθαι τῆς βουλῆς εἰς [τὸν] δ[ῆμο]||[ν ὅ]τι δοκῆι τῆι βουλῆι ("Resolved by the council and the assembly. Diophantos proposed: concerning what the ambassadors who arrive from Lesbos say be it voted by the council that the chairmen who are allotted to chair at the next meeting introduce them to the people, and that the motion of the council be floated to the people that it seems best to the council…"). The motion-formula does not appear in decrees before 403/2 B.C., but it is generally thought that any decree with an amendment-formula that runs "everything else exactly as the council" was at least closely based on a decree previously passed by the council.

[29] *IG* II² 80.8-14: [Πύρρανδ]ρος ε[ἶ]πε· τὰ μὲν ἄλλα | [καθάπερ] τῆι βολῆι· ἔναι δὲ καὶ γῆ[ς] | [ἔγκτησι]ν καὶ οἰκίας Ἐπιχάρει | [αὐτῶι καὶ] ἐκγόνοις καὶ πρόσοδον | [πρὸς τὴν β]ολὴν καὶ τὸν δῆμον, | [ἐάν το δέων]ται· οἱ δὲ πρυτάνεις | [οἱ ἀεὶ πρυτα]νεύοντες προσαγόντων ("Pyrrhandros proposed: the rest exactly as [was resolved by] the council, but that there be for Epichares and his proxeny the right to acquisition of land and domicile and the right to approach the council and assembly if they request, and let the *prytaneis* who happen to be serving as *prytaneis* at the time introduce them.").

[30] Rhodes (1972) 79 and Hansen (1984) 150.

[31] Thus *IG* II² 28.3-8 begins: Πολί|αγρος εἶπεν· ἐπαι[ν]έσαι μὲν τὸν δῆμον τὸγ Κλαζομενί|ων ὅτι πρόθυμός ἐσ[τι]ν ἐς τὴμ πόλιν τὴν Ἀθηναίων κα[ὶ] | νῦγ καὶ ἐν τῶι πρόσθε[ν] χρόνωι· περὶ δὲ ὧλ λέγοσι, **δε[δ]|όχθαι τῶι δήμωι (**"Poliagros proposed: to praise, on the one hand, the Klazomenian people because it is devoted to the city of the Athenians both now and in the time before, and regarding what they say, be it resolved by the assembly" [sc. that the Klazomenians be granted certain privileges].). Rhodes (1972), in searching for the origins of Athenian decrees based on their formulas, concluded (78) that "it seems in general to be true that the difference between the two formulaic patterns corresponds to a difference between two types of enactment, that from the fourth century the Athenians chose to differentiate verbatim ratifications of a probouleuma from other enactments of the demos." Those decrees which are thought to have been proposed and ratified in the assembly alone typically contain only the enactment-formula "resolved by the people," and, after 403/2 B.C., "be it resolved by the assembly" or "be it voted by the assembly."

[32] Rhodes (1972) 63.

screened by the council, provided that it fell under the scope of the agenda established by the *prytaneis* and the decree of the council that opened deliberations in the assembly.[33] On another, the principle of prior consideration meant "that all proposals for decrees had to be submitted to the *Boule* and that they could only reach the Assembly for debate and decision through the vehicle of a *probouleuma* prepared by the *Boule*."[34] On this construction of prior consideration, any decree, even one not obviously based on a preliminary decree, still had to be composed and put forward in the council; but if it was not selected as the preliminary decree of the council, the proposer could resubmit it at the assembly, where the secretary, "in consultation with the proposer, must have had responsibility for framing the text."[35] If right, then it was possible to propose an alternative decree on the floor of the assembly, but not to compose it there.

Certain decrees would undermine the principle of prior consideration if they were drafted as preliminary decrees in the council and only then brought before the assembly, but make perfect sense if they were proposed anew on the floor of the assembly (*IG* II^2 360.46-50):

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[33] Rhodes (1972) 79-80. Hansen (1987) 59 suggests that "the *rhetor* could move his proposal in the *ekklesia* either in response to an open *probouleuma* or as an alternative to a specific *probouleuma* submitted by the *boule*."

[34] Osborne (2012) 34. He is not the first to propose this interpretation of the law. Sinclair (1988) 83-84: "the assembly could not vote on a decree unless it had been previously discussed by the council and placed on the agenda by the prytaneis."

[35] Osborne (2012) 34-42.

> Telemachos son of Theangelos an Acharnian proposed: that it be voted by the people that the council, having engaged in preliminary deliberations, refer to the next assembly concerning Herakleides as to how he will find whatever good he can from the Athenian people.[36]

If Telemachos had been required by law to draft this proposal in the council, then it would follow that on some matters the council proposed that the assembly vote that the council issue a preliminary decree so that the assembly could consider some matter. That seems almost unthinkable.[37]

It also runs contrary to the way Athenians described, to each other, the steps of decision-making peculiar to their polity: first the *prytaneis* wrote notice of what the council was to deliberate about; only then was the council to deliberate and, if it chose, to issue a preliminary decree; and only then were deliberations in the assembly to begin.[38] Now, there is no evidence that it was illegal to propose in the assembly that the

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[36] Τηλέμαχος Θεαγγέλου Ἀχαρ εἶπεν· ἐψηφίσθαι τῶι | δήμωι τὴν βουλὴν προβουλεύσασαν ἐξενεγκεῖν ε|ἰς τὴν πρώτην ἐκκλησίαν περὶ Ἡρακλείδου καθότ|ι εὑρήσεται ἄν τι δύνηται ἀγαθὸν παρὰ τοῦ δήμου | τοῦ Ἀθηναίων.

[37] In fact, among modern scholars Hartel alone argued that since the assembly was sovereign every prior discussion of the council had to be authorized by the assembly, a view which "depended on a perverse interpretation of the formula in decree prescripts and was adequately refuted by Miller" (Rhodes 1972: 53).

[38] Dem. 19.185: ὑμῖν δὲ πρῶτον μὲν τὴν βουλὴν ἀκοῦσαι περὶ πάντων καὶ προβουλεῦσαι δεῖ, καὶ τοῦθ᾽ ὅταν ᾖ κήρυξι καὶ πρεσβείαις προγεγραμμένον, οὐκ ἀεί: εἶτ᾽ ἐκκλησίαν ποιῆσαι, καὶ ταύτην ὅταν ἐκ τῶν νόμων καθήκῃ. εἶτα κρατῆσαι καὶ περιγενέσθαι δεῖ τοὺς τὰ βέλτιστα λέγοντας τῶν ἢ δι᾽ ἄγνοιαν ἢ διὰ μοχθηρίαν ἀντιλεγόντων. Note that he is here speaking specifically about the process when envoys and heralds from foreign polities arrive in Athen: "With you, it is **first** necessary that the council hear about everything and make a preliminary decision, and this whenever it has been prescribed for herald and embassies, not at any given time, and **then** to form an assembly, and this whenever it is obligatory in accordance with the laws, and **then** it is necessary that those speaking the best hold sway and prevail over those speaking in opposition whether through ignorance or malice." Demosthenes is speaking specifically of foreign policy, but the same timeline is assumed in domestic matters (*IG* II² 120.25-32): το[ὺ]ς πρυτάνε[ι]ς προγράψαι περὶ τούτων [ἐ]ν [βουλε|υ]τηρίωι, ὅτ[α]ν οἷόν τε ἦι, ἀκούσασαν [δὲ τὴν] βου[λὴ]ν [ἀ]ντα|[ν]αγιγνωσκομένων τ[ῶν ἀναγεγραμμένων(?) ἐν τῆι] χαλκο[θ|ήκ]ει πρὸς τὰ ἀναγεγρ[αμμένα ἐν ταῖς στήλαις ἐ]άν τ[ινο|ς] δέηι προβουλεύσασ[αν ἐξενεγκεῖν εἰς τὸν δ]ῆμον, ὅ[πως | ἂ]ν ἀκούσας ὁ δῆμος βου[λεύσηται πῶς πληρ]ωθήσετ[αι τὰ | ἐ]λλείποντα, ὅ[π]ω[ς] ἀ[ν] ἔχ[ηι κάλλιστα καὶ ε]ὐσεβέστ[ατα τ|ὰ π]ρὸς τὴν θεόν. ("[be it resolved] that

council initiate proceedings at a later date on another matter not covered by the agenda of the *prytaneis* or the preliminary decree of the council. In other cities it was established by law that if the people wished to bestow honors on a foreign benefactor, it could pass a decree ordering the council to issue a preliminary decree to that end.[39] And while there is no explicit evidence of a similar law at Athens in the fourth century, it was assumed that the people was empowered to grant honors to whomever it wished.[40] On the simplest reading, Telemachos first aired his proposal on the floor of the assembly, and in that proposal he acknowledged the people's right to honor whomever it wished and the council's prerogative to have the first say.

A decree, then, could be proposed in the assembly even if its text had not been first screened by the council, and thus, it must have been possible for a decree to be drafted on the floor of the assembly. Indeed, if every decree had to be drafted in the

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the *prytaneis* publish notice about these matters in the council-house, whenever it is possible, that the council, hearing the things registered in the Chalkotheke read alongside the things inscribed on the stelai, if anything is missing make a preliminary decision and issue it to the assembly, so that the people, having heard, make a decision as to how to fill up what is left out, so that the matter be as fine and as reverent as possible with repect to the god.").

[39] *SEG* XIII 458.19-23 (Thasos 2nd/1st century B.C.): ἐν δὲ τῶι νόμωι | γέγραπται, ἐάν τινα βούληται ὁ δῆμος | τιμῆσαι προξενίαι καὶ προστάξηι τῆι βουλῆ | ψηφισάμενος ἐγ κυρίαι ἐκκλησίᾳ, τὴν βουλὴν | προβουλεύειν· ("and in the law it has been written, if the people wishes to honor anyone with proxeny and orders the council, having decreed in a sovereign assembly, that the council is to engage in preliminary deliberations…").

[40] Thus when Demosthenes prosecuted Leptines in 355 B.C. for proposing an illegal law, he argued (among other things) that Leptines revealed, by writing in his law that it be impossible to grant immunity from taxes in the future, that (Dem. 20.2) "he thought the people unworthy of having the authority to grant [sc. immunity] to whomever it wishes" (τὸν δῆμον ἀνάξιον ἡγεῖτο κύριον εἶναι τοῦ δοῦναι, ἐάν τῳ βούληται).

council, then what can Athenians have meant when they referred to decrees written in the assembly? For example, in 342 B.C., after Philip II of Macedon complained to the Athenians that his ambassadors never raised the possibility of amending the Peace of Philokrates, the *rhetor* Hegesippos mounted the platform during an assembly and reminded his fellow citizens:

> In the same meeting of the assembly the ambassadors who came to you from Philip made their speeches and the decree was written, such that it was not possible for you, immediately after the speeches were delivered and the decree was read out, to have ratified a motion that misrepresented them.[41]

Hegesippos wrote the decree himself.[42] And when he says that "the decree was written in the same assembly," he cannot have meant that he wrote it in the council and then had to resubmit it in the assembly after redrafting it in consultation with the secretary. The ambassadors addressed the people on behalf of Philip, and in response to what they said Hegesippos drafted, right there on the floor of the assembly, the decree that

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[41] [Dem.] 7.19: ἐν γὰρ τῇ αὐτῇ ἐκκλησίᾳ καὶ οἱ πρέσβεις ὑμῖν οἱ παρ' ἐκείνου ἥκοντες διελέγοντο καὶ τὸ ψήφισμα ἐγράφη. ὥστ' οὐχ οἷόν τε, παραχρῆμα τῶν λόγων εἰρημένων καὶ εὐθὺς τοῦ ψηφίσματος ἐπαναγιγνωσκομένου, τὴν καταψευδομένην γνώμην τῶν πρέσβεων, ταύτην ὑμᾶς χειροτονῆσαι.

[42] [Dem.] 7.24-25: ἐγὼ δ', ὦ ἄνδρες Ἀθηναῖοι, παράνομον μὲν οὐδὲν ἐτόλμησα γράψαι, τῷ δὲ Φιλοκράτους ψηφίσματι οὐκ ἦν παράνομον τἀναντία γράφειν, ὡς ἐγὼ ἐπιδείξω· τὸ γὰρ ψήφισμα τὸ Φιλοκράτους, καθ' ὃ ὑμεῖς ἀπώλλυτε Ἀμφίπολιν, ἐναντίον ἦν τοῖς προτέροις ψηφίσμασι, καθ' ἃ ὑμεῖς ἐκτήσασθε ταύτην τὴν χώραν. τοῦτο μὲν οὖν παράνομον ἦν τὸ ψήφισμα, τὸ τοῦ Φιλοκράτους, καὶ οὐχ οἷόν τ' ἦν τὸν τὰ ἔννομα γράφοντα ταὐτὰ τῷ παρανόμῳ ψηφίσματι γράφειν. ἐκείνοις δὲ τοῖς προτέροις ψηφίσμασι, τοῖς οὖσιν ἐννόμοις καὶ σῴζουσι τὴν ὑμετέραν χώραν, ταὐτὰ γράφων ἔννομά τ' ἔγραψα καὶ ἐξήλεγχον τὸν Φίλιππον, ὅτι ἐξηπάτα ὑμᾶς καὶ οὐκ ἐπανορθώσασθαι ἐβούλετο τὴν εἰρήνην, ἀλλὰ τοὺς ὑπὲρ ὑμῶν λέγοντας ἀπίστους καταστῆσαι. ("But I, men of Athens, dared write nothing illegal, and it was not illegal to write things contrary to the decree of Philokrates, for the decree of Philokrates, in accordance with which you lost Amphipolis, was opposed to the earlier decrees in accordance with which you acquired this territory. This, then, was the illegal decree, the one of Philokrates, and it was not possible that someone writing lawful things write the same things as an illegal decree. I, by writing the same things as are in those prior decrees, being lawful and preserving your territory, I wrote lawful things and a refuted Philip, to the effect that he deceived you and was unwilling to amend the peace, and established those speaking on your behalf as untrustworthy.")

(according to Philip) misrepresented his ambassadors. The ambassadors, he claims, could have objected that the language did not reflect what they said before the people when the decree was read out.[43] If he did not mean in plain Greek that the decree was written in the assembly, then "read" in the passage above would have to mean something other than "read," and no one, to my knowledge, has suggested as much.[44] He may have been exaggerating the ambassadors' ability to object formally to the language of the decree.[45] But he cannot have claimed that he wrote a decree in the assembly in response to those ambassadors if his fellow citizens knew that this was procedurally impossible.

Nothing, therefore, in the literature or decrees of the Athenian people suggests that to draft a decree on the floor of the assembly violated the principle of prior consideration, or that every proposal had to be screened by the council before it could be put before the people. Scholars in the age of the Roman empire, however, thought a

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[43] [Dem.] 7.20: καὶ οἱ μὲν πρέσβεις αὐτοί, ὧν κατεψεύδετο τὸ ψήφισμα, ὅτ' ἀπεκρίνεσθε αὐτοῖς ἀναγιγνώσκοντες καὶ ἐπὶ ξένια αὐτοὺς ἐκαλεῖτε, οὐκ ἐτόλμησαν παρελθεῖν, οὐδ' εἰπεῖν ὅτι 'καταψεύδεσθε ἡμῶν, ὦ ἄνδρες Ἀθηναῖοι, καὶ φατὲ ἡμᾶς εἰρηκέναι ἃ οὐκ εἰρήκαμεν,' ἀλλὰ σιωπῇ ἀπιόντες ᾤχοντο. ("and the ambassadors themselves, whom the decree misrepresented, when you read your answer to them and invited them to dinner, did not dare to come forward, not to say that "you misrepresent us, men of Athens, and say that we have said what we have not said," but went away in silence.").

[44] Trevett (2011) 120 translates: "Since the reading of the decree followed immediately after the speeches, it is impossible that you voted for a resolution that gave the lie to the ambassadors."

[45] Trevett (2011) 120 n. 28 claims that "[i]t is not credible that Philip promised to accept any revision whatsoever that the Athenians might propose" and in n.29 that "Hegesippus argues (surely misleadingly) that the Athenian decree – to demand that each party have what belongs to it – must have been in conformance with what Philip's ambassadors had just offered."

passage from Demosthenes' *Against Androtion*, in which Androtion is accused of proposing an illegal decree, showed exactly that:

> There is one argument which he thinks is clever concerning the decree being *aprobouleuton*. The law, he says, is that if the council seems to have served in a way worthy of the gift, that the people bestow the gift on it. This question, he says, the presiding magistrate raised; the people voted on it; it was resolved. There is no need, he says, for a preliminary decision in this situation, since what happened was in accordance with law.[46]

He does not claim explicitly that Androtion ought to have submitted his proposal to the council beforehand, but it has been suggested that he refers to a law "requiring that all decrees receive the prior approval of the Council."[47] And according to a scholiast, in charging that Androtion's decree was ἀπροβούλευτον the speaker "is relying on a law…stipulating that no ἀπροβούλευτον decree could be read to the assembly," in order to argue that "it was in no way possible to introduce a decree to the people if the council had not read it beforehand and put it forward it unanimously."[48]

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[46] Dem. 22.5: Ἔστι γὰρ εἷς μὲν ὃν οἴεται τεχνικῶς ἔχειν αὐτῷ λόγος περὶ τοῦ ἀπροβουλεύτου. νόμος ἐστί, φησίν, ἐὰν ἀξίως ἡ βουλὴ δοκῇ βουλεῦσαι δωρειᾶς, διδόναι τὸν δῆμον τὴν δωρειὰν αὐτῇ. ταῦτ' ἐπήρετο, φησίν, ὁ ἐπιστάτης, διεχειροτόνησεν ὁ δῆμος, ἔδοξεν. οὐδὲν δεῖ, φησί, προβουλεύματος ἐνταῦθα· κατὰ γὰρ νόμον ἦν τὰ γιγνόμενα.

[47] Harris (2013) 156.

[48] Σ Demosthenes 22.1a [Dilts]: ὁ τοίνυν Δημοσθένης ἤτοι Διόδωρος ὁ τὸν λόγον ἐξειληφὼς ἰσχυρίζεται μὲν νόμοις τοῖς περὶ τὸ πρᾶγμα δύο, ἑνὶ μὲν τῷ προστάττοντι μηδαμῶς ἐξεῖναι στεφανοῦσθαι τὴν βουλήν, εἰ μὴ ποιήσαιτο τὰς τριήρεις, ἑτέρῳ δὲ τῷ κελεύοντι μηδὲν ἀπροβούλευτον ἐξεῖναι ἀναγνωσθῆναι τῷ δήμῳ ψήφισμα. ὁ δὲ Ἀνδροτίων ἰσχυρίζεται πρὸς ἀμφοτέρους τούτους ἔθει καὶ νόμῳ· νόμῳ μὲν πρὸς τὸν περὶ τῶν τριήρων νόμον, ἔθει δὲ πρὸς τὸ ἀπροβούλευτον· Δημοσθένους γὰρ φάσκοντος μηδαμῶς ἐξεῖναι εἰσφέρειν εἰς τὸν δῆμον ψήφισμα εἰ μὴ τῆς αὐτὸ προαναγνούσης βουλῆς καὶ τοῦτο καθόλου προτείναντος ("Demosthenes, accordingly, or rather Diodoros, who contracted the speech from him, relies on two laws pertinent to the matter, one stipulating that it was in no way permitted to crown the council if it should not make the triremes, and another bidding that no ἀπροβούλευτον decree was permitted to be read to the people. But Androtion relies, against both laws, on custom and law, on law against the law concerning the triremes, on custom against the ἀπροβούλευτον decree. For Demosthenes, alleging that it was in no way permitted to refer a decree to the people if the council had not read it beforehand and put this forward unanimously…").

Now, the scholiast does not identify a source for that alleged law. Neither does Photius, who held basically the same view.[49] But Libanius writes, in his preface to *Against Androtion*, that "the prosecutors say that the decree was ἀπροβούλευτον, inasmuch as law ordered not to introduce a decree to the people before it was scrutinized in the council."[50] His source, Harpokration, defined ἀπροβούλευτον as "a decree not first brought to the council but straightway to the assembly," and suggested that "in the speech *Against Androtion* a law is adduced (παράκειται) showing this."[51]

But there is no law cited anywhere in *Against Androtion* and there is little reason to think there ever was. For one thing, it was unnecessary to quote laws in the text of the speech itself, because copies of laws cited in speeches were sealed before trial and read aloud by a clerk during proceedings.[52] In fact, when verbatim excerpts from laws do appear in the manuscripts they are often obvious forgeries.[53] And usually, instead of

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[49] Phot. s.v. ἀπροβούλευτον· τὸ μὴ πρότερον εἰς τὴν βουλήν, ἀλλ' εὐθὺς εἰς τὸν δῆμον εἰσαχθὲν ψήφισμα. ("*Aprobouleuton*: the decree introduced not beforehand to the council but straightaway to the people").

[50] Lib. *Hyp*. ad Dem 22: φασὶ δὲ οἱ κατήγοροι πρῶτον μὲν ἀπροβούλευτον εἶναι τὸ ψήφισμα, νόμου γὰρ κελεύοντος μὴ πρότερον εἰς τὸν δῆμον ψήφισμα ἐκφέρειν, πρὶν ἐν τῇ βουλῇ δοκιμασθείη, τὸν Ἀνδροτίωνα παρὰ τοῦτον τὸν νόμον ἀπροβούλευτον εἰσενεγκεῖν τὴν γνώμην. ("The prosecutors say first that the decree is ἀπροβούλευτον, inasmuch as law bids not to refer a decree to the people before it was scrutinized in the assembly, Androtion contrary to this law referred a motion that was ἀπροβούλευτον.").

[51] Harpokration s.v. ἀπροβούλευτον: τὸ μὴ πρότερον εἰς τὴν βουλὴν, ἀλλ' εὐθὺς εἰς τὸν δῆμον εἰσφερόμενον ψήφισμα. ἐν τῷ κατ' Ἀνδροτίωνος νόμος παράκειται ταῦτα δηλῶν.

[52] Canevaro (2013) 3: "The documents that we find in the medieval manuscripts of the Attic orators are only a fraction of those that the speakers ask the clerks to read out. This makes it clear that normal practice for the Attic orators was rather not to include in their drafts the texts of the documents they were to discuss. These documents were already sealed in the echinos, and the grammateus was responsible for retrieving them when requested."

[53] Not all of the documents in the manuscripts of Demosthenes are necessarily forgeries. Canevaro (2013) 319 concludes: "in the public speeches of the Demosthenic corpus one can find two different categories of

excerpted laws, we find a simple directive issued to the clerk: "read."[54] But the speaker of *Against Androtion* never asks the clerk to read any law. Thus, it is unlikely that there was a law cited in the manuscripts that was lost in transmission. Harpokration, I suggest, does not necessarily mean there is a law "adduced" in the speech in the sense of "explicitly quoted."[55] Although the word παρατίθημι can refer to a document appended to another text,[56] it need mean no more than that a rule "is applied" [57] or "invoked."[58]

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documents. The documents of the *Against Aristocrates* and part of those of the *Against Timocrates* were included in the edition to which the stichometry refers, whereas the documents of the speeches *On the Crown*, *Against Meidias*, *Against Neaera*, and part of those of the *Against Timocrates* were inserted at a later date. The two categories contain very different features: the stichometric documents usually do not contain features that are inconsistent with contemporary language and formulas, and their provisions are often confirmed by independent evidence. When they contain some errors, these errors can be easily explained as mechanical corruption of the text in its transmission, and their quantity and quality are coherent with the degree of corruption of the Demosthenic corpus as a whole."

[54] Dem. 18.120: λέγε δ' αὐτόν μοι τὸν νόμον λαβών ("take and cite the law itself for me). Or Dem. 20.153: ἀνάγνωθι λαβὼν τὸν νόμον αὐτοῖς ὃν λέγω ("take and read to them the law which I cite").

[55] He sometimes uses παράκειται to refer to marks in the margins of a text. Thus Harpokration s.v. παραγραφή: οὐ μόνον ἐπὶ τοῦ κοινοῦ καὶ γνωρίμου τίθεται παρὰ τοῖς ῥήτορσιν, ἀλλ' ἰδίως Ἰσοκράτης ἐν τῷ περὶ τῆς ἀντιδόσεώς φησιν "λέγε ἀρξάμενος ἀπὸ τῆς παραγραφῆς," ὅπερ ἐστὶν ἀπὸ τῆς γραμμῆς ἣν μέχρι νῦν παράγραφον καλοῦμεν· καὶ ἔστι τὸ λεγόμενον, ἀφ' οὗ παρέγραψα· τοῦτο δ' ἂν εἴη, ἀφ' οὗ παρεθέμην (*Paragraphe*: Not only is applied in the common and well-known sense in the orators, but peculiarly Isocrates in *On the Antidosis* says "read, beginning from the *paragraphe*," which is to say from the mark that still now we call a *paragraphos*. And what is meant is, "from where I noted in the margin." This would be, "from where I cited/noted"). Gibson (2002) 32 offers the attractive "possibility—though it is one supported by no surviving physical evidence—that Didymus possessed annotated texts of Demosthenes containing brief introductory notes about dates of delivery and authenticity, and perhaps marginal glosses that briefly identified and dated historical allusions or commented on word choice." But evidence for such is lacking; McNamee (2007) 118: "there is almost a complete absence of annotated oratorical papyri."

[56] [Plu.] *Vita A Or*. 833d12 transmits a decree at the end of the *Life of Antiphon*, referring to as: ψήφισμα ἐπὶ Θεοπόμπου ἄρχοντος, ἐφ' οὗ οἱ τετρακόσιοι κατελύθησαν, καθ' ὃ ἔδοξεν Ἀντιφῶντα κριθῆναι, ὃ Καικίλιος παρατέθειται ("a decree, in the archonship of Theopompos, in the time when the Four Hundred were deposed, in accordance with which it was resolved that Antiphon be tried, which Caecilius has cited").

Thus, Harpokration may have meant only that law is applied or invoked in *Against Androtion*, because he knew that Androtion's decree was charged as ἀπροβούλευτον and that in democratic Athens there was a law on the books pertaining to such decrees. That law is not "cited" in *Against Androtion*. It simply forms the background. And the lexicographers' explanation of the technicalities of that law – that it required all decrees be put in front of the council before being introduced to the assembly – is contradicted by court speeches from democratic Athens. Indeed, their definition of ἀπροβούλευτον has much more in common with the way Greek historians in the age of the Roman empire described the legislative process in the Roman republic.[59] All the more reason to suspect anachronism.

It would be enlightening to discover a law that explained in detail what made a decree ἀπροβούλευτον. But it would be surprising if that law stipulated or even implied

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[57] Dionysius of Halicarnassus writes (D.H. *Lys.* 24) of the *prooimion* to *Against Diogeiton*: τοῦτο τὸ προοίμιον ἁπάσας ἔχει τὰς ἀρετάς, ὅσας δεῖ τὸ προοίμιον ἔχειν. δηλώσουσι δὲ οἱ κανόνες αὐτῷ παρατεθέντες οἱ τῶν τεχνῶν. ("this prooimion has all the virtues which a proomion ought to have. And the canons of the rhetorical handbooks will show this once they are applied to it.").

[58] Is. 9.32: Ἔπειτα νῦν ἀξιώσουσι κληρονομεῖν τῶν Ἀστυφίλου οὐ μόνον τὰς διαθήκας λέγοντες, ἀλλὰ καὶ τὸ γένος παρατιθέντες, ὅτι ἀνεψιὸς ἦν Κλέων πρὸς πατρός. ("Now next they will demand to inherit the property of Astyphilos, not only mentioning wills, but also invoking kinship, because Kleon was his nephew on his father's side").

[59] Appian writes (*BC* 1.59) that Sulla and Pompeius, after taking the city of Rome, assembled the people and proposed "that no longer shall anything not considered beforehand [sc. by the Senate] be introduced to the people, an ancient practice established in law in antiquity but abandoned a long time ago" (εἰσηγοῦντό τε μηδὲν ἔτι ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεσθαι, νενομισμένον μὲν οὕτω καὶ πάλαι, παραλελυμένον δ' ἐκ πολλοῦ). It is implied by D.H. 5.32 that the Roman people could ratify parts of a decree of the Senate and also reject and replace others and thus one ought not assume that amendments were forbidden.

that a decree could not be drafted on the floor of the assembly. Half of the decrees that survive to this day look like they were first proposed there. And citizens like Hegesippos mentioned writing decrees in the assembly as an ordinary thing. Scholars from the Roman empire onwards unanimously thought otherwise. But they seem to have confused the practice of republican Rome with that of democratic Athens. There, provided he kept within the scope of the agenda published by the *prytaneis* and the preliminary decree of the council, any eligible citizen could draft a decree on the floor of the assembly.

2.2: As a Rule Decrees Were Proposed in Writing

Did a decree have to be put in writing to receive consideration? Early scholars of the Athenian assembly thought that a citizen either showed up draft-in-hand or wrote it in the assembly with the help of the secretary.[60] That view has won a few followers.[61] Still, by and large modern scholars think that citizens could also propose in speech, leaving it

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[60] Schömann (1819) 118 first suggested that "Psephismas aut jam ante conscriptum attulit lator aut in ipsis comitiis adhibito scriba publico conscripsit." So too Miller (1885) 8-9: "[r]ogationem ipsam litteris consignari necesse erat a latore, sive scriptam attulit sive in comitiis adhibito scriba publico eam perscripsit." Gilbert (1895) 296 suggested that "all motions…were formulated by the mover in writing and handed to the president or his secretary, or else proposed by word of mouth and afterwards put in writing with the assistance of the secretary." The only evidence cited by all three for the first option was Aeschin. 2.83-84 (discussed below), which proves only that at least one citizen submitted his decree in writing. The evidence for the second option comes from Ar. *Th.* 428-431, which, I will argue below, does not reflect what these three scholars thought.

[61] On the basis of Aeschin. 2.83-84 Hansen (1987) 91 suggests that in the fourth century "any citizen was entitled to go to the platform (*bema*) to address the people and to move a proposal, the text of which he had to set down in writing and to hand over to the *proedroi*." Gagarin (2008) 188 observes that "the common expression for the activity of public figures in the assembly is 'speaking and writing' (e.g. Dem. 18.66), that is, giving oral advice and proposing decrees orally, but also putting those decrees in writing before they are approved."

to the secretary to draft decrees on the floor of the assembly or even outside it.[62] But close attention to the way Athenians talked about proposing decrees suggests that a *rhetor* was expected to propose his decree in writing even if that meant writing it himself on the spot.

At the beginning of a decree the proposer was identified with the formula "so and so said" (ὁ δεῖνα εἶπεν).[63] What does this formula tell (if anything) about how a decree was proposed? Modern scholars urge that "so and so said" indicates that a decree reflects, in part or whole, what a citizen said in his speech before the assembly.[64] Thus, on one view, the formula "so and so said"

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[62] Sickinger (2002) 147-153, discussing the evidence for how proposals were made, concludes that "a secretary could draw up a motion after a speaker had proposed it orally," though he notes that "the frequency with which the word γράφειν is used in the fourth-century orators in conjunction with the proposing of new laws and decrees indicates that the writing out of proposals by their proposers was common." Missiou (2011) 135 suggested that proposals were "composed through collaboration of literate and less literate councillors," the latter leaning more or less heavily on the secretary of the council, who is thought by Osborne (2012) 42 n. 53 to have taken the lead in drafting texts.

[63] *IG* II² 26.4-7: ἔ[δοξ]εν τῶι δήμωι· Ἱπποθωντὶς ἐπρυ|τάνευεν, Χαρίδημος | ἐγραμμάτευε[ν], | [Θ]ρασυμήδης ἐπεστάτε· **Ἀθηνόδωρο[ς] | [εἶ]πεν**. This way of identifying the proposer was not limited to public documents. Thus Andoc. 1.71: Κηφίσιος γὰρ οὑτοσὶ ἐνέδειξε μέν με κατὰ τὸν νόμον τὸν κείμενον, τὴν δὲ κατηγορίαν ποιεῖται κατὰ ψήφισμα πρότερον γενόμενον, ὃ εἶπεν Ἰσοτιμίδης, οὗ ἐμοὶ προσήκει οὐδέν. Ὁ μὲν γὰρ εἶπεν εἴργεσθαι τῶν ἱερῶν τοὺς ἀσεβήσαντας καὶ ὁμολογήσαντας, ἐμοὶ δὲ τούτων οὐδέτερα πεποίηται· οὔτε ἠσέβηται οὔτε ὡμολόγηται ("For Kephisios here indicted me, on the one hand, in accordance with the law on the books, but he makes his prosecution in accordance with a decree passed earlier, which Isotimides proposed, none of which pertains to me. For he proposed to exclude from the holy places those who had committed impieties and had confessed, but neither of these have been done by me, neither have impieties been committed nor has a confession been made."). See too Dem. 24.11: Ψήφισμ' εἶπεν ἐν ὑμῖν Ἀριστοφῶν ἐλέσθαι ζητητάς, εἰ δέ τις οἶδέν τιν' ἢ τῶν ἱερῶν ἢ τῶν ὁσίων χρημάτων ἔχοντά τι τῆς πόλεως, μηνύειν πρὸς τούτους ("Aristophon proposed a decree in front of you in the assembly, to the effect that inquirers be elected, and if anyone knows of anyone in possession of any of the polis' sacred or nonsacred money, the denounce him to these [sc. inquirers].").

[64] Low (2013) 74. Lambert (2011) 200 suggests that an inscribed decree "elevates (from Pnyx or Councilchamber to the acropolis), petrifies and perpetuates in the name of the Athenians collectively the

> seems to suggest that, at least originally, individuals who proposed new legislation delivered their motions orally before the Council or Assembly or both. This impression is reinforced by the title *rhetor*, 'speaker', which is sometimes given to individuals who proposed laws and decrees. This usage seems to suggest that a citizen rose before the Council or Assembly and delivered a speech that included his motion. Other speeches followed and a vote was finally taken, and writing may have entered the picture only late: perhaps only after a measure had been approved was its text fixed in writing.[65]

But by the late fifth century neither the title *rhetor* nor the formula "so-and-so said" necessarily reflected *how* a decree was formally proposed. In fact, Athenians occasionally said of the same proposer proposing the same decree that he "wrote" what he "said."[66] Thus, in 406 B.C., the generals who abandoned dead and shipwrecked sailors after the battle of Arginousai were brought to trial in the assembly. There, according to Xenophon, "the council introduced its resolution," that the generals were to be tried collectively and if convicted sentenced to death, "Kallixenos having proposed" (Καλλιξένου εἰπόντος).[67] That last phrase undoubtedly echoes the decree of the council in which the proposal was put forward, which would have begun Καλλίξενος εἶπεν.[68] But

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performance of an honorific utterance, originally an actual speech of an individual citizen in Assembly or Council" (emphasis mine). Here too, then, the decree is envisioned as a kind of summary of speech.

[65] Sickinger (2002) 149.

[66] Jones (1957) 114 suggested already that "[a]lthough in the stereotyped formula of the prescript the mover or amender of a motion is always said to speak, and in the technical language of the law was called a speaker (ῥήτωρ), motions and amendments were actually handed in writing to the secretary, who read them aloud."

[67] X. *HG* 1.7.8: ἐντεῦθεν ἐκκλησίαν ἐποίουν, εἰς ἣν ἡ βουλὴ εἰσήνεγκε τὴν ἑαυτῆς γνώμην Καλλιξένου εἰπόντος τήνδε.

[68] Individual proposers are always identified with ὁ δεῖνα εἶπεν. Andocides 1.96 quotes the following decree: Ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ. Αἰαντὶς ἐπρυτάνευε, Κλειγένης ἐγραμμάτευε, Βοηθὸς ἐπεστάτει. Τάδε

Xenophon later notes that when certain citizens tried to block the motion by laying a summons against Kallixenos, they charged him with having *written* things that were illegal.[69] Both were true because Kallixenos wrote the decree that began, as all such did, "so-and-so said." In fact, Athenians might even say in the same breath that a citizen "has proposed" something "by having written it in a decree."[70] Such suggests that by the late fifth century only one of these expressions reflects practice on the ground. Which?

A citizen who proposed a decree in writing was nevertheless identified as the one who "said" the proposal, and in that case the formula "so-and-so said" does not

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Δημόφαντος συνέγραψεν. If genuine, then perhaps the decree of Kallixenos began Καλλιξένος συνέγραψεν. But Canevaro and Harris (2012) observe that this formula "has no parallel in decrees from this period" (121), and that on philological grounds the citation "is not a genuine text of the decree of Demophantus" (124). Sommerstein (2014) 51 speculates that "presumably the verb συνέγραψεν is used rather than εἶπεν because Demophantus did not propose the decree on his own initiative but was instructed (either by the Council or the Assembly) to draft one. Sommerstein agrees that the citation is not what Andocides cited but proposes that the later editor "who inserted it in the text appears to have taken it from a collection of decrees like that of Craterus" (56). Nevertheless, it is a tick against the authenticity of the text as inserted that it employs a proposer-formula nowhere else attested.

[69] X. *HG* 1.7.12: τὸν δὲ Καλλίξενον προσεκαλέσαντο παράνομα φάσκοντες συγγεγραφέναι Εὐρυπτόλεμός τε ὁ Πεισιάνακτος καὶ ἄλλοι τινές. τοῦ δὲ δήμου ἔνιοι ταῦτα ἐπῄνουν, τὸ δὲ πλῆθος ἐβόα δεινὸν εἶναι εἰ μή τις ἐάσει τὸν δῆμον πράττειν ὃ ἂν βούληται. ("Euryptolemos son of Peisianax and certain others charged Kallixenos alleging that he had written illegal things, and some of the people praised this, but the majority shouted that it is a terrible thing if someone does not suffer the people to do what it wishes.").

[70] Dem. 23.87: οὐ γὰρ δήπου, ἃ μηδὲ νομοθετεῖν ἔξεστιν, ταῦτ' ἐν ψηφίσματι γράψας τις ἔννομ' ἂν εἰρηκὼς εἴη ("For surely as to those things that are not permitted to legislate, one would not have proposed lawful things by having written these in a decree?"); Dem. 22.49: ψηφίσματα δ' εἶπεν ἐν ὑμῖν δεινὰ καὶ παράνομα, δι' ὧν ἠργολάβει καὶ πολλὰ τῶν ὑμετέρων κέκλοφεν, τοὺς ἕνδεκα γράψας ἀκολουθεῖν μεθ' ἑαυτοῦ ("he proposed among you decrees terrible and illegal, through which he has profited and has stolen much of what is yours, by having written [sc. in those decrees] that the Eleven follow with him.").

reflect *how* he proposed it.[71] Rather, the formula was, with but a few exceptions,[72] the default way to indicate authorship of a statute in Athenian public records. Thus, even after written proposal of legislation had become a legal requirement[73] a law's proposer was still identified with the phrase "so-and-so said."[74] But what a proposer "said" in a law was not the content of a speech, in full or abstract form, but a record of what he wrote in his draft of the law.[75] Likewise, I urge, a citizen in the assembly wrote what he "said" in the body of the decree. That is why a treasury account from the final years of the fourth century refers to "the decree of the council that Ischyrias of Aixone wrote,"

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[71] Cf. Gagarin (2008) 188, where it is suggested that decrees were put in writing before they were approved, and that the formula ὁ δεῖνα εἶπεν "refers to the fact that the proposer would present the text orally in the assembly." There is no evidence that speakers presented or discussed their drafts. Instead, there was an official known as the secretary of the assembly, not the same man as the secretary of the council, who "was in charge of nothing but reading" (*AthPol* 54.5), i.e., reading proposals and other documents (like the letter of Nicias mentioned in Th. 7.10)

[72] There are four exceptions, all of which involve decrees with multiple proposers. *IG* I^3 135.3 is restored: [γνόμε τõν χσυγγ]ραφέον which also appears in *ATL* D 9 and SEG X 123. In *IG* I^3 78a.3-4 we have the phrase τάδε οἱ χσυγγραφε̃ς χσυνέ[γρ]αφσαν , likewise *SEG* X 104. *IG* II^2 1 begins γνώμη Κλεσόφο καὶ συνπρυτάνεων. Similarly *IG* II^2 27, which begins γνώμη στρατηγῶν.

[73] Dem. 20.94: ἐπέταξεν ἐκθεῖναι πρόσθε τῶν ἐπωνύμων καὶ τῷ γραμματεῖ παραδοῦναι, τοῦτον δ' ἐν ταῖς ἐκκλησίαις ἀναγιγνώσκειν. ("he enjoined publishing [sc. proposals] in front of the Eponymoi and handing them over to the secretary, and that he read [sc. proposals] in meetings of the assembly."). One of the charges made against Timocrates was that he neither exhibited a draft of his law nor handed it over so that anyone who wanted to could speak in opposition after reading it. (Demosthenes 24.26: οὔτε γὰρ ἐξέθηκε τὸν νόμον, οὔτ' ἔδωκεν εἴ τις ἐβούλετ' ἀναγνοὺς ἀντειπεῖν).

[74] Stroud (1998) 4 ll.2-5: ἐπι Σωκρατίδο ἄρχοντος | νόμος περὶ τῆς δωδεκάτης τοῦ σίτου | τῶν νήσων |Ἀγύρριος εἶπεν ("in the archonship of Sokratides; law on the one-twelfth tax on the grain of the islands; Agyrrhios proposed…").

[75] Dem. 20.127: ὅτι δ' οὐκ ἔστι ταὐτὸν ἱερῶν ἀτέλειαν ἔχειν καὶ λητουργιῶν, ἀλλ' οὗτοι τὸ τῶν λητουργιῶν ὄνομ' ἐπὶ τὸ τῶν ἱερῶν μεταφέροντες ἐξαπατᾶν ζητοῦσι, Λεπτίνην ὑμῖν αὐτὸν ἐγὼ παρασχήσομαι μάρτυρα. γράφων γὰρ ἀρχὴν τοῦ νόμου 'Λεπτίνης εἶπεν' φησίν, 'ὅπως ἂν οἱ πλουσιώτατοι λητουργῶσιν, ἀτελῆ μηδέν' εἶναι πλὴν τῶν ἀφ' Ἁρμοδίου καὶ Ἀριστογείτονος.' Cf. Demosthenes 24.79 (on a law proposed by Timocrates): σκέψασθε γὰρ ὡς γέγραφεν. 'Τιμοκράτης εἶπεν' φησὶ 'καὶ εἴ τινι τῶν ὀφειλόντων τῷ δημοσίῳ προστετίμηται κατὰ νόμον ἢ κατὰ ψήφισμα δεσμοῦ ἢ τὸ λοιπὸν προστιμηθῇ, εἶναι αὐτῷ ἢ ἄλλῳ ὑπὲρ ἐκείνου ἐγγυητὰς καταστῆσαι, οὓς ἂν ὁ δῆμος χειροτονήσῃ, ἢ μὴν ἐκτείσειν.'

"the decree of the assembly that Philip of Acharnai wrote," and "the decree of the assembly that Demochares of Leukonoe wrote."[76] The change in the language of the formula does not reflect a change in how decrees were proposed, since later documents use the conventional phrase.[77] Rather, it was a rare slip, an intrusion of informal language into a formal document. It reveals that in decrees, as in laws, "so and so said" indicated *who* proposed, but not *how*. We can therefore distinguish between two ways in which a *rhetor* "said" what he said in the assembly: by addressing the people and by writing a decree for them to consider and then ratify or reject.

In fact, Athenians themselves drew this distinction when they paraphrased laws about rhetors. In Athenian law the *rhetor* is only ever said to "speak." So, for example, the law stipulated that "if any of the Athenian citizens has prostituted, let him not state an opinion (μηδὲ γνώμην εἰπάτω) in the council or assembly."[78] But Demosthenes

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[76] *IG* II^2 1492.105-108: ἐβδό[μει] φ[θί]ν[ο]ντος χρήματα ἐδ[όθη] | [Πολυ]κλείτωι [Ἀ]θηναίωι, [Ἡρα]κ[λ]εί..ι Ἐρυθ[ρ]αίωι [καὶ] τ[οῖς] | [στρα]τηγοῖς ἀργυρίου Ἀλ[εξα]νδ[ρ]ε[ίου] τάλαντα ΔΔΔ.. | [κατὰ ψή]φ[ισ]μα βουλ[ῆς, ὃ] ἔ[γρ]αψεν [Ἰσ]χυρίας· [Α]ἰξωνε[ύς]; 114-115: κατὰ ψήφισμ[α β]ουλῆς, ὃ ἔ[γρ]αψεν Ἰσχυρία[ς] Αἰξ|[ωνεύς; 122-123: κα[τὰ ψή]φ[ι]σμα δ[ή]μου, ὃ ἔ[γρ]||[αψε]ν Φίλιππος Ἀχαρνεύς; 126-127: κατὰ ψήφισμα δήμ[ου, ὃ] ἔγ[ραψε Δη]||[μοχ]άρης Λευκονοεύς.

[77] Thus: *IG* II^2 682.92-96 (276/5 B.C.): Λύανδρος Λυσιάδου Ἀναφλύστιος εἶπεν· ἀγα|[θ]εῖ τύχει δεδόχθαι τῶι δήμωι, τὰ μὲν ἄλλα | [πά]ντα πράττειν περὶ τῆς δωρεᾶς ἧς εἴτηκεν | Φαῖδρος κατὰ τὸ πρότερον ψήφισμα ὃ Λύανδρο|ς εἶπεν ("Lyandros son of Lysiades Anaphlystian proposed: with good fortune be it resolved by the assembly, to do everything else concerning the gift which Phaidros has requested in accordance with the prior decree which Lyandros proposed.").

[78] Aeschin. 1.19-20: ἄν τις Ἀθηναίων, φησίν, ἑταιρήσῃ…μηδὲ γνώμην εἰπάτω μηδέποτε μήτε ἐν τῇ βουλῇ μήτε ἐν τῷ δήμῳ, μηδ' ἂν δεινότατος ᾖ λέγειν. Ἐὰν δέ τις παρὰ ταῦτα πράττῃ, γραφὰς ἑταιρήσεως πεποίηκε καὶ τὰ μέγιστα ἐπιτίμια ἐπέθηκεν. Λέγε αὐτοῖς καὶ τοῦτον τὸν νόμον, ἵν' εἰδῆτε οἵων νόμων ὑμῖν κειμένων, ὡς καλῶν καὶ σωφρόνων, τετόλμηκε Τίμαρχος δημηγορεῖν ὁ τοιοῦτος τὸν τρόπον οἷον ὑμεῖς ἐπίστασθε (If any of the Athenians, it says, prostitutes…let him never state an opinion neither in the council nor in the assembly, not even if he is the cleverest at speaking. If anyone acts contrary to this, he (sc. the lawgiver) has made suits for prostitution and has attached the greatest penalties. Cite for them this law, in order that you may know,

referred to that same law in his own words: "for those who have prostituted it is possible neither to speak nor to write."[79] "To speak" here meant to formally address the council or assembly.[80] "To write" therefore must mean to write a decree. Thus, what was expressed in the language of law as a single action, "to state an opinion," actually referred to distinct kinds of utterance. And the distinction was not between ways of proposing a decree, but between addressing the council or assembly on some issue and drafting a decree for the councillors or people to consider. A *rhetor*, of course, could both address the council or people and write a decree, if he wanted and was eligible. But writing a decree was an additional and formally distinct way for a citizen to "state an opinion," and if a citizen wanted to formally propose a decree, he was expected to write it. Again, the way Athenians paraphrased the language of law makes this clear. The law stipulated impeachment against "anyone who, being a rhetor, *says* things that are not the

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despite there being laws of this sort established for you all, so fine and sound, that Timarchos, who is of the sort and acts in the way you all know, has dared to address the assembly.")

[79] Dem. 22.30: Ἄξιον τοίνυν, ὦ ἄνδρες Ἀθηναῖοι, καὶ τὸν θέντα τὸν νόμον ἐξετάσαι Σόλωνα, καὶ θεάσασθαι ὅσην πρόνοιαν ἐποιεῖτο ἐν ἅπασιν οἷς ἐτίθει νόμοις τῆς πολιτείας, καὶ ὅσῳ περὶ τούτου μᾶλλον ἐσπούδαζεν ἢ περὶ τοῦ πράγματος οὗ τιθείη τὸν νόμον. πολλαχόθεν μὲν οὖν ἄν τις ἴδοι τοῦτο, οὐχ ἥκιστα δ' ἐκ τούτου τοῦ νόμου, μήτε λέγειν μήτε γράφειν ἐξεῖναι τοῖς ἡταιρηκόσιν. Cf. Σ Aeschines 1.195 Schultz: φησὶ γὰρ καὶ Λυκοῦργος δοκιμάζεσθαι δεῖν οὐ πάντας ἐπὶ τῷ ἑταιρῆσαι, ἀλλὰ τοὺς πολιτευομένους ῥήτορας καὶ τὰ ψηφίσματα γράφοντας. Demosthenes cited the law forbidding state debtors from addressing the council or the assembly the same way (Dem. 22.33): περὶ μὲν τοίνυν τοῦ νόμου καθ' ὅν, ὠφληκότος αὐτοῦ τοῦ πατρὸς τῷ δημοσίῳ χρήματα καὶ οὐκ ἐκτετεικότος, οὐκ ἔξεστι λέγειν οὐδὲ γράφειν τούτῳ. Dem. 22.34: ὄντι δ' ἀτίμῳ σοι λέγειν οὐ προσῆκεν οὐδὲ γράφειν. At 22.16 he complains of Androtion that οὗτος τοίνυν εἰς τοῦτ' ἐλήλυθε τοῦ νομίζειν αὑτῷ καὶ λέγειν καὶ γράφειν ἐξεῖναι πᾶν ὅ τι ἂν βούληται**.** Cf. 22.32: ὧν ὀλιγωρήσας ὁ καλὸς κἀγαθὸς οὗτος οὐ μόνον ᾤετο δεῖν λέγειν καὶ γράφειν οὐκ ἐξόν, ἀλλὰ καὶ παρὰ τοὺς νόμους ταῦτα ποιεῖν.

[80] Cf. note 79, where Aeschines complains that Timarchos has violated the law insofar as he addresses the assembly (δημηγορεῖν) despite having prostituted himelf.

best for the people;" but when he discusses that law, Hypereides stresses that this clause was directed "against the rhetors themselves, in whose hands is also the writing of decrees" (παρ᾽ οἷς ἔστιν καὶ τὸ γράφειν τὰ ψηφίσματα).[81] Now, a citizen could be called "the one who wrote the decree" years later even if that decree was rejected at the vote[82]; to say that rhetors write decrees was plain speech (to say that he "said" the decree was not). For rhetors, writing decrees was "in their hands" in the same sense that the deme-lists were in the hands of the demarchs,[83] that public funds were in the hands of the *hellenotamiai*,[84] that naval equipment was in the hands of citizen trierarchs.[85] These things belonged to the people but were handled by the citizens "in whose hands" their

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[81] Hyp. 4.8: ἐάν τις…ῥήτωρ ὢν μὴ λέγῃ τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων᾽ τὰ μὲν ἄνω τοῦ νόμου κατὰ πάντων τῶν πολιτῶν γράψαντες ἐκ πάντων γὰρ καὶ τἀδικήματα ταῦτα γένοιτ᾽ ἄν, τὸ δὲ τελευταῖον τοῦ νόμου κατ᾽ αὐτῶν τῶν ῥητόρων, παρ᾽ οἷς ἔστιν καὶ τὸ γράφειν τὰ ψηφίσματα.

[82] Aeschin. 2.85: κάλει μοι τὸν γράψαντα τὸ ψήφισμα Ἀλεξίμαχον καὶ τοὺς συμπροέδρους τοὺς Δημοσθένους, καὶ τὴν μαρτυρίαν ἀνάγνωθι. Aleximachos had proposed, in response to a plea from the ambassador of Kersebleptes, king of Thrace, that Kersebleptes share in the peace with Philip and be added to the list of allies. Aeschines mentions (3.73-75) that a decree was enacted, on the proposal of Philokrates, that implicitly excluded Kersebleptes from the peace and the alliance, and thus we can infer that the decree submitted by Aleximachos was rejected at the vote.

[83] Harpokration s.v. Δήμαρχος: ἔτι δὲ καὶ τὰ ληξιαρχικὰ γραμματεῖα παρὰ τούτοις ἦν.

[84] *IG* I^3 52.5-7: ἀποδι|[δ]όναι δὲ ἀπὸ τῶν χρεμάτων, ἃ ἐς ἀπόδοσίν ἐστιν τοῖς θεοῖς ἐφσεφισμ|[έ]να, **τά τε παρὰ τοῖς ἑλλενοταμίαις ὄντα νῦν** καὶ τἄλλα ἅ ἐστι τούτον | [τῶ]ν χρεμάτον ("Pay from the money which has been voted for the payment to the gods, both that which is now in the hands of the *hellenotamiai* and anything else which belongs to this money.").

[85] *IG* II^2 1613.284-296: [σύμπας] ἀριθμὸς τριήρω[ν] | [τῶν ἐν τ]οῖς νεωρίοις | [ὄντων κ]αὶ ὧν οἱ τριήραρ|[χοι ἔχου]σιν καὶ τῶν δεδ[ο]|[μένων κ]ατὰ ψήφισμα | [καὶ τῶν ὑ]παιθρίων, ὧν | [παρελά]βομεν καὶ παρέ|[δομεν], καὶ τῶν διαδεδι|[κασμέ]νων καὶ σκευῶν | [τῶν ξυλ]ίνων καὶ κρεμα|[στῶν τῶ]ν ἐν τοῖς νεωρίοις | [ὄντων κ]αὶ **τῶν παρὰ τοῖς [τρι]|[ηράρ]χοις ὀφειλομένων**.

stewardship lay. So too, decrees were of the people and writing them was in the hands Athens' rhetors.[86]

Because modern scholars have not recognized the procedural distinction between addressing the assembly and proposing a decree, they struggle to identify "what form of statement would *ipso facto* constitute the making of the proposal:"[87]

> the issue of whether someone has made a formal proposal only becomes pressing when the taking of a vote is imminent and that is the point when (at the discretion of the presiding officer) those who have uttered clear suggestions are invited to say whether they are offering them formally.[88]

There is no evidence that there was a point, in the assembly, when the presiding magistrate asked whether any of the speaker's had a formal proposal to make. And where a *rhetor* submitted a proposed decree in writing there was no need to invite him to *say* whether he was formally proposing. The act of submission communicated that. The question was whether or not a citizen had or would put a proposal in writing and was willing to give it to the assembly clerk to read and the presiding magistrate to submit to a vote.[89]

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[86] Thus, Philip II of Macedon could rebuke the Athenian people for what they "wrote" in a decree: ([Dem.] 12.8): ἀλλὰ πρὸς τοῖς ἄλλοις καὶ γράφετε ἐν τοῖς ψηφίσμασιν ἐμοὶ προστάττοντες Τήρην καὶ Κερσοβλέπτην ἐᾶν Θρᾴκης ἄρχειν ὡς ὄντας Ἀθηναίους ("But in addition to the rest you also write in the decrees ordering me to allow Teres and Kersobleptes to rule Thrace on the grounds that they are Athenians.").

[87] Tuplin (1998) 305-306.

[88] ibid.

[89] On occasion we find it stated in the courtroom speeches that a citizen gave a decree for the presiding magistrates to put to a vote (Aeschin. 2.83) or to read (Aeschin. 2.83). On occasion a citizen was said to have given his decree to the secretary to read. The secretary here is presumably the secretary whom "the people elected as secretary to read to itself and the council," and who "is in charge of nothing except reading"

Thus, a *rhetor* might conclude his speech by saying "if you bid me, men of Athens, I will write, just as the treaties urge, that we make war against the transgressors."[90] Citizens urged each other to write what they said on the platform.[91] And not to write.[92] Rhetors came forward to ask the people: "What do you want? What should I write?"[93] If a *rhetor* had an unpopular (perhaps even illegal) suggestion, he worried that someone in the audience would dare to ask him: "Do you write this?"[94] Or that someone would accuse him of being unwilling to write what he suggested in his

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(*AthPol* 54.3). There can have been no guarantee that a citizen selected by lot to serve as councillor and then chosen by lot again to serve as presiding magistrate was capable of reading well enough or even loud enough for a council of five hundred let alone an assembly of six thousand.

[90] [Dem]. 17.30: ἐὰν οὖν κελεύητ', ὦ ἄνδρες Ἀθηναῖοι, γράψω, καθάπερ αἱ συνθῆκαι κελεύουσι, πολεμεῖν τοῖς παραβεβηκόσιν.

[91] Dem. 9.8: Εἰ μὲν οὖν ἔξεστιν εἰρήνην ἄγειν τῇ πόλει καὶ ἐφ' ἡμῖν ἐστι τοῦτο, ἵν' ἐντεῦθεν ἄρξωμαι, φήμ' ἔγωγ' ἄγειν ἡμᾶς δεῖν, καὶ τὸν ταῦτα λέγοντα γράφειν καὶ πράττειν καὶ μὴ φενακίζειν ἀξιῶ· ("if, then, it is possible for the city to remain at peace and if this is in our ability, to begin from that point, I declare that we must be at peace, and I call on anyone saying this to write and act and not to play tricks").

[92] [Dem]. 10.17: ταῦτα τοίνυν ἕκαστον εἰδότα καὶ γιγνώσκοντα παρ' αὑτῷ δεῖ μὰ Δί' οὐ γράψαι κελεύειν πόλεμον τὸν τὰ βέλτιστ' ἐπὶ πᾶσι δικαίοις συμβουλεύοντα ("each man, knowing and coming to this conclusion in himself, must not, by Zeus, urge him who is giving the best advice for all the just reasons to write: war.")

[93] Dem. 3.22: οἱ διερωτῶντες ὑμᾶς οὗτοι πεφήνασι ῥήτορες 'τί βούλεσθε; τί γράψω; τί ὑμῖν χαρίσωμαι ("these rhetors have appeared asking you "what do you want? What should I write? What can I grant you?").

[94] Demosthenes in the First Olynthiac talks about provisions for war thus (Dem. 1.19): περὶ δὲ χρημάτων πόρου, ἔστιν, ὦ ἄνδρες Ἀθηναῖοι, χρήμαθ' ὑμῖν, ἔστιν ὅσ' οὐδενὶ τῶν ἄλλων ἀνθρώπων [στρατιωτικά]· ταῦτα δ' ὑμεῖς οὕτως ὡς βούλεσθε λαμβάνετε. εἰ μὲν οὖν ταῦτα τοῖς στρατευομένοις ἀποδώσετε, οὐδενὸς ὑμῖν προσδεῖ πόρου, εἰ δὲ μή, προσδεῖ, μᾶλλον δ' ἅπαντος ἐνδεῖ τοῦ πόρου. 'τί οὖν;' ἄν τις εἴποι, 'σὺ γράφεις ταῦτ' εἶναι στρατιωτικά;' μὰ Δί' οὐκ ἔγωγε. ("About the provision of money, you have money, men of Athens, as much as no one else among men possesses. Take these however you wish. If, then, you will pay these to the men on campaign, you will have no lack of provision, but if not, then you will have such a lack, or rather, you will lack all provision. "What then," someone might say, "do you write that these monies be stratiotic? By Zeus no, not I!") From [Dem]. 59.4 we know that Apollodoros was charged with proposing an illegal decree for suggesting that the theoric funds, which Demosthenes alludes to in the First Olynthiac, be diverted to the stratiotic fund.

address to the assembly.[95] Indeed, even foreign ambassadors knew to challenge Athenian citizens to go beyond speaking and commit themselves to writing.[96]

A *rhetor*, then, had to be prepared either to bring a written proposal to the assembly or else to draft one there, so that the people could ratify it (or not). Thus in 349/8, when Athens wondered what to do about Philip II of Macedon's expansion into the North Aegean, Demosthenes told the people: "By Zeus, I shall say, but also write, so that, if you are willing, you will vote" (ἐγὼ νὴ Δί' ἐρῶ, καὶ γράψω δέ, ὥστ' ἂν βούλησθε χειροτονήσετε).[97] The passage has received little attention, and the few scholars who have commented on it are not sure what was taking place. One has suggested that Demosthenes is "simply expressing his intention in the near future to move *psephismata*."[98] Another posits that Demosthenes is merely indicating a willingness to formally propose if invited to do so.[99] But in his conclusion Demosthenes suggests that

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[95] Dem. 8.68: Εἶτα φησὶν ὃς ἂν τύχῃ παρελθών 'οὐ γὰρ ἐθέλεις γράφειν, οὐδὲ κινδυνεύειν, ἀλλ' ἄτολμος εἶ καὶ μαλακός (Then someone says, whoever happens to come forward, "you are unwilling to write, nor to run any risk, but you are undaring and soft.").

[96] According to [Dem]. 7.22 the sophist Pytho, acting as ambassador for Philip in 343/2 B.C., "was urging those speaking in the assembly not to cast blame on the peace, for it was not worth dissolving the peace, but if anything was not well written in the peace, to amend this, on the grounds that Philip was going to do whatever you decreed. But if they offer slander without writing anything through which there will be a peace and Philip will stop being suspect, [he urged you] not to pay attention to these sorts of fellows." (ἐκέλευεν οὖν τοὺς λέγοντας ἐν τῷ δήμῳ τῇ μὲν εἰρήνῃ μὴ ἐπιτιμᾶν: οὐ γὰρ ἄξιον εἶναι εἰρήνην λύειν: εἰ δέ τι μὴ καλῶς γέγραπται ἐν τῇ εἰρήνῃ,τοῦτ' ἐπανορθώσασθαι, ὡς ἅπαντα Φίλιππον ποιήσοντα ὅσ' ἂν ὑμεῖς ψηφίσησθε. ἂν δὲ διαβάλλωσι μέν, αὐτοὶ δὲ μηδὲν γράφωσι δι' οὗ ἡ μὲν εἰρήνη ἔσται παύσεται δ' ἀπιστούμενος ὁ Φίλιππος, μὴ προσέχειν τὸν νοῦν τοῖς τοιούτοις ἀνθρώποις.).

[97] Dem. 9.70.

[98] Hansen (1984) 59.

[99] Tuplin (1998) 306 suggests that when Demosthenes says "I write" his use of that word "is simply provisonal." If Tuplin means merely that "write" is not the formal Athenian technical terminology for "I

he is ready to draft at that very moment: "this, then, I say, *this* I write!"[100] The present tense and the emphatic asyndeton seem out of place if Demosthenes does not mean either that he has a draft decree in hand, as he is said to have done on occasion,[101] or even that he would immediately draft one to be submitted for the people to consider. The latter only requires that we believe rhetors were prepared to write decrees in the assembly itself.

They were certainly asked to erase. During a prosecution speech Hyperides asked a jury:

> Who would not be aggrieved whenever, when in the assembly you bid him erase something of what has been written, Demades is unwilling, and says to you that, if any of you in turn writes something else, he will depart the city, and one of his comrades comes up and declares that, however it is, you will vote this.[102]

Here a decree had been submitted and read out to the assembly, but not yet ratified. On discussion, a request for alteration through deletion was tendered and rejected. Merely

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move," then that is right: Athenians had no formal term for proposing in speech because they did not propose in speech.

[100] Dem. 9.76: ἐγὼ μὲν δὴ ταῦτα λέγω, ταῦτα γράφω.

[101] Aeschin. 2.67-69; for the text see n. 170 below.

[102] Hyp. *ad Diondam* 175r [Carey et al.]: τίς οὐκ ἄν ἀλγήσειεν ὅταν ἐν τῇ ἐκκλησίᾳ ὑμῶν κελευόντων ἀπαλεῖψαι τι τῶν γεγραμμένων μὴ εθέλῃ Δημάδης, ἄλλο γράφουσιν αὖ ὑμῖν φήσει ἀπιέναι ἐκ τῆς πόλεως, παρελθών δέ τις τῶν κοινωνῶν αὐτοῦ εἴπῃ ὁτι ὑμεῖς ὡς ἄν ἔχῃ ψηφιεῖσθε ταῦτα.

to speak on the platform did not count as a formal proposal. Proposing formally meant writing, sometimes on the spot, including deleting and adding.[103]

Such, at any rate, is how one proposed a decree by the late fifth century, because the practice of proposing decrees in writing was probably not newly established when the democracy was restored in 403 B.C. During the same assembly of 406 at which a group of citizens tried to charge the councillor Kallixenos with drafting an illegal decree, one of them, Euryptolemos, mounted the platform to suggest an alternative course of action. He advised and urged the people to prosecute the generals under existing law, either the decree of Kannonos or the law on temple-robbers and traitors.[104] Then,

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[103] According to Plutarch, when Phokion was tried for treason in 318 B.C., "Hagnonides read a decree he had in writing, according to which it was necessary for the people to vote regarding the men, whether they seemed to have done wrong, and to put the men to death if they were convicted. When the decree was read, some asked to add to it "that Phokion die after being tortured," and they were insisting on calling the attendants and bringing in the rack. But Hagnonides, seeing Kleiton ill-disposed toward this, and thinking it a barbaric and repugnant deed, said "let us take hold of Kallimedon the rogue and let us torture him; but about Phokion I write nothing of this sort" (Plu. *Phoc*. 34-35: ὁ δ' Ἀγνωνίδης ψήφισμα γεγραμμένον ἔχων ἀνέγνω, καθ' ὃ τὸν δῆμον ἔδει χειροτονεῖν περὶ τῶν ἀνδρῶν εἰ δοκοῦσιν ἀδικεῖν, τοὺς δ' ἄνδρας ἂν καταχειροτονηθῶσιν ἀποθνήσκειν. Ἀναγνωσθέντος δὲ τοῦ ψηφίσματος, ἠξίουν τινὲς προσγράφειν ὅπως καὶ στρεβλωθεὶς Φωκίων ἀποθάνοι, καὶ τὸν τροχὸν εἰσφέρειν καὶ τοὺς ὑπηρέτας καλεῖν προσέταττον. ὁ δ' Ἀγνωνίδης καὶ τὸν Κλεῖτον ὁρῶν δυσχεραίνοντα, καὶ τὸ πρᾶγμα βαρβαρικὸν εἶναι καὶ μιαρὸν ἡγούμενος, „ὅταν" ἔφη „Καλλιμέδοντα τὸν μαστιγίαν λάβωμεν ὦ ἄνδρες Ἀθηναῖοι, στρεβλώσομεν· περὶ δὲ Φωκίωνος οὐδὲν ἐγὼ γράφω τοιοῦτον.").

[104] X. *HG* 1.7.20-22: ἴστε δέ, ὦ ἄνδρες Ἀθηναῖοι, πάντες ὅτι τὸ Καννωνοῦ ψήφισμά ἐστιν ἰσχυρότατον, ὃ κελεύει, ἐάν τις τὸν τῶν Ἀθηναίων δῆμον ἀδικῇ, δεδεμένον ἀποδικεῖν ἐν τῷ δήμῳ, καὶ ἐὰν καταγνωσθῇ ἀδικεῖν, ἀποθανεῖν εἰς τὸ βάραθρον ἐμβληθέντα, τὰ δὲ χρήματα αὐτοῦ δημευθῆναι καὶ τῆς θεοῦ τὸ ἐπιδέκατον εἶναι. κατὰ τοῦτο τὸ ψήφισμα κελεύω κρίνεσθαι τοὺς στρατηγοὺς…τοῦτο δ' εἰ βούλεσθε, κατὰ τόνδε τὸν νόμον κρίνατε, ὅς ἐστιν ἐπὶ τοῖς ἱεροσύλοις καὶ προδόταις, ἐάν τις ἢ τὴν πόλιν προδιδῷ ἢ τὰ ἱερὰ κλέπτῃ, κριθέντα ἐν δικαστηρίῳ, ἂν καταγνωσθῇ, μὴ ταφῆναι ἐν τῇ Ἀττικῇ, τὰ δὲ χρήματα αὐτοῦ δημόσια εἶναι ("You know, men of Athens, all of you, that the decree of Kannonos is very harsh, which stipulates, "if anyone wrongs the Athenian people, he is to stand trial in chains in the assembly, and if he is convicted of wrongdoing, to die cast onto the plank, and that his money be forfeited to the public funds and that a tenth of it belong to the goddess. In accordance with this decree I bid you try the generals and by Zeus…But if you want, try them in accordance with the following law, which is directed at temple-robbers and traitors, "if anyone either betrays the city or steals sacred items, that he be judged in the court, if convicted, that he not be buried in Attika and that his money belong to the public.").

"having said these things, Euryptolemos wrote a proposal that the men be tried individually in accordance with the decree of Kannonos."[105] Euryptolemos had already proposed exactly that in his address to the assembly. Why write it down? The answer must be that it was already expected that a *rhetor* would, if he was really serious about proposing a decree, submit it in writing. Indeed, the practice may not have been an innovation of the last decade of the fifth century. Recall, from the first chapter, the joke in Aristophanes' *Birds* to the effect that when Athenians go at dawn to the assembly to legislate, they go to 'chew on' (or 'read') decrees on papyrus. Athenians of the fourth century believed rhetors were writing decrees as early as 430 B.C.,[106] as did historians

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[105] X. *HG* 1.7.34: Ταῦτ' εἰπὼν Εὐρυπτόλεμος ἔγραψε γνώμην κατὰ τὸ Καννωνοῦ ψήφισμα κρίνεσθαι τοὺς ἄνδρας δίχα ἕκαστον· ἡ δὲ τῆς βουλῆς ἦν μιᾷ ψήφῳ ἅπαντας κρίνειν. τούτων δὲ διαχειροτονουμένων τὸ μὲν πρῶτον ἔκριναν τὴν Εὐρυπτολέμου· ὑπομοσαμένου δὲ Μενεκλέους καὶ πάλιν διαχειροτονίας γενομένης ἔκριναν τὴν τῆς βουλῆς ("Having said this Euryptolemos wrote a motion that the men be judged each separately in accordance with the decree of Kannonos. That of the council was that all be judged by a single vote. When the vote between these was held, at first they chose that of Euryptolemos. But Menekles having attempted to bar it by affidavit, and the vote between them having been held again, they chose that of the council.").

[106] At [Dem.] 59.105, the speaker refers to a decree passed for the Plataians between 430-427 B.C., and asks the jurors to consider how well the *rhetor* drafted it: ὁρᾶτε, ὦ ἄνδρες Ἀθηναῖοι, ὡς καλῶς καὶ δικαίως ἔγραψεν ὁ ῥήτωρ ὑπὲρ τοῦ δήπου τοῦ Ἀθηναίων ("See, men of Athens, how finely and justly the *rhetor* wrote on behalf of the Athenian people"). The decree had been passed, for Thucydides twice refers to a grant of citizenship bestowed on the Plataians (3.55, 63.2), Isocrates too (12.94 and 14.51-52), and Lysias (23 *passim*). But the decree cited in the text is probably a forgery (Canevaro 2010: 337-369). According to *AthPol* 29.1: ἐπεὶ δὲ μετὰ τὴν ἐν Σικελίᾳ γενομένην συμφορὰν ἰσχυρότερα τὰ τῶν Λακεδαιμονίων ἐγένετο διὰ τὴν πρὸς βασιλέα συμμαχίαν, ἠναγκάσθησαν κι[νήσα]ντες τὴν δημοκρατίαν καταστῆσαι τὴν ἐπὶ τῶν τετρακοσίων πολιτείαν, εἰπόντος τὸν μὲν πρὸ τοῦ ψηφίσματος λόγον Μηλοβίου, τὴν δὲ γνώμην γράψαντος Πυθοδώρου το[ῦ Ἀναφλ]υ[σ]τίου ("when after the disaster in Sicily happened matters on the Spartan side became stronger on account of their alliance with the king, the Athenians were compelled, having stirred up the democracy, to establish the constitution of the Four Hundred, Melobias having delivered the speech on behalf of the decree, Pythodoros the Anaphlystian having drafted the proposal."). Harpokration mentions s.v. Ἄνδρων that "Krateros says in the ninth book of *Decrees* that it was Andron who wrote the decree concerning Antiphon the *rhetor*" (Ἄνδρωνά φησιν εἶναι Κράτερος ἐν θ' τῶν Ψηφισμάτων τὸν γράψαντα τὸ ψήφισμα τὸ περὶ Ἀντιφῶντος τοῦ ῥήτορος).

and biographers in the age of the Roman empire.[107] And there are plenty of hints in the literature of fifth century Athens that by the Peloponnesian war Athenian citizens proposed decrees in writing. In Aristophanes' *Clouds*, for example, a character jokes that animals did not differ much from Athenians, except that they do not write decrees.[108] What we want to determine is whether at the time the play was staged (423 B.C.), "to write a decree" meant what it did in 406 B.C. and thereafter, and to do so we must pick carefully through some of the surviving literature from fifth century Athens.

In one of the the surviving fragments of his poetry, Kritias referred to a decree that he proposed in 411, and the reference suggests that *rhetors* were writing their decrees by then:

> The motion which restored you, this in front of all,
> I proposed, and by writing I accomplished this deed,
> and the seal of my tongue lies in the following.[109]

"The general interpretation of the passage is agreed upon: Critias surely here refers to his (oral) motion for Alcibiades' recall in the Assembly and the written decree that

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[107] Plu. *Arist.* 27 claims that, according to some historians, after Aristeides died his daughters were granted their dowries from the public treasury and his son was given a hundred minas, a hundred acres of land, and a four-obol per diem, "Alcibiades having written the decree" (Ἀλκιβιάδου τὸ ψήφισμα γράψαντος). The famous politicans of fifth century Athens are depicted throughout Plutarch as writers of decrees, but it is hard to say how he knew this and whether he was right that even Themistokles and Aristeides were proposing in writing before the democracy was fully established.

[108] Ar. *Nub.* 1427-1429 (for text and discussion see the conclusion to this dissertation).

[109] Plu. Alc. 30.1: γνώμην δ' ἥ σε κατήγαγ' ἐγὼ ταύτην ἐν ἅπασιν/ εἶπον καὶ γράψας τοὔργον ἔδρασα τόδε,/ σφραγὶς δ' ἡμετέρης γλώσσης ἐπὶ τοίσδεσι κεῖται.

enacted that motion into law."[110] But for Plutarch this showed that Kritias wrote the decree by which, once ratified by the people, Alcibiades was recalled.[111] And the thrust of the *sphragis* metaphor in Greek poetry was to claim and secure authorship of a written text.[112] Kritias' point, I urge, was rather like that of Demosthenes, when he claimed that he not only spoke, but would write as well. That is, Kritias spoke an opinion and made that speech action (τοὔργον ἔδρασα τόδε) by writing the proposal that, once ratified by the Athenians, returned Alcibiades to Athens.[113] Interpreted in this way, the passage suggests that rhetors were drafting their proposed decrees already by 411 B.C.[114]

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[110] Pratt (1995) 179. Iannucci (1998) 107-115, 112, points out that "[c]on il vocabolo γνώμη Crizia, evidemente, designa 'la proposta' del singolo, che, nella prassi assembleare, precedeva di regolo lo psephisma votato dall'intero organismo e dunque coerentemente chiamata in causa da Plutarco."

[111] Plu. *Alcib*. 33.1: τὸ μὲν οὖν ψήφισμα τῆς καθόδου πρότερον ἐκεκύρωτο, Κριτίου τοῦ Καλλαίσχρου γράψαντος, ὡς αὐτὸς ἐν ταῖς ἐλεγείαις πεποίηκεν, ὑπομιμνήσκων τὸν Ἀλκιβιάδην τῆς χάριτος ἐν τούτοις. ("the decree of return, then, had been ratified beforehand, Kritias son of Kallaischros having written it, as he himself makes out in the elegies, reminding Alcibiades of his favor in these things.").

[112] Hubbard (2006) 198-205, discussing scholarship on the *sphragis*, concludes that the so-called *sphragis*-elegy in Theognis and even other works attributed to that poet "presuppose a written text" (205).

[113] He may also be playing upon the relationship between what he proposed in the assembly and the epigram ("this very work") in which he commemorates that deed. The only parallel for such, though, is a fragment of Alkaios which refers to "when we undertook this here work" (F 358 [Lobel and Page]: ἐπεὶ δὴ †πρώτισθ' ὑπὸ† ἔργον ἔσταμεν/ τόδε.) but in Alkaios it is seems from the context that the work is the work of war, not the poem itself.

[114] According to Thucydides, the recall of Alkibiades was ratified in 411 B.C., and scholarly consensus holds that this was the decree proposed by Kritias (see Wade-Gery 1945 24 n.3). Andrewes (1953) 3 n.7 suggested that it was proposed in 408/7 B.C., and Ostwald (1985) 400 n.215 argued that the recall of 411 was proposed by Theramenes, citing Diodoros and Nepos as sources. But Diodoros only says that Theramenes *advised* his recall (D.S. 13.38: καὶ γὰρ τὸν Ἀλκιβιάδην οὗτος μόνος συνεβούλευσε κατάγειν cf. 13.42: τῷ δήμῳ συνεβούλευσε κατάγειν τὸν Ἀλκιβιάδην). Nepos too (*Alcibiades* 5): "post suffragante Theramene populi scito restituitur." Since in the fourth century to advise and to propose were formally distinct, it is entirely plausible that Kritias drafted the motion which Theramenes advocated.

Even before then, there were good reasons for a *rhetor* to prefer to propose in writing. The special procedure for prosecuting those accused of proposing illegal decrees was established by 415 B.C. at the latest.[115] If the fourth-century court speeches written for that procedure are any guide, the proposer of a decree could be prosecuted not only for what was *in* the text of the decree but even what was left *out* of it.[116] While some citizens were punished with no more than a smallish fine,[117] one could lose his citizen-rights[118] or his life for what he proposed.[119] And even if he kept his rights, his money, or his head, his reputation might be tarnished. Now, there is no explicit evidence that in the fifth century trials under *graphê paranomôn* focused so closely on the language of the proposal. But already by the middle of the fifth century Athenians were passing laws with entrenchment-clauses that stipulated serious penalties for anyone who proposed contrary legislation (including decrees).[120] Thus, a *rhetor* had good reason to

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[115] Andocides states (1.17) that his father charged and prosecuted a councillor named Speusippos for an illegal proposal concerning the men alleged to be involved in the profanation of the Mysteries in 415 B.C. Thus Hansen (1974) 28: "[t]he trial must be dated 415."

[116] Aeschin. 3.31: ἕτερος δ' ἀπαγορεύει νόμος ἀρχὴν ὑπεύθυνον μὴ στεφανοῦν, ὑμεῖς δὲ ὀμωμόκατε κατὰ τοὺς νόμους ψηφιεῖσθαι, ὁ δὲ ῥήτωρ γέγραφε τὸν ὑπεύθυνον στεφανοῦν, οὐ προσθεὶς «ἐπειδὰν δῷ λόγον καὶ εὐθύνας» ("Another law forbids crowning a magistrate liable to *euthyna*, and you have sworn to vote in accordance with the laws, but the rhetor, insofar as he did not add 'whenever he gives his account and *euthunai*,' has proposed to crown him though he is subject to *euthyna*.").

[117] According to Hyp. 4.18 Polyeuktos was fined only twenty-five drachmas for proposing that a disputed hill near Oropos be returned to the god Amphiaraus.

[118] Lewis (1997) 142-44.

[119] Dem. 22.69.

[120] *IG* I³ 46.24-29 (445 B.C.): ἐ]ὰν δει τις ἐπιφσεφίζει παρὰ τὲ[ν στέλ]||[εν ἒ ῥέ]τορ ἀγορεύει ἒ προσκαλε͂σθα[ι ἐγχερ]||[ε͂ι ἀφαι]ρε͂σθαι ἒ λύεν τι το͂ν ϝεφσεφι[σμένον], | [ἄτιμον] ἔναι αὐτὸν καὶ παῖδας τὸς ἐχς [ἐκένο] | [καὶ τὰ χ]ρέματα δεμόσια ἔναι καὶ τε͂ς [θεο͂ τὸ ἐ]||[πιδέκα]τον ("If any one puts a motion to the vote contrary to the

attempt to limit personal risk by trying to control what he was held responsible for proposing. Writing the proposed decree himself may have seemed the surest way to do that.

Precisely when it became the norm to propose in writing will probably remain elusive, but it may have been customary as early as the years leading up to outbreak of the Peloponnesian war. A decree of 425 B.C., if restored correctly, stipulates punishment against anyone who "submits a proposal" contrary to the terms of the decree.[121] The text is quite fragmentary and the restoration difficult to parallel.[122] But some lines in Aristophanes' *Acharnians*, staged the same year, was thought by ancient readers to show that Perikles wrote the so-called Megarian decree passed in the preceding decade. A character remarks that when two prostitutes were stolen by the Megarians,

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stele or any speaker proposes or tries to issue a summons detracting from or annulling any of what has been decreed, he shall be [without rights], himself and the sons born from him, and his property shall be confiscated and a tithe given to the Goddess."). Cf. *IG* I^3 1453 B/G frg.6.3-4: καὶ ἐάν τ]ις εἴπ[ηι ἢ] ἐπιψηφίσηι περ[ὶ τούτων - 15 - ἐς ἄλλο] τι χρῆσθαι ἢ | δανε[ίζεσθαι, ἀπαγέσθω αὐτίκα μάλα πρὸς] τοὺς ἕνδεκα· οἱ δ[ὲ ἕνδεκα θανάτωι ζ[ημιωσάντων.

[121] *IG* I^3 71.31-33: κα]ὶ ἐάν τις ἄλλος δι[δῶι φσῆφον τῆ]ϙι [πόλεσι μ]ὲ ἶναι τ|[ὰς] τάχσ[ες κατὰ Π]α[ναθένα]ια τὰ μ[εγάλα] ἐπὶ τῆς πρυτανεί[ας ἥ]τις ἂν πρ]ότ[ε] [πρυτα]νεύει ἄτ|[ι]μος ἔσ[το καὶ] τὰ χ[ρέματα] αὐτοῦ δ[εμόσι]α ἔσ[τ]ο καὶ τῆς θεοῦ [τὸ ἐπιδέκατ]ον. Meritt and West translated the first clause of these lines to mean "if anyone else introduces a motion."

[122] Lewis (1997) 142 points out that "[i]f we require Meritt and West's sense, and I think we do, we should at least amend the restoration to δι[δῶι γνόμεν], which gives the right meaning." If then this would mean submitting a proposal, as is clear from Demosthenes 24.13: ἔδωκε γνώμην Εὐκτήμων ὡς δυνατὸν δικαιοτάτην, ὑμᾶς μὲν εἰσπράττειν τοὺς τριηράρχους, ἐκείνοις δ' εἶναι περὶ αὐτῶν εἰς τοὺς ἔχοντας ἀναφοράν· ἐὰν δ' ἀμφισβητῆταί τι, ποιεῖν διαδικασίαν, τὸν δ' ἡττηθέντα, τοῦτον ὀφείλειν τῇ πόλει. γράφονται τὸ ψήφισμα ("Euktemon submitted a proposal, as just a one as possible, that you exact payment from the trierarchs, that there be recourse for them concerning the payment to those in possession [sc. of the naval equipment], and if anything is disputed, to hold a suit, and that the loser owe the money to the city. They charged the decree.").

> Then in anger Olympian Perikles began to strike lightning, to thunder, to propose laws written like drinking-songs (ἐτίθει νόμους ὥσπερ σκόλια γεγραμμένους): that the Megarians must not remain in the territory nor in the agora nor on sea nor on the continent.[123]

Readers of the play from the 4th century onward understood these lines to mean that "Perikles, writing the decree proposed that the Megarians enjoy access to neither the market nor the sea nor the land."[124] Modern scholars, conversely, take Aristophanes to mean only that "Perikles passed a law."[125] But only the people had the capacity to "pass" a law. It was the privilege of an individual citizen to "lay down a law" in the sense that he could "propose" or "frame" the language of a law that was either rejected or passed by the people. Moreover, to understand ἐτίθει νόμους as though this means that Perikles "passed a law" ignores the imperfect tense and the force of the plural. The imperfect

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[123] Ar. *Ach.* 530-534: ἐντεῦθεν ὀργῇ Περικλέης οὐλύμπιος/ ἤστραπτ', ἐβρόντα, ξυνεκύκα τὴν Ἑλλάδα/ ἐτίθει νόμους ὥσπερ σκόλια γεγραμμένους,/ ὡς χρὴ Μεγαρέας μήτε γῇ μήτ' ἐν ἀγορᾷ/ μήτ' ἐν θαλάττῃ μήτ' ἐν ἠπείρῳ μένειν.

[124] Σ *Ach.* 532 [Wilson]: ἐπεὶ ὁ Περικλῆς γράφων τὸ ψήφισμα εἶπε Μεγαρέας μήτε ἀγορᾶς μήτε θαλάττης μήτ' ἠπείρου μετέχειν. The scholiast is interpreting the scene exactly as ancient readers did. Aristodemos (*FGrHist* 104 F2A) cites *Ach.* 530-34 as evidence that "many causes are reported concerning the war, but first is the one pertaining to Perikles. For they say that when the Athenians were preparing the elephantine Athena and had appointed Pericles as the superintendent of that work, and Pheidias as the artist, Pheidias having been convicted of theft, Perikles took care that accounts were not demanded of him, wanting to avert the trial he manufactured this war by having written the decree against the Megarians" (αἰτίαι δὲ καὶ πλείονες φέρονται περὶ τοῦ πολέμου· πρώτη δὲ ἡ κατὰ Περικλέα. φασὶ γὰρ ὅτι τῶν Ἀθηναίων κατασκευαζόντων τὴν ἐλεφαντίνην Ἀθηνᾶν καὶ ἀποδειξάντων ἐργεπιστάτην τὸν Περικλέα, τεχνίτην δὲ Φειδίαν, ἁλόντος τοῦ Φειδίου ἐπὶ νοσφισμῶι, εὐλαβηθεὶς ὁ Περικλῆς μὴ καὶ αὐτὸς εὐθύνας ἀπαιτηθῆι, βουλόμενος ἐκκλῖναι τὰς κρίσεις ἐπολιτεύσατο τὸν πόλεμον τοῦτον, γράψας τὸ κατὰ Μεγαρέων ψήφισμα). Aristodemos is thought to have worked anywhere from the fourth century B.C. to the second century A.D. His sources are clearly Thucydides, Ephoros, perhaps Hellanikos, and as Connor (1961) 51-56 shows, his understanding of these lines of the Acharnians can be traced back to Ephoros. That his interpretation of the *Acharnians* clearly reflects an ancient tradition is apparent from a fragment of Philochoros (*FGrHist* 328 F3b): λέγουσι δέ τινες ὡς Φειδίου τοῦ ἀγαλματοποιοῦ δόξαντος παραλογίζεσθαι τὴν πόλιν καὶ φυγαδευθέντος, ὁ Περικλῆς φοβηθεὶς διὰ τὸ ἐπιστατῆσαι τῆι κατασκευῆι τοῦ ἀγάλματος καὶ συνεγνωκέναι τῆι κλοπῆι, ἔγραψε τὸ κατὰ Μεγαρέων πινάκιον καὶ τὸν πόλεμον ἐξήνεγκεν.

[125] Fornara (1983) 141 but cf. Connor (1961) 95-96, where it is implied that Perikles drafted the law himself.

ought refer, as a handful of parallels shows, to someone proposing or framing a statute.[126] And since the law here is elsewhere referred to, in the singular, as a 'decree',[127] which reflects the fact that it was proposed and passed in the assembly, "the laws" (νόμους) here ought refer to clauses in that decree (as *nomos* sometimes does).[128] All the more reason to translate ἐτίθει as "proposed" or "framed" since Perikles had the power

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[126] Din. 1.42: εἰσί τινες ἐν τῷ δικαστηρίῳ τῶν ἐν τοῖς τριακοσίοις γεγενημένων, ὅθ' οὗτος ἐτίθει τὸν περὶ τῶν τριηράρχων νόμον; οὐ φράσετε τοῖς πλησίον ὅτι τρία τάλαντα λαβὼν μετέγραφε καὶ μετεσκεύαζε τὸν νόμον καθ' ἑκάστην ἐκκλησίαν, καὶ τὰ μὲν ἐπώλει ὧν εἰλήφει τὴν τιμήν, τὰ δ' ἀποδόμενος οὐκ ἐβεβαίου; ("Are there any, in the courtroom, of those who were among the three hundred when he was proposing the law on the trierarchs (ἐτίθει τὸν περὶ τῶν τριηράρχων νόμον)? Won't you indicate to those near you that, after taking three talents he rewrote and rearranged the law each assembly, and in some cases he sold parts whose price he had already accepted, and other things, though he had sold them, he did not make good on?"). Aristotle writes (*Pol.* 1267b) of Hippodamos, who wrote the first philosophical treatise on constitutions: ἔτι δὲ νόμον ἐτίθει περὶ τῶν εὑρισκόντων τι τῆι πόλει συμφέρον ὅπως τυγχάνωσι τιμῆς, καὶ τοῖς παισὶ τῶν ἐν τῶι πολέμωι τελευτώντων ἐκ δημοσίου γίνεσθαι τὴν τροφήν, ὡς οὔπω τοῦτο παρ' ἄλλοις νενομοθετημένον ("moreover he proposed a law, concerning those discovering something advantageous for the city, that they acquire honor, and that provision be madefor the children of those who die in war, as though this had not yet been proposed elsewhere"). Dem. 22.30: θεάσασθαι ὅσην πρόνοιαν ἐποιεῖτο ἐν ἅπασιν οἷς ἐτίθει νόμοις τῆς πολιτείας. ("Consider how much forethought he was taking in all the laws of the constitution he was making"). So too Pl. *R.* 497c-d: δεήσοι τι ἀεὶ ἐνεῖναι ἐν τῇ πόλει λόγον ἔχον τῆς πολιτείας τὸν αὐτὸν ὅνπερ καὶ σὺ ὁ νομοθέτης ἔχων τοὺς νόμους ἐτίθεις ("It would be necessary that there always be in the city something having the same understanding of the constitution which you had when you were proposing the laws"). Cf. Pl. *Leg.* 631d: τὸ γὰρ ἀπ' ἀρετῆς ἄρχεσθαι, λέγοντα ὡς ἐτίθει ταύτης ἕνεκα τοὺς νόμους, ὀρθόν ("for it was right to begin from virtue, saying that he was proposing laws with a view to this").

[127] That Aristophanes is referring to a decree is clear from Ar. *Th.* 535-537: ἐντεῦθεν οἱ Μεγαρῆς, ὅτε δὴ 'πείνων βάδην,/Λακεδαιμονίων ἐδέοντο τὸ ψήφισμ' ὅπως/μεταστραφείη τὸ διὰ τὰς λαικαστρίας ("then the Megarians, when they were slowly starving, they beseeched the Spartans so that the decree be overturned, the one on account of the harlots").

[128] For *nomos* referring to a clause in a decree see [Dem.] 59.106: ἔπειτα καὶ τὸν νόμον διωρίσατο ἐν τῷ ψηφίσματι πρὸς αὐτοὺς εὐθέως ὑπέρ τε τῆς πόλεως καὶ τῶν θεῶν, [καὶ] μὴ ἐξεῖναι αὐτῶν μηδενὶ τῶν ἐννέα ἀρχόντων λαχεῖν μηδὲ ἱερωσύνης μηδεμιᾶς, τοῖς δ' ἐκ τούτων, ἂν ὦσιν ἐξ ἀστῆς γυναικὸς καὶ ἐγγυητῆς κατὰ τὸν νόμον. ("next, he also defined the law in the decree regarding them straightforwardly about the city and the gods, 'that is not be possible for any of them to be allotted to serve as one of the nine archons nor any priesthood, but for their offspring, as long as they were from a woman of the city and lawfully wedded."). Cf. Is. 8.49: Ὡς δὲ ἀληθῆ λέγω, ἐκ τῶν ψηφισμάτων γνώσεσθε ἃ ἐψηφίσατο ἡ βουλὴ περὶ αὐτῆς. Λαβὲ τὸ ψήφισμα ("That I speak truthfully, you will know from the decrees which the council passed concerning her. Take the decree."). Here the plural *decrees* must refer to the *clauses* of the decree that mention the woman, since he tells the clerk to "take the decree" (singular) and never again asks the clerk to take any decree. Athenians in the fifth century did not distinguish between law and decree and so it was possible to say that someone framed a law or framed a decree (e.g. Kratinos F 264 Kock: ψήφισμα ἔθηκεν).

to frame the clauses of a statute but not to establish them as law. Construed thus, the Greek implies that Perikles proposed this decree in writing, and that would at least reflect what Athenians in the fourth century believed to be true.

By the last decade of the fifth century there was a formal distinction between addressing the assembly and proposing a decree. But that distinction was not likely to have been an innovation of that decade. By 415 B.C. the proposer could be charged with making an illegal proposal. By the outbreak of the Peloponnesian war the people had grown accustomed to holding the *rhetor* responsible for the terms of any treaty he proposed.[129] Decrees from the years preceding, during, and after the Peloponnesian war occasionally stipulated penalties, even death, against anyone who "says or puts to vote" anything contrary to some or all of the terms of the decree. None of these arrangements would have required that a citizen put his proposals in writing. But all of them would have given him a good incentive to do so. For it seems unlikely that a citizen would hang his future on the secretary's competence, goodwill, or memory, all the more so since there were multiple procedures available against proposers but none, so far as we

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[129] [X.] *Ath* 2.17: ἅσσα δ' ἂν ὁ δῆμος σύνθηται, ἔξεστιν αὐτῷ ἑνὶ ἀνατιθέντι τὴν αἰτίαν τῷ λέγοντι καὶ τῷ ἐπιψηφίσαντι ἀρνεῖσθαι τοῖς ἄλλοις ὅτι Οὐ παρῆν οὐδὲ ἀρέσκει ἔμοιγε, ἃ συγκείμενα πυνθάνονται ἐν πλήρει τῷ δήμῳ ("Whatever the people establishes in a treaty, it is possible for it to, having referred the blame on the one who was speaker and the one who put it to vote, for others to deny that "I was not present nor does it please me" with regard to the things which they learn have been established in a treaty in the full assembly").

know, against the secretary.[130] Proposers had skin in the game. Secretaries did not. How plausible is it, then, that the secretaries were responsible for much of the actual drafting of decrees for which others were held liable?

2.3: The Involvement of the Secretary Was Minimal

Scholars find evidence for the secretary's involvement in decree-making in a fictional assembly of women depicted in Aristophanes' *Thesmophoriazusae*, a comedy staged in the spring of 411 B.C. Like the real assembly, this one begins when a herald reads out a preliminary decree of the council (of women) asking the assemblywomen what to do about the playwright Euripides. She then asks the question with which deliberations in Athens' assembly began: who wishes to speak?[131] A woman stands up and delivers a rousing speech on the wrongs done to women by Euripides. At the end she suggests (431-432):

> Now then, it seems best to me to plot some kind
> of destruction for him someway somehow,
> either with poisons or with one device at least –
> as long as he dies. This I say openly.
> And the other things I will write down with the secretary (τὰ δ' ἄλλα μετὰ τῆς γραμματέως συγγράψομαι).[132]

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[130] Dionysius of Halicarnassus mentions Dinarchus' εἰσαγγελία κατὰ Φειδιάδου γραμματέως. But there is no record of a Pheidiades serving as secretary of the council in Deinarchos' lifetime, and thus it is not self-evident that Pheidiades was secretary of the council or that he was impeached for transgressions relating to decrees.

[131] Dem. 18.170; 18.191, though cf. Aeschin. 3.4: τίς ἀγορεύειν βούλεται τῶν ὑπὲρ πεντήκοντα ἔτη γεγονότων; ("Who having attained an age beyond fifty years wishes to speak?").

[132] Ar. *Th.* 428-432: νῦν οὖν ἐμοὶ τούτῳ δοκεῖ / ὄλεθρόν τιν' ἡμᾶς κυρκανᾶν ἀμωσγέπως, / ἢ φαρμάκοισιν ἢ μιᾷ γέ τῳ τέχνῃ, / ὅπως ἀπολεῖται. ταῦτ' ἐγὼ φανερῶς λέγω· / τὰ δ' ἄλλα μετὰ τῆς γραμματέως συγγράψομαι.

Many think that this scene reveals that on occasion the proposer worked out the text with the secretary and that the secretary exercised a heavy hand in shaping the texts of Athenian decrees. But apart from this bit of comedy there is no evidence that secretaries did that work, and close attention to the details of the scene suggest that it is not a straightforward imitation of the real assembly.

Let us begin by teasing out the implications of the verb συγγράψομαι. Scholars have construed the middle voice here as causative, "get written down," as LSJ, citing Herodotus, suggest is sometimes the case with this verb.[133] But Herodotus, in fact, does not appear to use the middle voice of this verb in a causative sense, for in the one instance where context sheds much light the middle need mean no more than "write something down for oneself" and is barely (if at all) different from γράφειν.[134] Nor is

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[133] Dover (1981) 2-3 points out (n.4) that LSJ, who distinguish between the meaning of the voices of this verb in Herodotus, do not distinguish between the active and middle voice where this verb is used of proposing a decree.

[134] Hdt. 8.135: ἐλθεῖν ἄρα τὸν Εὐρωπέα Μῦν, περιστρωφώμενον πάντα τὰ χρηστήρια, καὶ ἐς τοῦ Πτῴου Ἀπόλλωνος τὸ τέμενος. Τοῦτο δὲ τὸ ἱρὸν καλέεται μὲν Πτῷον, ἔστι δὲ Θηβαίων, κεῖται δὲ ὑπὲρ τῆς Κωπαΐδος λίμνης πρὸς ὄρεϊ ἀγχοτάτω Ἀκραιφίης πόλιος. Ἐς τοῦτο τὸ ἱρὸν ἐπείτε παρελθεῖν τὸν καλεόμενον τοῦτον Μῦν, ἕπεσθαι δέ οἱ τῶν ἀστῶν αἱρετοὺς ἄνδρας τρεῖς ἀπὸ τοῦ κοινοῦ ὡς ἀπογραψομένους τὰ θεσπιεῖν ἔμελλε, καὶ πρόκατε τὸν πρόμαντιν βαρβάρῳ γλώσσῃ χρᾶν. Καὶ τοὺς μὲν ἑπομένους τῶν Θηβαίων ἐν θώματι ἔχεσθαι ἀκούοντας βαρβάρου γλώσσης ἀντὶ Ἑλλάδος, οὐδὲ ἔχειν ὅ τι χρήσωνται τῷ παρεόντι πρήγματι· τὸν δὲ Εὐρωμέα Μῦν, ἐξαρπάσαντα παρ' αὐτῶν τὴν ἐφέροντο δέλτον, τὰ λεγόμενα ὑπὸ τοῦ προφήτεω γράφειν ἐς αὐτὴν, φάναι δὲ Καρίῃ μιν γλώσσῃ χρᾶν· συγγραψάμενον δὲ οἴχεσθαι ἀπιόντα ἐς Θεσσαλίην. (Mys of Europos came in his wanderings among the places of divination to the precinct of Ptoan Apollo. This temple is called Ptoum, and belongs to the Thebans. It lies by a hill, above lake Copais, very near to the town Acraephia. When this man called Mys entered into this temple together with three men of the town who were chosen on the state's behalf to write down [ἀπογραψομένους] the oracles that should be given, straightway the diviner prophesied in a foreign tongue. The Thebans who followed him were astonished to hear a strange language instead of Greek and knew not what this present matter might be. Mys of Europus, however, snatched from them the tablet which they were carrying and wrote [γράφειν] on it that which was spoken by the prophet, saying that the words of the oracle were Carian, and after writing it [συγγραψάμενον] he went back to Thessaly). Mys did not get another to write down the oracle; he was the one who knew Carian well enough to transcribe it. Here, then, συγγράφεσθαι scarcely differs from γράφειν.

there any evidence that Athenians used the active to mean "write" and the middle to mean "get written." A citizen in court might use the middle to say that he wrote a deposition for himself and the active to say that he wrote a deposition for someone else to attest,[135] and here the difference between the middle and active has nothing to do with who wrote the document. It is unclear why, when it comes to writing decrees, we should suppose that Athenians meant "write" when they used the active συγγράφειν (which is more common) and "get written" when they used the middle (which is rare).

Greeks in other cities did not draw such a distinction.[136] And a parallel in Plato's *Gorgias* provides a simpler way to explain the nature of the middle voice in the *Thesmophoriazusae*:

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[135] Dem. 19.176: καὶ ταῦθ' ὅτι ἀληθῆ λέγω, πρῶτον μὲν αὐτὸς ἐγὼ συγγραψάμενος καὶ καταστήσας ἐμαυτὸν ὑπεύθυνον μαρτυρήσω ("and that I say this truthfully, I myself will first bear witness, having written [sc. the deposition] and having established myself as liable). Dover (1980) 3 suggests that by the middle voice "Demosthenes wishes to suggest that he has copied down what was admitted to or discloses by others." But it is simpler to see here the usual reflexive middle, insofar as Demosthenes wrote the deposition *for himself* to testify. In *Against Aphobos*, Demosthenes remarks that he challenged Aphobos to testify against his uncle Demon, "having written this I bid him to depose to it, the very evidence which he now charges as falsely witnessed" (29.20: προσκαλοῦμαι κατὰ Δήμωνος εἰς μαρτυρίαν, ὄντος αὐτῷ θείου καὶ κοινωνοῦ τῶν ἀδικημάτων, καὶ συγγράψας ταῦτ' ἐκέλευον μαρτυρεῖν, ἃ νῦν διώκει τῶν ψευδομαρτυρίων).

[136] *IG* XII.6.1 42 (Samos 321-319 B.C.): ἔδοξε τῶι δήμωι· ἐπειδὴ Ἀριστοφῶντος εἰπόν|τος καὶ γνώμην ἐν Ἀθηναίοις συγγραψαμέν|ου τὸν στρατηγὸν τὸν ὑπ' Ἀθηναίων εἰΣάμον |κεχειροτονημενον Σαμίων τοὺς ἐξ Ἀναίω|ν κατελθόντας καὶ α[ὐ]τοὺς καὶ ἐκγόνους | συλλαβόντα ἀποστέλλειν εἰς Ἀθήνας, | τοῦ δήμου τοῦ Ἀθηναίων ταῦτα ψήφισα|μένου καὶ τὴμ Πάραλον τὸ ψήφισμα φέρ|ουσαν εἰΣάμον ἀποστείλαντος, ὁ στρατη|γὸς πολλοὺς καὶ καλοὺς καὶ ἀγαθοὺς τῶ|ν πολιτῶν συλλαβὼν ἀπέστειλεν, οὓς Ἀ|θηναῖοι καθέρξαντες εἰς τὸ δεσμοτήριον | θάνατον κατέγνωσαν ("Resolved by the people: since Aristophon, having proposed and having written a proposal among the Athenians to the effect that the general voted by the Athenians to Samos having gathered up those of the Samians who had returned, them and their offspring, send them to Athens, and the Athenian people having ratified this and having dispatched the Paralos bringing the decree to Samos, the general having gathered up many of the citizens both fine and good sent them, whom the Athenians, having shut them up in prison, sentenced to death…"). The point is to publicly assign blame, and it is worth noting that only the proposer, the people, and the general who carried out the decree are mentioned. If the secretary was a key figure in drafting the decree, why not mention him?

> If someone should ask, "What is the art you call calculation?" I should say that this too is an art which achieves its goal by reasoning (λόγῳ). And if he then asked: "What does it concern?" I should say, just like those writing in the assembly, that calculation is, in other respects exactly like counting (εἴποιμ' ἂν ὥσπερ οἱ ἐν τῷ δήμῳ συγγραφόμενοι, ὅτι τὰ μὲν ἄλλα καθάπερ ἡ ἀριθμητικὴ ἡ λογιστικὴ ἔχει).[137]

Socrates is alluding to the formulae by which amendments in Athenian decrees are identified: "everything else exactly as the council" or "everything else exactly as so-and-so proposed." [138] Thus, "those writing in the assembly" are those who propose amendments.

Now, it has been suggested that "those writing in the assembly" should really be translated "those who get (proposals) composed in the assembly."[139] But there is a simpler way to explain why Athenians would use the middle voice to refer to those who drafted amendments. Athenians tended to use the middle when two or more individuals were involved in the drafting of a legal documents like treaties[140] or

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[137] Pl. *Grg.*451b-c: Τὴν δὲ λογιστικὴν τίνα καλεῖς τέχνην;" εἴποιμ' ἂν ὅτι καὶ αὕτη ἐστὶν τῶν λόγῳ τὸ πᾶν κυρουμένων· καὶ εἰ ἐπανέροιτο· "Ἡ περὶ τί;" εἴποιμ' ἂν ὥσπερ οἱ ἐν τῷ δήμῳ συγγραφόμενοι, ὅτι τὰ μὲν ἄλλα καθάπερ ἡ ἀριθμητικὴ ἡ λογιστικὴ ἔχει.

[138] An amendment proposed in response to a preliminary decree of the council began like so (*IG* I^3 228.20-21): Φράσμω[ν εἶπεν· τὰ μ]ὲν [ἄλ|λα] καθάπερ τῆι βο[λῆι An amendment proposed in the assembly in response to proposal from the floor began with the same formula but with the name of the proposer rather than the council, as in *IG* I^3 40.70-71: Ἀρχέστρατο[ς] εἶπε· τὰ μὲν ἄλλα καθάπερ Ἀ|ντικλε̃ς·.

[139] Dover (1980) 3.

[140] Thucydides writes (5.41) that when Argive ambassadors came to negotiate a treaty the Spartans "were so eager for Argos to be completely friendly they yield to the terms which the (the Argives) demanded and drafted a treaty" (ἐπεθύμουν γὰρ τὸ Ἄργος πάντως φίλιον ἔχειν) ξυνεχώρησαν ἐφ' οἷς ἠξίουν καὶ ξυνεγράψαντο).

contracts.[141] A decree with a main resolution and an amendment proposed by different citizens was a legal document with two authors, insofar as anyone who proposed an amendment explicitly agreed to some of the terms of the decree and added his own. Socrates is referring, then, not to "those who get (proposals) written down" but to those who propose – that is, draft – amendments, and no one seems to have observed that this is precisely what the proposer in the *Thesmophoriazusae* is doing. The scene opens, just as the real assembly did, with the reading of a preliminary decree of the council, in which

> "Zostrate proposed: to hold an assembly at dawn in the midst of the Thesmophoria, when we are especially free to do so, and to deliberate first about Euripides and what he must suffer, since it is resolved by us that he is guilty of wrongdoing."[142]

In the real assembly, a preliminary decree like this, that included both a resolution and the introduction of a topic for debate, was answered with an amendment proposed from the floor.[143] In the fictional assembly of women in the *Thesmophoriazusae*, then, the

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[141] Dem. 56.10: ἐξαιρεῖται τὸν σῖτον ἐν τῇ Ῥόδῳ κἀκεῖ ἀποδίδοται, καταφρονήσαντες μὲν τῆς συγγραφῆς, ὦ ἄνδρες δικασταί, καὶ τῶν ἐπιτιμίων, ἃ συνεγράψαντο αὐτοὶ οὗτοι καθ' αὑτῶν ("They removed the grain in Rhodes and sold it there, in defiance of the contract, men of the jury, and the fines which they themselves contracted against themselves").

[142] Ar. *Th*. 373-379: ἔδοξε τῇ βουλῇ τάδε / τῇ τῶν γυναικῶν: Τιμόκλει' ἐπεστάτει, / Λύσιλλ' ἐγραμμάτευεν, εἶπε Ζωστράτη: / ἐκκλησίαν ποιεῖν ἕωθεν τῇ μέσῃ / τῶν Θεσμοφορίων, ᾗ μάλισθ' ἡμῖν σχολή, / καὶ χρηματίζειν πρῶτα περὶ Εὐριπίδου, / ὅ τι χρὴ παθεῖν ἐκεῖνον: ἀδικεῖν γὰρ δοκεῖ / ἡμῖν ἁπάσαις.

[143] In *IG* II² 218.9-12 the council resolved "that whoever are allotted to serve as chairmen at the next assembly introduce [sc. Dioskourides son of Dionysodoros] and deal with him" and then offered its specific proposal, "that the council and the generals and the archons in the cities of the Athenians take care that [Dioskourides and his offspring] come to no harm." (Εὐβολίδης Ἀν|[τ]ιφίλο Ἁλιμούσιος εἶπεν· περὶ ὧν Διοσκο[ρ]||[ί]δης ὁ Ἀβδηρίτης ἔδοξεν ἔννομα ἱκετεύει|ν ἐν τῆι βουλῆι, ἐψηφίσθαι τῆι βολῆι τοὺς π|ροέδρους οἳ ἂν λάχωσι προεδρεύειν εἰς τὴν | πρώτην ἐκκλησίαν προσαγαγεῖν αὐτὸν πρὸ|ς τὸν δῆμον καὶ χρηματίσαι, γνώμην δὲ ξυ|νβάλλεσθαι τῆς βουλῆς [εἰ]ς [τὸν] δῆμον ὅ[τι] | [δ]οκεῖ τῆι βουλῆι, ἐπε[ιδὴ αἰ]τ[οῦ]σι ἃ[ξια τοῦ] | [δήμ]ο τοῦ Ἀθηναίων Διο[σκ]ουρίδης καὶ [οἱ ἀ]||[δελφοὶ αὐ]τοῦ Χαρμῆς καὶ Ἀναξίπολις οἱ Δι[ο]||[νυσοδ]ώρο τοῦ Ἀβδηρίτου ὑεῖς, ἐπιμελεῖσ[θ]||[αι αὐτῶν τὴν] βουλὴν καὶ τοὺς στρατηγὸς κ|[αὶ] τοὺ[ς ἄρ]χοντας τοὺς ἐν ταῖς πόλεσι ταῖς | [Ἀ]θηναίων ὅπως ἂν μὴ ἀδικῶνται.) Then in lines 29-35 an amendment is recorded: "Diopeithes of Sphettos

middle voice need not reflect who held the pen but the fact that the woman who took the floor was proposing an amendment. To that extent, then, the scene seems to intersect with procedure in the real assembly, and suggests that by 411 even amendments had to be formulated in writing.

Yet she distinguishes between what she says openly and "the other things" that she will draft with the secretary. Scholars take this as evidence that "a proposal outlined and agreed to in the Assembly in response to an 'open probouleuma' could be put into appropriately legal form subsequently with the secretary."[144] But the contrast is between what is done openly (φανερῶς) in front of the assembly and what is not. Now, it was a principle of Athenian democracy that citizens brought proposals openly before the people,[145] and Athenian democrats on at least one occasion rejected the suggestion that

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proposed: concerning what Dioskourides seemed to lawfully petition the people for, so that the Athenian people honor its benefactors and take care of those friends of the city whenever they petition, be it voted by the people, in regard to the other things exactly as was resolved by the council, but also that it be possible for Dioskourides and Charmes and Anaxipolis the children of Dionysodoros the Abderite and for their own offspring to live at Athens until they return to their home and to pay the *eisphora* and campaign with the Athenians" (Διοπείθης | [Δι]οπείθους Σφήττιος εἶπεν· περὶ ὧν ἔδοξ|εν τῶι δήμωι Διοσκουρίδης ἔννομα ἱκετε|ύειν, ὅπως ἂν ὁ δῆμος ὁ Ἀθηναίων [τ]ιμᾶι τ|οὺς εὐεργέτας καὶ ἐπιμελῆται τῶν ἀεὶ δε|ομέ[ν]ων φίλων τῆς πόλεως, ἐψηφίσθαι τ|ῶι δή[μω]ι τὰ μὲν ἄλλα καθάπερ τῆι βουλ|[ῆ]ι, εἶναι δὲ Διοσκουρίδηι καὶ Χαρμῆι καὶ | [Ἀ]ναξιπόλιδι τοῖς Διονυσοδώρου τοῦ | [Ἀβ]δηρίτου παισὶν καὶ τοῖς ἐκ τούτων | [οἰκ]εῖν Ἀθήνησιν ἕως ἂν κατέλθωσι|[ν εἰς τ]ὴν αὐτῶν· εἰ[σφ]έρειν δὲ αὐτοὺς | [τὰς εἰσφορὰς καὶ στρατεύεσθαι] μετὰ | [Ἀθηναίων).

[144] Osborne (2012) 42 n.3. More than a century ago Wilhelm suggested that the lines echo "eine stehende Formel, welche die Redaktion nebensächlicher Bestimmungen dem Antragsteller im Einvernehmen mit dem γραμματεύς überließ."

[145] In E. *Supp.* 438-441, Theseus boasts, in the course of a speech contrasting tyranny and Athenian political life: τοὐλεύθερον δ' ἐκεῖνο· Τίς θέλει πόλει / χρηστόν τι βούλευμ' ἐς μέσον φέρειν ἔχων; / καὶ ταῦθ' ὁ χρήιζων λαμπρός ἐσθ', ὁ μὴ θέλων / σιγᾶι. ("This is freedom: who wishes to bring some useful plan to the public? And whoever wants this is well-known, whoever does not remains silent.").

the specific terms of a document could be worked out after the fact by agents elected by the people.[146] How likely is it, then, that the assembly of women in the *Thesmophoriazusae* mirrors a real procedure by which citizens were permitted to outline a proposal in speech and "to sort out the formal text with the secretary afterwards"?[147]

This is, after all, comedy, and in the assembly of women the basic procedures of the real assembly are perverted into parody. For example, when the heraldess pronounces the ritual curse at the start of the assembly she begins with the traditional clauses of the curse, which were directed against the Persians and any intent on tyranny, but her list of objectionable offenses "quickly deteriorate into a series of private, feminine offenses, such as passing off someone else's baby as one's own, tattling on the sexual adventures of one's mistress, and conveying false information from a lover."[148] When a speaker stands up to argue on behalf of Euripides, she (really a man in disguise)

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[146] Th. 4.22: ξυνέδρους δὲ σφίσιν ἐκέλευον ἑλέσθαι οἵτινες λέγοντες καὶ ἀκούοντες περὶ ἑκάστου ξυμβήσονται κατὰ ἡσυχίαν ὅτι ἂν πείθωσιν ἀλλήλους. Κλέων δὲ ἐνταῦθα δὴ πολὺς ἐνέκειτο, λέγων γιγνώσκειν μὲν καὶ πρότερον οὐδὲν ἐν νῷ ἔχοντας δίκαιον αὐτούς, σαφὲς δ' εἶναι καὶ νῦν, οἵτινες τῷ μὲν πλήθει οὐδὲν ἐθέλουσιν εἰπεῖν, ὀλίγοις δὲ ἀνδράσι ξύνεδροι βούλονται γίγνεσθαι· ἀλλὰ εἴ τι ὑγιὲς διανοοῦνται, λέγειν ἐκέλευσεν ἅπασιν ("[The Spartans] urged them to elect representatives for themselves who, by speaking and listening on each individual point, should come to an agreement in quiet regarding whatever they could persuade each other. But Kleon then then began to press harder, saying that he recognized even before that they had nothing just in mind, and that is was clear still now, that they were the sort who were unwilling to propose anything to the masses, but wishes that things happen with a few men; but if they had anything sound in mind, he ordered them to say it before all.").

[147] Rhodes (2001) 37: "In the *Thesmophoriazusae* one of the women outlines her proposal to the assembly and undertakes to sort out the formal text with the secretary afterwards."

[148] McClure (1999) 229. She continues: "[c]ited as particularly heinous in carrying out crimes against women are adulterers who deceive their mistresses and break their promises, crones who give presents to their lovers, courtesans who cheat on their boyfriends, and tavern keepers who deny women their full measure of wine (339-48). Thus, McClure concludes (230), "[t]he debate scene in the *Thesmophoriazusae* makes a mockery of the democratic process enacted in the Athenian assembly and in the law courts."

is threatened with physical harm, and in response she (he) invokes the freedom of speech and the freedom from bodily harm that constituted central ideals of Athenian democracy.[149] We know, then, that the women are presented by Aristophanes as getting the procedures and principles of Athenian democracy almost (but not quite) right: what is done for the public is abused by them for private purposes, what is done in the open in public is done, by them, in secret. Such, I urge, is the case with the woman who stands up, explains her thoughts openly, and then says she will draft an amendment, in private, with the secretary.

Indeed, it is unlikely that the secretary had much, if anything, to do with the drafting of decrees, especially in Aristophanes' day, when he was elected by his fellow councillors to serve a single 35-day term.[150] If in some cases he was chosen for what he knew of the language of decrees, he must have acquired that knowledge as an active citizen, not as a secretary. Anyway, as far as we are told, in Aristophanes' day the men who served as secretaries were chosen because they appeared to be "highly reputable and trustworthy."[151] Trustworthiness was the criterion, I suggest, because those who proposed decrees and those who put them to vote could be accused of colluding to get a

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[149] Ar. *Th*. 540-543: εἰ γὰρ οὔσης / παρρησίας κἀξὸν λέγειν ὅσαι πάρεσμεν ἀσταί, / εἶτ' εἶπον ἀγίγνωσκον ὑπὲρ Εὐριπίδου δίκαια / διὰ τοῦτο τιλλομένην με δεῖ δοῦναι δίκην ὑφ' ὑμῶν.

[150] According to *AthPol* 54.3 "in earlier times he was elected" (πρότερον μὲν οὖν οὗτος ἦν χειροτονητός). Henry (2002) 91 suggests that "[u]ntil sometime in the 360s, this official was appointed for a single prytany only, so that in any given year there were ten Secretaries of the Council" (in this he is following Ferguson [1895] 19: "at least as late as the year 368-7 B.C., the secretary changed with the prytany.").

[151] *AthPol* 54.3: πρότερον μὲν οὖν οὗτος ἦν χειροτονητός, καὶ τοὺς ἐνδοξοτάτους καὶ πιστοτάτους ἐχειροτόνουν.

decree passed that was against the people's interests or even illegal (the proposer by slipping the offending clause into the decree, the presider by putting it to a vote).[152] It would be odd for the secretary to not be included among the potential suspects, especially if he did the heavy lifting of drafting the proposal. But if he was not involved in drafting the text and had no control over its language, if his job was simply to "keep safe the decrees being passed,"[153] then it makes sense that the secretary was chosen for his perceived trustworthiness and was not, so far as we know, subject to special legal procedures (as the proposer and the presider were).[154] He had no legal responsbility for

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[152] Aeschin. 3.74: Λανθάνει γὰρ ὁ μὲν Φιλοκράτης ἐν ψηφίσματι μετὰ τῶν ἄλλων γράμμα τι παρεγγράψας, ὁ δ' ἐπιψηφίσας, Δημοσθένης, ἐν ᾧ γέγραπται «ἀποδοῦναι δὲ τοὺς ὅρκους τοῖς πρέσβεσι τοῖς παρὰ Φιλίππου ἐν τῇδε τῇ ἡμέρᾳ τοὺς συνέδρους τῶν συμμάχων». Παρὰ δὲ Κερσοβλέπτου σύνεδρος οὐκ ἐκάθητο· γράψας δὴ τοὺς συνεδρεύοντας ὀμνύναι, τὸν Κερσοβλέπτην οὐ συνεδρεύοντα ἐξέκλῃσε τῶν ὅρκων. ("Philokrates escaped notice having written a certain clause along with the others in his decree, and Demosthenes having put it to a vote, in which it has been written "the *synedroi* of the allies give the oaths to the ambassadors from Philip on this very day." But no *synedros* from Kersebleptes was then seated. In the act of having written that the *synedroi* see the oath sworn, he shut out Kersebleptes from the oath inasmuch as he was not one of the *synedroi*."). See also Aeschin. 3.3: γράφουσί τε τινὲς ῥᾳδίως παρανόμους γνώμας, καὶ ταῦτα ἕτεροί τινες τὰ ψηφίσματα ἐπιψηφίζουσιν ("some easily write illegal motions, and certain others put these to vote as decrees."). If the secretary was in charge of checking the legality of the proposal and had any power to prevent an (even apparently) illegal motion to a vote, then a claim like this, rhetorical and exaggerated as it may be, would make no sense without corresponding mention of a secretary who was in on the game.

[153] *Ath.Pol* 54.3: [sc. it was the secretary] ὃς τῶν γραμμάτων ἐστὶ κύριος, καὶ τὰ ψηφίσματα τὰ γιγνόμενα φυλάττει ("who is in charge of documents and keepsafes the decrees that are being enacted"). If Sickinger (1999) 145 is right that the present participle "suggests that the secretary dealt with the texts of decrees as they passed through the ratification process until they were approved," then we know exactly what his role was: to keepsafe the text, not to draft it. The meaning of φυλάττει is clearly "keepsafe" (*AthPol* 3.4): θ[εσ]μοθέται δὲ πολλοῖς ὕστερον ἔτεσιν ἠρέθησαν, ἤδη κατ' ἐνιαυτὸν αἱρουμέ[νων] τὰς ἀρχάς, ὅπως ἀναγράψαντες τὰ θέσμια φυλάττωσι πρὸς τὴν τῶν ἀμφι[σ]βητ[ού]ντων κρίσιν ("The Thesmothetai many years later were elected, when they were already electing officials yearly, to guard the ordinances for the judgment of those in disputes *after they recorded them*").

[154] Dionysius of Halicarnassus mentions (D.H. *Din* 10) Deinarchos' εἰσαγγελία κατὰ Φειδιάδου γραμματέως. But there is no record of a Pheidiades serving as secretary of the council in Deinarchos' lifetime, and thus it is not evident that Pheidiades was secretary of the council or that he was impeached for transgressions relating to decrees. And I know of no evidence that the councillors allotted to serve as secretaries before the 360s were subject to a special audit (*euthyne*).

the shape of a decree and that is reason to suspect that he had no power to shape the language of decrees. That was in the hands of the citizens who proposed them.

2.4 The Decree From Assembly to Archive

Still, after ratification a record of the decree had to be made, and since the secretary was in charge of public documents, he was presumably responsible for making an official copy of the decree to deposit in the archive[155] and, if so resolved, having a copy inscribed and erected in the city.[156] Archival copies of decrees were written on perishable materials and so none survives. Nevertheless scholars hold that "we may see on stone only a much abbreviated or otherwise edited version of the *probouleuma* that (a member of) the Council proposed to the assembly" and that "either a *probouleuma* or an intervention made from the floor of the assembly might be edited in such a way as to become virtually incoherent."[157] Thus, secretaries are thought to have exercised wide discretion

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[155] *AthPol* 54.3 tells us that, in addition to keepsafing decrees that are being enacted. the secretary "keepsafes the decrees that are being passed and has copies drawn of all the rest" (καὶ τἆλλα πάντα ἀντιγράφεται) If "all the rest" means all decrees that have been passed, then the *AthPol* means that he is in charge of having copies drawn, which ought to include the official copy. But the Greek is so compressed that it is hard to parse.

[156] Low (2005) 102 n. 40 suggests that there is "some evidence for the existence of assistants to the secretaries, to whom it can be assumed that many of the day-to-day tasks of taking minutes and maintaining records would have been delegated." For the undersecretary see Rhodes (1972) 132, who also discusses the public slaves who worked in the archives (141-2). It is obvious that the secretary did not cut the inscription himself but saw that it was inscribed on stone.

[157] Osborne (2010) 65-66. Scafuro (2003) 227 describes this as "the *status quo* on the subject." Thus Faraguna (2014) 168 has recently affirmed that the "inscribed text was often no more than an extract or abridged version of the archival copy of the document." And Elsner (2015) 51: "nor can we be at all sure that what was inscribed was exactly what was decreed." Rhodes and Lewis (1997) 3 offer a more restricted version of the thesis: "[w]hen a state publishes, or allows an interested party to publish, a decree, we may assume that the published text is based on (but not necessarily a complete and *verbatim* copy of) an original text written

not only in the conversion of spoken proposals to written decrees (a legislative scenario for which there is no evidence), but also over the redaction of archival copies (a documentary form of which not one specimen survives) into inscribed versions.

But one citizen might say of another that "he deposited an agreement with the people when he wrote a decree against himself, with the Mother of the gods, who stands guard for the *polis* over all statutes in writing."[158] That, just seconds after asking the clerk to read a decree drafted a year or so earlier and then asking, "Did you write this, Demosthenes? You did write it. It is impossible to deny."[159] The clear implication of this heated passage is that what Demosthenes wrote and what the archival copy bore were the same. So too when a prosecutor claims that he wrote a decree, "having written it explicity in the words which I now cite,"[160] and the defendant in the same trial states that

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on papyrus or comparable material." But Klaffenbach (1960) 36 wrote confidently that for Greeks "kam es allein auf den Inhalt an, und die Form trat hinter ihm zurück. Der Wortlaut brauchte durchaus nicht in allen Einzelheiten identisch zu sein, vorauzgesetzt, daß alles Wesentliche gesagt war." To my knowledge, the idea derives from Wilhelm (1909) 298, who suggested that documents "oft nur in Form eines Auszuges."

[158] Din. 1.86: ἔθετο συνθήκας μετὰ τοῦ δήμου, γράψας τὸ ψήφισμα καθ' ἑαυτοῦ, παρὰ τὴν Μητέρα τῶν θεῶν, ἣ πάντων τῶν ἐν τοῖς γράμμασι δικαίων φύλαξ τῇ πόλει καθέστηκε.

[159] Din. 1.83: ἔγραψας σὺ τοῦτο Δημόσθενες; ἔγραψας· οὐκ ἔστιν ἀντειπεῖν.

[160] Dem. 19.154: ἐπειδὴ γὰρ ἐκκλησία μὲν οὐκέτ' ἦν ὑπόλοιπος οὐδεμία διὰ τὸ προκατακεχρῆσθαι, οὗτοι δ' οὐκ ἀπῆσαν, ἀλλ' αὐτοῦ διέτριβον, γράφω ψήφισμα βουλεύων, τὴν βουλὴν ποιήσαντος τοῦ δήμου κυρίαν, ἀπιέναι τοὺς πρέσβεις τὴν ταχίστην, τὸν δὲ στρατηγὸν Πρόξενον κομίζειν αὐτοὺς ἐπὶ τοὺς τόπους ἐν οἷς ἂν ὄντα Φίλιππον πυνθάνηται, **γράψας ὥσπερ νῦν λέγω, τοῖς ῥήμασιν οὕτως ἄντικρυς**. Καί μοι λέγε τοῦτο τὸ ψήφισμα λαβών.

"decrees remain exactly as they were written from the beginning," [161] they meant that the decree changed little if at all from council or assembly to archive.

Why, then, should we think that the text changed on transition from archive to inscription? Decrees direct secretaries to inscribe "this decree" (τὸ δὲ ψήφισμα τόδε).[162] If a *rhetor* proposed a decree in writing and the assembly ratified it as written, then passage of any decree that contained the directive to inscribe "this decree" can only have meant faithful transcription of the written text (within the limits of ancient technology, which made it difficult to fix mistakes and expensive to discard one stone and start over on another). This suggests we revisit why scholars have seen, in inscribed decrees, evidence that the secretary had wide latitude over the formulation of official copies of decrees whether on stone or not.

Scholars assume that a decree's prescript was written by the secretary or one of his assistants. The prescripts of inscribed decrees show "haphazardness," and their "practice is not consistent even within a secretary's term of office" [163] (or even the same assembly for that matter).[164] Thus, it is concluded that "Athenian secretaries clearly had

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[161] Aeschin. 2.65-66: μοι λαβὲ τὸ ψήφισμα καὶ ἀνάγνωθι τὸ Δημοσθένους, ἐν ᾧ φαίνεται γεγραφώς, τῇ μὲν προτέρᾳ τῶν ἐκκλησιῶν συμβουλεύειν τὸν βουλόμενον, τῇ δ' ὑστέρᾳ τοὺς προέδρους ἐπιψηφίζειν τὰς γνώμας, λόγον δὲ μὴ προτιθέναι, ἐν ᾗ μέ φησιν αὐτὸς Φιλοκράτει συνειπεῖν. Οὐκοῦν τὰ μὲν ψηφίσματα ὡς ἐξ ἀρχῆς ἐγράφη μένει, οἱ δὲ τῶν συκοφαντῶν λόγοι πρὸς τοὺς ἐφ' ἡμέραν καιροὺς λέγονται.

[162] The earliest example is found in *IG* I^3 10.22-27 (c. 469-450 B.C.): τ|[ὸ δὲ ψήφισ]μα τό[δε] ἀναγραψά|[τω ὁ γραμμ]ατεὺς ὁ τῆς βολῆς | [ἐστήλη]ι λιθί[νη]ι καὶ καταθ|[έτω ἐμ πόλει τ]έλεσι τοῖς τῶ|[ν Φασηλιτῶν].

[163] Rhodes (2003) 38.

[164] Thus *IG* II^3 324.2-8 has the following prescript: [ἐ]πὶ Φρυνίχ[ο]υ ἄ[ρχοντος, ἐπὶ τῆς Πανδιονί]|[δ]ος δεκάτη[ς] π[ρυτανείας· Χαιρέστρατος Ἀ]|χαρνεὺς ἐγ[ρ]α[μμάτευεν· Σκιροφοριῶνος ἕ]|νει καὶ νέ[αι, πέμπτηι καὶ τριακοστῆι τῆς] | πρυτανείᾳ[ς· τῶν προέδρων ἐπεψήφιζεν Εὐ]|θυκράτης Ἀ[φιδναῖος· Διόφαντος

much greater discretion in deciding how to frame the minutes of the meetings they attended than do their modern counterparts,"[165] and that this discretion extended to the decree handed in by the proposer.[166] But it is unclear why we should expect strict regularity in Athenian decrees, or why a lack of regularity shows that the secretary had wide discretion to frame Athens' binding decrees.

Now, most of the formulae that make up the prescript vary from one decree to another, in their order or presence, including even the formula that certified the decree as the official enactment, "resolved by the council and assembly."[167] But one formula always appears in the same place just before the beginning of the substance of the decree: ὁ δεῖνα εἶπεν.[168] The simplest explanation for this stability, I suggest, is that this

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Φρασικλ]|είδου Μυρ[ρινούσιος εἶπεν· Compare *IG* II³ 325.1-7: [ἐπ]ὶ Φρυνίχου ἄρχοντος, ἐπὶ τῆς Πανδ|[ι]ονίδος δεκάτης πρυτανείας, εἶ Χαι|ρέστρατος Ἀμεινίου Ἀχαρνεὺς ἐγρα|μμάτευεν· τῶν προέδρων ἐπεψήφιζεν | Εὐθυκράτης Ἀφιδναῖος· ἔδοξεν τῶι δ|ήμωι καὶ τεῖ βουλεῖ· Διόφαντος Φρασ|ικλείδου Μυριν[ο]ύσιος εἶπεν·

[165] Henry (1977) 105.

[166] Even Miller, who began with the premise that the secretary drafted his minutes on the basis of written proposals, believed that the secretary decided whether to transcribe or summarize them, putting forward a reason on (1885) 13: "quantae dissimilitudines quantaeque varietates ex hac scribarum libertate in decretis Atticis multifariam ortae sint…quae cum ita sint, nemo mirabitur praeter praescripta ipsius decreti partes aliter alios scribas exhibuisse."

[167] See n. 165 above where one of two decrees passed at the same meeting (and proposed by the same man) does not even have an enactment-formula.

[168] There are three texts where ὁ δεῖνα εἶπεν might be missing. *IG* II² 356.10-11: ἔδοξ[ε]ν [τῶι] δήμω|[ι· ἐπειδ]ὴ Μ[έ]μνω[ν] τ..α… | ..η..ε…7…β..ε̣ι.. ; in *IG* II³ 361.10-11 the same text is restored: ἔδοξ[ε]ν [τῶι] δήμω|[ι· ..5…]ΗΜ[.]ΜΝΩ[.]Τ[..]Α[…]. The fragmentary *IG* II² 334.7-8 appears to contain an amendment without a proposer-formula: ὅπως ἂν εὐ]σ[εβ]ῶς κα|[ὶ - - -] κατ' ἐνιαυτὸν κ|[αὶ πέμπηται ἡ πομπὴ π]αρασκευ[ασμ]ένη ὡς ἄριστα τῆι Ἀ|[θηνᾶι καθ' ἕκαστο]ν τὸν ἐνιαυτὸν ὑπὲρ τοῦ δήμου τοῦ Ἀ|[θηναίων καὶ τἄλ]λα ὅσα δεῖ διοικῆται περὶ τὴν ἑορτὴ|[ν τὴν ἀγομένην τ]ῆι θεῶι καλῶς ὑπὸ τῶν ἱεροποιῶν εἰς | [τὸν ἀεὶ χρόνον, ἐ]ψηφίσθαι τῶι δήμωι, τὰ μὲν ἄλλα καθά|[περ τῆι βουλῆι. But there may have been a proposer-formula in the missing lines, for although amendments usually begin "so and so proposed: on the one hand everything else exactly

formula is an artefact of the proposal handed in by the proposer, not the prescript and certainly not the putative minutes.

In 343 B.C. Aeschines, defending himself in court, had a citizen named Amyntor attest to the following deposition:

> Amyntor testifies for Aeschines that when the people were deliberating on the subject of the alliance with Philip, according to the decree of Demosthenes, in the second meeting of the assembly, when no opportunity was given to address the people, but when the decrees concerning the peace and alliance were being put to vote, that at that meeting Demosthenes was sitting by him, and showed him a decree, on which the name of Demosthenes had been written [ἐφ' ᾧ ἐπεγέγραπτο <τὸ> Δημοσθένους ὄνομα]; and that he consulted him as to whether he should hand it to the presiding officers to put to vote; this decree contained the terms on which Demosthenes wrote that peace and alliance be made, and these terms were identical with the terms that Philocrates had written.[169]

To affix (ἐπεγέγραπτο) one's name on a decree was to identify oneself as proposer. In his prosecution of Timarchos for prostitution, Aeschines asked, "why do we wonder at our

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as (the council or a proposer), sometimes the proposer offered a lengthy motivation-clause before the amendment-formula, as in *IG* II² 218.22-29: Διοπείθης | [Δι]οπείθους Σφήττιος εἶπεν· περὶ ὧν ἔδοξ|εν τῶι δήμωι Διοσκουρίδης ἔννομα ἱκετε|ύειν, ὅπως ἂν ὁ δῆμος ὁ Ἀθηναίων [τ]ιμᾶι τ|οὺς εὐεργέτας καὶ ἐπιμελῆται τῶν ἀεὶ δε|ομέ[ν]ων φίλων τῆς πόλεως, ἐψηφίσθαι τ|ῶι δή[μω]ι τὰ μὲν ἄλλα καθάπερ τῆι βουλ|[ῆ]ι. The only text where ὁ δεῖνα εἶπεν genuinely seems to have dropped out of the text is *IG* II³ 411.33-47: χρηματί|σαι δὲ καὶ περὶ τῶν ἄλλων, ὧ|ν Ἀρύββας λέγει. τὰ μὲν ἄλλ|α καθάπερ τῆι βουλῆι· ἐ[ὰν δ]|έ τις Ἀρύββα[ν] β[ι]αίωι θ[ανά]||[τ]ωι ἀποκτείνηι ἢ τῶν πα[ίδ]||ων τινὰ τῶν Ἀρύββου, εἶν[αι] | τὰς αὐτὰς τιμω<ρ>ίας, αἵ[περ] | [κ]αὶ ὑπὲρ τῶν ἄλλων εἰσ[ὶν ν] | Ἀθηναίων· ἐπιμελεῖσθ[αι δ]|ὲ καὶ τοὺς στρατηγού[ς, οἳ ἂ]|ν στρατηγῶσι, ὅπως Ἀρ[ύββα]|ς καὶ οἱ παῖδες αὐτοῦ [κομί]|σωνται τὴν ἀρχὴν τὴν [πατρ]|ώιαν. Perhaps the proposer of the main resolution and amendment were the same man and the proposer-formula was dropped by an unscrupulous stonecutter. Perhaps the proposer-formula was dropped simply because here the text moves from one column on the stone to another and the stonecutter skipped over it.

[169] Aeschin. 2.67-68: Μαρτυρεῖ Ἀμύντωρ Αἰσχίνῃ, ὅτε ἐβουλεύετο ὁ δῆμος περὶ τῆς συμμαχίας τῆς πρὸς Φίλιππον κατὰ τὸ Δημοσθένους ψήφισμα, ἐν τῇ ὑστέρᾳ τῶν δυοῖν ἐκκλησιῶν, ὅτε οὐκ ἐξῆν δημηγορεῖν, ἀλλὰ τὰ περὶ τῆς εἰρήνης καὶ συμμαχίας ψηφίσματα ἐπεψηφίζετο,ταύτῃ τῇ ἐκκλησίᾳ Δημοσθένην ἐπιδείξασθαι παρακαθήμενον ψήφισμα γεγραμμένον ἑαυτῷ, ἐφ' ᾧ ἐπεγέγραπτο <τὸ> Δημοσθένους ὄνομα, καὶ ἀνακοινοῦσθαι αὐτὸν αὑτῷ, εἰ δῷ τοῖς προέδροις ἐπιψηφίσαι, καὶ εἶναι, ἐφ' οἷς τὴν εἰρήνην καὶ τὴν συμμαχίαν ἔγραψε ποιεῖσθαι, ἐπὶ τοῖς αὐτοῖς, ἐφ' οἵσπερ καὶ Φιλοκράτης ἐγεγράφει.

joint lack of success in affairs, when these sorts of *rhetors* are affixing themselves on the resolutions of the assembly?"[170] After the Athenians were defeated at Chaironeia "Demosthenes delivered the funeral speech, yet did not affix his own name to decrees, but each of his friends individually."[171] A sycophant was, on one view, "one of those shouting around the speaker's platform and filing indictments in exchange for money and denouncing *and affixing himself on other men's proposals*."[172]

This was the generic language for indicating formal authorship not just in decrees but in a range of legal instruments. When Philokrates was charged with drafting an illegal decree in 343, a group of citizens indicted him, "inscribing Lykinos in the plaint."[173] That is, the plaint was offered by Lykinos and began "Lykinos charged."[174] Similarly with impeachments,[175] with plaints for other charges,[176] and even with

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[170] Aeschin. 1.188: τί θαυμάζομεν τὴν κοινὴν ἀπραξίαν, τοιούτων ῥητόρων ἐπὶ τὰς τοῦ δήμου γνώμας ἐπιγραφομένων.

[171] Plu. *Dem.*21: τὸν μὲν οὖν λόγον εἶπεν ὁ Δημοσθένης, τοῖς δὲ ψηφίσμασιν οὐχ ἑαυτόν, ἀλλ' ἐν μέρει τῶν φίλων ἕκαστον ἐπέγραφεν.

[172] [Dem.] 59.43: [sc. the defendant] was οὐ γάρ πω ἦν ῥήτωρ, ἀλλ' ἔτι συκοφάντης τῶν παραβοώντων παρὰ τὸ βῆμα καὶ γραφομένων μισθοῦ καὶ φαινόντων καὶ ἐπιγραφομένων ταῖς ἀλλοτρίαις γνώμαις.

[173] Aeschin. 3.14: δίδωσι ψήφισμα Φιλοκράτης ὁ Ἀγνούσιος, καὶ ὁ δῆμος ἅπας ὁμογνωμονῶν ἐχειροτόνησεν, ἐξεῖναι Φιλίππῳ δεῦρο κήρυκα καὶ πρέσβεις πέμπειν ὑπὲρ εἰρήνης. Πρότερον μὲν γὰρ καὶ αὐτὸ τοῦτ' ἐκωλύετο ὑπό τινων, οἷς ἦν τοῦτ' ἐπιμελές, ὡς αὐτὸ τὸ πρᾶγμα ἔδειξεν. Γράφονται γὰρ οὗτοι παρανόμων τὸ ψήφισμα, Λυκῖνον ἐπὶ τὴν γραφὴν ἐπιγραψάμενοι, καὶ τίμημα ἑκατὸν τάλαντα.

[174] Aeschin. 3.62: Ἔγραψε Φιλοκράτης ἐξεῖναι Φιλίππῳ δεῦρο κήρυκα καὶ πρέσβεις πέμπειν περὶ εἰρήνης. Τοῦτο τὸ ψήφισμα ἐγράφη παρανόμων. Ἦκον οἱ τῆς κρίσεως χρόνοι· κατηγόρει μὲν Λυκῖνος ὁ γραψάμενος, ἀπελογεῖτο δὲ Φιλοκράτης, συναπελογεῖτο δὲ Δημοσθένης· ἀπέφυγε Φιλοκράτης.

[175] Dem. 13.5: τοὺς στρατηγοὺς κρίνετε, καὶ περίεσθ' ὑμῖν ἐκ τῶν πραγμάτων '**ὁ δεῖνα τοῦ δεῖνος τὸν δεῖν' εἰσήγγειλεν**,' ἄλλο δ' οὐδέν. See Plutarch *Alcibiades* 22: τὴν μὲν οὖν εἰσαγγελίαν οὕτως ἔχουσαν ἀναγράφουσι: 'Θεσσαλὸς Κίμωνος Λακιάδης Ἀλκιβιάδην Κλεινίου Σκαμβωνίδην εἰσήγγειλεν ἀδικεῖν… ("They record his impeachment as holding thus: Thessalos son of Kimon of the deme Lakiadai impeached Alcibiades son of Kleinias of the deme Skambonidai as doing wrong).

depositions.[177] Plaints, like decrees, were written by the accuser and then submitted to a magistrate.[178] And decrees, like plaints, were handed in with a formula affixed that consisted of the name of the proposer and a verb describing his action: "so-and-so said."[179]

The formula "so-and-so said" is taken to be the end of the prescript.[180] But it was an artefact of the draft decree submitted by the *rhetor*. The fact that it is never missing and never trades its position with the formulae of the prescript suggests that the secretrary's discretion to frame the official copy of a decree ended at the proposer-formula. And though we cannot collate inscribed and archival copies of decrees, another body of evidence sheds light on the secretary's possible scope of intervention.

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[176] Dem. 21.103: καὶ γὰρ οὔτ' ἀνεκρίνατο ταύτην ὁ συκοφάντης ἐκεῖνος, οὔθ' οὗτος οὐδενὸς εἵνεκ' αὐτὸν ἐμισθώσατο πλὴν ἵν' ἐκκέοιτο πρὸ τῶν ἐπωνύμων καὶ πάντες ὁρῷεν '**Εὐκτήμων Λουσιεὺς ἐγράψατο Δημοσθένην Παιανιέα λιποταξίου**· The formula was parodied in Ar. *V.* 894-897: ἐγράψατο | κύων Κυδαθηναιεὺς Λάβητ' Αἰξωνέα | τὸν τυρὸν ἀδικεῖν ὅτι μόνος κατήσθιεν | τὸν Σικελικόν. τίμημα κλῳὸς σύκινος.

[177] Dem. 54.31: ἐμβάλλεται μαρτυρίαν ψευδῆ καὶ ἐπιγράφεται μάρτυρας ἀνθρώπους οὓς οὐδ' ὑμᾶς ἀγνοήσειν οἴομαι ἐὰν ἀκούσητε, '**Διότιμος Διοτίμου Ἰκαριεύς, Ἀρχεβιάδης Δημοτέλους Ἁλαιεύς, Χαιρήτιος Χαιριμένους Πιθεὺς μαρτυροῦσιν** ἀπιέναι ἀπὸ δείπνου μετὰ Κόνωνος, καὶ προσελθεῖν ἐν ἀγορᾷ μαχομένοις Ἀρίστωνι καὶ τῷ υἱεῖ τῷ Κόνωνος, καὶ μὴ πατάξαι Κόνωνα Ἀρίστωνα'.

[178] Harris (2013) 144-145.

[179] Hyp. F 76 [Jensen] : εἰ τἀληθῆ Δημάδης ἐβούλετο περὶ Εὐθυκράτους εἰπεῖν, τοιοῦτον αὐτὸν ἔδει ψήφισμα γράψαι ... δι' ἣν Εὐθυκράτην πρόξενον ἐποίησεν. ἐγὼ <δὴ> τὰ πεπραγμένα αὐτῷ, ἐπιγράψας τὸ τούτου ὄνομα, ἀναγνώσομαι. *καὶ πλάττεται τοιοῦτον ψήφισμα*: Δημάδης Δημέου Παιανιεὺς εἶπεν· ἐπειδὴ Εὐθυκράτης προὔδωκε τὴν ἑαυτοῦ πατρίδα Ὄλυνθον καὶ αἴτιος ἐγένετο τὰς πόλεις τῶν Χαλκιδέων οὔσας τετταράκοντα ἀναστάτους γενέσθαι *καὶ τὰ ἑξῆς*. "If Demades wanted to speak the truth about Euthykrates, he ought to have written a decree of this sort…through which [sc. motion?] he made Euthykrates a *proxenos*. I, affixing the name of this one [sc. Demades], will read aloud the things done by him [sc. Euthykrates] (*he works up a decree of this sort*): Demades son of Demeas Paianean proposed: since Euthykrates betrayed his country Olynthos and became the cause of the cities of the Chalkidians which were in existence for forty years having been reduced to rubble *and so forth*."

[180] See n.166.

2.4 Amendments in Athenian Decrees

A little more than a hundred Athenian decrees carry what are often called "riders," but what are better described as amendments. A rider has little do with the subject of the main resolution. What we find appended to the end of the main resolution in an Athenian decree are texts that add to or change – that is, amend – certain of its provisions. Of the hundred or so surviving decrees with amendments, most are too fragmentary to make comparison fruitful, and many amendments simply supplement the main resolution. Nevertheless, a handful correct it, and if amendment and main resolution were, as I urge, enacted jointly, then decrees with amendments give us a rare chance to examine how much or little the secretary shaped the texts of decrees from archive to inscription.

On one view "it may have been that amendments were not taken, as in modern practice, before the motion."[181] But the main resolution and amendment are parts of a single decree,[182] and they fall under the same enactment formula because,[183] I urge, they

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[181] Jones (1957) 113.

[182] E.g. *IG* II² 212. In the main part of the decree Androtion proposed honors for Spartokos and Pairisiades, the sons of Leukon. In the amendment Polyeuktos proposed that a third son, Apollonios, be crowned together with his brothers. Rubinstein (2000) 94 observes that "[t]he heading of the decree, which mentions all three sons, shows that the decree was perceived and published as a single public enactment. This interpretation is further supported by the relief decoration on the stele depicting Spartokos and Pairisiades seated on a throne with Apollonios standing next to them. The relief thus represents the contents of the decision in its entirety, including the rider." Rubinstein points out (95) that *IG* II² 1623.276-285 refers to actions taken "in accordance with the decree of the people which Lykourgous of Boutade proposed and Aristonikos of Marathon" (κατὰ ψήφισμα | δήμου, ὃ εἶπεν Λυκ|οῦργος Βουτά : καὶ Ἀ|ριστόνικος Μαραθώ). The verb is singular, but the subjects are two. One possibile interpretation of the Greek, as Rubinstein observes, is that one man proposed the main resolution and the other an amendment. The fact that the main

were enacted by the same vote. The formulae that identify amendments imply that the main resolution in a decree with an amendment had not yet been ratified at the time the amendment was proposed. Thus, if an amendment was proposed to a preliminary resolution of the council, it began with the formula "everything else exactly as the council," where "the council" was in the dative case,[184] and the dative is best explained if the formula was a compressed way of saying "everything else [as resolved by] the

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resolution and amendment are treated as a single decree raises an interesting question: were the proposers responsible for each other's contribution? Rubinstein (2000) 96 suggests that "[i]t can reasonably be supposed that, if the proposer of a rider was brought to trial in a [γραφὴ παρανόμων], the writ on which the γραφὴ παρανόμωνwas formally based would contain only the text of the rider itself along with the law or laws which the rider allegedly contravened. Even so, it seems utterly inconceivable that the prosecutors would refrain from commenting on the wider context of the rider (*i.e.* the main body of the decree), once a case was given a hearing before the court."

[183] The only exception is *IG* II^3 324, passed in the ninth prytany of 322/1, on the second of Thargelion, nine months after a limited democracy was established after the Athenian were defeated by the Macedonians at the battle of Crannon. The first decree on the stone, a preliminary decree of the council ratified verbatim by the people in 337/6, establishes that Euanor the Akarnanian be a *proxenos* of the Athenian people. In line 31 a new prescript begins, referring to an assembly fifteen years later, in which it was resolved that Euanor and his descendants be granted the right to own property. That decree, proposed by the same citizen who fifteen years earlier proposed that Euanor be a *proxenos*, begins "everything else exactly as the council." If the amendment is referring to the decree above, then this would constitute evidence that an amendment could be proposed and enacted separately (by fifteen years no less). But it is far from clear that the amendment is directed at the first decree on the stone. And even if it was, it is possible that the decree of 337/6 B.C. had to be resubmitted for the people to consider because nine months before a new, limited democratic regime had been established by Antipater. When a new regime was established, honorific decrees often had to be re-decreed. Thus, it is possible that the first decree on the stone was resubmitted as a preliminary of the council, and that at that time Diophantos proposed an amendment to it, and since the decree itself was already inscribed on stone, the amendment was added to the same stone with a prescript reflecting the circumstances of its enactment. In any case, the fact that this decree was ratified and inscribed after the establishment of a limited democracy means that it is of limited value to our understanding of Athenian democracy in the fifth and fourth centuries.

[184] So *IG* I^3 110.26-27: Ἀντιχάρης εἶπε· τὰ μὲ|ν ἄλλα καθάπερ τῆι βολῆι.

council."[185] Now, an amendment that referred to what was resolved by the council implicitly does not refer to what was resolved by the people. Therefore in decrees that were "resolved by the council and the assembly," amendments that began "everything else exactly as the council" make more sense if they were proposed before the preliminary resolution was ratified by the assembly than if they were proposed after.

The same procedure ought to have applied when an amendment was proposed to a main resolution first proposed on the floor of the assembly. In those cases, the amendment began "everything else exactly as so-and-so [sc. proposed]."[186] If amendments like these were proposed in relation to a decree recently passed by the people, we might expect the formula to run "everything else exactly as (resolved by) the people" (in fact, when proposing an addendum to a previously enacted decree, Athenians preferred the phrase "everything else exactly as the prior decree").[187] But the formula "everything else exactly as so and so" addressed what was proposed by a citizen on the floor of the assembly, not what was resolved by the assembly. Decrees

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[185] Decrees of other cities were more explicit. In Miletos the formula was "everything else exactly as the council decreed" (*Milet* I 3 139c.22-23: Πειθένους Θαρσαγόρου εἶπεν· τὰ μὲν ἄλλα καθότι ἡ βουλὴ ἐψηφίσατο). What the council decreed was, in other words, what was resolved by the council. The amendment-formulae in Athens, Halikarnassos, and Miletos are simply different ways of expressing the same fact.

[186] *IG* I^3 68.26-34: Π|[…]κριτος εἶπε· τ̣[ὰ μὲν ἄλ]λα καθάπερ Κλεόνυμ|[ος· ℎ]όπος δὲ ἄρι[στα καὶ ῥᾶ]ιστα οἴσοσι Ἀθενα|[ῖοι τ]ὸν πόλεμ[ον γνόμεν ἐς] τὸν δε͂μον ἐχφέρεν |[ἐκκλε]σίαν̣ [ποέσαντας ℎε]οθινέν, ⁝ ἔδοχσεν τε͂ι | [βολε͂ι καὶ το͂ι δέμοι· Κεκρ]οπὶς ἐπρυτάνευε, Πο|[λέμαρχος ἐγραμμάτευε, ℎ]υγιαίνον ἐπεστάτε, |[Κλεόνυμος εἶπε· τὰ μὲν ἄλλ]α κατὰ τὸ πρότερο[ν | φσέφισμα - 14 -]ματα ἐς τὸν [the fragment ends here].

[187] See the text in the preceding note.

with this amendment-formula, then, consist of two proposals made from the floor and jointly enacted as a single decree by the same vote.

That explains why, if the main motion proposed "that the secretary inscribe this decree," it was unnecessary to propose additionally that the amendment be inscribed.[188] And also why, if someone proposed in an amendment "that the secretary inscribe this decree," but no such clause appeared in the main motion, the secretary took that to mean the amendment and the main motion and inscribed both.[189] Both constituted "this decree" because both were ratified by the same vote. And since amendment and main resolution were jointly enacted as the decree, then jointly they open a backdoor into the process by which the secretary made a record of a decree drafted and ratified on the floor of the assembly.

Scholars have suggested that "[i]t was common Athenian practice both to correct the original proposal in light of the amendment and to publish the amendment after the corrected proposal."[190] But the only evidence for that practice is a single amendment in which it is explicitly stipulated that the text of the original proposal be corrected.[191] And

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[188] Thus in *IG* I³ 40.57-60 we find in the main resolution the following clause: τὸ δὲ φσέφισμα τόδε καὶ τὸν | *h*όρκον ἀναγράφσαι Ἀθένεσι μὲν τὸν γρα|μμ[α]τέα τε͂ς βολε͂ς ἐστέλει λιθίνει καὶ κ|αταθε͂ναι ἐς πόλιν. In the amendment recorded at lines 70-79 no publication clause appears.

[189] E.g. *IG* II² 232 (no stipulation to inscribe in the main resolution; it appears in the amendment).

[190] Rhodes and Osborne (2003) 16.

[191] *IG* I³ 110.6-10 begins: Διειτρέφης εἶπε· ἐπειδὴ ἀνή|ρ ἐστι ἀγαθὸς Οἰνιάδης ὁ Παλ|αισκιάθιος περὶ τὴν πόλιν τ|ὴν Ἀθηναίων καὶ πρόθυμος πο|ιε͂ν ὅ τι δύναται ἀγαθόν. In lines 26-32 an amendment is recorded: Ἀντιχάρης εἶπε· τὰ μὲ|ν ἄλλα καθάπερ τῆι βολῆι, ἐς δ|[ὲ τ]ὴγ γνώμην μεταγράψαι ἀντ|[ὶ τὸ͂ "Σ]κιαθίο", ὅπως ἂν ἦι γεγρα|[μμένο]ν, "Οἰνιάδην τὸν Παλαισ|[κιάθιον"]. Thus, Dieitrephes must have initially named

it does not appear to have been observed that it was possible for an amendment to correct the substance of the main resolution without explicitly stipulating that the text be changed, and without a consequent modification of the language in that resolution. In the main resolution in *IG* I^3 84, introduced to the assembly as the preliminary decree of the council, the councillor Adosios proposed, among other things, to fence in the precinct of Neleos and Kodros and Queen and to let it under contract; that the *poletai* were to hire someone to do the fencing, but that the king-archon was to let the contract for the precinct; that the money for the fencing was to come from the precinct; that the *poletai* and the king-archon were to do these things before the current council left office, or else be subject to a thousand-drachma fine.[192]

There must have been debate in the assembly, for the amendment, proposed by the same Adosios, stipulated a number of substantive changes: that the king and the *poletai* were to arrange the lease of the precinct together; that the lessee was to fence in the precinct at personal cost; and that if the king-archon or anyone else whom he

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Oiniades the "Skiathian" in the preliminary resolution of the council. In the assembly Antichares proposed that the name be modified.

[192] *IG* I^3 84.4-11: Ἀδόσιος εἶπε ἦρχσαι τὸ *h*ιερὸν τοῖ Κόδρο καὶ τοῖ Νελέος καὶ τῆς Βασίλες κ[α]|ὶ μισθῶσαι τὸ τέμενος κατὰ τὰς συνγραφάς. οἱ δὲ πολεταὶ τὲν ἦρχσ[ι]|ν ἀπομισθοσάντον. τὸ δὲ τέμενος ὁ βασιλεὺς ἀπομισθοσάτο κατὰ [τ]|ὰς χσυνγραφὰς, καὶ τὸς ὁριστὰς ἐπιπέμφσαι ὁρίσαι τὰ *h*ιερὰ ταῦτα, | ὅπος ἂν ἔχει ὸς βέλτιστα καὶ εὐσεβέστα<τα>. τὸ δὲ ἀργύριον ἐς τὲν ἦρχ|σιν ἀπὸ τοῖ τεμένος εἶναι. πρᾶχσαι δὲ ταῦτα πρὶν ἢ ἐχσιέναι τένδε | τὲν βολέν, ἢ εὐθύνεσθαι χιλίασι δραχμέσι ἕκαστον κατὰ τὰ εἰρε|μένα.

deputized to carry out the decree did not do so within the prytany of Aegeis, the last prytany of that year, then he was to be subject to a fine of ten-thousand drachmas.[193]

These provisions were meant to supersede those of the original proposal. The secretary, however, retained the defunct clauses in the main body of the decree. The amendment offered superseding provisions but did not specifically call for overwriting the original clauses, and so the secretary dutifully represented everything that had been presented to him, including the clauses in the council's resolution that had no legal force. In other words, here when the secretary drew up the official copy of the decree he appears to have been constrained to reproduce the text drafted by the proposer and ratified by the people.

The same is apparent in decrees with supplementary amendments. Even a simple supplementary amendment, proposed in the assembly by the same citizen who proposed the preliminary resolution of the council, was nevertheless inscribed as a discrete part of the decree. Thus in *IG* II^2 206, Hierokleides proposed that since Theogenes of Naukratis had done what good he could for Athens and individual Athenians, it be resolved by the council to introduce him at the next assembly, and to put the motion to the people that he be a *proxenos* and an official benefactor with the

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[193] *IG* I^3 84.11-20: Ἀδόσιος εἶπε· τὰ μὲν ἄλλα καθάπερ τῆι βολῆι, ὁ δὲ βασιλεὺς μ|[ι]σθοσάτο καὶ οἱ πολεταὶ τὸ τέμενος τὸ Νελέος καὶ τῆς Βασίλες κα|[τ]ὰ τὰς χσυνγραφὰς εἴκοσι ἔτε· τὸν δὲ μισθοσάμενον ἦρχσαι τὸ *h*ιε|[ρ]ὸν τὸ Κόδρο καὶ τὸ Νελέος καὶ τῆς Βασίλες τοῖς ἑαυτο τέλεσιν· ὁπ|[ό]σεν δ' ἂν ἄλφει μίσ[θ]οσιν τὸ τέμενος κατὰ τὸν ἐνιαυτὸν ἕκαστον, κ|αταβαλλέτο τὸ ἀργύριον ἐπὶ τῆς ἐνάτες πρυτανείας τοῖς ἀποδέκ|ταιϛ, οἱ δὲ ἀποδέκται τοῖς ταμίαισι τῶν ἄλλον θεῶν παραδιδόντον |[κ]ατὰ τὸν νόμον· ὁ δὲ βασιλεὺς ἐὰν μὲ ποιέσει τὰ ἐφσεφισμένα ἢ ἄλλ|ος τις οἷς προτέτακται περὶ τούτον ἐπὶ τῆς Αἰγείδος πρυτανεί|ας, εὐθυνέσθω μυρίεσι δραχμῆσιν (" Adosios proposed: everything else exactly as the council, but let the Basileus

right to acquire land in Attica and the protection of the Athenian generals and council.[194] In the assembly, the same Hierokleides proposed, in an amendment, that the secretary of the council inscribe the decree and have it erected within ten days of ratification, that the *tamias* pay for the inscription, and that the people praise Theogenes and invite him to dine in the *prytaneion*.[195]

The main body of the decree must be nearly identical to what Hierokleides proposed to the council, for he did not address the assembly and propose that "it be resolved by the council." And the people did not resolve that the *council* submit its opinion that Theogenes be a *proxenos* and a benefactor and have the right to acquire

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[194] *IG* II² 206.1-25: ἐπὶ τῆς Πανδιονίδος ἐνάτης π[ρυτα]|νείας ἧι Διεύχης Δημάρχου Φρε[άρρ]|ιος ἐγραμμάτευεν. Σωκέρδης Ἁλα[ιε]|ὺς ἐπεστάτει· Καλλίμαχος ἦρχεν· [ἔδ]|οξεν τῆι βουλῆι καὶ τῶι δήμωι· Ἱε[ρο]|κλείδης Τιμοστράτου Ἀλωπεκῆθε[ν] | εἶπεν· ἐπειδὴ Θεογένης ὁ Ναυκρατί|της ἀνὴρ ἀγαθός ἐστιν περὶ τὸν δῆμ|ον τὸν Ἀθηναίων καὶ ποεῖ ὅτι δύνατ|αι ἀγαθὸν καὶ ἰδίαι τοὺς ἀφικνουμ|ένους καὶ δημοσίαι καὶ νῦν καὶ ἐν τ|ῶι πρόσθεν χρόνωι καὶ αὐτὸς καὶ οἱ | πρόγονοι αὐτοῦ, δεδόχθαι τῆι βουλ|ῆι, τοὺς προέδρους οἳ ἂν λάχωσιν πρ|οεδρεύειν εἰς τὴν πρώτην ἐκκλησί|αν προσαγαγεῖν Θεογένην καὶ χρημ|[ατίσ]αι αὐτῶι, γνώμην δὲ ξυμβάλλεσ|θαι τῆς [β]ουλῆς εἰς τὸν δῆμον ὅτ[ι] δο|κεῖ τῆι βου[λῆι] εἶναι Θεογένην Ξε[ν]|οκλέ̣ους Ναυκ[ρατίτη]ν πρόξενον [κα]|ὶ εὐ[ερ]γέτην [τ]ο[ῦ δήμου τοῦ Ἀθηναίω]|ν καὶ αὐτὸν καὶ [ἐκγόνους καὶ εἶναι] | αὐτῶι οἰκίας ἔ[γκτησιν· ἐπιμελεῖσ]|θαι δὲ αὐτοῦ το[ὺς στρατηγοὺς καὶ τ]|ὴν βουλὴν τὴν ἀ[εὶ βουλεύουσαν] ("Gods. In the ninth prytany, of Pandionis, for which Dieuches son of Demarchos of Phrearrhioi was secretary. Sokerdes of Halai was chairman. Kallimachos was archon. Resolved by the Council and the People. Hierokleides son of Timostratos of Alopeke proposed: since Theogenes of Naukratis is a good man with respect to the Athenian People and does what good is in his power, for those who approach (him), both individually and publicly, both now and in time past, both he himself and his ancestors, be it resolved by the council that the presiding committee allotted to preside at the next Assembly shall introduce Theogenes, and deal with him, and submit the opinion of the Council to the People, that it seems good to the Council, that Theogenes son of Xenokles of Naukratis be proxenos and benefactor of the Athenian People, both himself and his descendants; and he shall have right of [ownership] of a house; and the generals and the Council in office at any time shall take care of him.").

[195] Ἱεροκλείδης Τ[ιμοστράτου Ἀλωπεκ]|[ῆ]θεν εἶπεν· τὰ μ[ὲν ἄλλα καθάπερ τῆι] | βουλῆι, ἀναγράψ[αι δὲ τόδε τὸ ψήφισ]|μα τὸν γραμματ[έα τῆς βουλῆς ἐν ἀκρ]|οπόλει καὶ στῆσ[αι δέκα ἡμερῶν, εἰς] | δὲ τὴν ἀναγραφὴ[ν τῆς στήλης δοῦνα]|ι τὸν [τ]αμίαν τοῦ [δήμου ΔΔ δραχμὰς ἐ]|κ τῶν κατὰ ψηφίσ[ματα ἀναλισκομέν]|ων τῶι δήμωι. ἐπα[ινέσαι δὲ Θεογένη]|[ν κ]αὶ [κα]λέ[σ]α[ι] ἐ[πὶ ξένια εἰς τὸ πρυτ]|[ανεῖον εἰς αὔριον] ("Hierokleides son of Timostratos of Alopeke proposed: The rest as proposed by the Council, but the secretary of the Council shall inscribe this decree on the acropolis and stand it there within ten days; and the treasurer of the People shall give 20 drachmas for inscribing the stele from the money spent by the people for decrees; and to praise Theogenes and invite him to hospitality in the [city hall] tomorrow.").

property in Attica. Whatever Hierokleides or anyone else said in the assembly, what was submitted for vote and passed was a written copy of the council's prior resolution. In that document's passage from council to assembly and from assembly to inscription, it seems scarcely to have changed. The secretary did little more than add to the initial resolution formula the words "καὶ τῶι δήμωι" and to the end of the text the amendment, which was also proposed by Hierokleides.

It would have been simple enough to tack the proposals in the amendment onto the end of the initial resolution without indicating that they were proposed in an amendment, since the proposer was the same man and the amendment was merely a set of additional provisions not requiring any changes. But the secretary was apparently constrained to leave the amendment as an addendum and even to leave the language of the preliminary resolution in the resulting decree of the people, such that a decree which begins "resolved by the council and the assembly" proposes "that it be resolved by the council." This does not suggest that "a huge amount must have been omitted from this record,"[196] nor that generally "inscriptions do *not* record the words of the *probouleuma*."[197] Quite the opposite; this decree of the assembly was in effect the council's preliminary resolution with a minor amendment attached.

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[196] Low (2013) 72.

[197] Osborne (2010) 68 (emphasis his).

If these examples show that the secretary's editorial authority was constrained then a number of thorny texts make better sense. *IG* II² 1 contains multiple decrees, the first of which was proposed and enacted in 405/4 B.C. on behalf of the Samians who supported the Athenian people at the end of the Peloponnesian war.[198] In it Klesophos and his fellow *prytaneis* proposed, among other things that the Samians be Athenians but govern themselves as they wished and use their own laws; that in all other matters the Athenians and Samians swear oaths in accordance with established treaties; to give and accept legal cases concerning whatever charges are laid against each other in accordance with existing agreements; to give to the Samians to use however they wished the trireremes already outfitted in Samos.[199] But not long after the decree was enacted,

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[198] That the grant was limited to loyal Samians is expressed in the superscript of the inscription (*IG* II² 1.3-4): Σαμίοις ὅσοι μετὰ τοῦ δήμο τοῦ Ἀθηναί|ων ἐγένοντο. After the Athenians were defeated at Aesgopotami "the rest of Greece revolted from the Athenians after the battle except the Samians, and they made a slaughter of the nobles and retained possession of the city" (X. *HG* 2.2.6).

[199] *IG* II² 1.12-32: δεδόχθαι τῆι βολῆι καὶ τῶι δήμωι, Σαμίος Ἀθηναίος ἔναι | πολιτευομένος ὅπως ἂν αὐτοὶ βόλωνται· καὶ ὅπως ταῦτα ἔσται ὡς ἐπιτηδειό|τατα ἀμφοτέροις, καθάπερ αὐτοὶ λέγοσιν, ἐπειδὰν ἐρήνη γένηται, τότε περὶ | τῶν ἄλλων κοινῆι βολεύεσθαι. τοῖς δὲ νόμοις χρῆσθαι τοῖς σφετέροις αὐτῶν | αὐτονόμος ὄντας, καὶ τἄλλα ποιεῖν κατὰ τὸς ὅρκος καὶ τὰς συνθήκας καθάπερ | ξύνκειται Ἀθηναίοις καὶ Σαμίοις· καὶ περὶ τῶν ἐνκλημάτων ἃ ἂγ γίγνηται | πρὸς ἀλλήλος διδόναι καὶ δέχεσθαι τὰς δίκας κατὰ τὰς συμβολὰς τὰς ὅσας. | [ἐ]ὰν δέ τι ἀναγκαῖογ γίγνηται διὰ τὸν πόλεμον καὶ πρότερον περὶ τῆς πολι|[τ]είας, ὥσπερ αὐτοὶ λέγοσιν οἱ πρέσβες, πρὸς τὰ παρόντα βολευομένος ποιεῖν | [ἢ]ι ἂν δοκῆι βέλτιστον ἔναι. περὶ δὲ τῆς ἐρήνης, ἐὰγ γίγνηται, ἔναι κατὰ ταὐτὰ | [κ]αθ' ἅπερ Ἀθηναίοις, καὶ τοῖς νῦν οἰκοῦσιν Σάμον· ἐὰν δὲ πολεμῆν δέηι, παρασκ|[ε]υάζεσθαι αὐτὸς ὡς ἂν δύνωνται ἄριστα πράττοντας μετὰ τῶν στρατηγῶν. | [ἐὰ]ν δὲ πρεσβείαν ποι πέμπωσιν Ἀθηναῖοι, συμπέμπεν καὶ τὸς ἐƵάμο παρόντας, | [ἐάν] τινα βόλωνται, καὶ συνβολεύεν ὅτι ἂν ἔχωσιν ἀγαθόν. ταῖς δὲ τριήρεσι | [ταῖς] ὅσαις ἐσΣάμωι χρῆσθαι αὐτοῖς δοῦναι ἐπισκευασαμένοις καθ' ὅτι ἂν αὐ|[τοῖς δ]οκῆι· τὰ δὲ ὀνόματα τῶν τριηράρχων, ὧν ἦσαν αὗται αἱ νῆες, ἀπογράψαι | [τὸς πρέσ]βες τῶι γραμματεῖ τῆς βολῆς καὶ τοῖς στρατηγοῖς, καὶ τούτων εἴ πό | [τί ἐστι ὄφλημ]α γεγραμμένον ἐν τῶι δημοσίωι ὡς παρεληφότων τὰς τριήρες, |[ἅπαντα ἐξαλειψά]ντων οἱ νεωροὶ ἀπανταχόθεν, τὰ δὲ σκεύη τῶι δημοσίωι ἐσ|[πραξάντων ὡς τάχιστα κα]ὶ ἐπαναγκασάντων ἀποδοῦναι τὸς ἔχοντας τούτων | [τι ἐντελῆ.

the Athenians were defeated and an oligarchy established in Athens by the Spartan general Lysander.[200]

The oligarchy was short-lived and by 403/2 B.C. democracy was restored. In the course of that year the Athenians passed another decree on behalf of the Samians, recorded just below the decree passed in 405/4. In the main resolution Kephisophon proposed that everything be valid that the Athenian people had previously decreed for the Samian people; that the Samians send whomever they wish as ambassadors to Sparta; that the Athenians elect ambassadors to send with them; that the Athenians praise the Ephesians and Notians for accepting Samians into their cities as refugees; that the Samians be brought before the assembly so that the people could deal with whatever they asked; and to invite them to dinner in the prytaneion.[201] Then in the assembly the same Kephisophon proposed, in an amendment, "that it be voted by the Athenian people that everything which was earlier decreed concerning the Samians be valid

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[200] Stem (2003) 18-34 discusses the evidence for the two dates mentioned in the ancient sources, April of 404 (Plu. *Lys.* 15.1 with X. *HG* 2.3.3) and sometime in the summer of 404 (D.S. 14.3.4-5).

[201] *IG* II² 1.42-51 Κηφισοφῶν [εἶπεν] | [ἐπαινέσαι τὸς Σαμίος ὅτι ἐσὶν] ἄνδρες ἀγαθοὶ περὶ Ἀθηναίος, καὶ ἅπ[αντα] | [κύρια ἦναι ἃ πρότερον ὁ δῆμος] ἐψηφίσατο ὁ Ἀθηναίων τῶι δήμωι τῶι Σα[μίων] | [πέμψαι δὲ τὸς Σαμίος ὥσπερ αὐ]τοὶ κελεύοσιν ἐς Λακεδαίμονα ὄντινα [ἂν αὐ]|[τοὶ βόλωνται· ἐπειδὴ δὲ προ]σδέονται Ἀθηναίων συνπράττεν, προσελέσ[θαι] | [πρέσβες, οὗτοι δὲ συμπρα]ττόντων τοῖς Σαμίοις ὅ τι ἂν ἀγαθὸ[ν καὶ] | [κοινῆι βολευέσθων μετὰ] ἐκένων· ἐπαινῆσι δὲ Ἀθηναίοι Ἐφεσίος καὶ Νοτ[ιᾶς] | [ὅτι προθύμως ἐδέξαντο] Σαμίων τὸς ἔξω ὄντας· προσαγαγῆν δὲ τὴν πρεσβεία[ν] | [τῶν Σαμίων ἐς τὸν δῆμ]ον χρηματίσασθαι ἐάν το δέωνται· καλέσαι δὲ καὶ ἐπὶ | [δεῖπνον τὴν πρεσβ]είαν τῶν Σαμίων ἐς τὸ πρυτανέον ἐς αὔριον.

exactly as the council proposed in its preliminary decree and invite the Samians to dinner in the prytaneion."[202]

It has struck scholars as odd that Kephisophon appears to repeat, in his amendment, two clauses that appear in the main resolution. On an old view, the purpose of the amendment was to cancel those clauses that had not been repeated.[203] But this would imply that any time clauses in the main decree were not repeated in the amendment, they were meant to be nullified. Since many amendments simply call for the text to be inscribed or other simple additions, this cannot be the norm. Anyway, the default expression of the amendment formula was to uphold everything else proposed by the council but for the proposals made in the amendment itself, whether they supplemented or overwrote any of the main resolution. On a recent view, the proposal to uphold the earlier decree of 405/4 and the invitation to dinner did not appear in the preliminary resolution presented by Kephisophon to the assembly, but were proposed in the amendment and added to the main body of the decree after the assembly.[204] But it is hard to explain why the secretary took it upon himself to correct the main body of the

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[202] *IG* II² 1.51-55: Κηφισωφῶν | [εἶπε· τὰ μὲν ἄλλα κ]αθάπερ τῆι βολῆι· ἐψηφίσθαι δὲ Ἀθηναίων τῶι δήμωι κύρια | [ἶναι τὰ ἐψηφισ]μένα πρότερον περὶ Σαμίων καθάπερ ἡ βολὴ προβολεύσασα | [ἐς τὸν δῆμον ἐσ]ήνεγκεν· καλέσαι δὲ τὴν πρεσβείαν τῶν Σαμίων ἐπὶ δεῖπνον | [ἐς τὸ πρυτανέ]ον ἐς αὔριον.

[203] Miller (1885) 46-52, so too Swoboda (1895) 13.

[204] Rhodes and Osborne (2003) 16. Rhodes (1972) 279 offered the same suggestion. Already Jones (1957) 115 had suggested that "[i]t is difficult to see what to make of this muddle. Did the council forget to record in its probouleuma a resolution which it had passed confirming the earlier decrees and omit to invite the embassy to dinner? And did Cephisophon in his amendment correct these errors? And were the corrections embodied in the decree, as well as being recorded as an amendment?"

decree in one respect but leave in it a resolution like "introduce the Samians to the people to deal with whatever they ask." Language like that belongs to a preliminary decree of the council. It serves no purpose in a decree of the assembly. Moreover, the council was permitted to extend its own invitations to dinner, and thus the invitation in the amendment is simply a second invitation. Thus, we can be sure that the main resolution reflects the preliminary decree of the council, including the provision that everything be valid which had previously been voted for the Samians.

The amendment, then, needs further explanation. Someone, I suggest, whether Athenian or Samian, must have wondered aloud whether that meant the main resolution of 405/4, which was a preliminary resolution of the council ratified by the assembly and which contained a wide set of rights and privileges, or the amendment, ratified by the assembly alone, which contained a set of procedures for carrying out the provisions of the main resolution. Kephisophon must have meant the main resolution, and so he specified, in his amendment, that everything be valid exactly as the council issued in its preliminary decree (the main resolution of 405/4). And the secretary, when he inscribed Kephisophon's decree and amendment, did what most secretaries did: he did not "correct" the main resolution, because the amendment did not direct him to do so. The result is a decree in which the intent of a resolution in the main body is clarified by an amendment but never explicitly corrected because the secretary was not ordered

to alter the text and so he did not. Instead he faithfully reproduced the proposals laid before and ratified by the people.

Amendments that correct the main resolution are few and far between, but the same fidelity is evident in other, smaller ways. On occasion, a citizen proposed that the people vote between two or more options. Thus, in the first decree recorded in *IG* I^{3} 61 Diopeithes proposed first that the assembly choose whether (1) to assess tribute on the Methonians right away, or (2) permit them to pay as much tribute to the goddess (Athena) as they were formerly ordered to contribute, with anything else untaxed. Then follow a series of clauses concerning debts and trade relations, all of which are expressed in the infinitive or the imperative, as is typical in the motions of decrees. But at the end of the decree the language switches from infinite to the finite, in a note in which the secretary recorded, in exactly the same words as proposed by Diopeithes, that the assembly voted that the Methonians pay as much to the goddess as they had been paying.[205]

It has been suggested that since the note must derive from minutes kept by the secretary and the language of the motion and the note indicating the outcome of the vote are identical, the motion must have derived from the same source: the minutes of the

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[205] *IG* I^{3} 61.4-9: Δ[ιοπ|εί]θες εἶπε· δι[α]χειροτονῆσαι τὸν δῆμον αὐτίκ[α πρὸ|ς Μ]εθοναίος εἴτε φόρον δοκεῖ τάττεν τὸν δῆμο[ν αὐτ|ίκ]α μάλα ἢ ἐχ[σ]αρκῆν αὐτοῖς τελῆν *h*όσον τῆι θε[ῶι ἀπ|ὸ τ]ῶ φόρο ἐγίγνετο *h*ὸν τοῖς προτέροις Παν[αθ]ε[ναίο|ις] ἐτετάχατο φέρεν, τῶ δὲ ἄλλο ἀτελῆς ἔνα[ι· ll.29-32: ἐχειροτόνεσεν *h*ο δῆμος [Μεθον|αίο]ς τελῆν *h*[όσο]ν τῆι θεῶι ἀπὸ τῶ φόρο ἐγίγνε[το *h*ὸν | τοῖ]ς προτέρο[ις] Παναθεναίοις ἐτετάχατο φ[έρεν, τῶ | δὲ ἄ]λλο ἀτε[λῆς ἔ]ναι.

secretary.[206] That argument is circular. And if Diopeithes submitted his proposal in writing, then the decree and note are identical for a simpler reason: the secretary, instead of striking the rejected proposal and retaining what was resolved, preferred to append a note at the end of the decree indicating which of the two choices the people ratified, and when he wrote that note he followed the language of the decree exactly.

Such *diacheirotonia*-clauses are rare among inscribed decrees, rarer still their survival complete. But even fragmentary texts suggest that the secretary did not simply omit the option that was not ratified.[207] And there can be no doubt, I think, that the secretary opted in these cases to record the decree as proposed. Nothing else explains why it might be decreed "that the citizens shall decide by dividing vote how much money to allot for the administration of the sacrifices, and that *whatever will seem best to the people when it votes*, the treasurer of the stratiotic funds and those in charge of the

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[206] Following Kirchhoff (1880) 846-47, Miller (1885) 10 suggested that "talia cum ex commentariis comitiorum manasse appareat, veri est simillimum etiam cetera, quae illis in titulis insunt, quoniam cum additamentis istis artissime cohaerent, ex eodem fonte hausta esse. Porro cum nemo crediderit alium scribam aliunde verba decretorum in lapidibus exarandorum arcessivisse, adnotationes illae aptae sunt ex quibus colligamus commentarios, ex quibus ipsae fluxerunt, materiam dedisse."

[207] *IG* II² 28.14-17: περὶ δὲ ἄρχ]|οντος καὶ φρουρᾶς διαχειρο[τονῆσαι τὸν δῆμον αὐτί]|κα μάλα, εἴτε χρὴ καθιστάναι ε[ἰς Κλαζομενὰς εἴτε αὐ]|τοκράτορα εἶναι περὶ τούτων [τὸν δῆμον τὸγ Κλαζομε]|νίων εἰάν τε βούληται ὑποδέχεσ[θαι εἰάν τε μή. The heavily fragment lines 22-25 are restored thus: ἐχειροτόνησεν] | [ὁ δῆμος αὐτὸς τέ]λη οὐχ ὑποτελοῦ[ντας ἄλλα οὐδὲ φρου]|[ρὰν ἐσδεχομένος] οὐδὲ ἄρχοντα ὑ[ποδεχομένος ἐλευθ]|[έρος ἔναι καθὰ Ἀθη]ναίους. If correctly restored, then this is a remarkable text, for it reveals that the people rejected *both* options, yet both were recorded as part of the decree. *IG* II² 211.5-15: διαχειρο]|[τονῆσαι τ]ὸν δῆμον αὐτ[ίκα πρὸς αὐτ]|[ὸς εἰ δοκε]ῖ δοῦναι τοῖ[ς ἐκπεπτωκό]|[σιν Ὀλυνθί]ων τὴν ἀτέλ[ειαν τοῦ με]|[τοικίου εἴτ]ε μή· ἐ[ὰ]ν δὲ [δόξηι αὐτῶι] | [διαχειροτο]ν[ή]σαντι δ[ιδόναι αὐτο]|[ῖς τὴν ἀτέλει]αν, τὸν μὲν [γραμματέα] | [τῆς βολῆς ἀναγράψ]αι ἐν σ[τήληι λιθίν]|[ηι ἐν ἀκροπόλει τὰ] ὀνόματα [αὐτῶν καὶ] | [ὅτι φεύγοσι ἐκπολι]ορ[κ]ηθέν[τες ὑπ]|[ὸ Φιλίππου· The editors of *IG* II³ 503 reject the restorations of *IG* II² 211 entirely.

administration shall allot."[208] There must have been discussion and proposals about the amount of money to allot, but whatever the people decided was not recorded as part of the decree because it was not part of the document submitted by the proposer. The decree was not modified to reflect the outcome, and the secretary even retained language that made sense only from the perspective of the decree, as proposed, prior to passage.

Few decrees survive in which the proposer asked the people to choose between two options. But notes appended at the end of decrees are common enough; these were not the habit of one or two secretaries or of a particular day and age and neither are they restricted to proposals that call for a vote between options. These notes often appear in decrees that include proposals to elect representatives, usually ambassadors but occasionally representatives of other sorts. Thus, in the so-called Charter of the Second Athenian League, it was resolved (*IG* II² 43.72-77):

> that the Assembly elect three ambassadors forthwith to Thebes, who are to persuade the Thebans whatever good they can. The following were elected: Aristotle the Marathonian, Pyrrandros the Anaphlystian, Thrasyboulos the Kollytean.[209]

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[208] *IG* II² 674.18-20: διαχειροτονῆσαι τὸν δῆμον, ὁπόσον δεῖ αὐτοῖς μερίσαι εἰς τὴ[ν διοίκησ]||[ιν τῆς θυσίας]· ὅ τι δ' ἂν διαχειροτονοῦντι τῶι δήμωι δόξει, μερίσαι τὸ[ν ταμίαν τ]||[ῶν στρατιωτικῶν] καὶ τοὺς ἐπὶ τῆι διοικήσει. It is clear from the participle διαχειροτονοῦντι and the tense of δόξει that this belongs in a proposal, not the finalized decree of the people. Cf. *IG* II² 687.52-54: μερίζειν δὲ τοῖς αἱρεθεῖσ[ιν τοὺς ἐπὶ τῆι διοικ]||ήσει εἰς ἐφόδια οὗ ἂν χρόνου ἀποδημῶ[σιν ὅ τι ἂν διαχειροτο]||νοῦντι δόξει τῶι δήμωι.

[209] *IG* II² 43.72-77: ἑλέσθαι δ|ὲ τὸν δῆμον πρέσβεις τρεῖς αὐτίκα μάλ|[α] εἰς Θήβας, [ο]ἵτινες πείσοσι Θηβαίοις ὅ|[τ]ι ἂν δύνω[ν]ται ἀγαθὸν. οἵδε ηἱρέθησαν ||[Ἀ]ριστοτέλης Μαραθώνιος, Πύρρανδρο|ς Ἀναφλύσ[τ]ιος, Θρασύβολος Κολλυτεύς

Notes like these help answer a long-debated question: did the resolutions in the decree depend, grammatically, on the enactment-formulae (resolved by the council or assembly or both), or the proposer-formula?[210]

Obviously, in the decree above, the assembly did in fact resolve to elect three citizens noted in the decree above. If the resolutions depended on the enactment formula, then it is odd that the secretary did not simply record, in the infinitive, "[sc. it was resolved] to elect Aristotle the Marathonian, Pyrrandros the Anaphlystian, Thrasyboulos the Kollytean." But if the resolutions depended on the proposer-formula, then it is easy to explain why the secretary recorded notice of who was elected as a syntactically distinct item in the official document: the nomination and election of candidates did not form part of the decree as drafted and ratified, for it was a separate procedure consequent on the passage of the decree, and anyone, not just the proposer, could nominate candidates.[211] Thus, the fact that the secretaries recorded the outcome of the election outside the syntax of the enactment must mean that the resolutions depended, grammatically, on the proposer formula "so-and-so said." And since that

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[210] De Laix (1973) 113-14 offers reasons for either position but does not argue which was the case. Miller (1885) 21 first suggested that the resolutions in a decree depended grammatically on ὁ δεῖνα εἶπεν but did not explain why.

[211] Aeschin. 2.20: ψήφισμα ἔγραψεν ὁ Φιλοκράτης ἑλέσθαι πρέσβεις πρὸς Φίλιππον ἄνδρας δέκα, οἵτινες διαλέξονται Φιλίππῳ περὶ εἰρήνης καὶ τῶν κοινῇ συμφερόντων Ἀθηναίοις καὶ Φιλίππῳ. Χειροτονουμένων δὲ τῶν δέκα πρέσβεων, ἐγὼ μὲν προεβλήθην ὑπὸ Ναυσικλέους, Δημοσθένης δ' ὑπ' αὐτοῦ Φιλοκράτους, ὁ νυνὶ Φιλοκράτους κατηγορῶν. (Philokrates wrote a decree to elect ten men as ambassadors to Philip, who were to engage in discussion with Philip about peace and the things that jointly benefitted Athenians and Philip. When the ten ambassadors were being chosen, I was nominated by Nausikles, and Demosthenes by Philokrates, who now prosecutes Philokrates.").

formula is an artefact of the proposal, then the habit of recording the outcome of an election as a grammatically distinct element of the official record shows one more way in which the secretary was restricted to recording the decree as drafted and ratified.

Now, on occasion a decree with an election-clause was inscribed without the accompanying note indicating who was elected, even though the custom was to record the names of the ambassadors in the archive copy of the decree.[212] Such texts are proof positive that on occasion the secretary did not inscribe the record exactly as it stood in the archive, where the names of the ambassadors chosen were, in all likelihood, usually recorded. But the note indicating who was elected was not properly part of the decree proposed by the proposer. They were, rather, records of decisions taken consequent to the ratification of that decree, which was written from the point of view of the proposer. Thus, on occasion the secretary took the injunction to "inscribe this decree" to mean the decree and a note of any action consequent to its ratification. On occasion he took that injunction more strictly and left the note out. It must have been up to the secretary to include such notes or not in the copy of the text he prepared for inscription, just as it was probably his privilege to draft the prescript as he saw fit. But whatever editorial privilege he had over the text ended with the proposer formula "so and so said." There

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[212] Aeschin. 2.58: Τῶν γὰρ πρεσβειῶν, ἃς ἐξεπέμψατε εἰς τὴν Ἑλλάδα, ἔτι τοῦ πολέμου τοῦ πρὸς Φίλιππον ὑμῖν ἐνεστηκότος, οἱ μὲν χρόνοι τῆς αἱρέσεως, ὅτε ἐξεπέμφθησαν, καὶ τὰ τῶν πρεσβευσάντων ὀνόματα ἐν τοῖς δημοσίοις ἀναγέγραπται γράμμασι ("the embassies which you sent to Greece when the war against Philip broke out, the dates of the election, when you sent them out, and the names of those serving as ambassadors are recorded among the public records").

the decree proper began, and the secretary, when drafting a record of that decree, had little discretion over it.

This may even explain why decrees so often strike modern readers as carelessly composed. It is often observed that "inscribed decrees are often untidy documents in the sense that the items included in them may be mentioned in a far from logical order."[213] Modern scholars invoke such untidiness as evidence that the secretary might transform a decree when preparing a copy for publication on stone.[214] Some have even suspected that untidy decrees might contain hidden amendments proposed at separate assemblies by citizens other than the proposers.[215] But surely some citizens wrote tidier proposals than others. And if the secretary was required to record what was drafted and ratified, then an untidy decree reflects no more than the habit of a proposer who "simply

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[213] Rhodes (2001) 40.

[214] Osborne (2010) 64-82.

[215] Laqueur (1927) 40: "wo der Verewigungsbefehl in den Text hineinverschoben ist, dies auf dembesonderen Grunde beruht, dass eine Erweiterung des schriftlich eingebrachten Antrags stattgefunden hat." and (p. 53): "Als Ergebnis dieses Abschnitts betrachte ich demnach den Nachweis, dass die auf den Verewigungsbefehl folgenden Teile einer Urkunde auf Zusiatzen beruhen, welche von dem ersten Redaktor des Antrags nicht vorgesehen waren. Die Folge dieser Erweiterungen am Ende der Urkunden war mitunter ihre Interpolierung im Inneren." Modern scholars have generally looked disfavorably on Laqueur's argument, but even a skeptic like Rhodes (above n.40) might find reason to suspect there is a hidden amendment in a particular decree. For a detailed discussion of Laqueur's argument see Billheimer (1938) 465-485. Tod (1928) 205 could not accept Laqueur's "confidence that a προβούλευμα must have lacked those elements of inconsistency and illogicality which, when they appear in decrees, are attributed by the author to the hasty or imperfect incorporation of amendments in the original proposals."

wrote things down as he thought of them and did not bother to reorder his draft before presenting it to the assembly."[216]

Indeed, if it were customary for the people to demand that a proposer delete, add, or modify parts of his draft, then even a decree that began in good shape might have ended up in a condition that strikes a modern reader as careless or messy. In other words, the very carelessness in which modern scholars have seen most vividly the hand of the secretary may in fact show what a light touch he exercised when he took a decree drafted on the floor of the council or assembly and made a record of it.

No doubt inscribed copies of decrees often departed, in small ways, from the text archived in the Metroon. Stonecutters slip. Secretaries must have too. But the minor differences that may have existed between the document as proposed in the assembly, recorded in the archive, and carved on stone, do not tell of a secretary drafting the binding language of decrees as he saw fit, or indeed exercising much latitude at all. Whatever discretion the secretary had when he drew up the inscribed copy of a decree was, I urge, constrained by the expectation that he record the decree essentially as drafted and ratified. The same goes for when he drew up a copy for deposition in the archive.

Thus, a range of phenomena in the texts of surviving decrees suggests that when drafting the official copy of a decree, for deposition in the archive or inscription on

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[216] Rhodes (2001) 40.

stone, the secretary did little apart from drafting the prescript and the occasional note indicating the outcome of an action consequent to the passage of the decree itself. It is true, then, that "[w]hat is inscribed on decrees is not a straightforward record of words spoken in the decreeing body," but not because there was any "gap between what was proposed and argued for in the Assembly and what was recorded on stone."[217] What got inscribed was a record of a decree that existed in writing at the time it was proposed. Thus, if any gap that existed between the speech that a rhetor gave and the decree that he or another citizen proposed, it existed already in the assembly.

2.5 The Rhetor and his Craft

The rhetor wrote his decree, and that simple fact about the paperwork of decree-making helps clarify a famous passage in the *Phaedrus* in which Plato hints at what this dissertation will argue at length in the next chapter and conclusion: the rhetor, in his capacity as a "technician of *logoi*" (τεχνίτης λόγων) applied his technique not only to speeches but also to decrees.[218] That is not to say that the craft of speech-making and the craft of decree-making shared the same rules. But they did share the same basic principle: rigor with language.

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[217] Osborne (2010) 81 and 69, respectively.

[218] The phrase appears in Aeschin.1.170 and Aeschin. 3.200, where it is clearly derisive.

When Phaedrus expresses his worry that the logographer Lysias will quit writing speeches because an Athenian statesman rebuked him for so doing, Socrates offers him the following rebuttal:

> It escapes your attention that those statesmen who think most highly of themselves are especially keen for logography and for leaving behind texts, since whenever they write a *logos* they rejoice so much in their praisers that they add first to their *logos* whoever individually praises them. [Phai]. What do you mean by this? [Soc.] Do you not understand that at the beginning, in a writing of a politician, they add the praiser first? [Phai.] How so? [Soc.] "Resolved," he says, "by the Council" or "by the Assembly," or by both, and "so and so proposed," - mentioning and praising himself with great reverence, and then after this he goes on, displaying (ἐπιδεικνύμενος) his wisdom to his praisers, sometimes having made a very long text. Or does this sort of thing seem to you to be anything other than a *logos* written out? [Phai]. Nothing else, to me at least. [Soc]. Therefore if this *logos* abides, its maker leaves the theater happy, but if it is erased and he has no share in logography and of being worthy of authorship, he and his sidekicks are aggrieved.[219]

Scholars have written this off as a tongue-in-cheek statement meant to discredit those who were politically active in the assembly by associating their speeches with the speeches of those who made rhetoric their trade.[220] Thus it has been suggested that when Socrates says that the *rhetor* "displays his wisdom to his praisers," we are meant to think of the rhetor engaged in the kind of craft associated with the sophists, that his wisdom

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[219] Pl. *Phdr*. 257d-258b: λανθάνει σε ὅτι οἱ μέγιστον φρονοῦντες τῶν πολιτικῶν μάλιστα ἐρῶσι λογογραφίας τε καὶ καταλείψεως συγγραμμάτων, οἵ γε καὶ ἐπειδάν τινα γράφωσι λόγον, οὕτως ἀγαπῶσι τοὺς ἐπαινέτας, ὥστε προσπαραγράφουσι πρώτους οἳ ἂν ἑκασταχοῦ ἐπαινῶσιν αὐτούς. {ΦΑΙ.} Πῶς λέγεις τοῦτο; οὐ γὰρ μανθάνω.{ΣΩ.} Οὐ μανθάνεις ὅτι ἐν ἀρχῇ ἀνδρὸς πολιτικοῦ συγγράμματι πρῶτος ὁ ἐπαινέτης γέγραπται. {ΦΑΙ.} Πῶς; {ΣΩ.} "Ἔδοξέ" πού φησιν "τῇ βουλῇ" ἢ "τῷ δήμῳ" ἢ ἀμφοτέροις, καὶ "ὃς <καὶ ὃς> εἶπεν" — τὸν αὐτὸν δὴ λέγων μάλα σεμνῶς καὶ ἐγκωμιάζων ὁ συγγραφεύς— ἔπειτα λέγει δὴ μετὰ τοῦτο, ἐπιδεικνύμενος τοῖς ἐπαινέταις τὴν ἑαυτοῦ σοφίαν, ἐνίοτε πάνυ μακρὸν ποιησάμενος σύγγραμμα· ἤ σοι ἄλλο τι φαίνεται τὸ τοιοῦτον ἢ λόγος συγγεγραμμένος; {ΦΑΙ.} Οὐκ ἔμοιγε. {ΣΩ.} Οὐκοῦν ἐὰν μὲν οὗτος ἐμμένῃ, γεγηθὼς ἀπέρχεται ἐκ τοῦ θεάτρου ὁ ποιητής· ἐὰν δὲ ἐξαλειφθῇ καὶ ἄμοιρος γένηται λογογραφίας τε καὶ τοῦ ἄξιος εἶναι συγγράφειν, πενθεῖ αὐτός τε καὶ οἱ ἑταῖροι.

[220] Dover (1980) 4.

here refers "primarily to the *rhetor*'s technical or rhetorical ability."[221] Exactly. But this need not be taken to be an exaggeration. It is clear, from the allusions to formulae well-known from the prescripts of decrees, that the *logos* of the politician is the decree and that the decree is the handicraft of the *rhetor*. Moreover, ἐπιδείκνυμι need not be taken as a reference to epideictic oratory, because it is also used, in a much simpler sense, of those who draft decrees and show them to the council or the assembly for consideration.[222]

A simpler point has, I think, been overlooked: decrees were drafted by the rhetors, and voted up or down by the council or assembly (or both) just as the rhetors wrote them, with little added on the path from assembly to archive except for a prescript, and in all likelihood nothing modified or subtracted that was not explicitly called for by an amendment. And the rhetor whose craft was speech practiced another, and with the same rigor, though with a different set of discursive rules: drafting decrees.

This is captured neatly and vividly in an anecdote about what happened when Alexander the Great demanded that the Athenians give up certain politicians, chiefly Demosthenes, who had opposed the young king. Some advocated that the Athenians

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[221] Yunis (1996) 186.

[222] e.g. *IG* I^3 78a.59-51: περὶ δὲ τοῖ ἐλαίο ἀπαρχῆς χσυγγράφ|σας Λάμπον ἐπιδειχσάτο τεῖ βολεῖ ἐπὶ τῆς ἐνάτες πρυτανείας· | *h*ε δὲ βολὲ ἐς τὸν δεμον ἐχσενενκέτο ἐπάναγκες. Aeschin. 2.64 refers to "one of the politically active citizens to whom Demosthenes showed a decree and conferred with him as to whether he should give it to the secretary" (εἷς τῶν πολιτευομένων, Ἀμύντωρ, ᾧ τὸ ψήφισμα ἐπεδείξατο Δημοσθένης καὶ ἀνεκοινοῦτο, εἰ δῷ τῷ γραμματεῖ).

hand him and the rest over to Alexander.[223] Someone advised saving them,

> and read a decree that was artfully drafted (ψήφισμα γεγραμμένον φιλοτέχνως), insofar as it contained an entreaty for the men and a promise to punish them in accordance with the laws if they were worthy of punishment.[224]

The decree was written "artfully." The word is uncommon, but it and its relatives were applied to literary greats like Homer,[225] rhetorical wizards like Gorgias,[226] and (more broadly) those who delight in craft, verbal and otherwise.[227] The point of the term as applied to the decree of Demades, then, is clear: the drafting of a decree, no less than a speech, could be carried out with the care and attention to language that was characteristic of the Athenian rhetor. And that was only possible because the drafting of decrees was entirely in his hands.

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[223] D.S. 17.15.1.

[224] D.S. 17.15.3-4: ἐπὶ τελευτῆς δὲ Δημάδης, πεπεισμένος ὑπὸ τῶν περὶ Δημοσθένην, ὥς φασι, πέντε ταλάντοις ἀργυρίου, συνεβούλευε μὲν σώζειν τοὺς κινδυνεύοντας, παρανέγνω δὲ ψήφισμα γεγραμμένον φιλοτέχνως· περιεῖχε γὰρ παραίτησιν τῶν ἀνδρῶν καὶ ἐπαγγελίαν τοῦ κολάζειν κατὰ τοὺς νόμους, ἂν ὦσιν ἄξιοι τιμωρίας. ὁ μὲν οὖν δῆμος ἀποδεξάμενος τὴν ἐπίνοιαν τοῦ Δημάδου τό τε ψήφισμα ἐκύρωσε καὶ τὸν Δημάδην μεθ' ἑτέρων ἀπέστειλε πρεσβευτὴν πρὸς τὸν βασιλέα

[225] Σ Homer 2.681 Erbse.

[226] D.S. 12.53: οὗτος οὖν καταντήσας εἰς τὰς Ἀθήνας καὶ παραχθεὶς εἰς τὸν δῆμον διελέχθη τοῖς Ἀθηναίοις περὶ τῆς συμμαχίας καὶ τῶι ξενίζοντι τῆς λέξεως ἐξέπληξε τοὺς Ἀθηναίους ὄντας εὐφυεῖς καὶ φιλολόγους. (4) πρῶτος γὰρ ἐχρήσατο τοῖς λέξεως σχηματισμοῖς περιττοτέροις καὶ τῆι φιλοτεχνίαι διαφέρουσιν, ἀντιθέτοις καὶ ἰσοκώλοις καὶ παρίσοις καὶ ὁμοιοτελεύτοις καί τισιν ἑτέροις τοιούτοις ("he, upon coming to Athens and being led to the assembly spoke to the Athenians about the alliance and by the strangeness of his speech he surprised the Athenians even though they were naturally clever and fond of arguments. For he first used unusual figures of speech that were distinguished by their craft, antitheses and isocola and balanced clauses and clauses with the same endings and others of this kind").

[227] Pl. *R.* 476a.

2.6 Conclusion

This point has been borne out across a range evidence drawn from the literature, the courtroom and assembly speeches, and the decrees of democratic Athens. Apart from the assembly scene in Aristophanes' *Thesmophoriazusae,* in which the procedures of the assembly and the principles of democracy are topsy-turvy, there is no evidence that the secretary had any "say in the formal presentation of the decree for the assembly's decision."[228] A broad and deep body of evidence shows that the rhetor did. And while it is clear, from the surviving assembly and court speeches, that a rhetor might or might not seek or accept input from his fellow citizens, the same speeches give us no indication as to which was the norm. But the inscribed decrees do. For if, as I have argued, the secretary was constrained to record the decree as drafted in the assembly, and if, as I have suggested, he did not reconcile the main resolution and the amendment even when the latter corrected the former, then it is startling that there are so few decrees with amendments and that such a small number of these amendments correct the main resolution.

If this is not a distortion of the fact that honorific decrees dominate the epigraphic record (a possibility that should be seriously entertained), then it is possible that debate and discussion in the assembly rarely resulted in substantive changes to the decrees drafted by the small percentage (perhaps as small as three or four percent) of the

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[228] Dover (1980) 1.

citizen body,[229] and that in a city where "everything is administered through decrees,"[230] where no decree could be passed without the approval of the councillors or the people and "simple majorities therefore determined the state's policy."[231] On the other hand, it is possible that honorific decrees, which were more likely to be inscribed (because inscription was one of the honors), were less likely to invite amendment, and that the paucity of amendment is simply a reflection of what was likely to be inscribed (and thus to have survived to the present day).

Indeed, in the next chapter we shall see a handful of examples in which it is clear that Athenians paid close and careful attention to decrees that pertained to interstate relations. There is a single example, discussed in the conclusion to this dissertation, where the people in the assembly are said to have paid that careful attention to the import of the text of a decree (and no doubt it was not the only time). But in most cases, it is the rhetors, whose necks were on the line, who applied their considerable skill with

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[229] Hansen (1984) 154 has shown that "[a]t any meeting of the *ecclesia* some 300-600 citizens out of the more than 6000 attending may have been prepared, if necessary, to move a proposal, which is an indication that participation in politics, even at the highest level, was more widespread than is assumed by most historians." But if only 5-10% of the citizens in any given assembly was prepared to propose, and the assembly contained, on average, 20% of the citizen body, then the number of proposers of decrees relative to the number of citizens as a whole is rather small. Hansen suggests that in the thirty-year period 352-322 B.C. there were 700-1400 proposers out of 30,000 citizens, so anywhere from 2.5-5% of the citizenry proposed a decree in those three decades. Moreover, we have no way of knowing how often a decree drafted in the name of one citizen was actually written by a leading politician, as Demosthenes 59.43 suggests was not uncommon (for text see note 168). This is a potentially unnerving fact, for it raises the possibility that the 5-10% of citizens ready to put forward a decree were actually fronting for some other politician.

[230] For text see *Ath.Pol* 41.2 at n.166.

[231] Ober (1989) 8

words to the drafting (and the discussion) of decrees in diplomacy. In fact, one rhetor, not known for his humility, remarked that in the midst of a diplomatic crisis everything was administered through his decrees (and his laws and his service on embassies).[232] He was obviously boasting. But since rhetors did the heavy labor of drafting state policy, he was not exaggerating.

[232]Dem. 18.320: καὶ τοῖς ἐμοῖς καὶ ψηφίσμασι καὶ νόμοις καὶ πρεσβείαις ἅπαντα διῳκεῖτο…

Chapter 3. Documenting Interstate Law at Athens

3.1 The Sources and Nature of Interstate Law in Greece

Diplomacy appeared in the eastern Mediterranean long before Greeks did, and as in many other areas of their culture, Greeks show the influence of their neighbors and their predecessors in their diplomatic practices.[1] But there are several institutions of diplomacy, as it was practiced by Greeks from the Classical age onward, that distinguish it, in the eyes of classicists and ancient historians, from modern diplomacy and from diplomacy as practiced by other ancient polities.[2] There were no permanent ambassadors trained to advocate for their home cities in matters of politics and law,[3] as there are now and as there may have been in days that were ancient history to Greeks.[4] Instead, envoys were elected on a case-by-case basis.[5] There was no "sovereign authority

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[1] See Weinfeld (1973) 190-199 and, more recently, Cohen (2001) 27-30 on the Hittite, Assyrian, Hebrew, and Egyptian origins of the formulae of Greek treaties.

[2] Wolpert (2001) 73: "In contrast to modern states, diplomacy was underdeveloped in ancient Greece. Certainly one can find some similarities and some continuity, but what stands in high relief for Greece are the limits placed on diplomacy as a sphere of activity. Antiquity cannot account for this since complex diplomatic systems predating that of the polis already existed in the fourteenth century BCE, as the Amarna Letters show. Neither the collapse of Bronze Age civilizations nor Greece's isolation in the Dark Age (c. 1100-750) adequately explains the disruption. The Greeks subsequently used terms and expressions similar to those found in the earlier treaties from the Near East, for which Weinfeld hypothesizes a common origin. It is therefore even more striking that the Greeks neither borrowed nor invented diplomatic method with the sophistication of that of the Amarna community."

[3] Adock & Mosley (1975) 152-156.

[4] Cohen (1999) 8.

[5] Mosley (1973) 43-49.

over states to judge competing legal claims, to make and enforce its decisions, and to reserve the use of violence to itself."[6] Instead, envoys spoke on behalf of their fellow citizens in the councils and assemblies of other polities.[7] Nor was there a code of internationally recognized statutes that envoys could cite as a source of law.[8] But scholars do not agree what kind of interstate law there was in the absence of such a code.

On one view, the only form of interstate law in Greek diplomacy "was that contained in treaties between states."[9] Thus, it is has been suggested,

> "the fact the so-called customary rights of the Greeks have no place in any of the treaties that have come down to us indicates that their sanction was not a solid enough basis for a compact and lent itself more readily to pious platitudes used by one state in arguing with another."[10]

On this view, Greeks drew a bright line between rules established in writing and norms invoked in speech, and that line separated what did and did not really count as law. But other scholars have argued that the idea of a "legal distinction…between Greek

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[6] Hunt (2010) 216.

[7] Mosley & Adcock (1975) 165-68.

[8] Mosley & Adcock (1975) 121: "there was some developed sense of religious ideals and moral scruples, but there was not an accepted body of International Law to which appeal could be made or which defied disobedience or misinterpretation." The idea is current. Thus Hunt (2010) 221: "In the interstate realm there was no equivalent to the lawcode. There was no officidal body of written international law." And Low (2007) 96: "there existed no legislative body which could create positive *nomoi* on behalf of the Greeks."

[9] Gomme *HCT ad* 1.37.3. The idea is old and in the past found widespread acceptance. Thus Mosley and Adcock (1975) 121 assert that "there was not an accepted body of International law to which appeal could be made or which defied disobedience or misinterpretation"; see also Busolt & Swoboda (1926) 1259-64.

[10] Ostwald (1982) 3.

international custom and (written) treaty law is tendentious and misleading,"[11] that "it is not possible to define a fixed point where the boundary between 'law' and 'custom' is crossed,"[12] and that the unwritten norms governing relations between states were as real as those written down in interstate documents.[13] Moreover, it is argued, the rules established in treaties cannot have been created out of thin air, but must reflect the preexisting norms of the people who formulated them.[14]

Consequently, scholars of diplomacy and interstate law in ancient Greece have largely abandoned the notion that there was no law outside the texts of treaties,[15] and have instead turned to reconstructing the norms that shaped interstate relations and that, on this view, functioned as the sources of interstate law and shaped the formulation of the treaties and other interstate documents in which policy took written form: reciprocity, custom, the obligations of kinship and friendship.

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[11] Sheets (1994) 70.

[12] Low(2007) 100.

[13] ibid. (1994) 57-64 Low (2007) 77-102.

[14] Sheets (1994) 51.

[15] Though not all of them; thus Christ (2012) 122: "[t]here were indeed few formal constraints on interstate behavior in the absence of written international law or any central authority that could impose penalties on aggressive states." And 122 n. 11: "Although some scholars have argued that Greeks had a system of international law (Sheets 1994; Bederman 2001: 11-15; Alonso 2007; Low 94, 102), I am not persuaded that Hellenic customs and conventions concerning the relations of states constitutes "international law" in a meaningful sense."

Considerations of reciprocity, it is argued, shaped the decisions of both individuals and polities in interstate relations.[16] Likewise, it is claimed, "customary law, or rather a consciousness of its norms, shaped policy decisions by the governments of Greek states.[17] Appeals to kinship, it has been suggested, did too.[18] Friendship between polities was, on one view, not just a nice word to describe an alliance, but "a precondition for a more technical diplomatic relationship with clearer expectations and obligations"[19]; moreover, it is argued, "the use of private friendships for the direction of public policy seems to have been an accepted part of the political process" (provided it was not to the detriment of the city).[20] Thus, it is suggested, in the Greek world "the rules and obligations of international law can be found, precisely, in the habits and the will, the hearts and minds of society."[21]

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[16] Low (2007) 253.

[17] Sheets (1994) 70.

[18] Jones (1999) 37-38; Jones is well aware that kinship was not persuasive everywhere, especially at Athens; see Jones in n. 26 below.

[19] Bolmarcich (2010) 117. The precise meaning of the word in interstate documents is difficult to ascertain. Adcock & Mosley (1975) 208 suggest that "[a]t best it could signify a positive relationship and at least it meant little, if anything, more than non-aggression or non-belligerency between powers which might or might not have contracted any formal relationship by treaty." Bauslaugh (1991) 63 suggests that *philia* "represents a diplomatic obligation a commitment, that the citizens of the respective states will not injure one another or assist other states intending hostility."

[20] Mitchell (2002) 65.

[21] Low (2007) 102. where it is argued that "the representation of these international laws – whether in inscribed decrees or in literary texts – is much closer to the Xenophontic view than the Demosthenic." The Xenophontic view, according to Low (2007) 100, is "that interstate agreements – whether with friends or enemies – are as open to regulation by *nomoi* as behavior in the law-courts or as guardianship of money or of minors," and that "it is not possible to define a fixed point where the boundary between 'law' and 'custom' is crossed."

Athenians, however, have left a conflicting body of evidence for their commitment to those rules and obligations. On the one hand, in 499 B.C. they were persuaded to help the Ionians revolt from the Persians in part because Aristagoras of Miletos claimed (among other things) that the Milesians were settlers from Athens.[22] And when the Spartans feared, in 480 B.C., that the Athenians would independently ally themselves with Persia, the Athenians are said to have reassured Spartan envoys that no such treaty would be made

> "since the nation of Greeks is of the same blood and the same speech, since the places and the sacrifices of the gods are common to them, since their customs are of the same character, and it would be unbecoming for the Athenians to turn traitor to these."[23]

After the Persian defeat, the newly freed Ionians, tired of their treatment at the hands of the Spartan general Pausanias, requested that the Athenians become their leaders on account of their kinship; the Athenians "accepted the argument and with it the hegemony."[24]

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[22] Hdt. 5.97.

[23] Hdt. 8.144: αὖτις δὲ τὸ Ἑλληνικόν, ἐὸν ὅμαιμόν τε καὶ ὁμόγλωσσον, καὶ θεῶν ἱδρύματά τε κοινὰ καὶ θυσίαι ἤθεά τε ὁμότροπα, τῶν προδότας γενέσθαι Ἀθηναίους οὐκ ἂν εὖ ἔχοι.

[24] Th. 1.95: ἤδη δὲ βιαίου ὄντος αὐτοῦ οἵ τε ἄλλοι Ἕλληνες ἤχθοντο καὶ οὐχ ἥκιστα οἱ Ἴωνες καὶ ὅσοι ἀπὸ βασιλέως νεωστὶ ἠλευθέρωντο· φοιτῶντές τε πρὸς τοὺς Ἀθηναίους ἠξίουν αὐτοὺς ἡγεμόνας σφῶν γίγνεσθαι κατὰ τὸ ξυγγενὲς καὶ Παυσανίᾳ μὴ ἐπιτρέπειν, ἤν που βιάζηται. οἱ δὲ Ἀθηναῖοι ἐδέξαντό τε τοὺς λόγους καὶ προσεῖχον τὴν γνώμην ὡς οὐ περιοψόμενοι τἄλλά τε καταστησόμενοι ᾗ φαίνοιτο ἄριστα αὐτοῖς. ("Already, since he [Pausanias] was violent, both the other Greeks and not least the Ionians were bothered, and as many as had recently been freed from the king. Making their way to the Athenians they asked them to become their leaders, in accordance with the bond of kinship, and not to turn it over to Pausanias, if at any point he exercised force. The Athenians accepted the arguments and applied their attention so as not to overlook anything and to establish the rest in the way that seemed best to them.").

Nevertheless, by the Peloponnesian war, Athenians seem to have felt some ambivalence about the role, in interstate relations, of reciprocity, kinship, friendship, and justice. Thus, it has been noted that Athenian democrats seem to have rejected the principle that reciprocity ought to guide interstate relations.[25] It has been observed that Athenians were reluctant to acknowledge kinship with other Greeks,[26] a reticence that some have seen as characteristic of Athenian democrats,[27] and when they did acknowledge kinship with other Greeks, they did so (according to other Greeks) to screen what were, in reality, power-grabs.[28] Athenians cared little for friendship as their allies understood that bond.[29] They did not care at all when the Melians, appealing to justice, urged the Athenians to reconsider destroying their city.[30]

The evidence that Athenians wobbled in their commitment to the unwritten rules and obligations of interstate law comes almost entirely from the works of Greek

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[25] Missiou (1998) 196 concludes that "whereas the Spartans believed that reciprocity might guide a city's behaviour in inter-state relations, the Athenians rejected this belief; they did not like to be reminded of a favour, but also did not demand the return of it."

[26] Jones (1999) 44 suggests that the "reluctance of Athens to acknowledge kinship even with its mythical colonies appears to have been a deliberate policy."

[27] Connor (1993) 206.

[28] Th. 6.6.1.

[29] Crane (1998) 176-187, discussing the Mytileneans' speech at a conference with Sparta early in 427 B.C. (Th. 3.9-14), notes that "[t]heirs is a world in which even closest allies cannot be trusted and in which friendship has become a thin disguise for deadly competition."

[30] Th. 5.89-90.

historians like Herodotus and especially Thucydides.[31] That should give us pause, because it is widely acknowledged that Greek historians had aims beyond portraying history as it really happened,[32] that they were selective about what evidence to include,[33] and that we do not always have a good grasp on why a given historian chose to include, exclude, or (the possibility must be admitted) invent the substance of the speeches in their histories.[34] Even if we assume that speeches in the historians must map onto their

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[31]Though the notion that might makes right, so often associated with Thucydides, cannot be an outright invention because it was invoked in the assembly (Dem. 15.29): τῶν μὲν γὰρ ἰδίων δικαίων τῶν ἐν ταῖς πολιτείαις οἱ νόμοι κοινὴν τὴν μετουσίαν ἔδοσαν καὶ ἴσην καὶ τοῖς ἀσθενέσιν καὶ τοῖς ἰσχυροῖς· τῶν δ' Ἑλληνικῶν δικαίων οἱ κρατοῦντες ὁρισταὶ τοῖς ἥττοσι γίγνονται. ("Of private rights in polities the laws give a common and equal share to the weak and the strong; but of Hellenic rights those who hold sway become, for the weak, the deciders.").

[32] Murray (2003) 334: "Greek historiography is bound by tight literary conventions that encourage the use of (usually invented) speeches and formal descriptions of places and events but discourage and even prohibit the citation of documents." Baragwanath (2008) 57 n.8: "[Herodotus'] particular focus on a story that deserves *memorialization*…implies that his account of the truth is not to be 'warts and all' but selective – just as any narrative history must be selective, of course."

[33] "The current tendency among ancient historians, then, is to see Thucydides as a crucial witness to, and analyt of, the Peloponnesian Wars. But most would accept that Thucydides is biased (although the nature and extent of his bias is debated). And all would say that he is highly selective (although the History's incompleteness fuels ongoing debate about whether any unified design and purpose accounts for the selections). Van Wees (2017) 60: "the Archaeology is highly selective and misleading"; Millender (2017) 87: "Throughout his account of the Archidamian War…Thucydides provides a selective and skewed portrait of Spartan naval activity."; Connor (1984) 42 n.2 (revolts not mentioned in Thucydides but inferable from epigraphic evidence).

[34] Porciani (2007) 334-335 contains a discussion of the long bibliography on the question of the accuracy of speeches in Thucydides, to which scholars have offered basically two answers. Woodman (2003) 13: "the majority of each speech in his work is the creation of the historian himself." Cf. Marincola (2010) 122: "we cannot use the speeches as reproductions (either more or less faithful) of what was actually said, even though Thucydides will have often reproduced some of the actual arguments used. Because the orientation and the shape of the speech, especially in what it emphasizes and what it omits, are the work of the historian himself, our impressions and understandings of a speaker are directly mediated through the historian's, not the original speaker's, words: selection and arrangement already carry with them interpretation."

readers' expectations and dispositions in order to seem plausible,[35] their readership was elite, as far as we can tell, not popular.[36] Thus we cannot gauge how far their or their readers' commitments to the rules and obligations of interstate law align with the disposition of Athenians in the council and assembly, where elites and commoners came together as Athenians to deliberate and to issue decrees.[37]

Decrees, on the other hand, are sure to reflect more directly the prejudices and dispositions of the Athenian people, and therefore they ought to be a decent index of the rules and obligations of interstate relations that were explicitly acknowledged by the

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[35] Rubinstein (2016) 92-93 observes: "the debate on the extent to which they reflect what was actually said on each occasion is never-ending, with no clear consensus emerging… many scholars, especially recently, have adopted an approach that in some ways gets round the problem of historical accuracy. Although the speeches themselves may be partly or wholly the product of the historiographers' creative imagination, their intended effect of drawing the reader into the narrative by letting him experience debates and arguments as they unfold may well have depended considerably on dramatic realism, mimesis."

[36] Flory (1980) 12-28 argues that Herodotus cannot, per earlier scholars, have reached a wide (let alone popular) readership. Johnson (1994) 245 n.43 suggests, contra prior consensus that Herodotus recited his work publicly, that Herodotus' "intended audience was primarily, if not entirely, the social and intellectual elite at Athens and other cities" and that (253) "[o]nly a few will have read Herodotus' monumental history in his own time and a full reading with the requisite concentration could only have been sustained in a private setting." Scholars disagree about the composition of the audience for whom Thucydides wrote. Connor (1984) 239: "Thucydides' audience, moreover, was no representative cross section of the Athenian citizenry or of Greeks in general. It was enlightened, well-educated, and affluent – not disposed to revert to the aristocratic patterns of the archaic age but distrustful of the populist strain in contemporary democracy." Ridley (1981) 25-46 gathers evidence that much of the excursive and antiquarian detail in Thucydides implies a non-Athenian audience.

[37] Hansen (1991) 125-27 suggests that the assembly was dominated, but not overwhelmingly so, by Athenians from the city and suburbs, with a smattering of country folk, and that while there is evidence for upper- and middle-class Athenians attending in some numbers, payment for attendance and "the crush to secure the daily payment indicates that the poorer group of citizens were the majority" in the assembly as in the courts (126). Of the council Hansen (1991) 259 suggests: "[t]he Council could not have functioned unless a reasonable number of *thetes* (who were formally excluded from all magistracies) had turned up for selection to the Council. On the other hand, the evidence reveals a clear tendency for the "haves" to be overrepresented on the council in relation to their proportion of the population."

Athenian people.[38] And in their decrees, Athenians of the Classical era were reluctant to acknowledge, in explicit terms, things like kinship, friendship, and the customary norms of the Greeks. Kinship with any other polity is not explicitly mentioned as a reason to pass a decree until the Hellenistic age.[39] Friendship with other polities, though often established by decree,[40] is not invoked as a reason to ratify a particular decree until after the Greeks lost the battle of Chaeronea in 338 B.C.,[41] which is thought to mark the

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[38] Cf. Low (2007) 102: "[i]f the proposer of a decree, or the writer of a speech, has the power to declare that a particular action upholds or breaks an international *nomos* ["norm" or "law"], then – if only in that decree, or that speech – the *nomos* comes into existence." The distinction – admittedly subtle – between Low's formulation and the one set out above is that in the statement above it is presumed that what mattered was not whether a speaker or proposer invoked a norm, but whether the councilors or assemblymen were persuaded by the invocation of that norm and willing to acknowledge their approval through the vote.

[39] Papazarkadas and Thonemann (2008) 73: "Agora I 7602 appears to be the earliest firm attestation of mutually accepted *sungeneia* between Athens and non-Ionian city. Indeed, it is the first known inscription recording kinship between Athens and another city on grounds other than the latter's status as a colony, at least before the Roman period." Tracy identified the inscription as the work of the "Cutter of *IG* II² 1706" and thus the text should date between 229-201B.C.; on the evidence for a specific date see Paparkadas and Thonemann (2008) 76. The closest thing to kinship-diplomacy in Athenian epigraphy before Chaironeia is to be found in *RO* 29/*SEG* XXXI.67.3-6: 3-6: εἰς Παναθήν]αια βο͂ν καὶ πανο|[πλίαν καὶ εἰς Διονύ]σια βο͂ν καὶ φαλλὸ|[ν] ἀ[π]ά[γεν ἀριστεῖο]ν ἐπειδὴ [τ]υγχάνοσ|[ι] ἄποι̣κ̣οι ὄ[ντες τ]ο̣ῦ δήμου το͂ Ἀθηναίων· ("to the Panathenaia lead a cow and panoply and to the Dionysian a cow and a phallos as an offering since they happen to be colonists of the Athenian people.").

[40] Bolmarcich (2010) 124-125 argues that while the term *philia* first appears in the sixth century, "on the basis of current evidence it does not rise to real prominence or take on legal overtones until the era of the Peloponnesian war and the last quarter of the fifth century BCE, when it is combined with other diplomatic relationships like συμμαχία and εἰρήνη."

[41] The first secure attestation is found in *IG* II² 237.8-11 (338/7 B.C.): ἐπειδὴ Φορμίων καὶ Καρ[φ]ίνας ὄντες πατρό[θε]|[ν φίλ]οι τοῦ δήμου τοῦ Ἀθηναίων διαφυλάττουσιν [τὴ]|[ν εὔ]νοιαν ἣν οἱ πρόγονοι αὐτοῖς παρέδοσαν πρὸς [τὸ]|[ν δ]ῆμον τὸν Ἀθηναίων. This is but one of several reasons advanced (the text is discussed in more detail below, 119-120. Almost entirely restored is the reference to interstate friendship in *IG* II² 220. 15-19: [ὅπως ἂν ἡ πόλις] | [τῶν Π]ελλα[νέων διατελῇ ἀεὶ φίλ]|[η οὖ]σα καὶ ε[ὔνους τῶι δήμωι τῶι Ἀ]|[θην]αίων κα[θάπερ ἐν τῶι πρότερο]|[ν χρ]όνωι· ("so that the city of the Pellanians continues to be ever friendly and goodwilled towad the Athenian people just as it was in time before"). The same is true of the only fifth-century attestation of friendship as a reason for a piece of legislation in *IG* I³ 66.5-8 (427/6 B.C.): ἐπειδὲ καλο͂ς πειθαρ]χεῖ | [Μυτιλεναίον ho δε͂μος καὶ φίλος ἐστὶ καθάπερ ἐ]|[ν το͂ι πρόσθεν χρόνοι Ἀθεναίον τε͂ι βολε͂ι κα]ὶ το͂|[ι δέμοι. ("Since the Mytilenean people have obeyed finely and is friendly just as in the past to the council and people of Athenians."). But the relevant lines are entirely restored, and this would be the

moment when Greek cities (Athens among them) began to lose their autonomy and prestige in international affairs.[42] Only a single decree from Classical Athens cites the abrogation of customary law as a reason for its passage.[43] If reciprocity, kinship, friendship, and custom were the guiding principles of interstate relations, if they were acknowledged as such by Athenians, and if they made up the library of concepts and the treasury of norms available for Athenians to formulate interstate documents, then why have they left so little footprint in the interstate legislation ratified by the Athenian people?

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earliest attestation of this kind of language in a decree by nearly a century. The restoration may be right, but the text as it survives is not proof. The same goes for *IG* II² 336.15-17 (334/3 B.C.): ἐπειδὴ δὲ καὶ ὁ πατὴρ] | αὐτοῦ Ἀθηνα[ίων φίλος ἦν καὶ ἔδωκεν αὐ]|τ]ῶι ὁ δῆμο[ς τὴν πολιτείαν. ("Since his father also was a friend of the Athenians and the people gave citizenship to him.").

[42] Mosley (1973) 1: "the major cities of the Greeks were placed under some restraints by Macedonian control in the conduct of their external policies, restraints which were to be maintained through the Hellenistic era and periods of Roman domination." After a review of treaties struck between 350-321 B.C., Lambert (2010) 160 concludes: [t]he overall impression is one of a radical diminution of Athens' role on the international stage, but not of a decrease in diplomatic energy."

[43] Tod II.137: ἐπε[ι]δὴ Αἰτωλῶν̣ [τ]ο῀ῦ κ[ο]ι̣νοῦ δεξαμέ|[ν]ων τὰς μ[υ]στηριώ̣τιδ[α]ς [σ]π[ο]νδὰς τῆς Δήμ|[η]τ̣ρος τῆς [Ἐ]λευσινίας καὶ τῆ̣ς Κόρης τοὺ|[ς] ἐπαγγείλαντας τὰς σπονδὰ̣ς Εὐμολπιδ|ῶ̣ν καὶ Κηρύκων δεδέκασι Τ[ρ]ιχονειῆς Πρ|[ό]μαχον καὶ Ἐπιγένην παρὰ τοὺς νόμους τ|[ο]ὺς κοι[ν]οὺς τῶν Ἑλλήνων, ἐλέσθαι τὴμ βο|[υ]λὴν αὐ[τ]ίκα μάλα κήρυκα ἐξ Ἀθηναίων ἁπ|ά̣ντων ὅσ̣[τ]ις ἀφικόμενος πρὸς τὸ κοινὸν | [τὸ Αἰ]τ̣ω̣[λῶν] ἀ̣[παιτήσει τοὺς] ἄ̣νδ̣ρας ἀφεῖ|[ναι] ("Since the federation of Aitolians, having accepted the truce for celebrating the mysteries of Demeter Eleusinia and the Maiden, have put in chains those of the Eumolpidae and Heralds who had reported the truce, the Trixoneians Promachos and Epigenes, in contravention of the common laws of the Hellenes, the council is to choose forthwith a herald from all Athenians who, upon arriving before the federation of Aitolians shall demand that they release the men."). Reference to 'common laws of the Hellenes', as Low (2007) 95 observes, "usually implies not just shared but also 'unwritten' laws" and the proper treatment of heralds is surely one of the unwritten laws of Greek interstate relations.

It is not, I urge, a matter of oversight, as though Athenians merely neglected to incorporate the norms of interstate law into their diplomatic legislation. The previous chapter of this dissertation concluded that the rhetors who wrote decrees did so with care and craft, and that care and craft appear most vividly in Athenian diplomacy. Athenians in the Classical age relied more heavily on documents as instruments of communication and as sources of law than modern accounts of Greek diplomacy have hitherto observed.

This is true in a banal sense: Athenian envoys were elected consequent to decrees, and those decrees were drafted and ratified with a view to the substance and tone appropriate for the circumstances of a given embassy. But reliance on documents went far beyond the decrees that authorized a particular group of envoys. There was a wide range of interstate documents available to Athenian envoys, and they used these texts to make their case alongside appeals to unwritten rules and obligations. At home, in the council and assembly, Athenian rhetors unpacked interstate documents like letters and treaties to help the people make decisions about matters of foreign policy. More importantly, as the second half of this chapter argues, rhetors paid particularly close attention to the texts of past and present documents when drafting decrees, which are studded with references, explicit and implicit, to other interstate documents.

The evidence for this practice is especially rich in the middle of the fourth century B.C., as a survey of the surviving material will show. But this cannot be called an

innovation, since decrees dating all the way back to the Peloponnesian war and beyond reveal the extent to which the Athenians who drafted decrees reproduced the logic and sometimes even the text of prior interstate documents. Thus, diplomacy in Athens, it will be argued, was not only a matter of hearts and minds but also a matter of rigorous and exacting attention to documents and documentary texts.

3.2 Diplomacy by Document in Classical Athens

It has recently been observed that

> "From the late fourth century onwards, the inscriptions increasingly offer numerous attestations of the use of written documentation as a diplomatic instrument in interactions between *poleis*. Many documents published in response to a variety of diplomatic approaches tend to emphasize the written material conveyed from one state to another. In some instances, the written documentation submitted included not only decrees, which could be – and no doubt often were – construed as an authentic voice of the envoys' *polis*, but also covering letters accompanying the official enactments conveyed."[44]

Not only are documents more emphasized in the epigraphic record of the Hellenistic diplomacy than in the literature or epigraphy of Classical Athens; their role is more explicitly defined. Decrees in which envoys are explicitly instructed to hand over a copy of the text are first found in inscriptions from the Hellenistic period.[45] So are decrees in which it is explicitly stated that envoys had spoken in accordance with the terms written

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[44] Rubinstein (2013) 167.

[45] *IG* II^3 1258.46-50 (196/5 B.C.): χειροτονῆσαι | τὸν δῆμον ἤδη ἕνα ἄνδρα ἐξ Ἀθηναίων ἁπάντων, ὅστις ἀφικόμενος | πρὸς τὸν βασιλέα Φαρνάκην τό τε ψήφισμα ἀποδώσει καὶ προσαγορεύσει | [καὶ] αὐτὸν καὶ τὴν βασίλισσαν ὑπὲρ τοῦ δήμου καί, ἐὰν ἐν δυνατῶι εἶ, πα[ρα]|[λ]ήψεται τὰ γινόμενα μέρη τῶι ἐνιαυτῶι ([sc. be it resolved] "that the people vote now one man from all the Athenians who, upon arriving before the king Pharnakes, will both give the decree and will also address him and the queen on behalf of the people and, if it be in his power, will take the shares accruing for the year.").

in the decree they handed over.[46] Moreover, scholars have observed, from the epigraphic record of Hellenistic diplomacy, that envoys assembled and brought with them dossiers of other documents in support of their claims, including letters, decrees, interstate compacts, oracles, and even works of history.[47] Is this because documents had a more significant role in Hellenistic diplomacy than they did in diplomacy of the Classical era?[48]

Except for the cover letter, which seems to have been a genuine innovation, the kinds of documents employed in diplomacy of the Hellenistic age were employed in diplomacy of the Classical era, in Athens at any rate. Envoys were elected consequent to a decree.[49] They traveled with drafts of treaties in hand, to be discussed openly in

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[46] E.g. *IG* XII Suppl. 138.19-21 (199 B.C.): διελέχθησαν δὲ καὶ οἱ πρέσβευται ἀκο|λ[ού]θως τοῖς ἐν τῶι ψαφίσματι γεγραμμένο[ισι] | τᾶς [φι]λοτιμίας οὐδεν ἐλλείποντες· ("and the envoys spoke in accordance with what is written in the decree leaving nothing of zeal out.").

[47] Thus with regard to the multiple embassies of Magnesians from Maeander seeking recognition of the games for Artemis Leukophryenia, Sosin (2009) 386 is "inclined to think, with Kern 1901: 509–11, that the Magnesian ambassadors did come armed with a variety of written documentation. Note especially the reference to local Magnesian chroniclers (*Asylia* 96.13–14): ἱ[σ]τορ[ι]αγράφων τῶν συγγεγραφότ[ων] τὰς Μαγνήτων πρ[άξ]ει[ς], the implication of documentary proof of Magnesian magnanimity going back to 369 (*Asylia* 88.25–29; Chaniotis 1988: T 7), the handing over of decrees, whether that authorizing the initiative (examples in note above) or past honorary decrees (*Asylia* 85.9–10, 86.9–10, 96.14–15 with pp. 213, 233): παρανέγνωσαν δὲ | καὶ τὰ ψαφίσματ[α] τὰ ὑπάρχοντα αὐτοῖς παρὰ ταῖς πόλ[ε]σιν (96.14–15). The heavily documentary nature of this diplomatic enterprise seems clear enough."

[48] Note that Rubinstein (n.44 above) does not endorse any such historical divide in Greek diplomatic practice. To my knowledge no one has expressely argued for such a sharp historical divide in diplomatic practice, but it is telling that Adcock, in an early survey of Greek diplomacy, has little to say about documents in diplomacy until he turns to the Hellenistic era, where diplomacy is described thus (Adcock 1948: 9): "[t]he usual method is for the city to pass a decree which in effect states what they want to make valid and then to send it in the hand of ambassadors, whose task is to justify it.").

[49]The earliest evidence for election is found in *IG* I^3 40.45-47 (variously dated to 446/5 or 424/3 B.C.): ϝοίτινες δὲ ἐχσορκόσοσι ἀφικόμενοι ἐ|ς Χαλκίδα, ἐλέσθαι τὸν δε͂μον πέντε ἄνδρ|ας αὐτίκα μάλα. ([sc. resolved] "that the people choose five men forthwith who are to see the oath sworn upon arriving in Chalkis."). The text refers

councils and assemblies[50]; they brought home, to be read in the council and the assembly, resolutions of Panhellenic institutions like the Amphictyonic council,[51] decrees of free cities, and letters from kings, all of which served as official responses to the envoys' speeches[52]; they sent letters home to update the people on negotiations.[53] But the

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to "men" and not "envoys" but a formal embassy is implied by ll.35-37: ὁρκῶσαι δὲ πρεσβε|ίαν Ἀθεναίον ἐλθοῦσαν ἐς Χαλκίδα μετὰ τ|οῦν ὁρκοτῶν τῶν ἐν Χαλκίδι ("the embassy of Athenians are to see the oath sworn upon coming to Chalkis with the oath-givers in Chalkis").

[50] Bickerman (1952) 207.

[51] Aeschin. 3.124-25: ἀνάγνωθι τὸ ψήφισμα. Ψήφισμα Τοῦ δόγματος τούτου ἀποδοθέντος ὑφ' ἡμῶν ἐν τῇ βουλῇ καὶ πάλιν ἐν τῇ ἐκκλησίᾳ ("read the decree. DECREE. When this resolution was handed over by us in the council and again in the assembly…") It is unclear whether he acquired the copy of this text read in court from the Metroon or, since he had been Athens' agent on that occasion, kept a copy for himself.

[52] Dem. 18.214: ὅ τι δ' οὖν ἐπείσαμεν ἡμεῖς καὶ ἡμῖν ἀπεκρίναντο, ἀκούσατε. λέγε ταυτὶ λαβών ("what, therefore, we convinced them, and what they answered us, hear. Take and read this.") The answer had been given by the Thebans in a decree passed in response to a diplomatic mission on which Demosthenes served 13 years earlier. Aeschines recounts that after he and his fellow envoys gave their report on the first embassy to Philip, Demosthenes stood up to give his account (Aeschin. 2.50): Ἅμα δ' ἐκέλευεν ἀναγνωσθῆναι τὸ ψήφισμα τοῦ δήμου. Ἀναγνωσθέντος δὲ εἶπεν ὅτι «κατὰ τοῦτο ἐξεπέμφθημεν, καὶ ταῦτα ἐπράττομεν ἃ ἐνταυθοῖ γέγραπται. Λαβὲ δή μοι καὶ τὴν ἐπιστολὴν ἣν ἥκομεν παρὰ Φιλίππου φέροντες». Ἐπειδὴ δὲ ἀνεγνώσθη, «ἀπέχετε», ἔφη, «τὴν ἀπόκρισιν, καὶ λοιπὸν ὑμῖν ἐστι βουλεύσασθαι. ("At once he called to the decree of the people to be read. When it was read he said that 'in accordance with this we were sent out, and we have done these things which are written in it. Take, then, for me also the letter which we brought here from Philip. When it was read, he said "you all have your answer, and it remains for you to make a decision.").

[53]Dem. 19.174: τὴν μὲν γραφεῖσαν ἐπιστολὴν ὑπ' ἐμοῦ πρὸς ὑμᾶς ἀπεψηφίσαντο μὴ πέμπειν, αὐτοὶ δ' οὐδ' ὁτιοῦν ὑγιὲς γράψαντες ἔπεμψαν ("The letter written by me they voted not to send to you, but they themselves wrote and sent one to you a letter in no way beneficial."). The contents are not recoverable and thus it is unclear in what sense the letter was not beneficial, but letters from diplomats were in all likelihood meant to keep the council and people up to date on negotiations. A letter from a different embassy is read at Dem. 18.212; according to Demosthenes it was proof (Dem. 18.211): Ὡς γὰρ ἀφικόμεθ' εἰς τὰς Θήβας, κατελαμβάνομεν Φιλίππου καὶ Θετταλῶν καὶ τῶν ἄλλων συμμάχων παρόντας πρέσβεις, καὶ τοὺς μὲν ἡμετέρους φίλους ἐν φόβῳ, τοὺς δ' ἐκείνου θρασεῖς ("when we arrived in Thebes we found Philip and the ambassadors of the Thessalians and the other allies present, and our friends were afraid, his were emboldened."). How these letters were preserved is an open question. Perhaps a copy of the latter letter was preserved by Demosthenes among his own papers; on the other hand, the letter would have been sent to the council and people, so that it may have entered the archives and been available years later.

kinds of documents produced in the course of international affairs went far beyond documents created for and by envoys. Generals sent letters to the council and assembly to update them on their actions.[54] Letters came from garrison commanders in Athenian-held territories.[55] Foreign kings sent letters, and in court Athenians cited not only those sent to Athens but also those sent to other polities.[56] Interstate agreements proliferated so rapidly in the topsy-turvy politics of the eastern Mediterranean that the mercenary general Charidemos made five treaties with the Athenian people in the course of a few years, and even though all but one of these were canceled or superseded by later agreements, copies were available to be cited in court a decade later.[57]

In fact, that was true of other kinds of documents created in other circumstances. Granted, it is usually unclear whether these documents came from the city archives or the personal collections of politicians. But wherever he got ahold of them, a rhetor with an eye for detail could assemble decrees, letters, and treaties into a portrait of past

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[54] X. *HG* 1.7.4.

[55] Dem. 23.159-162.

[56]Dem. 18.218; read out by the court clerk at Dem. 18.221. How Demosthenes got hold of these letters is unclear, but we must envision that either the rhetor himself collected copies of interstate documents not directly pertinent to the affairs of Athens or that the Athenians did this collectively, by means honest and otherwise. Philip complained in a letter to the Athenians ([Dem.] 12.2): Νικίου τοῦ κήρυκος ἁρπασθέντος ἐκ τῆς χώρας τῆς ἐμῆς, οὐχ ὅτι τοῖς παρανομοῦσιν ἐπετιμήσατε τὴν δίκην, ἀλλὰ τὸν ἀδικούμενον εἴρξατε δέκα μῆνας· ἃς δ᾽ ἔφερε παρ᾽ ἡμῶν ἐπιστολάς, ἀνέγνωτ᾽ ἐπὶ τοῦ βήματος ("when Nikias the herald was seized from my territory, that you not only did not punish the wrongdoers, but you even imprisoned the victim for ten months, and the letters which he was bringing from me you read on the speaker's platform.").

[57] First a treaty with the Athenian general Kephisodotos (Dem. 23.167), then with Athenodoros, a general in the service of the Thracian kings Amodokos and Beroisiades (Dem. 23.175), then with the Athenian general Chabrias (Dem. 23.176), and then with the Athenian general Chares (Dem. 23.173).

events and relations, and some of these documents were not even produced at Athens. Thus, for example, in 330 B.C., Aeschines had a decade-old decree of Oreus read to the court as evidence that Demosthenes had accepted money from them in exchange for his advocacy at Athens.[58] Demosthenes himself, in a trial twenty years earlier, had an Athenian decree and letters from the Athenian generals Iphikrates and his successor Timotheus read to a jury alongside a letter from Charidemus, as evidence that Charidemus was partially responsible for Athens' failure to reclaim its territories in the North Aegean and was thus unworthy of the privileges extended to him via a recently passed decree.[59]

Rhetors like Aeschines and Demosthenes were often chosen to serve as envoys,[60]

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[58] The decree for which he was allegedly paid is read out at Aeschines 1.102-3; the decree of Oreus at Aeschin. 104-5: Ἀναγκαζόμενοι δὲ οἱ Ὠρεῖται καὶ οὐκ εὐποροῦντες, ὑπέθεσαν αὐτῷ τοῦ ταλάντου τὰς δημοσίας προσόδους, καὶ τόκον ἤνεγκαν Δημοσθένει τοῦ δωροδοκήματος δραχμὴν τοῦ μηνὸς τῆς μνᾶς, ἕως τὸ κεφάλαιον ἀπέδοσαν. Καὶ ταῦτ' ἐπράχθη μετὰ ψηφίσματος τοῦ δήμου. Ὅτι δὲ ἀληθῆ λέγω, λαβέ μοι τὸ ψήφισμα τῶν Ὠρειτῶν (The people of Oreus, under constraint and not well-provisioned, mortgaged the public incomes to him at the value of the talent, and bore interest to Demosthenes for his bribe at a rate of a drachma each month on the mina, until they paid the capital sum. And this was done with a decree of the people. That I speak the truth, take for me the decree of the people of Oreus."). It is unclear whether this decree was deposited in the city archives at Athens or somehow came into the private possession of Aeschines. Though the latter seems more likely, decrees passed in other cities were sent to Athens to be published (and so perhaps archived); see *SEG* 26:130 (a Boiotian decree, possibly religious in substance, and inscribed in its native dialect in Attica.). The date of the decree will remain unknown, but according to Aeschines, it belongs to the 'second period' of Demosthenes' career, which he ends at 339 B.C., and thus the decree from Oreus was just shy of a decade old at this point.

[59] Dem. 23.151-52.

[60] Mosley (1973) 43-49 remains, to my knowledge, the only survey of who was elected for particular diplomtatic missions (and on what grounds). He suggests (43) that "[d]iplomacy was a matter for the leading citizens." Roberts (1982) 360, summing up a prosopography of Athenian politicians active from the death of Pericles in 429 B.C., concluded that half of them as generals or diplomats (and often both, though not at the same time). So also Wolpert (2001) 75-76: the diplomat "was selected from among the prominent members of the polis." Not all missions were serious ones, and thus Mosley (1965) 263 urges: "there were occasions when the tasks involved did not demand men of the highest calibre." Giovannini (2007) 94: "Les

especially on missions that required the talents of a skilled negotiator,[61] who was adept at crafting diplomatic speeches, which combined features of deliberative, forensic, and declamatory oratory.[62] It would be surprising if envoys with experience putting together dossiers for court cases did not base at least some of their arguments on documents, including but not limited to the decree by which they were authorized to act and speak on behalf of the people. Accordingly, this chapter will argue that from the last quarter of the fifth century onward Athenians used decrees as a means of communicating the will of the people while defining the terms, sometimes subtle and sometimes not, under which envoys negotiated; that Athenian envoys, like their Hellenistic successors, assembled dossiers of supporting documentation, to be advanced as evidence of the arguments they made on the authority of the decree under which they acted; and that

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missions diplomatiques étaient confiées de préférence à des citoyens qui avaient acquis une certain expérience dans la vie politique." Granted, there are lots of diplomats who are nothing more than names to us. They are unlikely to have been nobodies in Athens.

[61] Aeschin. 2.103: «Τὸ μὲν γὰρ τοὺς ὅρκους ἀπολαβεῖν, καὶ περὶ τῶν ἄλλων διαλεχθῆναι, καὶ περὶ τῶν αἰχμαλώτων εἰπεῖν, κἂν εἰ τοὺς ὑπηρέτας ἔπεμψεν ἡ πόλις περιθεῖσα πίστιν αὐτοῖς, ἅπαντ' ἂν πραχθῆναι νομίζω· τὸ δὲ ὑπὲρ τῶν ὅλων ὀρθῶς βουλεύσασθαι, ὅσα καθ' ἡμᾶς ἐστιν ἢ Φίλιππον, τοῦτο ἔστιν ἤδη πρέσβεων ἔργον φρονίμων."(I think everything could have been done - the taking of the oaths, and discussion about the other things, and speaking about the hostages, even if the city sent petty servants and put trust in them. But to deliberate about the big picture correctly, so far as is in our power or Philip's, this is work for discerning envoys.").

[62] Rubinstein (2016) 80 points out that "envoys' speeches were often deliberative in nature, which is reflected by the fact that both Aischines and Demosthenes quite happily refer to such symbouleutic speeches as *demegoriai*." But, she continues: "when an envoy spoke for his *polis* in an interstate dispute, or when one polis sent our representatives to complain to another *polis* about the latter's conduct or the conduct of one of its citizens, his speech would most likely have borne a closer resemblance to the dikanic genre in Aristotelian terms," and "some envoys' speeches seem to have been mainly epideiktic in nature."

Athenians in the courts, the council, and the assembly may have privileged this strategy of diplomatic appeal over others.

3.2.1 Diplomacy by Decree

In surviving examples of decrees that authorized envoys, the resolution to elect the envoys is typically recorded alongside resolutions that tell them what to do and (in brief) what to say on their embassy. Often these resolutions were recorded alongside ones that did not pertain to the envoys.[63] Were such decrees meant to accompany the envoys in their entirety? Were the relevant sections somehow excerpted in another form of document, or was the entire document simply left at home in Athens?

It has been proposed that envoys in the Classical age, like those of the Hellenistic world, carried letters of credential that cited the decree that authorized their mission.[64] The evidence for that proposal is a remark of the lexicographer Pollux that "the third assembly each month was reserved for dealing with heralds and embassies, who first

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[63] Mosley (1973) 26-27.

[64] Bickerman (1952) 207 suggests both that "le décret du peuple chargeant des deputes d'une mission remplissait a la fois la fonction d'une note diplomatique et cette d'une delegation de pouvoirs" and that "les <notes> diplomatiques citaient les decrets de l'assemblée." Mosley (1973) 21 preferred the second possibility: "[e]nvoys….would probably have some letters of credence to present to the states to which they were sent in order to explain their purpose and authority. The title given in the credentials was probably something simple and written down from the wording of the decree of state in accordance with which the envoys were elected, for the description of the tasks of envoys in the literary sources and the instructions recorded in inscriptions are of a similar brief nature."

had to hand over their documents to the *prytaneis*."[65]

It has long been recognized that Pollux must be read alongside *AthPol* 43.6,[66] but it has not been observed, to my knowledge, that Pollux has cribbed that passage nearly word-for-word, and that his remark is therefore applicable only to Athens.[67] And in the *AthPol* it is only noted that in Athens the last two assemblies of the prytany were reserved for sacred matters and for heralds and embassies and that "heralds and envoys first come before the *prytaneis*, and those bearing dispatches hand them over to these

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[65] Poll. 8.96: ἡ δὲ τρίτη κήρυξι καὶ πρεσβείαις ἀξιοῖ χρηματίζειν, οὓς δεῖ πρότερον τοῖς πρυτάνεσιν ἀποδοῦναι τὰ γράμματα ("the third [sc. assembly] requests to deal with herals and ambassadors, who must hand over their documents to the *prytaneis* beforehand.")

[66] Bickerman (1952) 207 n.24.

[67] Poll. 8.95 s.v. πρυτάνεις: οὗτοι τὴν βουλὴν συνάγουσιν ὁσημέραι, πλὴν ἄν τις ἄφετος ᾖ, τὸν δὲ δῆμον τετράκις ἑκάστης πρυτανείας· καὶ προγράφουσι πρὸ τῆς βουλῆς καὶ πρὸ τῆς ἐκκλησίας ὑπὲρ ὧν δεῖ χρηματίζειν. τῶν δ' ἐκκλησιῶν ἡ μὲν κυρία, ἐν ᾗ τὰς ἀρχὰς ἐπιχειροτονοῦσιν, εἰ καλῶς ἄρχουσιν, ἢ ἀποχειροτονοῦσιν· ἐν ᾗ καὶ τὰς εἰσαγγελίας ὁ βουλόμενος εἰσαγγέλλει, καὶ τὰς ἀπογραφὰς τῶν δημευομένων ἀναγινώσκουσιν οἱ πρόδικοι, καὶ τὰς λήξεις τῶν κλήρων. ἡ δὲ δευτέρα ἐκκλησία ἀνεῖται τοῖς βουλομένοις, ἱκετηρίαν θεμένοις, λέγειν ἀδεῶς περί τε τῶν ἰδίων καὶ τῶν δημοσίων ("*prytaneis*: these assemble the council for as many days, except if one is a holiday, and the assembly four times a prytany; and they prescribe, on behalf of the council and the assembly, about what they are to transact; and of assemblies one is chief, in which they vote to approve the magistrates, if they are discharging their office well, or vote to remove them; in which also anyone who wishes can file an impeachment, and the registers of properties to be sold at public auction litigants read, and the suits for the inheritance of estates; the second assembly is left free for anyone who wishes, having placed a branch of supplication, to speak freely about private and public matters."). Compare *Ath.Pol* 43.6: ἔπειτα συνάγουσιν καὶ τὴν βουλὴν καὶ τὸν δῆμον· τὴν μὲν οὖν βουλὴν ὅσαι ἡμέραι, πλὴν ἐάν τις ἀφέσιμος ᾖ, τὸν δὲ δῆμον τετράκις τῆς πρυτανείας ἑκάστης. καὶ ὅσα δεῖ χρηματίζειν τὴν βουλήν, καὶ ὅ τι ἐν ἑκάστῃ τῇ ἡμέρᾳ καὶ ὅπου καθίζειν, οὗτοι προγράφουσι. προγράφουσι δὲ καὶ τὰς ἐκκλησίας οὗτοι· μίαν μὲν κυρίαν, ἐν ᾗ δεῖ τὰς ἀρχὰς ἐπιχειροτονεῖν εἰ δοκοῦσι καλῶς ἄρχειν, καὶ περὶ σίτου καὶ περὶ φυλακῆς τῆς χώρας χρηματίζειν, καὶ τὰς εἰσαγγελίας ἐν ταύτῃ τῇ ἡμέρᾳ τοὺς βουλομένους ποιεῖσθαι, καὶ τὰς ἀπογραφὰς τῶν δημευομένων ἀναγιγνώσκειν, καὶ τὰς λήξεις τῶν κλήρων καὶ τῶν ἐπικλήρων ⟦ἀναγινώσκειν⟧, ὅπως μηδένα λάθῃ μηδὲν ἔρημον γενόμενον ("Next, they assemble both the council and the assembly; the council, then, as many days as there are except if one is a holiday, the assembly four times each prytany. And what things it is necessary for the council to handle, both in respect to what on each day and where they are to be seated, they prescribe. They prescribe also the assembles: one sovereign, in which it is necessary to ratify the magistrates if they are resolved to be discharging their offices well, and to deliberate about grain, and about the defense of the territory, and whoever wishes makes impeachments on this day, and reads the registers of land to be sold at public auction, and the suits for heritable estates and heiresses, so that it not escape anyone's attention that any of these has been abandoned.").

men."[68] It is unclear what kinds of dispatches are meant here, since Athenians sent orders through decrees the way kings did through letters.[69] But since it is clear that the reference is to envoys arrived in Athens, whether foreign envoys from kings like Philip or Athenian envoys on their return home,[70] then neither Pollux nor *AthPol.* 43.6 constitutes positive evidence that Athenian envoys brought letters of credential with them on embassies.

Nor was there any need for such a letter. The decree under which the envoys acted was credential enough, because their names and the date of their selection were recorded in it,[71] and so were their instructions,[72] which stipulated not only what they

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[68] *AthPol* 43.6: προσέρχονται δὲ καὶ οἱ κήρυκες καὶ οἱ πρέσβεις τοῖς πρυτάνεσιν πρῶτον, καὶ οἱ τὰς ἐπιστολὰς φέροντες τούτοις ἀποδιδόασι ("both heralds and ambassadors first approach the *prytaneis*, and those bearing letters give [sc. the letters] to these").

[69] The verb ἐπιστέλλειν seems to mean, on occasion, "order by decree," for it is often used by Thucydides of the Athenians communicating to their officers and their allies, which happened via decree (see, e.g., Th 2.6, 3.4). In the first Philippic, after his proposal was read aloud, Demosthenes told the people (Dem. 4.30): ἐπειδὰν δ' ἐπιχειροτονῆτε τὰς γνώμας, ἂν ὑμῖν ἀρέσκῃ, χειροτονήσετε, ἵνα μὴ μόνον ἐν τοῖς ψηφίσμασι καὶ ταῖς ἐπιστολαῖς πολεμῆτε Φιλίππῳ, ἀλλὰ καὶ τοῖς ἔργοις. ("whenever you ratify the proposals, if it pleases you, you will vote in order that you fight Philip not only in decrees and in dispatches but in actions."). There is, to my knowledge, no positive evidence that the people of Athens ever communicated with Philip via letter. I suspect this is essentially a hendiadys, wherein "you fight Philip with decrees and dispatches" essentially means "through dispatches in decrees."

[70] Pollux and *AthPol* may have both in mind. According to Aeschines, Demosthenes wrote a decree praising himself and his fellow envoys once they had returned to Athens: "for when we came here and gave a summary report of the embassy to the council and we handed over the letter, the one from Philip" (Aeschin. 1.45: Ὡς γὰρ δεῦρ' ἤλθομεν καὶ πρὸς τὴν βουλὴν ἐπὶ κεφαλαίων τὴν πρεσβείαν ἀπηγγείλαμεν, καὶ τὴν ἐπιστολὴν ἀπέδομεν τὴν παρὰ Φιλίππου). Note too the similarity of language between *AthPol* 43.6 and Aeschin. 1.50, which purports to quote part of Demosthenes' speech in the assembly held after the meeting with the council: Λαβὲ δή μοι καὶ τὴν ἐπιστολὴν ἣν ἥκομεν παρὰ Φιλίππου φέροντες ("take for me also the letter from Philip which we arrived with…").

[71] Aeschin. 2.58: Τῶν γὰρ πρεσβειῶν, ἃς ἐξεπέμψατε εἰς τὴν Ἑλλάδα, ἔτι τοῦ πολέμου τοῦ πρὸς Φίλιππον ὑμῖν ἐνεστηκότος, οἱ μὲν χρόνοι τῆς αἱρέσεως, ὅτε ἐξεπέμφθησαν, καὶ τὰ τῶν πρεσβευσάντων ὀνόματα ἐν τοῖς δημοσίοις ἀναγέγραπται γράμμασι…Παρελθὼν τοίνυν, Δημόσθενες, ἐπὶ τὸ βῆμα τοῦτο ἐν τῷ ἐμῷ λόγῳ, εἰπὲ πόλεως ἥστινος βούλει τῶν Ἑλληνίδων τοὔνομα, ἐξ ἧς ἀφῖχθαι τότε φῂς τοὺς πρέσβεις· καὶ τὰ προβουλεύματα

were permitted to do but also what they were permitted to say on behalf of the Athenian people.

Athenian envoys were held strictly accountable to the terms of that decree. Early in the fourth century several envoys were sentenced to death in a decree in which the primary charge was that "they carried out the embassy [ἐπρέσβευσαν] contrary to the document."[73] It is certain from the context of citation that "the document" was the decree under which the envoys had served.[74] In what sense, then, did they carry out the embassy contrary to the terms of that decree? The embassy was either one sent to Sparta

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αὐτῶν ἐκ τοῦ βουλευτηρίου δὸς ἀναγνῶναι, καὶ τοὺς Ἀθηναίων κάλει πρέσβεις, οὓς ἐξέπεμψαν ἐπὶ τὰς πόλεις, μάρτυρας. Names of envoys are recorded, somewhat haphazardly, in the inscribed copy of decrees the earliest example of which is *IG* II² 34 (384/3 B.C.). But notes recording the outcome of an action stipulated in a decree go back to the Peloponnesian war, as we know from chapter one of this dissertation. Thus, it is possible that the election of envoys was recorded in the fifth century, and that we simply have no surviving example. *IG* I³ 54.2-8: πρέσβες ἐγ Λεον[τ]|ίνον ϝοὶ τὲγ χσυμμαχί|αν ἐποέσαντο καὶ τὸν ϝ|όρκον Τιμένορ Ἀγαθοκ|λέος, Σῶσις Γλαυκίο Γέ|λον Ἐχσεκέστο, γραμμα|τεὺς Θεότιμος Ταυρίσ|κο· The Rhegian envoys who swore an oath to an alliance with Athens in 431 B.C. were recorded in the superscript of the epigraphic copy of the treaty (*IG* I³ 53.1-3): [θεοί· πρέσβες ἐκ Ῥεγίο ϝ]οὶ τὲν χσυμμαχίαν | [ἐποέσαντο καὶ τὸν ϝόρκ]ον Κλέανδρος Χσεν|[……19……]τίνο, Σιλενὸς Φόκο. Note too the protocol recorded at the end of the truce of 423 B.C. transcribed at Thucydides 4.119, which records the names of the individuals responsible for establishing the terms of the agreement and swearing the oath.

[72] Dem. 19.1.5-6 claims that, among other things, diplomats are responsible "for the things which you instruct them" and "since, moreover, regarding what you instructed them to say or do you decreed explicitly to do, it behooves them to administer" (ὧν προσετάξατ' αὐτῷ…καὶ μὴν περὶ ὧν γε προσετάξατ' εἰπεῖν ἢ πρᾶξαι καὶ διαρρήδην ἐψηφίσασθε ποιῆσαι, προσήκει διῳκηκέναι.).

[73] The decree is quoted at Dem. 19.278: 'ἐπειδὴ παρὰ τὰ γράμματα' φησὶν 'ἐπρέσβευσαν ἐκεῖνοι.' καὶ τοῦτ' ἔστι τῶν ἐγκλημάτων πρῶτον. ("it says 'since they served as envoys contrary to the document', and this is the first of the charges.").

[74]The document is twice called a decree at Dem. 19.276-77: καί μοι λέγε τουτὶ τὸ ψήφισμα λαβών. ΨΗΦΙΣΜΑ. Κατὰ τουτὶ τὸ ψήφισμ', ὦ ἄνδρες Ἀθηναῖοι, τῶν πρέσβεων ἐκείνων ὑμεῖς θάνατον κατέγνωτε, ὧν εἷς ἦν Ἐπικράτης, ἀνήρ, ὡς ἐγὼ τῶν πρεσβυτέρων ἀκούω, σπουδαῖος καὶ πολλὰ χρήσιμος τῇ πόλει, καὶ τῶν ἐκ Πειραιῶς καταγαγόντων τὸν δῆμον καὶ ἄλλως δημοτικός.

in 392/1 B.C. that had, as its purpose, a peace treaty[75] (a draft of which ended up in the Athenian assembly),[76] or one sent to the king of Persia in 387/6 B.C. that had, as its result, a peace treaty (the so-called King's Peace).[77] Thus, we know that they were responsible for negotiating a treaty of peace on behalf of their fellow Athenians. Moreover, we know, as LSJ note, that Greeks used *presbeuein* to say that an envoy "negotiated" a treaty.[78] Now, most of the time, when they used this word in the sense of "negotiate", they used it transitively.[79] But Athenians also used the word intransitively to say that an envoy "negotiated" *about* peace or alliance. That is, the transitive and intransitive usages appear to be equivalent ways of expressing the same fact.[80] Therefore, there is no

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[75] Philoch. F 328 [Jacoby]: καὶ τὴν εἰρήνην τὴν ἐπ᾽ Ἀντι̣α̣λκίδου κατέ/πεμψεν ὁ βασιλεύς, ἣν Ἀθηναῖοι ο̣[ὐκ] ἐδέξαντο, / διότι ἐγέγραπτο ἐν αὐτῆι τοὺ[ς τὴν Ἀ]σίαν οἰκοῦν/τ[ας] Ἕλληνας ἐν βασιλέως οἴκ[ωι π]άντας εἶναι συννενεμημένους· ἀλλὰ καὶ τοὺ[ς πρέσ]βεις τοὺς / ἐν Λακεδαίμονι συγχωρήσα[ντας] ἐφυγάδευ/σαν, Κ̣αλλιστράτου γράψαντος, κ[αὶ οὐ]χ ὑπομεί/ναντας τὴν κρίσιν, Ἐπικράτην Κηφισιέα, Ἀν/δοκίδην Κυδαθηναιέα, Κρατῖνον Σ̣φήττιον, Εὐ/βουλίδην Ἐλευσίνιον ("And the peace the one 'under Antalkidas' the king sent down, which the Athenians did not accept, because it had been written in that the Hellenes dwelling in Asia be apportioned to be in the house of king; but the envoys, the ones conceding this in Lakedaimon, they cast into exile, Kallistratos having written the proposal, even though they did not await the judgment: Epikrates the Kephisian, Andocides the Kudathenaion, Kratinos the Sphettian, Euboulides the Eleusinian.").

[76] Andoc. 3.40.

[77] Σ Aristides 172.15 [Dindorf]: τῶν γε πεισάντων κατέγνωσαν] εἰς Ἐπικράτην αἰνίττεται, ὃς ἔπεισεν Ἀθηναίους δι᾽ ἅσπερ ἴσμεν αἰτίας δέξασθαι τὴν εἰρήνην. AC. εἰς Ἐπικράτην αἰνίττεται. κατέγνωσαν λέγει, τὸν θάνατον δηλονότι. BD.

[78] LSJ s.v. πρεσβεύειν II.2.

[79] e.g. Isoc. 4.177: Διὸ καὶ τῶν πρεσβευσάντων ταύτην τὴν εἰρήνην δικαίως ἂν κατηγοροῖμεν, ὅτι πεμφθέντες ὑπὸ τῶν Ἑλλήνων ὑπὲρ τῶν βαρβάρων ἐποιήσαντο τὰς συνθήκας ("Where, also, we might justly accuse those who have negotiated this peace, because they, though sent by the Hellenes, made the compact on behalf of the barbarians.").

[80] Andoc. 3.34: Φημὶ γὰρ, ὦ Ἀθηναῖοι, πολέμου μὲν ὄντος ἄνδρα στρατηγὸν τῇ πόλει τε εὔνουν εἰδότα τε ὅ τι πράττῃ, λανθάνοντα δεῖν τοὺς πολλοὺς τῶν ἀνθρώπων καὶ ἐξαπατῶντα ἄγειν ἐπὶ τοὺς κινδύνους, εἰρήνης δὲ πέρι πρεσβεύοντας κοινῆς τοῖς Ἕλλησιν, ἐφ᾽ οἷς ὅρκοι τε ὀμοσθήσονται στῆλαί τε σταθήσονται γεγραμμέναι, ταῦτα δὲ οὔτε λαθεῖν οὔτε ἐξαπατῆσαι δεῖν, ἀλλὰ πολὺ μᾶλλον ἐπαινεῖν ἢ ψέγειν, εἰ πεμφθέντες αὐτοκράτορες ἔτι ἀποδώσομεν ὑμῖν περὶ αὐτῶν σκέψασθαι ("For I declare, Athenians, that in war, a man serving as general who is well-minded toward the city and who knows what he should do, he ought to escape the notice of the

obstacle to interpreting the intransitive use of the verb in the decree sentencing the envoys to death to mean that they negotiated the treaty contrary to their instructions. If right, then this is clear evidence that envoys in Classical Athens were held accountable for negotiating in accordance with the terms of the enabling decree (just as their Hellenistic successors were).

Moreover, like their successors in the Hellenistic world, Athenian envoys were occasionally instructed to bring the decree on their embassy. Thus, in 386/5 B.C., a decree was passed for Hebryzelmis, king of the Odrysians, in which it was resolved (among other things):

> "to choose three men from all the Athenians who are to report to Hebryzelmis the things decreed by the people, and to report also concerning the ships the ones around […] and concerning the other things which the envoys coming to the people from king Hebryzelmis request…"[81]

The instruction to report the things decreed by the people can be interpreted as an instruction to convey the decree itself. When the people passed a decree sentencing all the Mytileneans to death in 427 B.C., they "sent a trireme to Paches as messenger of the

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majority of men and, deceiving them, lead them to dangers; but those negotiating about a peace common to the Greeks, the terms on which oaths will be sworn and stela will stand written, with respect to these terms they must not escape notice nor deceive, but much more should one praise rather than blame, if sent with full powers we still hand it over to you to inquire about these things."). Compare Andoc. 3.23: Ποίαν τιν᾽ οὖν χρὴ εἰρήνην πρεσβεύοντας ἥκειν; ("what sort of peace must envoys come and negotiate?"). Later Andocides refers to the treaty and friendship established with the King, "which Epilykos son of Teisander negotiated for us" (Andoc.3.29: ἃ ἡμῖν ἐπρέσβευσεν Ἐπίλυκος <ὁ> Τεισάνδρου).

[81] ἑλέσθαι δὲ ἄ]νδ[ρα]ς τρῆς ἐξ Ἀθ[η]να[ίων] | ἁπάντ[ων οἵτ]ινε[ς] ἀπαγγελῶσι [π]ρ[ὸς Ἑβ]|ρύ[ζελ]μιν [τὰ ἐ]ψηφι[σ]μένα τῶι δ[ή]μ[ωι, ἀπ]|αγ[γελῶσι δὲ] κ[αὶ] περὶ τῶν νεῶν [τ]ῶ[ν περ]|ὶ Πλ[..5.. καὶ] περὶ τῶν ἄλλων ὧ[ν] α[ἰτῶσ]|ιν οἱ πρέσβ[ε]ς οἱ π[αρ]ὰ βασιλέω[ς] Ἑ[βρυζ]|έλ[μ]ιδο[ς ἥ]κοντες τῶι δήμωι τῶ[ι] Ἀ[θηνα]|ίων…

things resolved,"[82] and in practice, that meant they sent a copy of the decree to Paches, for when the people changed its mind and ratified a decree amending the first one, they sent another ship to catch up, and that ship came upon Paches "just as he read the decree and was preparing to carry out its resolutions."[83]

If "send a messenger (***aggelos***) of the things resolved" means, in practice, "convey the decree," then it seems reasonable enough to take the instruction that envoys "shall report (***apaggelousin***) the things decreed" to mean the same, all the more so since the "the things decreed" is merely this particular proposer's way of saying "the decree," (a few lines later the secretary is ordered to inscribe "the things decreed" rather than the more usual "inscribe this very decree").[84] Thus, there need be no practical difference between envoys in Classical Athens being ordered to "report what is decreed" and

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[82] Th. 3.36.3: πέμπουσιν οὖν τριήρη ὡς Πάχητα ἄγγελον τῶν δεδογμένων, κατὰ τάχος κελεύοντες διαχρήσασθαι Μυτιληναίους. ("They send, then, a trireme to Paches as messenger of the resolutions, ordering him to execute the Mytileneans with haste.").

[83] Th. 3.49: ἡ μὲν ἔφθασε τοσοῦτον ὅσον Πάχητα ἀνεγνωκέναι τὸ ψήφισμα καὶ μέλλειν δράσειν τὰ δεδογμένα, ἡ δ' ὑστέρα αὐτῆς ἐπικατάγεται καὶ διεκώλυσε μὴ διαφθεῖραι. ("the one [sc. trireme] arrived first only so far as Paches had read the decree and was preparing to carry out the resolutions, but the second came to land just after this one and prevent the destruction.").

[84] *IG* II² 31.12-14: κ]α[ὶ στῆσ]αι [ἐ]ς στήλην ἀναγρ[άψαντ]|α τὸν γραμ[μ]ατέ[α] τῆς βολῆς τὰ ἐψ[ηφισμ]|ένα <ἐν ἀ>[κ]ρ[οπό]λ[ει. That "the decree" and "the things decreed" are coextensive is also evident from *IG* II² 223.8-9: ὅπως δ' ἂν καὶ ὁ | δῆμος εἰδὼς τὰ ἐψηφισμένα τῆι βουλῆι περὶ Φανοδήμου τιμήσει καὶ αὐτὸς [κ]αὶ στεφανώσει ἐὰν δοκεῖ τῶι δήμωι καθάπερ τῆι βουλῆι, τοὺς προέδρους οἳ ἂν λάχωσιν προεδρεύειν ἐν | τῶι δήμωι εἰς τὴν πρώτην ἐκκλησίαν χρηματίσαι περὶ Φανοδήμου, καὶ ἀναγ[νῶ]ναι τόδε τὸ ψήφισμα τὸγ γραμματέα τῶι δήμωι ("That those chosen to make the dedication inscribe this here decree also on the dedication of the council; so that the people, knowing the the things decreed by the council about Phanodemos, shall also itself honor and crown him if it is resolved by the council on exactly the same terms as the council, and that the *proedroi* whoever are allotted to serve as proedroi among the people at the assembly transact the business concerning Phanodemos; and that the secretary read this very decree to the people.").

envoys in the Hellenistic age being ordered to "hand over" a decree.[85]

Most of the time it must have been unnecessary to explicitly instruct envoys to bring the decree along. In fact, instructions to convey a decree are quite rare in surviving decrees from Classical Athens, but (or perhaps because) in many cases the envoys would not have needed such. Often envoys were instructed to take oaths to the terms of a treaty on behalf of the people, and since the terms of oaths and the terms of treaties were in most cases established by and recorded in the same decree by which the envoys were elected,[86] they must have carried it along for the other parties to swear to even if they were not ordered to do so, especially if they were also to see to the inscription of the decree in the territory to which they were sent.[87]

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[85] *IG* II² 653.42-48: ὅπω]ς ἂν δὲ καὶ εἰδῆι ὁ βασιλεὺς Σπάρτ[ο]|[κος τὰ ἐψηφ]ισμένα τῶι δήμωι, χειροτονῆσαι πρέ|[σβεις τρε]ῖς ἄνδρας ἐξ Ἀθηναίων ἁπάντων, οἵτι[ν]|[ες αἱρεθέ]ντες ἀπαροῦσιν καὶ τό τε ψήφισμα ἀ|[ποδώσου]σιν καὶ ἀπανγελοῦσι τὴν εὔνοιαν ἣν | [ἔχει πρὸ]ς αὐτὸν ὁ δῆμος καὶ παρακαλοῦσιν αὐ|[τὸν βοηθ]εῖν τῶι δήμωι καθότι ἂν δύνηται ("So that therefore the king Spartokos knows too the things decreed by the people, vote as envoys three men from all the Athenians who, upon being chosen, will set sail and both hand over the decree and report the goodwill which the people has toward him and call on him to aid the people however he is able."). The text is stoichedon but varies between 36-38 stoichoi; it is worth wondering whether ἀ|[ποδώσου]σιν could be restored ἀ[πανγελοῦ]σιν; the repetition would seem awkard to us but perhaps, since the decree for Hebryzelmis contains exactly that repetition, the Athenian ear would have heard no such awkwardness. Theangela 4.22-26: ἑλέσθαι δὲ καὶ πρέσ[βεις] | πέντε οἵτινες ἀφικόμενοι τὰς τιμ[ὰς τὰς] |[ἐ]ψηφισμένας ἀποδώσουσιν καὶ π[αρακα]|[λοῦ]σιν αὐτὸν τὴν εὔνοιαν παρέ[χεσθαι τῆι] | [πόλει.

[86] Bederman (2001) 61: "Ancient treaties were, as a matter of definition, an exchange of oaths." Bolmarcich (2007) 27 points out: "[i]t is also sometimes difficult to distinguish in any source between a treaty-oath and the terms of its treaty."

[87] *IG* II² 102.1-5: ἄνδρ]ας, οἵτ[ινες ἀπολήψονται τ]|[ὸς] ὅρ[κος] παρὰ Ἀμύ[ντο καὶ Ἀλεξάνδρο κ][αὶ] ἐπιμελήσοντα[ι τῆς ἀναγραφῆς καὶ] | [τῆ]ς στήλης, ὅπως ἂ[ν τέλος ἔχηι τὰ ἐψηφ]|[ισ]μένα τῶι δήμωι. Granted, it is possible that these ambassadors had the inscription cut in Athens and brought the stone with them all the way to Macedonia, as is stipulated in *IG* I³ 156.19-29 (440-425 B.C.): περὶ [δ]|ὲ Λεονίδο τὰ ἐφσεφισμένα ἀ[ν]|αγραφσάτο ϝο γραμματεὺς τε͂|ς βολε͂ς τέλεσι τοῖς Λεονίδο | ἐν στέλαιν δυοῖν, καὶ τὲν μὲν | ϝετέραν στε͂σαι ἐμ πόλει, τὲν | δὲ ϝετέραν ἐν ϝαλικαρνασσο͂|ι ἐν το͂ι ϝιερο͂ι το͂ Ἀπόλλονος· | ἄνδρα δὲ προσελέσθο Λεονίδ|ες ϝόστις ἄχσει τὲστέλεν καὶ | στέσει. But nowhere else is a person, let alone persons, *elected* to oversee the inscription of a particular text at Athens. Moreover, the men "who will take the oaths from Amyntas and

In fact, it seems to have been the custom that envoys took a copy of the entire decree along with them, even when the oaths and the treaty were lumped together in the same decree as their instructions, and even when those instructions were broad and pertained only to them (like when envoys were to be elected "to persuade the Thebans whatever they can" in 378 B.C.).[88] Even the most explicit instructions left it to the envoys to decide what they should say in their speeches, and since Athenian envoys almost always traveled in groups,[89] and each envoy gave (as far as we know) an individual speech,[90] they had to determine collectively what sorts of arguments fell under the scope of the decree.

What little evidence we have shows that envoys met upon arrival at their destination to discuss the enabling decree and divvy up the task of speaking. Thus, the envoys sent to Philip in 346 B.C. to take his oath to uphold the so-called Peace of

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Alexander" would have to travel to take them (hence the future tense), and since "they will see to the inscription and the stele" is also in the future tense, the text makes more sense if they were to oversee the inscription of the text in Macedonia.

[88] *IG* II² 43.72-75: ἑλέσθαι δ|ὲ τὸν δῆμον πρέσβεις τρεῖς αὐτίκα μάλ|[α] εἰς Θήβας, [ο]ἵτινες πείσοσι Θηβαίοις ὅ|[τ]ι ἂν δύνω[ν]ται ἀγαθὸν ("that the people elect three envoys forthwith to Thebes, who are to persuade the Thebans what good they can.").

[89] Mosley (1973) 57. Nevertheless, there are three decrees that send out a single diplomat: *IG* II² 117.19-23 (361/0 B.C.), *IG* II² 264.3-6 (before 336 B.C.), and *IG* II² 360.35-36 (325/4 B.C.). In all three decrees a diplomat is to be sent to plead on behalf of a private individual, and this may not be happenstance; the Athenians sent single a single diplomat to Philip to negotiate the repayment of ransom for an Athenian citizen (Aeschin. 2.12-3 and Dem. 19.10), and again to negotiate on behalf of two citizens when Olynthus fell (Aeschin. 2.15-16). It would be valuable to collect the evidence for single envoys and groups to see whether one can discern why one option was taken over another.

[90] Rubinstein (2016) 88-93.

Philokrates held a meeting, once they arrived at the court of the king, to discuss in what order each should speak and what each of them ought to say, and during that meeting one of them argued that

> "The ambassadors of the Thebans are here, those of the Spartans are arrived, and here we have arrived with a decree of the people in which it is written, "the ambassadors are to do whatever good they can"; all the Greeks are looking to what will happen. If, then, the people thought it was fine to communicate to Philip, in frank speech, 'to shatter the *hybris* of the Thebans and to rebuild the walls of the Boiotians,' it would have demanded this in the decree. As it is, they left to themselves a retreat into obscurity, in case they should not convince him, and thought it necessary for the risk to fall on us."[91]

The oaths to be sworn were recorded in the decree itself.[92] But the envoys brought the entire document with them, rather than, say, excerpting the text of the oath, which was the only part of the decree directly relevant to Philip. The rest of it consisted of instructions addressed to the envoys, but those instructions were drafted and ratified under the explicit assumption that even that clause constituted a message to Philip, and that the other polities involved would read (or hear read) the text of the decree.

That assumption involves another one: that the entire decree was going with the

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[91] Aeschin. 2.104: Πάρεισι μὲν γὰρ Θηβαίων, ἥκουσι δὲ Λακεδαιμονίων πρέσβεις, ἀφίγμεθα δ' ἡμεῖς ἔχοντες τοῦ δήμου ψήφισμα, ἐν ᾧ γέγραπται «πράττειν δὲ τοὺς πρέσβεις καὶ ἄλλ' ὅ τι ἂν δύνωνται ἀγαθόν·» ἅπαντες δὲ οἱ Ἕλληνες πρὸς τὸ μέλλον ἔσεσθαι βλέπουσιν. Εἰ μὲν οὖν ἡγεῖτο ὁ δῆμος αὑτῷ καλῶς ἔχειν ἐξενεγκεῖν μετὰ παρρησίας πρὸς Φίλιππον, Θηβαίων μὲν περιελεῖν τὴν ὕβριν, Βοιωτῶν δὲ ἀναστῆσαι τὰ τείχη, ταῦτ' ἂν ἠξίωσεν ἐν τῷ ψηφίσματι· νῦν δὲ αὑτοῖς μὲν κατέλιπον τὴν εἰς τὸ ἀφανὲς ἀναφοράν, ἂν μὴ πείθωσιν, ἐν ἡμῖν δὲ ἀποκινδυνεύειν ᾠήθησαν δεῖν. Obviously we cannot independently corroborate that this discussion took place in this manner. But Aeschines could, and had his fellow envoys testify on his behalf at 2.108.

[92] The original draft of the Peace of Philokrates included the stipulation that the peace and oaths apply to all "except the Phocians and Halians", but this was amended in the assembly to read "the Athenians and their allies. This clause displeased Philip, according to Dem. 19.159: οὐκ ἐβούλετο τοῦτον ὀμωμοκέναι τὸν ὅρκον οὐδένα τῶν αὑτοῦ συμμάχων (οὐ γὰρ αὐτῷ συστρατεύσειν ἐφ' ἃ νῦν ἔχει τῶν ὑμετέρων ἔμελλον, ἀλλ' ἕξειν πρόφασιν τοὺς ὅρκους ("he did not want any of his allies to swear this oath, for they would not campaign with him against any of the places of yours which he now possesses, but would have the oaths as a pretext [sc. for refusing to campaign].').

envoys whether or not they were instructed to take it. And in fact that assumption turned out to be well-founded, for during the embassy a representative from another polity expressed his misgivings about the instruction that the Athenian envoys do what good they could, which he feared was a cover for secret collusion between Philip and the Athenians,[93] and he pointed to the terms of the peace established in the rest of the decree as evidence for the validity of that fear.[94] That is, a participant in the negotiations interpreted a clause that technically pertained only to the Athenian envoys in the context of the rest of the decree. The decree in its entirety, then, was understood by everyone involved to communicate to everyone involved.

The drafter of this decree and the people who ratified it could assume that envoys from other cities would pay close attention to its clauses, even apparently minor ones, because it was widely acknowledged by the ancients themselves that the Athenian people communicated with other polities by issuing decrees. In the passage above, the Greek **ἐκφέρειν** is translated as "communicate" as a way of capturing the double sense

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[93] Aeschin. 2.120: Κλεοχάρης ὁ Χαλκιδεὺς θαυμάζειν ὑμῶν καὶ Φιλίππου φαίη τὴν ἐξαίφνης ὁμόνοιαν, ἄλλως τε καὶ προστεταγμένον ἡμῖν πράττειν ἀγαθὸν ὅ τι ἂν δυνώμεθα· τοὺς γὰρ μικροπολίτας, ὥσπερ αὐτός, φοβεῖν τὰ τῶν μειζόνων ἀπόρρητα ("Klearchos of Chalkis said that he was amazed at the sudden agreement between you and Philip, especially that we were instructed to do what good we can, "for the citizens of small polities," like himself, "fear the secret doings of the bigger ones.").

[94] Dem. 19.22: ἀκούειν δὲ καὶ τῶν Εὐβοέων ἐνίων ἔφη πεφοβημένων καὶ τεταραγμένων τὴν πρὸς τὴν πόλιν οἰκειότητα Φιλίππῳ γεγενημένην, ὅτι 'οὐ λελήθαθ' ἡμᾶς, ὦ ἄνδρες πρέσβεις, ἐφ' οἷς πεποίησθε τὴν εἰρήνην πρὸς Φίλιππον, οὐδ' ἀγνοοῦμεν ὅτι ὑμεῖς μὲν Ἀμφίπολιν δεδώκατ' ἐκείνῳ, Φίλιππος δ' ὑμῖν Εὔβοιαν ὡμολόγηκεν παραδώσειν.' ("He said that he heard some of the Euboeans expressing fear and disturbed that affection for the city had developed in Philip, that "it does not escape our notice, envoys, on what terms you have made peace with Philip, nor are we ignorant that you have given Amphipolis to him, and Philip has agreed to hand over Euboia to you.").

of that word when used of deliberative bodies: just as the council communicated its proposals to the assembly by issuing a preliminary decree, so also the people in the assembly communicated its will, to the city and those outside the city, by issuing decrees.

Thus, Demosthenes could use the same word to tell the Athenians: "you communicate (ἐκφέρεσθε) your hatred through decrees but you are in control of no outcomes."[95] This sense that the people communicated through decrees was shared by others, Greek and not. Thus, Philip of Macedon could complain, in a letter to the council and the assembly of Athens, of what "you write in your decrees,"[96] even though we know, from the previous chapter, as Philip knew, that decrees were written by their proposers. This is a figure of speech. It captures, in vivid form, the fact that the Athenian people communicated to its own citizens and to others through decrees. That must have been reason enough for most embassies to bring the enabling decree along with them, even when its terms were circumspect and vague.

It seems all the more likely, then, that Athenian envoys brought along the decree under which they acted any time it explicitly addressed the king or city to which they

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[95] Dem. 13.33: οὐκοῦν τὴν μὲν ἀπέχθειαν διὰ τῶν ψηφισμάτων ἐκφέρεσθε, τῶν δ' ἔργων οὐδενὸς κύριοι γίγνεσθε.

[96] Dem. 12.8: Ἀλλὰ πρὸς τοῖς ἄλλοις καὶ γράφετ' ἐν τοῖς ψηφίσμασιν ἐμοὶ προστάττοντες Τήρην καὶ Κερσοβλέπτην ἐᾶν Θρᾴκης ἄρχειν, ὡς ὄντας Ἀθηναίους. ("But in addition to the other things you even write in your decrees ordering me to allow Teres and Kersobleptes to rule Thrace, on the grounds that they are Athenians.").

were sent – and the people was willing, on occasion, to communicate its will in blunt terms. So, for example, in one of the earliest examples of diplomacy by decree it was resolved (*IG* I³ 61.16-29; 429 B.C.)

> To send three envoys who have attained beyond fifty years of age to Perdikkas, and to say to Perdikkas that it seems to be just to allow the Methonaians to use the sea and that it is not permitted to draw boundaries, and to allow them to journey and neither wrong nor be wronged, nor to lead an army through the territory of the Methonaians if the Methonaians are unwilling, and if each of them agrees, let the envoys bring them to terms, but if not, let each send an embassy to the Dionysia, in possession of full powers regarding whatever they disagree about, to the council and assembly; and say to Perdikkas that if the soldiers in Potidaia offer praise, the Athenians will have good opinions of him.[97]

The syntax of this decree is worthy of close attention. It was more usual, when drafting instructions for envoys, to express that envoys are to be elected, followed by a relative clause of purpose in which the instructions are laid out. Thus, it was resolved in 422 B.C. "that the assembly choose forthwith from all the Athenians five men who are to take the oaths from the Bottiaioi"[98]; in 346 B.C. "Philokrates wrote a decree, to choose as envoys to Philip ten men, who shall hold discussions with Philip about peace and things that jointly benefit Athenians and Philip."[99] But in the decree above it was neither proposed

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[97] *IG* I³ 61.16-29: π[ρέσβε]||[ς δ]ὲ τρε͂ς πέμφσαι ϝυπὲρ πεντέκοντα ἔτε γεγον[ότας] | [ϝο]ς Περδίκκα[ν], εἰπε͂ν δὲ Περδίκκαι ϝότι δοκε[ῖ δίκα]||[ιο]ν ἔναι ἐᾶν Μεθοναίος τε͂ι θαλάττει χρε͂σθα[ι μεδὲ] | [ἐχσ]ε͂ναι ϝορίσασθαι, καὶ ἐᾶν εἰσεμπορεύεσθ[αι καθ]||[άπε]ρ τέος ἐ[ς] τὲν χόραν καὶ μέτε ἀδικε͂ν μ[έ]τε [ἀ]δ[ικε͂σ]||[θαι] μεδὲ στρα[τ]ιὰν διὰ τε͂ς χόρας τε͂ς Μεθ[ο]ναίον [διά]||[γεν ἀ]κόντομ [Με]θοναίον, καὶ ἐὰμ μὲν ὁμολ[ο]γο͂σιν [ϝεκ]||[άτερ]οι χσυ[μβι]βασάντον ϝοι πρέσβες, ἐὰν δὲ μέ,[πρεσ]||[βεί]αν ἑκάτ[ερ]ο[ι] πεμπόντον ἐς Διονύσια, τέλος [ἔχον]||[τας] περὶ ϝο͂[ν] ἃν διαφ<έ>ρονται, πρὸς τὲν βολὲν κα[ὶ τὸν] | [δε͂μ]ον· ε[ἰ]πε͂ν δὲ [Π]ερδίκκαι ϝότι ἐὰν ϝοι στρατι[ο͂ται] | [ϝοι] ἐμ Ποτειδ[ά]αι ἐπαινο͂σι γνόμας ἀγαθὰς ϝέ[χσοσι] | [περὶ] αὐτο͂ Ἀθε[ν]αῖοι.

[98] *IG* I³ 76.30-32: τὸς δὲ [ὅρκος] ϝοίτινες λέ[φσονται παρὰ Βοττιαίον ἐλέσθαι τὸν δε͂]μον πέντε ἄν[δρας αὐτίκα μάλα ἐκ πάντον Ἀθεναίον.

[99] Aeschin. 2.18: ψήφισμα ἔγραψεν ὁ Φιλοκράτης ἑλέσθαι πρέσβεις πρὸς Φίλιππον ἄνδρας δέκα, οἵτινες διαλέξονται Φιλίππῳ περὶ εἰρήνης καὶ τῶν κοινῇ συμφερόντων Ἀθηναίοις καὶ Φιλίππῳ.

nor resolved to elect envoys "who shall say to Perdikkas to allow the Methonaians to use the sea" (and so on). Instead, what is to be said to Perdikkas depends, grammatically, on the motion-formula and the resolution-formula.

Properly construed, then, these clauses are not what the envoys were instructed to say, but what the proposer proposed and the people resolved to say to Perdikkas through the only instrument of communication that it had at its disposal, the decree. That is, the principle that the Athenian people communicated through the decree is here reflected in the syntax of the decree itself. Such suggests, I urge, that the envoys were to bring it along with them. If right, then the custom of bringing it along (for it was probably a matter of custom and not enjoined by any statute) was not a Hellenistic innovation, but rather existed by the early years of the Peloponnesian war.[100]

3.2.2 Documents in the Speeches of Athenian Envoys

Still, there would have been no need to send envoys, especially ones who were skilled speakers, if the decree contained everything that needed to be said (and the vast majority of surviving diplomatic decrees are nowhere near as explicit as the one for Perdikkas). Envoys were, in their own words, responsible for and in charge of their

[100] Scholars have suggested any year between 430/29 B.C. and 427/6 B.C. Mattingly (1961) 154-165 reviews the arguments and argues for 427/6.

arguments.[101] And the enabling decree, while a necessary guide to what an envoy should argue, was not the sole criterion on which he would be judged to have done his duty. So, for example, when an envoy sent to negotiate a treaty of peace was criticized for coming back with a draft even though he and his colleagues were authorized to ratify the official document,[102] a draft that plenty were unsatisfied with,[103] he responded to the criticism thus: "we envoys have to negotiate looking not only to the written documents but also at your disposition, men of Athens."[104]

Envoys, then, were conscious of the need to fit their speech to expectations that were not set out in the enabling decree, because an envoy knew he would be judged "for whatever I say that is not necessary or whatever I do that is not part of my instructions.[105] Clearly what had to be said was not entirely defined by the instructions

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[101] Dem. 19.183: τίνος γὰρ ἄλλου δεῖ δίκην παρὰ πρέσβεων ἢ λόγων λαμβάνειν; εἰσὶ γὰρ οἱ πρέσβεις οὐ τριήρων οὐδὲ τόπων οὐδ' ὁπλιτῶν οὐδ' ἀκροπόλεων κύριοι (οὐδεὶς γὰρ πρέσβεσι ταῦτ' ἐγχειρίζει), ἀλλὰ λόγων καὶ χρόνων ("What other thing is there for which one must get justice from diplomats than words? For diplomats are not in charge of triremes, or places, or hoplites, or fortresses, for no one puts these in diplomats' hands, but words and opportunities.") It is clear that this was a widely shared norm, inasmuch as Aeschines, the defendant, confessed that during the second embassy of 346, the one for which he was on trial (Aeschin. 2.118): Ἡ μὲν τύχη καὶ Φίλιππος ἦσαν τῶν ἔργων κύριοι, ἐγὼ δὲ τῆς εἰς ὑμᾶς εὐνοίας καὶ τῶν λόγων (Fortune and Philip were masters of the deeds done, but I was master of goodwill toward you and of words). The complaint recurs at Aeschines 1.178: Ἐμὲ δ' οὐχ ὡς πρεσβευτὴν κρίνουσιν, ἀλλ' ὡς ἐγγυητὴν Φιλίππου καὶ τῆς εἰρήνης· καὶ τὸν τῶν λόγων κύριον τὰς τῶν ἔργων προσδοκίας ἀπαιτοῦσι ("Me they judge not as ambassador, but as the guarantor of Philip and the peace; and they demand from one in charge of words the fulfillment of their expectation of how events would play out.").

[102] Andoc. 3.33.

[103] Andoc. 3.40.

[104] Andoc. 3.35: Οὐ γὰρ μόνον, ὦ Ἀθηναῖοι, πρὸς γράμματα τὰ γεγραμμένα δεῖ βλέποντας πρεσβεύειν ἡμᾶς, ἀλλὰ καὶ πρὸς τοὺς τρόπους τοὺς ὑμετέρους.

[105] Aeschin. 2.107: Οὐδείς με τῶν ὅπλων ἕνεκα τῶν Φιλίππου κρινεῖ, ἀλλ' ὧν ἂν εἴπω τι μὴ δέον, ἢ πράξω τι τῶν μὴ προστεταγμένων ("No one is going to judge me for Philip's wars, but for whatever I say that is not

in the envoys' decree, and the reference to what is not (and thus implicitly what is) necessary to say is an admission that the people expected their envoys to say things that were not made explicit in the decree. What were those expectations?

Not a single speech delivered by an envoy has survived from Athens, and neither has anything that resembles a how-to manual or a treatise on writing diplomatic speeches.[106] Nor are the many speeches delivered by envoys in the Greek historians much help, since it is hard to parse what distinguishes the kinds of arguments actually made in real negotiations from those shaped by the invisible hand of the historian, and even harder to detect what lines of argument spoke to the commitments of the Athenian citizens who elected envoys and judged their words and deeds in court.[107]

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necessary, or whatever I do that is not part of my instructions."). Note that this is what Aeschines alleges Demosthenes said when they discussed how to address Philip before the second embassy.

[106] Wooten (1973) 209 observes: "[t]he author of the *Rhetorica ad Alexandrum* (30) discusses what an ambassador should do when reporting what has been accomplished in an embassy; however, he does not discuss what an ambassador's speech before the addressee should be like. Moreover, there are no examples of ambassador's speeches from extant Greek oratory." Similarly Pepe (2013) 334: "the content of these [sc. diplomatic] speeches is only known to us from the examples cited by historians, and involves giving advice or presenting a request." And Rubinstein (2016) 91: "leaving aside Andoc. 3, Aeschin. 2 and 3, and Dem. 18 and 19, there are surprisingly few comments on the type of arguments envoys deployed in order to persuade their audiences, whether foreign envoys in Athens or Athenian envoys in other Greek states."

[107] Thus Rubinstein (2016) 93 observes: "it may be possible to identify themes and argumentative strategies that were characteristic of this particular type of symbouleutic oratory, on the assumption that what we are listening to, in the company of the internal audiences in the stories, conforms in generic terms to the real-life oratory typically delivered in similar circumstances…But even this cautious approach is not without its potential pitfalls. The most pressing question is how far we can be confident that the historiographical speeches were in fact plausible and realistic imitations of envoys' speeches as delivered in real life. That question is extremely difficult to answer, because we have so few surviving comparanda, apart from Aischines' and Demosthenes' accounts of the speeches that they themselves delivered to audiences abroad, in the Peloponnese, Makedonia, and Delphi." Cf. Hunt (2010) 22-2, who notes that there are areas of overlap

But a good place to start looking for those commitments is the pair of speeches known today as *On the False Embassy*, because they were delivered during a trial at which the defendant, Aeschines, was accused by his fellow envoy, Demosthenes, of acting in bad faith during an embassy.[108] In the course of his defense, Aeschines recapitulates the reports that he gave in the Athenian assembly of the speeches that he delivered on the first embassy to negotiate peace and on the second embassy to take oaths from Philip and his allies. It has long been recognized that this self-portrait constitutes "the closest approximation which we have to an authentic ambassador's speech from the fourth or fifth centuries."[109] And yet it has received little attention from scholars of Athenian diplomacy.

His self-portrait as an envoy must have been selective and self-serving. His life was on the line. But if we want to know what a run-of-the-mill citizen expected an envoy to say while on an embassy, we can hardly do better than an account written for a trial in which the defendant stood to lose his life if the panel of a thousand or more

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between diplomatic speeches in the historians and in surviving assembly speeches and suggests: "this rough congruence between the two bodies of evidence suggests that most historical speeches present arguments well within the mainstream of Athenian thinking." The question deserves separate treatment.

[108] The charge is never stated explicitly, and the speech is first identified as "On the False Embassy" by Plutarch *Demosthenes* 15.5. That such a suit existed is clear from Demosthenes 21.5: εἰ μὲν οὖν, ὦ ἄνδρες Ἀθηναῖοι, παρανόμων ἢ παραπρεσβείας ἤ τινος ἄλλης αἰτίας ἔμελλον αὐτοῦ κατηγορεῖν τοιαύτης ("if, then, o men of Athens, I was going to prosecute him for illegalities in a decree or bad conduct on an embassy or any other charge of this sort…"). But at Dem.19.17 and Aeschin. 2.278 the case is described as an official audit (*euthunas*).

[109] Wooten (1979) 209.

dikasts found him guilty.[110] What he chose to include, to omit, to review in detail or to treat cursorily – in all of this he must have catered to the prejudices and expectations of the dikasts, who were by and large not elites,[111] and who were told by the prosecutor that they sat in judgment on behalf of the entire city.[112] Their prejudices and expectations conditioned how the defendant (and the prosecutor) portrayed their actions as envoys. It is significant, then, that the defendant (Aeschines), when recounting both embassies, portrays himself, in ways explicit and suggestive, as an envoy whose speeches leaned heavily on a dossier of documents that he had brought along on the embassies.

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[110] 1501 is the traditional number; but the source usually cited for it, Plutarch *Moralia* 840c, simply notes that Aeschines was acquitted by thirty votes.

[111] The precise socioeconomic background of the dikasts is contested. According to Hansen (1991) 184: "[t]he few sources that say anything direct as to the social position of the jurors all point in one direction: that it was mainly the poor who manned the people's court." But Todd (1990) 169 concludes: "the bulk of the jury (and probably also of the assembly) was composed not of rich nor of poor, but of farmers (including peasants). Since these formed one class, we have no way of telling what proportion of these were very poor, fairly poor, fairly well off, or rich. These were the people who exercised passive political rights: that is not to say that they were the political leaders—a far more restricted circle; but they were the people who voted." In either case, the dikasts were not likely to be elites (though that does not preclude the idea that a member of the birth or wealth elite might serve as a dikast, only that such elites did not dominate the panels of dikasts.).

[112] Dem. 19.132: πῶς γὰρ οὐκ αἰσχρόν, ὦ ἄνδρες Ἀθηναῖοι, δημοσίᾳ μὲν ἅπαντας ὑμᾶς καὶ ὅλον τὸν δῆμον πᾶσι τοῖς πεπραγμένοις ἐκ τῆς εἰρήνης ἐπιτιμᾶν, καὶ μήτε τῶν ἐν Ἀμφικτύοσι κοινωνεῖν ἐθέλειν, δυσκόλως τ' ἔχειν καὶ ὑπόπτως πρὸς τὸν Φίλιππον, ὡς ἀσεβῶν καὶ δεινῶν ὄντων τῶν πεπραγμένων καὶ οὔτε δικαίων οὔθ' ὑμῖν συμφερόντων, εἰς δὲ τὸ δικαστήριον εἰσελθόντας τὰς ὑπὲρ τούτων εὐθύνας δικάσοντας, ὅρκον ὑπὲρ τῆς πόλεως ὀμωμοκότας, τὸν ἁπάντων τῶν κακῶν αἴτιον καὶ ὃν εἰλήφατ' ἐπ' αὐτοφώρῳ τοιαῦτα πεποιηκότα, τοῦτον ἀφεῖναι; ("how is not it a shameful thing, men of Athens, on the one hand, for all of you and the entire people to censure publicly everything done because of the peace, and for you to be unwilling to share in the Amphictyonic matters, and to be angry and suspicious toward Philip on the grounds that what has been done is impious and terrible and neither just nor to your benefit, and on the other hand, having come into the court to judge *euthunai* on these things, you who have sworn an oath on behalf of the city, to acquit him who is the cause of all evils and whom you have caught in the act having done these sorts of things?")

3.2.3 The First Embassy to Philip

On the first embassy to Philip, when the envoys were to discuss the possibility of a peace treaty and the common interests of Philip and the Athenians, Aeschines claimed that he delivered a speech in four parts, and that "for everything I said, I handed over, as witnesses, letters of the persons involved, decrees of the Athenian people, and a truce of the Athenian general Callisthenes [made with Philip's older brother, the previous king of Macedon, Perdikkas]." [113] It is impossible to count up exactly how many documents he included in that dossier. But the plural (letters and decrees) suggests that it included a substantial number of documents. And close attention to the language in which he describes his speech suggests how extensively he relied (or purports to have relied) on that dossier.

In the first part of his speech, he recounted (διεξῆλθον) for Philip the hereditary goodwill (τὴν πατρικὴν εὔνοιαν) and the benefactions (τὰς εὐεργεσίας) that the Athenian people had extended to Philip's father, Amyntas, "omitting nothing, but mentioning everything in order."[114] Now, Aeschines uses 'recount' to describe when he works through the text of a document point-by-point in its entirety (and he was not unique in

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[113] Aeschin. 2.31: Καὶ πάντων ὧν εἴποιμι μάρτυρας τὰς ἐκείνων ἐπιστολὰς παρειχόμην καὶ τὰ ψηφίσματα τοῦ δήμου καὶ τὰς Καλλισθένους ἀνοχάς. Julien and Perera (1902) 25 gloss: παρειχόμην (ἐν τοῖς λόγοις) imparfait du recit.

[114] Aeschin. 2.26: Πρῶτον μὲν γὰρ πρὸς αὐτὸν διεξῆλθον τὴν πατρικὴν εὔνοιαν καὶ τὰς εὐεργεσίας ἃς ὑμεῖς ὑπήρξατε Ἀμύντᾳ τῷ Φιλίππου πατρί, οὐδὲν παραλείπων, ἀλλ' ἐφεξῆς ἅπαντα ὑπομιμνήσκων.

so doing).[115] Further, "benefactions" can refer to the decree in which a good deed is recorded and the good deeds recorded in that decree,[116] just as a decree awarding proxeny can simply be called a "proxeny."[117] And the "goodwill" extended by the Athenian people to a foreigner was communicated by decree.[118] Moreover, he stresses that he recounted all of this "in order" (ἐφεξῆς), which he elsewhere uses either to mean

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[115] Aeschin. 2.67: Κάλει δέ μοι καὶ Ἀμύντορα Ἐρχιέα, καὶ τὴν μαρτυρίαν ἀνάγνωθι. Ὃν δὲ τρόπον γέγραπται, προδιελθεῖν ὑμῖν βούλομαι ("call for me Amyntor of Herchia, and read the deposition. The manner in which it is written, I wish to go through with you beforehand."). Similarly Aeschin. 1.8: Πρῶτον μὲν γὰρ διέξειμι πρὸς ὑμᾶς τοὺς νόμους οἳ κεῖνται περὶ τῆς εὐκοσμίας τῶν παίδων τῶν ἡμετέρων, ἔπειτα δεύτερον τοὺς περὶ τῶν μειρακίων, τρίτον δ' ἐφεξῆς τοὺς περὶ τῶν ἄλλων ἡλικιῶν, οὐ μόνον περὶ τῶν ἰδιωτῶν, ἀλλὰ καὶ περὶ τῶν ῥητόρων ("First I will go through with you the laws which are established concerning the orderly behavior of our children, then second those concerning the youths, and third in order those concerning the other ages, not only as regards the private citizens, but also as regards the public speakers."). What follows is a point-by-point discussion of the language of certain laws, including direct citation of laws and discussion of the cited legislation (Aeschines 1.15-22). This was not a peculiarity of Aeschines; thus Pl. Comicus *Phaon* F 1 [Meineke]: Ἐγὼ δ' ἐνθάδ' ἐν τῇ ᾽ρημίᾳ τουτὶ διελθεῖν βούλομαι τὸ βιβλίον πρὸς ἐμαυτόν ("I wish to read through this bookroll with myself here in solitude."). So too Isoc. 12.136, where "go through" is paired with "read" in a way that might be construed as a kind of hendiadys: Ἐμοὶ δὲ τῶν μὲν τοιούτων ἀκροατῶν οὐδὲν πώποτ' ἐμέλησεν, οὐδὲ τοῖς ἄλλοις τοῖς εὖ φρονοῦσιν, ἐκείνων δὲ τῶν ἅ τε προεῖπον πρὸ ἅπαντος τοῦ λόγου μνημονευσόντων, τῷ τε πλήθει τῶν λεγομένων οὐκ ἐπιτιμησόντων, οὐδ' ἢν μυρίων ἐπῶν ᾖ τὸ μῆκος, ἀλλ' ἐφ' αὐτοῖς εἶναι νομιούντων τοσοῦτον ἀναγνῶναι μέρος καὶ διελθεῖν ὁπόσον ἂν αὐτοὶ βουληθῶσιν…("I have never been concerned in any way with these sorts of readers, nor have the others who are sensible, but rather with those who will recall what I said before the whole speech, who won't blame the size of the speech, not even if the length be ten thousand words, but will realize that it is in their power to read a part and work through however much of it they want…").

[116] *IG* II² 29.2-4: καὶ] τὴν εὐεργ[εσίαν] | [ἀ]ναγράψ[αι ἐν στ]ήλει λιθίνει ἐν [ἀ]κ|[ρ]οπόλει ([sc. it is resolved] to inscribe the benefaction on a stone stele on the acropolis); with a slightly different meaning, but for the same purpose, *IG* II² 133.1-3: προξενία καὶ εὐεργεσί[α] | Φιλίσ[κ]ωι Λύκου αὐτῶ[ι] | καὶ ἐ[κ]γ[ό]νοις Σ[ηστ]ίω[ι] ("Proxeny and benefactor-status for Philiskos the son of Lykos, him and his descendants, a Sestian.") In *Against Leptines* the decree awarding honors to Epikerdes of [] is read out, after which the speaker asks (Demosthenes 20.45): Τὰς μὲν εὐεργεσίας ἀνθ' ὧν εὕρετο τὴν ἀτέλειαν ὁ Ἐπικέρδης ἀκηκόατ' ἐκ τῶν ψηφισμάτων, ὦ ἄνδρες δικασταί ("Members of the jury, you have heard from the decrees the benefactions for which Epikerdes got immunity from taxes").

[117] Thus one can refer "the stele in the time of the thirty on which there was proxeny for him" (*IG* II² 6.12-14: ἡ στήλη [ἐ]πὶ τῶν τριάκοντ|α ἐν ἧι ἦ[ν α]ὐτοῖς ἡ προξεν|ία); or it might be resolved "that the secretary of the council and stand it on the acropolis." (*IG* II² 80.5-7: [καὶ ἀναγ]ράψαι αὐτῶι τὴμ προ[ξενίαν] | [ἐν στήλ]ηι λιθ[ί]νηι τὸν γραμμα[τέα] | [τῆς βολῆ]ς κα[ὶ σ]τῆσαι ἐν ἀκροπ[όλει].).

[118] See, for example, *IG* II² 264.3-6: ἐλέσθαι δὲ κα]ὶ πρεσβευτὴν ἕ|[να ἄνδρα, ἐξ Ἀθηναί]ων ἁπάντων, ὅστις | [ἀπαγγελεῖ πρὸς Ἰ]ατροκλέα τὴν εὔνο|[ιαν, ἣν ὁ δῆμος ἔχ]ει πρὸς αὐτὸν ("elect also as ambassador one man from all the Athenians who will report to Iatrokles the goodwill which the people has for him").

in chronological order[119] or sequentially clause-by-clause in a text.[120] It is well known that he was willing and able to build arguments from archival details of documents like dates.[121] Thus, it is clear that he hung (or is trying to give the impression that he hung) the first part of his speech to Philip on decrees passed for Amyntas, and that he worked through (or is implying he worked through) these documents in chronological order.

In the second part of his speech, Aeschines reminded Philip that after the death of Amyntas his family was abandoned by their supporters, who favored a rival to the throne, Pausanias, and that when Pausanias began to take over the Macedonian cities near the Chalkidike, where the Athenians had longstanding interests, they elected Iphikrates to be general and sent him in several ships to scope out Amphipolis, a city in the Chalkidike that they had been trying to regain for half a century[122]; that when Iphikrates reached Amphipolis, Philip's mother, Eurydice, "sent for him" and, upon his arrival in Macedonia,

> as, at any rate, all who were present say, having set Perdikkas your brother into the arms of Iphikrates, and having put you, a little child, on his knees, she said that "Amyntas, the father of these children, when he was alive, made you his son, and engaged with the city of Athens as a familiar, and so you happen to be privately a brother of these children, and publicly our friend." And after this she made a forceful supplication both on her own behalf and on your behalf and on behalf of your kingdom and, in a word, on behalf of your salvation. Once he

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[119] Aeschin. 3.84 and 3.57.

[120] Aeschin. 1.7-8; 2.96.

[121] Thomas (1989) 69-71.

[122] Aeschin. 2.27.

> heard this, Iphikrates drove Pausanias from Macedonia and preserved your dynasty for you.[123]

Letters were included in the dossier that Aeschines had prepared for Philip. Now, the Athenian people did not communicate via letters, but Athenian generals and foreign royals did, with each other and with the people, and Aeschines' language implies that Eurydice sent for Iphikrates via letter: "sent for" (μετεπέμψατο) can mean "sent for by letter" without needing to specify the medium of the message.[124] It likely meant that here.

Although this is the only word that points toward a document that might have belonged to the dossier, Aeschines claimed to have proffered letters, not just a single letter. Could he have dug up, from the city archives or from someone's personal archive,

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[123] Aeschin. 2.28-29: καὶ ὥς γε δὴ λέγουσιν οἱ παρόντες πάντες, Περδίκκαν μὲν τὸν ἀδελφὸν τὸν σὸν καταστήσασα εἰς τὰς χεῖρας τὰς Ἰφικράτους, σὲ δὲ εἰς τὰ γόνατα τὰ ἐκείνου θεῖσα παιδίον ὄντα, εἶπεν ὅτι «Ἀμύντας ὁ πατὴρ τῶν παίδων τούτων, ὅτ᾽ ἔζη, υἱὸν ἐποιήσατό σε, τῇ δὲ Ἀθηναίων πόλει οἰκείως ἐχρήσατο, ὥστε συμβαίνει σοι καὶ ἰδίᾳ τῶν παίδων τούτων γεγενῆσθαι ἀδελφῷ, καὶ δημοσίᾳ φίλῳ ἡμῖν εἶναι». Καὶ μετὰ ταῦτα ἤδη δέησιν ἰσχυρὰν ἐποιεῖτο καὶ ὑπὲρ αὑτῆς καὶ ὑπὲρ ὑμῶν καὶ ὑπὲρ τῆς ἀρχῆς καὶ ὅλως ὑπὲρ τῆς σωτηρίας. Ἀκούσας δὲ ταῦτα Ἰφικράτης, ἐξήλασε Παυσανίαν ἐκ Μακεδονίας, καὶ τὴν δυναστείαν ὑμῖν ἔσωσε. Heskel (1997) 22 n.9 suggests that "Aeschines exaggerates the youth of the two princes for rhetorical purposes." But Athenians considered a boy a πάις until he was an ephebe at the age of 18, for Athenian boys were registered as members of their deme at age eighteen and when they were being registered, according to *AthPol* 42.1: διαψηφίζονται περὶ αὐτῶν ὀμόσαντες οἱ δημόται, πρῶτον μὲν εἰ δοκοῦσι γεγονέναι τὴν ἡλικίαν τὴν ἐκ τοῦ νόμου, κἂν μὴ δόξωσι, ἀπέρχονται πάλιν εἰς παῖδας ("the demesmen, on oath, take a vote on them, in the first place if they seem to have achieved the age according to the law, and if they do not seem so, they return once more to the children"). Thus the fact that Philip and Pausanias were around 12 and 14, respectively, does not mean they were not παῖδες.

[124] E.g. X. *An*. 3.1.4-5: Ἦν δέ τις ἐν τῇ στρατιᾷ Ξενοφῶν Ἀθηναῖος, ὃς οὔτε στρατηγὸς οὔτε λοχαγὸς οὔτε στρατιώτης ὢν συνηκολούθει, ἀλλὰ Πρόξενος αὐτὸν μετεπέμψατο οἴκοθεν ξένος ὢν ἀρχαῖος· ὑπισχνεῖτο δὲ αὐτῷ, εἰ ἔλθοι, φίλον αὐτὸν Κύρῳ ποιήσειν, ὃν αὐτὸς ἔφη κρείττω ἑαυτῷ νομίζειν τῆς πατρίδος. ὁ μέντοι Ξενοφῶν ἀναγνοὺς τὴν ἐπιστολὴν ἀνακοινοῦται Σωκράτει τῷ Ἀθηναίῳ περὶ τῆς πορείας. ("There was certain Athenian Xenophon in the army, who accompanied it neither as as general nor lieutenant nor soldier, but Proxenos sent for him because he was an old guest-friend of his house; he promised him, should he come, to make him friend to Cyrus, whom, he said, he valued more than his country. Xenophon, having read the letter to Socrates the Athenian, conferred with him about the journey.").

a letter from Iphikrates to the Athenian people? At some point during the campaign against Amphipolis, Iphikrates sent a letter to the people informing them that he had taken some Amphipolitans hostage, and that letter was cited, alongside a decree in which the people ordered that those hostages be conveyed to Athens, in a trial of 351 B.C.[125] In fact, it seems to have been ordinary for Iphikrates and other generals of this period to send letters home to Athens, especially when circumstances evolved in such a way as to make it difficult for the general to carry out the instructions laid on him by decree of the people,[126] or in such a way as to require further instruction.[127] And the

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[125] Dem. 23.151.

[126] In 346 B.C., the Athenians voted that "the Phocians hand over these territories to Proxenos the general" (Aeschin. 2.133: Ψηφισαμένων δ' ὑμῶν παραδοῦναι Προξένῳ τῷ στρατηγῷ τοὺς Φωκέας ταῦτα τὰ χωρία); shortly thereafter, Aeschines reminds the Athenians, on either the 18th or 19th of Elaphebolion, when they were deliberating whether to make peace with Philip, "you heard a letter of Proxenus, that the Phocians have not handed over the territories to him" (Aeschines 2.134: τῆς ἐπιστολῆς ἠκούετε τῆς Προξένου, ὅτι Φωκεῖς οὐ παραδεδώκασιν αὐτῷ τὰ χωρία). In the trial of 343 B.C., Aeschines had that letter read to the dikasts alongside depositions from the envoys sent by Proxenos to the Phocians, to counter the chronology of events according to which (as Demosthenes argued in his speech) Aeschines was responsible for the destruction of Phocis; the falsity of this chronology is refuted, according Aeschines, by the letter of Proxenus read aloud (Aeschin. 2.135): Ἀκούετε, ὦ Ἀθηναῖοι, τῶν χρόνων παραναγιγνωσκομένων ἐκ τῶν δημοσίων γραμμάτων καὶ τῶν μαρτύρων ὑμῖν προσδιαμαρτυρούντων ὅτι πρὶν ἐμὲ χειροτονηθῆναι πρεσβευτήν, Φάλαικος ὁ τῶν Φωκέων τύραννος ἡμῖν μὲν καὶ Λακεδαιμονίοις ἠπίστει, Φιλίππῳ δ' ἐπίστευεν ("you hear, Athenians, the dates from the public records being read side by side and the witnesses providing further evidence that Phalaikos the tyrant of Phocis turned against us before I was elected ambassador, and put his trust in Philip."). What was read alongside is unclear, since no other document besides the letter is mentioned, but the decree establishing the second embassy to Philip was read aloud in both cases and that was likely the document read together with the letter of Proxenos.

[127] D.S. 16.57: Ἰφικράτους διατρίβοντος περὶ Κόρκυραν μετὰ ναυτικῆς δυνάμεως καὶ Διονυσίου τοῦ Συρακοσίων δυνάστου πέμψαντος εἰς Ὀλυμπίαν καὶ Δελφοὺς ἀγάλματα ἐκ χρυσοῦ καὶ ἐλέφαντος δεδημιουργημένα περιτυχὼν ταῖς κομιζούσαις αὐτὰ ναυσὶν ὁ Ἰφικράτης καὶ κρατήσας αὐτῶν διεπέμψατο πρὸς τὸν δῆμον ἐπερωτῶν τί χρὴ πράττειν, οἱ δ' Ἀθηναῖοι προσέταξαν αὐτῷ μὴ τὰ τῶν θεῶν ἐξετάζειν, ἀλλὰ σκοπεῖν ὅπως τοὺς στρατιώτας διαθρέψῃ. Ἰφικράτης μὲν οὖν ὑπακούσας τῷ δόγματι τῆς πατρίδος ἐλαφυροπώλησε τὸν τῶν θεῶν κόσμον. ("When Iphikrates was tarrying around Corcyra with a naval force and Dionysius the Syracusan tyrant had sent to Olympia and Delphi dedications wrought from hold and elephantine, Iphikrates, then, having chanced upon the ships carrying these and having overcome them, sent to the people asking what it was necessary to do, and the Athenians instructed him not to scrutinize the properties

people readily decreed additional instructions for their generals even when those generals were on campaign outside Athens.[128] Since Iphikrates was ordered by decree to go to Amphipolis, not to Macedon, for him to pivot to Macedon probably required the authorization of another decree, and in this circumstance, as in others, he may have sent a letter requesting further instructions. If he had sent such a letter, and it was available in 346 B.C., as the other letter he sent while on campaign in Macedonia was still

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of the gods, but to see to it that he feed the soldiers. Iphikrates, then, obeying the resolution of his country, sold off the adornment of the gods.").

[128] *IG* II² 110.14-17: ἐπιμελεῖσθαι | [δὲ] αὐτοῦ καὶ τοὺς στρατηγοὺς τοὺς ὄντας περ|[ὶ Μα]κεδονίαν, ὅπως ἄν, ἐάν τοῦ δέηται, τυνχά|[νηι] ("[sc. resolved] that the generals who are in the vicinity of Macedonia be concerned for him, so that, if he need anything, he acquire it."). How this was communicated to the generals is not stated in the decree, but recall that two triremes were sent to Paches with the decrees sentencing death and mitigating that sentence in 427 B.C. (for text see n.476 and n.477 above). In 342/1 (for the date see Sealey 1976: 481), in response to calls to summon the general Diopeithes back to Athens to stand trial for detaining merchant ships while on a mission against Cardia in the Chersonese, Demosthenes argued that "a small tablet could prevent all this (Dem. 8.28: εἰ γὰρ δεινὰ ποιεῖ Διοπείθης καὶ κατάγει τὰ πλοῖα, μικρόν, ὦ ἄνδρες Ἀθηναῖοι, μικρὸν πινάκιον ταῦτα πάντα κωλῦσαι δύναιτ' ἄν). The contents of the tablet are unclear. Trevett (2011) 139 n.38 suggests "a writing tablet, containing the text of an impeachment"; so too Harpokration s.v. Πινάκια: ἐν δὲ τοῖς Φιλιππικοῖς ὅταν λέγῃ "μικρὸν, ὦ Ἀθηναῖοι, μικρὸν πινάκιον πάντα τὰ ἐνταῦθα," τυχὸν πινάκιον λέγει εἰς ὃ ἐγγράφεται τὰ ἐγκλήματα τὰ κατὰ τῶν εἰσαγγελλομένων ("And in the Philippics when he says, 'Athenians, a small, small little tablet [sc. could prevent) everything from here,' perhaps he means a little tablet on which are inscribed the charges against those who are being impeached."). But Harpokration was guessing (hence "perhaps"). Phillips (2004) 242 n.27 suggests: "[a] tablet inscribed with a decree ordering the recall of Diopeithes." But Demosthenes was arguing *against* removing Diopeithes from his command. Demosthens may mean nothing more, I urge, than a tablet with a decree ordering Diopeithes to stop the detentions, or a decree awarding him the financial support Demosthenes advocates throughout the speech, since Diopeithes was requisitioning merchants for lack of funds. And decrees were sometimes recorded on *pinakia*. When Pelasgos in Aeschylus suppliants reports the decree awarding the Danaids asylum, he says "these things are not engraved on tablets or sealed away in papyri, but you hear them from the mouth of a free man" (A. *Supp*. 946-950: ταῦτ' οὐ πίναξίν ἐστιν ἐγγεγραμμένα / οὐδ' ἐν πτυχαῖς βύβλων κατεσφραγισμένα, / σαφῆ δ' ἀκούεις ἐξ ἐλευθεροστόμου / γλώσσης.). Plutarch refers to "the tablet on which the decree [sc. against the Megarians] happened to be written (Plu. *Per.* 30.1: τὸ πινάκιον ἐν ᾧ τὸ ψήφισμα γεγραμμένον ἐτύγχανεν), so too Bekker *Anecdota Graeca* I (1814) 288 Lexica Segueriana s.v. Πινάκιον: τὸ ψήφισμα, καὶ ἡ γραφή, καὶ τὸ νῦν πινακίδιον τῶν κοινῶν γραμμάτων. (Pinakion: decree, or writ, and now the little tablet of the common records.").

available in 351 B.C., then it is perfectly plausible that Aeschines could have shown from Iphikrates' original instructions that he had not been sent, initially, to secure Macedon for Philip and his brother; that when called upon as a private and public friend to the Argead dynasty, he wrote to the Athenian people requesting further orders; and that they ordered him in a further decree to come to the Macedonians' aid. Such cannot be proven, of course, but it is a plausible way to explain why Aeschines claimed to have cited letters (in the plural) even though he only refers to one sent by Eurydice.

In the third part of his speech, Aeschines addressed a more difficult period in the history of relations between Athens and Macedon. Ptolemaios, the regent left in charge of the kingdom until Perdikkas should come of age, allied himself with Thebes against Athens and fought with the Amphipolitans against the Athenians, a policy continued by Perdikkas when he took Ptolemaios' life and the throne. In 363/2 B.C., the Athenians elected Callisthenes general and sent him to Amphipolis, where, failing to take the city, he struck an armistice with Perdikkas. Sometime thereafter Kallisthenes was dismissed, tried, and sentenced to death, and in the years between his death and the embassy to Philip a rumor spread that it was because of the truce:

> And your sense of benevolence, even when wronged, I recounted, by saying that when you were prevailing against Perdikkas in war, under the leadership of Kallisthenes, you made a truce, ever expecting to get some part of your rights. And this slander I tried to negate, by teaching him that the people executed Kallisthenes not because of the truce with Perdikkas, but on other charges. And

> again, I did not shrink from speaking against Philip, rebuking him because he himself made an undertaking of the war against the city.[129]

This is the only account we have of these events, and scholars consider it a complete fabrication. It has been argued that "Aischines' attempt to explain to Philip that Kallisthenes was not tried because of the armistice is almost a proof of the opposite."[130] The armistice, it has been suggested, "led to Callisthenes' dismissal and conviction," because, it is hypothesized, "it allowed Perdiccas to retain control of Amphipolis," and "[i]n that case it is highly unlikely that Callisthenes defeated Perdiccas as Aeschines suggests."[131]

But Aeschines did not claim, as some have suggested, that the people made the armistice with Perdikkas when it "defeated Perdiccas in war in the generalship of Callisthenes,"[132] only that the Athenians made an armistice "when prevailing in the war" (κρατοῦντες). The present tense implies that they had the upper hand, not that they had defeated Perdikkas for good and thus concluded the war.[133] There is no reason to doubt

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[129] Aeschin. 2.30: Καὶ τὴν ὑμετέραν ἠδικημένων ὅμως φιλανθρωπίαν διεξήειν, λέγων ὅτι κρατοῦντες τῷ πολέμῳ Περδίκκαν Καλλισθένους ἡγουμένου, ἀνοχὰς πρὸς αὐτὸν ἐποιήσασθε, ἀεί τινος προσδοκῶντες τῶν δικαίων τεύξεσθαι. Καὶ τὴν διαβολὴν ταύτην ἐπειρώμην λύειν, διδάσκων ὅτι Καλλισθένην ὁ δῆμος ἀπέκτεινεν οὐ διὰ τὰς πρὸς Περδίκκαν ἀνοχάς, ἀλλὰ δι' ἑτέρας αἰτίας. Καὶ πάλιν οὐκ ὤκνουν κατ' αὐτοῦ λέγειν Φιλίππου, ἐπιτιμῶν ὅτι τὴν ἐκδοχὴν ἐποιήσατο πρὸς τὴν πόλιν τοῦ πολέμου.

[130] Hansen (1975) 93.

[131] Heskel (1997) 50.

[132] ibid.

[133] Compare Isoc. 4.98: ὅστις οὐκ ἂν ὁμολογήσειεν διὰ μὲν τὴν ναυμαχίαν ἡμᾶς τῷ πολέμῳ κρατῆσαι ("who would not admit that we prevailed in the war because of the sea-battle [sc. at Salamis]?"); and X. *HG* 3.5.5, where Agesilaus, who had not defeated the King of Persia, but had won a significant battle against the Persians, is described as "prevailing" (κρατοῦντος Ἀγησιλάου); Dem. 10.51, where the Persian King is said to win the confidence of some Greeks "by accepting those being prevailed over in war up to the point of

that the Athenian people made an armistice when it had the upper hand, since they (and other Greeks) had done so before, especially since this armistice was, like most, a pause in the fighting, not the end of the war.[134] There is no evidence that Perdikkas was granted, by the terms of the armistice, the right to establish a garrison in and retain control of Amphipolis (which was at this time held by the Amphipolitans), and thus there is no reason to conclude, against the explicit statement of Aeschines, that Kallisthenes was executed because the armistice gave Amphipolis up to Perdikkas.[135]

Granted, it is clear that some thought Kallisthenes was executed because of the truce. But Aeschines calls this slander, and claims to have explained to Philip that the people sentenced the general to death "on account of other charges." What other charges? Kallisthenes was sentenced to death by decree (that is the import of Aeschines' claim that "the people killed him").[136] Such decrees typically included a brief statement

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making them equal to the others (τοὺς δὲ κρατουμένους τῷ πολέμῳ προσλαμβάνων, ἄχρι οὗ τοῖς ἑτέροις ἐξ ἴσου ποιήσαι).

[134] Th. 4.16 and 4.118 records two truces struck when the Athenians and Spartans, respectively, had won particular battles; neither truce brought about the end of the war, though the latter agreement paved the way for the Peace of Nicias. That the armistice was not intended to be an end to war is clear from the fact that after Kallisthene was deposed they elected Timotheos in his stead and sent him almost immediately to Amphipolis.

[135] Heskel (1997) 35.

[136] Arist. *Rh*. 1380b: διὸ εὖ Φιλοκράτης, εἰπόντος τινός, ὀργιζομένου τοῦ δήμου, "Τί οὐκ ἀπολογεῖ;", "Οὔπω γε", ἔφη. "Ἀλλὰ πότε;" "Ὅταν ἴδω ἄλλον διαβεβλημένον"· πρᾶοι γὰρ γίγνονται ὅταν εἰς ἄλλον τὴν ὀργὴν ἀναλώσωσιν, ὃ συνέβη ἐπὶ Ἐργοφίλου· μᾶλλον γὰρ χαλεπαίνοντες ἢ Καλλισθένει ἀφεῖσαν διὰ τὸ Καλλισθένους τῇ προτεραίᾳ καταγνῶναι θάνατον ("Wherefore Philokrates well said, when someone said, at a time when the people were enraged, 'why, will you not you defend yourself?' 'not yet,'; 'but when?' 'Whenever I see someone else slanderously accused.' For they become mild whenever they have spent up their anger on

of the reason for conviction, and those statements are described, by Athenians commenting on the texts of decrees, as "charges"[137] – but never as "slander." Aeschines is contrasting, I urge, "what everyone believes" with the formal reasons for conviction stated in the decree that sentenced Kallisthenes to death. He claimed to have brought a copy of the armistice and the decrees of the people with him on the embassy to Philip. The decree sentencing Kallisthenes to death must have been one of those decrees. If it was, then it is possible that he countered the slander that Kallisthenes was killed because of the truce by pointing to the reasons for conviction as stated in the decree.

The first three parts of his speech were, as Aeschines portrays them, diplomatic. They were aimed at establishing a history of good relations, at running through a list of benefactions done by the Athenian people to the Macedonian royals, at clearing up a misunderstanding about a past truce. In the fourth part of his speech, Aeschines turned to the legal issue at hand, the Athenian claim to Amphipolis, a city that they had lost in 422 B.C. They had been trying to regain ever since. They now hoped to regain it by

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someone else, which happened in the case of Ergophilos; for although they were more angry at him than at Kallisthenes, they acquitted him because they had sentenced Kallisthenes to death the day before.").

[137] Dem. 9.42; 'Ἄρθμιος' φησὶ 'Πυθώνακτος Ζελείτης ἄτιμος καὶ πολέμιος τοῦ δήμου τοῦ Ἀθηναίων καὶ τῶν συμμάχων αὐτὸς καὶ γένος.' εἶθ' ἡ αἰτία γέγραπται, δι' ἣν ταῦτ' ἐγένετο· 'ὅτι τὸν χρυσὸν τὸν ἐκ Μήδων εἰς Πελοπόννησον ἤγαγεν' ('Arthmios,' it says, "son of Pythanax a Delete, without rights and an enemy of the Athenian people and the allies, himself and his kind." Then the charge is written, on account of which this came to be: "because he brought gold from the Medes to the Peloponnese." Similarly Philoch. F 121 [Jacoby]: οἱ γὰρ Ἀθηναῖοι ταῦτα ἐψηφίσαντο Περικλέους εἰπόντος, τὴν γῆν αὐτοὺς αἰτιώμενοι τὴν ἱερὰν τοῖς θεοῖς ἀπεργάζεσθαι ("for the Athenians decree this, on the motion of Perikles, accusing them of [sc. the Megarians] cultivating the land sacred to the gods.")

negotiating a treaty of peace. At this point in his speech, at least as he portrayed it in his trial, his argument starts to look a lot like a speech made for a lawcourt:

> …the facts about our original acquisition both of the district and of the place called Ennea Hodoi, and the story of the sons of Theseus, one of whom, Acamas, is said to have received this territory as the dowry of his wife—all this was fitting to mention then, and was mentioned with the utmost exactness, but perhaps now it is necessary to abbreviate the arguments; but what proofs there were, not in the ancient myths, but were created in our own time, these I shall call to mind. For at a congress of the Lacedaemonian allies and the other Greeks, in which Amyntas, the father of Philip, since he was entitled to a seat, was represented by a delegate whose vote was absolutely under his control, he joined the other Greeks in voting to help Athens to recover possession of Amphipolis. As a witness to this I presented from among the public records the resolution of the Greek congress and the names of those who voted. "Now," said I, "a claim which Amyntas renounced in the presence of all the Greeks, and that not by words alone, but by his vote, that claim you his son have no right to advance.[138]

It has been suggested that the joint resolution of the Greeks "had been less prominent in the speech levelled at Philip, which, it may be surmised, instead gave more space to the mythical precedent."[139] There is no evidence for this view, but more was certainly available. Aeschines could have pointed out, as Isocrates did in a letter to Philip sent the same year as the embassy, that Philip was indebted to the Athenians for their friendship and goodwill because they had saved the sons of Herakles from Eurystheus, and thus were responsible for the very existence of the Macedonian royals, who thought

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[138] Aeschin. 2.31-33: Περὶ μὲν οὖν τῆς ἐξ ἀρχῆς κτήσεως τῆς χώρας, καὶ τῶν καλουμένων Ἐννέα ὁδῶν, καὶ περὶ τῶν Θησέως παίδων, ὧν Ἀκάμας λέγεται φερνὴν ἐπὶ τῇ γυναικὶ λαβεῖν τὴν χώραν ταύτην, τότε μὲν ἥρμοττε λέγειν καὶ ἐρρήθη ὡς ἐνεδέχετο ἀκριβέστατα, νυνὶ δὲ ἴσως ἀνάγκη συντέμνειν τοὺς λόγους· ἃ δὲ ἦν τῶν σημείων οὐκ ἐν τοῖς ἀρχαίοις μύθοις, ἀλλ' ἐφ' ἡμῶν γεγενημένα, τούτων ἐπιμνησθήσομαι. Συμμαχίας γὰρ Λακεδαιμονίων καὶ τῶν ἄλλων Ἑλλήνων συνελθούσης, εἷς ὢν τούτων Ἀμύντας ὁ Φιλίππου πατὴρ καὶ πέμπων σύνεδρον καὶ τῆς καθ' αὑτὸν ψήφου κύριος ὤν, ἐψηφίσατο Ἀμφίπολιν τὴν Ἀθηναίων συνεξαιρεῖν μετὰ τῶν ἄλλων Ἑλλήνων Ἀθηναίοις. Καὶ τούτων τὸ κοινὸν δόγμα τῶν Ἑλλήνων καὶ τοὺς ψηφισαμένους ἐκ τῶν δημοσίων γραμμάτων μάρτυρας παρεσχόμην. Ὧν δὲ Ἀμύντας ἀπέστη ἐναντίον τῶν Ἑλλήνων ἁπάντων οὐ μόνον λόγοις, ἀλλὰ καὶ ψήφῳ, τούτων, ἔφην ἐγώ, σὲ τὸν ἐξ ἐκείνου γεγενημένον οὐκ ἔστι δίκαιον ἀντιποιεῖσθαι.

[139] Grethlein (2014) 338.

themselves descendants of Herakles.[140] He could have established that there was a history of good feeling between Athens and Philip by recounting the legend that Herakles was adopted by an Athenian citizen in order to participate in the mysteries at Eleusis, as the head of the Academy, Speusippus, did in a letter to Philip sent around the time that Aeschines was on trial.[141]

Yet Aeschines instead "opts for the history of the last fifty years,"[142] and the only myth he cites is one that supports the Athenian claim to Amphipolis, currently in the hands of Philip, on the grounds that they were its original owners. If he lavished more

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[140] Isoc. 5.32-34: Γνοίης δ' ἂν ὡς οὐδεμιᾶς σοι προσήκει τούτων ὀλιγωρεῖν, ἢν ἀνενέγκῃς αὐτῶν τὰς πράξεις ἐπὶ τοὺς σαυτοῦ προγόνους· εὑρήσεις γὰρ ἑκάστῃ πολλὴν φιλίαν πρὸς ὑμᾶς καὶ μεγάλας εὐεργεσίας ὑπαρχούσας…τὴν δὲ πόλιν τὴν ἡμετέραν φασὶν, οἵσπερ περὶ τῶν παλαιῶν πιστεύομεν, Ἡρακλεῖ μὲν συναιτίαν γενέσθαι τῆς ἀθανασίας — ὃν δὲ τρόπον, σοὶ μὲν αὖθις πυθέσθαι ῥᾴδιον, ἐμοὶ δὲ νῦν εἰπεῖν οὐ καιρός—τοῖς δὲ παισὶ τοῖς ἐκείνου τῆς σωτηρίας. Μόνη γὰρ ὑποστᾶσα τοὺς μεγίστους κινδύνους πρὸς τὴν Εὐρυσθέως δύναμιν ἐκεῖνόν τε τῆς μεγίστης ὕβρεως ἔπαυσεν καὶ τοὺς παῖδας τῶν φόβων τῶν ἀεὶ παραγιγνομένων αὐτοῖς ἀπήλλαξεν. Ὑπὲρ ὧν οὐ μόνον τοὺς τότε σωθέντας δίκαιον ἦν ἡμῖν χάριν ἔχειν, ἀλλὰ καὶ τοὺς νῦν ὄντας· διὰ γὰρ ἡμᾶς καὶ ζῶσι καὶ τῶν ὑπαρχόντων ἀγαθῶν ἀπολαύουσι· μὴ γὰρ σωθέντων ἐκείνων οὐδὲ γενέσθαι τὸ παράπαν ὑπῆρχεν αὐτοῖς ("You should know that it is fitting for you to disregard none of them, if you reckon up their deeds toward your ancestors. For you will find that there is much friendliness in each of them toard you and great benefactions…those whom we trust in ancient matters say that our city was part of the reason for Herakles' becoming immortal – in what way, it is easy for you to find out, though the moment is not right for me to say – and a reason for the salvation of his children. For it alone, withstanding the greatest dangers against the power of Eurystheus, both stopped him from the greatest hubris and relieved his children of the terrors that were constantly befalling them. On behalf of which not only was it just that those saved then be thankful to us, but also those now, for because of us they are both alive and enjoy their present goods, because if those then were not saved, then it absolutely would have been the case that the later ones would ever have come into existence.").

[141] Hercher *Epistolographi Graeci* 31.8 (Speusippos' Letter to Philip): Καίτοι χρῆν πρῶτον μὲν τὴν ὑπάρχουσαν οἰκειότητα πρὸς τὴν ἡμετέραν πόλιν αὐτὸν μὴ λαθεῖν, ἀλλὰ ποιῆσαι καὶ τοῖς ἀπὸ σοῦ γενομένοις φανεράν· Ἡρακλῆς γάρ, ὄντος νόμου τὸ παλαιὸν ἡμῖν μηδένα ξένον μυεῖσθαι, βουληθεὶς μυεῖσθαι, γίνεται Πυλίου θετὸς υἱός· τούτου δ' ὄντος τοιούτου, τοὺς λόγους ἐξῆν Ἰσοκράτει λέγειν ὡς πρὸς πολίτην, ἐπειδὴ τὸ γένος ὑμῶν ἐστιν ἀφ' Ἡρακλέους ("And yet it was necessary first that the existing good feeling toward our city not escape his attention, but to make it obvious to all who come from you; for Herakles, though it was law for us in ancient times that no foreigner be initiated in the mysteries, wanted to be initiated, and became the adopted son of Pulias; since the matter stands this way, it was possible for Isocrates to deliver his words as to a citizen, since your family is descended from Herakles"). Natoli (2004) 115 translates οἰκειότητα as 'friendship', but it and *philia* seem to express genuinely distinct concepts, according to Jones (1999) 31.

[142] Grethlein (2014) 338.

attention on this myth during his speech to Philip, he still found it necessary to cut those parts of his argument short when accounting for his speech before a panel of Athenian dikasts. Why?

Scholars have long observed that speakers in the council, assembly, and courts tended to invoke precedents of the recent past over those of more remote times, and this is usually taken to reflect a preference for the contemporary past over remote history among those who sat in the council, deliberated in the assembly, or judged cases in the court.[143] But there are a couple of reasons to think that this preference cannot explain Aeschines' attention to public records. For one thing, Aeschines does not quite frame the distinction between the story of Akamas and the resolution of the Greeks as one of ancient and contemporary history. Rather, he specifies that evidence (*semeia*) of the Athenians' right to Amphipolis was available in ancient myths and the evidence that was created in his own lifetime, mentions that he employed both, but stresses that the documentary evidence is what he will refer to extensively in court. For another, the speech he delivered on the second embassy was, as he recounts it, almost entirely concerned with events that dealt by his own admission with ancient history, events which were considered by some of his contemporaries to belong to myth. And in that speech he relied on documents as old as the events they concerned. That would be hard

[143] Ibid.

to explain if Aeschines' rhetorical strategy was to cater to the dikasts' preference for arguments based on contemporary events.

3.2.4 The Second Embassy

On the second embassy to Philip the envoys were to take oaths and "do whatever good they could."[144] Aeschines had assembled, for this embassy, copies of inscribed documents from the Amphictyony at Delphi.[145] When it was his turn to speak, so he claimed in court, he spoke briefly about the oath and then, turning to the other instructions, urged Philip to settle the conflict with votes and verdicts, but, if such was impossible, "to pay attention to those who undertake to give instruction on our traditions":

> At once I reviewed from the beginning the story of the founding of the shrine, and of the first synod of the Amphictyons that happened; and I read their oaths, in which the men of ancient times swore that they would raze no city of the Amphictyonic states, nor shut them off from flowing water either in war or in peace; that if anyone violate this oath, they would march against him and raze the cities; and if anyone violate the shrine of the god or be privy to or make a plot against the holy places, they would punish him with hand and foot and voice and with all their power. To the oath was added a mighty curse.[146]

He then argued that it was "just (δίκαιον) not to overlook that the cities of Boiotia have been razed, since they were Amphictyonic and covered under the oath," as evidenced

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[144] See above p.185 n. 91.

[145] See Mari (2013) 133-134 for a discussion of Aeschines' knowledge of Delphic epigraphy.

[146] Aeschin. 2.115: Ἅμα δ' ἐξ ἀρχῆς διεξῆλθον τὴν κτίσιν τοῦ ἱεροῦ καὶ τὴν πρώτην σύνοδον γενομένην τῶν Ἀμφικτυόνων, καὶ τοὺς ὅρκους αὐτῶν ἀνέγνων, ἐν οἷς ἔνορκον ἦν τοῖς ἀρχαίοις, μηδεμίαν πόλιν τῶν Ἀμφικτυονίδων ἀνάστατον ποιήσειν, μηδ' ὑδάτων ναματιαίων εἴρξειν μήτ' ἐν πολέμῳ μήτ' ἐν εἰρήνῃ, ἐὰν δέ τις ταῦτα παραβῇ, στρατεύσειν ἐπὶ τοῦτον καὶ τὰς πόλεις ἀναστήσειν, καὶ ἐάν τις ἢ συλᾷ τὰ τοῦ θεοῦ, ἢ συνειδῇ τι, ἢ βουλεύσῃ τι κατὰ τῶν ἱερῶν, τιμωρήσειν καὶ χειρὶ καὶ ποδὶ καὶ φωνῇ καὶ πάσῃ δυνάμει· καὶ προσῆν τῷ ὅρκῳ ἀρὰ ἰσχυρά.

by the fact that votes on the council were awarded "to the Boiotians, not the Thebans alone,"[147] and that "those responsible for the seizure of the temple should pay the penalty, not their countries, but those who carried out and plotted the deed."[148]

These arguments hung on the logic of the oath. But they were not the only arguments he put forth. He briefly mentions that he warned Philip that if he sided with the Thebans he would find the other cities greater enemies in the future rather than friends. Thus reciprocity, in traditional guise of friendship and enmity, was invoked as an appeal to Philip's self-interest. But alongside that appeal – and what he gave the most airtime when defending himself in court – was an argument built on an interstate legal text that concerned an event in history that was by no stretch of the imagination contemporary. Aeschines himself admitted it was archaic. And his prosecutor, Demosthenes, claimed (in a later trial) that it was mythical.[149] Thus, in his account of the

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[147] Aeschin. 2.116: Τούτων δὲ ἀναγνωσθέντων ἀπεφηνάμην ὅτι μοι δοκεῖ δίκαιον εἶναι μὴ περιορᾶν κατεσκαμμένας τὰς ἐν Βοιωτοῖς πόλεις, ὅτι δὴ ἦσαν Ἀμφικτυονίδες καὶ ἔνορκοι, καὶ ἠριθμησάμην ἔθνη δώδεκα τὰ μετέχοντα τοῦ ἱεροῦ, Θετταλούς, Βοιωτούς, οὐ Θηβαίους μόνους…(once these were read, I declared that it seems just to me not to overlook that the cities among the Boiotians were razed, that they were indeed Amphiktyonic cities and covered under the terms of the oath, and I counted up the twelve tribes sharing in the sanctuary, the Thessalians, the Boiotians - not the Thebans alone…).

[148] Aeschin. 2.117: συλλεγέντων δὲ τῶν Ἀμφικτυόνων εἰς τὸ ἱερὸν καὶ τυχόντων σωτηρίας καὶ ψήφου, τοὺς αἰτίους τῆς ἐξ ἀρχῆς καταλήψεως τοῦ ἱεροῦ δίκης ἠξίουν τυχεῖν, μὴ τὰς πατρίδας αὐτῶν, ἀλλ' αὐτοὺς τοὺς χειρουργήσαντας καὶ **βουλεύσαντας** ("once the Amphikytons were assembled in the sanctuary and found safety and the vote, then those responsible from the beginning for the seizure of the temple ought to be punished, not their countries, but themselves the ones who did the crime and plotted against the temple").

[149] Demosthen. 18.149: καὶ λόγους εὐπροσώπους καὶ μύθους, ὅθεν ἡ Κιρραία χώρα καθιερώθη, συνθεὶς καὶ διεξελθὼν ἀνθρώπους ἀπείρους λόγων καὶ τὸ μέλλον οὐ προορωμένους, τοὺς ἱερομνήμονας, πείθει ψηφίσασθαι περιελθεῖν τὴν χώραν…("having concocted and recounted specious arguments and myths, whence the Kirrhaian plain was sanctified, men inexperienced in arguments and not looking forward to what was to come, the hieromnemones, he persuades to vote to make an ambit of the territory…"). Thus Robertson (1978) 38-73 argues that the entire episode is an invention; according to Sánchez (1997) 158-171 only the oath

speech he delivered on the second embassy , Aeschines cannot have emphasized the dossier that he brought on the first embassy or second embassy as an appeal to the dikasts' preference for contemporary history over the remote past. Instead, the common denominator in these two speeches is the fact that their arguments were built on documents, inscribed and not, and that some of those arguments were legal in nature.

His portrait of Demosthenes' speech on the second embassy gestures in the direction of the same conclusion. Demosthenes had spoken first, and (according to Aeschines) during his speech he read to Philip resolutions from two decrees that he had drafted himself,[150] one in the assembly where the diplomats gave their report after the first embassy to Philip,[151] and the other shortly thereafter in the council.[152] All of them

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is. For arguments on behalf of the authenticity of the oath see Lefèvre (1998) 14–15, 148 n. 6 and Mari (2002) 163–9.

[150] Aeschin. 2.109-10: δεύτερον δὲ ὑπανέγνω τὸ ψήφισμα ὃ γεγραφὼς αὐτὸς ἦν, σπείσασθαι τῷ κήρυκι καὶ τῇ παρὰ Φιλίππου πρεσβείᾳ, τρίτον δὲ τὸ περὶ τοῦ βουλεύσασθαι τὸν δῆμον ὑπὲρ εἰρήνης ἐν τακταῖς ἡμέραις. Καὶ προσέθηκέ τι τοιοῦτον ἐνθύμημα τῷ λόγῳ, ὅτι πρῶτος ἐπιστομίσαι τοὺς τὴν εἰρήνην ἐκκλήοντας, οὐ τοῖς λόγοις, ἀλλὰ τοῖς χρόνοις. Ἔπειθ' ἕτερον ἐπήγετο ψήφισμα, τὸ καὶ περὶ συμμαχίας βουλεύσασθαι τὸν δῆμον, καὶ μετὰ ταῦτ' ἤδη τὸ περὶ τῆς προεδρίας τῆς εἰς τὰ Διονύσια τοῖς πρέσβεσι τοῖς Φιλίππου ψήφισμα. ("Second he had read a decree, which he himself had written, to give safe passage to the herald and the embassy from Philip, third the one about the people deliberating on behalf of peace on appointed days. And he added to his account an argument of this sort, that he was the first to stop the mouths of those trying to shut out the peace, not by words but by dates. Then he brought forward another decree, the one about the people deliberating about alliance, and after this now the one about the decree about granting front-row seats at the Dionysia to the envoys from Philip.").

[151] Aeschin. 2.53: ἔφη, «ἐγὼ δὲ ψήφισμα γράψω καὶ τῷ κήρυκι σπείσασθαι τῷ παρὰ Φιλίππου ἥκοντι, καὶ τοῖς μέλλουσι παρ' αὐτοῦ δεῦρο ἰέναι πρέσβεσι, καὶ τοὺς πρυτάνεις, ἐπειδὰν ἥκωσιν οἱ πρέσβεις, ἐκκλησίαν ἐπὶ δύο ἡμέρας ποιεῖν μὴ μόνον ὑπὲρ εἰρήνης, ἀλλὰ καὶ περὶ συμμαχίας, καὶ τοὺς πρέσβεις ἡμᾶς, εἰ δοκοῦμεν ἄξιοι εἶναι, ἐπαινέσαι καὶ καλέσαι ἐπὶ δεῖπνον εἰς τὸ πρυτανεῖον εἰς αὔριον.» ("He said, 'I will write a decree also, for safe passage to be given to the Herald coming from Philip, and for those envoys who are going to come here from him, and that the *prytaneis*, whenever the envoys arrive, make an assembly for two days not only on

were procedural resolutions intended to further the peace negotiations first introduced by an earlier decree by Philokrates that was not, as far as we know, cited. All of them, according to Aeschines, were cited not as evidence of benefactions or rights owed by Philip to the Athenian people, but of services rendered by one man, Demosthenes, and this was, Aeschines claims, a blatant display of servitude to the king.[153] Now, it is impossible to know whether Aeschines was telling the truth or not. But it is obvious that he was setting Demosthenes up as a contrast to his account of his own speech on that embassy. That contrast is not between documents and oral traditions, nor between the contemporary and the remote past, but between one argument in which documents were cited in a spirit of self-aggrandizement and personal servitude to the king and another in which documents were cited to build an argument from justice (δίκαιον).

Aeschines was diplomatic. Although he was explicit that the Boiotian cities had been razed in violation of the oath, he leaves implicit the conclusion that the Thebans

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behalf of peace, but even about alliance, and to praise us envoys and invite us to dinner in the prytaneion on the morrow, if we seem to be worthy.'").

[152] Aeschin. 2.55: Οὐ τοίνυν μόνον ταῦτα ἔγραψεν, ἀλλὰ καὶ μετὰ ταῦτα ἐν τῇ βουλῇ θέαν εἰς τὰ Διονύσια κατανεῖμαι τοῖς πρέσβεσιν, ἐπειδὰν ἥκωσι, τοῖς Φιλίππου. ("Not only did he write this, but even after this in the council he wrote "to apportion seating at the Dionysia for for the envoys of Philip whenever they come.").

[153] Aeschin. 2.109 describes Demosthenes' speech thus: "he went through the services furnished by himself to him to Philip" (διεξῄει τὰς ὑπηρεσίας τὰς ὑπηργμένας εἰς Φίλιππον αὑτῷ); at 2.111 he concludes his portrait of Demosthenes' speech thus: "he did not slink into the shade, as certain others did, but manifestly displayed his service in these matters" (Aeschin. 2.111: οὐ καταδὺς εἰς τὸ σκότος, ὥσπερ ἕτεροί τινες, ἀλλὰ φανερῶς ἐπιδεικνύμενος τὴν τῶν πραγμάτων θεραπείαν).

should be punished for violating the oath and that the cities of Boiotia should be restored. But his other argument echoed the oath, for just as the oath stipulated punishment against any individual who robbed the god or plotted against the sanctuaries, so Aeschines urged that those individuals who were originally responsible for the seizure of the sanctuary be punished, not their countries. Thus, although on this embassy he may have brought along only a single text to read (at least this is the only one that we know about), his arguments hung on the logic and even quoted the text of that document, and he portrayed himself this way in contrast to Demosthenes, who simply recited those resolutions of his decrees which demonstrated his service to the king in whose hands the fate of the Greek polities rested.

Consequently, we should see here a contrast: both envoys brought along documents to cite, but one cited them as part of a claim about what interstate law demanded, and the other cited them as evidence of the kinds of favors that, according to the logic of reciprocity, Philip ought to repay in kind. It is clear that Aeschines thought that the Athenians who were serving as dikasts put a higher premium on the citation of documents as legally binding than on their citation in an appeal to reciprocity. Thus, we might see, in Aeschines' self-portrait as an envoy on the second embassy to Philip, a sign that Athenians privileged the use of legal documents as sources of binding statute over the use of documents simply to establish precedent for an unwritten norm of diplomacy

like reciprocity. And such squares well with the generally thin evidence for reciprocity in Athenian diplomacy (as was discussed in the introduction to this chapter).

3.2.5 Conclusion

The portrait of the second embassy to Philip drawn by Aeschines is, of course, likely to have been motivated by concerns other than the desire to report the bare facts. We have no reason to think that Aeschines' entire speech on the second embassy was built out of documentary texts. Indeed, just as in his account of the speech he delivered on the first embassy, Aeschines was clear about the fact that he offered a brief and selective account of the speeches that he had delivered on the second:

> in order that I not while away the time recounting in detail now to you the arguments made there, I will stop, now that I have spoken in summary fashion about everything. Fortune and Philip were responsible for events, I for my good intention toward you all and for my arguments. That which was lawful and to your benefit was argued by me, but things turned out not as we prayed, but as Philip acted. Who, then, is justly held in good repute, the one who was in no way eager to work some good, or the one who left nothing out of the things he could accomplish? But at present now I leave aside many things on account of the demands of the present occasion (διὰ τὸν καιρὸν).[154]

It is clear that the trial and the dikasts shaped his selection, for he claims to have given a full account of his speeches and Philip's responses thereto when he delivered his reports on the embassies in the assembly.[155] Perhaps there he went into further detail about the

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[154] Aeschin. 2.118: Ἵνα δὲ μὴ διατρίβω τοὺς ἐκεῖ λόγους ῥηθέντας νυνὶ πρὸς ὑμᾶς ἀκριβῶς διεξιών, ἐν κεφαλαίῳ περὶ πάντων εἰπὼν παύσομαι. Ἡ μὲν τύχη καὶ Φίλιππος ἦσαν τῶν ἔργων κύριοι, ἐγὼ δὲ τῆς εἰς ὑμᾶς εὐνοίας καὶ τῶν λόγων. Παρ' ἐμοῦ μὲν οὖν ἐρρήθη τὰ δίκαια καὶ τὰ συμφέροντα ὑμῖν, ἀπέβη δὲ οὐχ ὡς ἡμεῖς ηὐχόμεθα, ἀλλ' ὡς Φίλιππος ἔπραξε. Πότερον οὖν ὁ μηδὲν προθυμηθεὶς ἀγαθὸν ἐργάσασθαι δίκαιός ἐστιν εὐδοξεῖν, ἢ ὁ μηδὲν ὢν ἦν δυνατὸς ἐλλιπών; ἐν δὲ τῷ παρόντι νυνὶ πολλὰ διὰ τὸν καιρὸν παραλείπω.

[155] Aeschin. 2.25: τὰ μὲν καθ' ἕκαστα τῶν ἐκεῖ ῥηθέντων ὑπ' ἐμοῦ, καὶ τοὺς πρὸς ταῦτα λεχθέντας ὑπὸ Φιλίππου λόγους, ἐν τῷ δήμῳ σαφῶς ἀπήγγειλα πρὸς ἅπαντας Ἀθηναίους, νυνὶ δὲ πειράσομαι διὰ κεφαλαίων ὑμᾶς

myth of Akamas, about his appeals to Philip's sense of reciprocity or his need to make friends with the free Greek cities, all of which are hinted at in the account that he gave the dikasts, but none of which is recounted in as much detail as those arguments he based on documents ancient and contemporary.

Some of the documents had been established by and for Greeks that he himself described as ancient. Thus, his decision to emphasize the arguments that he built on documentary texts and the fact that they were lawful and beneficial to the Athenian cause cannot be explained as a decision to cater to the dikasts' preference for evidence drawn from recent events. Nor does it seem likely that he was attempting to impress the dikasts with his innovative use of archives and legal documents.[156] He employed documents that were inscribed and some that were not. And there seems to have been

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ὑπομιμνῄσκειν. ("The particulars of what was said there by me and the words of Philip spoken in response to these I reported clearly in the assembly to all Athenians, but now I will try to remind you of them summarily.").

[156] Thomas (2010) 498: "Aeschines laboured his clever and detailed deductions from democratic documents as if this was a rather unusual, innovative activity, or at least that it was not the usual material presented to the great mass democratic audiences of Athenians." See too Thomas (1989) 71: "It is thus tempting to see Aeschines as the orator who first realized the full significance of the public records in demagogic rhetoric and their place in the democracy." It is true that speakers in surviving speeches do not make much use of the archival features of records (like dates) until 343, during Aeschines' trial. But it is not true that "he is the first to exploit the public records as part of his demagogic rhetoric" (Thomas 1989: 69). Demosthenes relied heavily on public records a decade or more old in *Against Aristokrates* (delivered in 352/1 B.C.). Moreover Aeschines was concerned with rebutting a timeline of events constructed by Demosthenes to show that Aeschines was responsible for the disasters after the peace. The fact that the latter turned to archival dates in public records, then, is a reaction to this problem, not necessarily a sign of innovative sophistication in the use of documents; too few speeches survive to know whether this was an innovation or not.

little prestige attached to those who mucked about with documents.[157] Intimate knowledge of the legal documents, even ones pertinent to a case, was something that ligitants were at pains to explain as forced on them by circumstances beyond their control.[158] And Athenian litigants generally worked hard to avoid giving the impression that they were experts.[159] In fact, Aeschines himself claims, in the conclusion of his speech, that he was "a common man with regard to my station in life, akin to the middling sort among you,"[160] by which he meant not that he was a lowly peasant (for he had earlier claimed to be an Athenian blueblood),[161] but that he was not a rhetor, the closest thing in Athens to a citizen who specialized in politics and law.[162] This was an invitation to the dikasts to see him as one of them: a native Athenian and a run-of-the-mill citizen who represented their interests as best he could while abroad, someone who shared their dispositions. That was a fiction, of course, but if the dikasts were not

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[157] Dem. 19.70: Thirteen years later in the trial *On the Crown* Aeschines is insulted as someone "hunched over documents" (Dem. 18.209: γραμματοκύφων). The word and its meaning is obscure. Photius suggests (s.v. Γραμματοκύφων): Δημοσθένης ἐν τῷ Περὶ στεφάνου (18, 209) διαπαίζων τὸν Αἰσχίνην οὕτως εἶπεν, ἀντὶ τοῦ ὦ γραμματεῦ, διότι οἱ γραμματεῖς προσκεκυφότες γράφουσιν. ἢ γραμματοκύφων, ὡσανεὶ ὁ ἐν ἀγορᾷ γραμματεύων· οἱ γὰρ ἀγοραῖοι τῷ κύφωνι μαστιγοῦνται. ("Grammatokyphon: Demosthenes in On the Crown [18.209], making a crack at Aeschines said it thus instead of 'o clerk' because the *grammateis* write hunched over. Or grammatakyphon, as if one clerking in the marketplace, for the clerks are whipped with a crooked stick").

[158] E.g. Dem. 58.19.

[159] E.g Lys. 17.1.

[160] Aeschin. 2.181.

[161] Aeschin. 2.147-152.

[162] Rubinstein (1998) 142: "in so far as the Athenians operated with anything which may meaningfully be termed 'state' as opposed to 'individual', a 'them' as opposed to an 'us', the rhetores definitely belonged to 'them' when seen in opposition to the *idiotai*."

disposed to credit arguments built on documents, then the attention he lavishes on that aspect of his diplomacy would be at odds with the fiction that he was a plain-speaking Athenian like them.

Indeed, although not every embassy was so high-stakes and not every envoy need have leaned so heavily on documents, Aeschines was not an outlier. Other envoys invoked myth and documentary texts alongside each other to establish Athenian claims to territory.[163] Some of them appear to have lavished more attention on the unwritten norms of diplomacy than the evidence of documents, although it is hard to know for sure since we possess only those parts of their speeches that attracted the eye of later antiquarians, who seem to have had a greater taste for myth than for ancient documents.[164]

In any case, Aeschines has furnished us with the most detailed portrait of an embassy that we have. It confirms, I urge, that Athenian envoys leaned on the unwritten rules and obligations of interstate law, like kinship, friendship, custom, and above all reciprocity, for if these kinds of appeal mattered nothing to the dikasts, then there would have been no reason for him to mention them at all. These unwritten norms received

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[163] Harpokration s.v. Ἀποικία· ἰδίως τὰ γράμματα καθ' ἃ ἀποικοῦσί τινες οὕτως ὠνόμασαν· Ὑπερείδης Δηλιακῷ. ("*Apoikia*: in a special sense they thus call the documents according to which some go out and establish colonies; Hyperides in the *Delian Speech*.").

[164] The lexicographers and the scholiasts have preserved a number of fragments of Hyperides' *Delian Speech* that suggest he leaned heavily on the unwritten norms of diplomacy. He claimed that Leto in flight from Hera had first landed at Zoster in Attica and unloosed her girdle, whereupon Athena Pronaia led her to Delos (F 67 [Jensen]). He also invoked "the Panionian krater the Greeks mix together" (F 69 [Jensen]: καὶ τὸν κρατῆρα τὸν Πανιώνιον κοινῇ οἱ Ἕλληνες κεραννύουσιν.).

only brief mention, compared to the attention that he gave to what his use of the documents of interstate law, suggests that the dikasts expected an envoy to pay serious attention to documents and documentary texts and to build at least some of his claims atop them.

3.3 Diplomacy by Documents in the Council and Assembly

Was the same expected of the citizens who addressed their fellow citizens and formed the audiences for diplomacy in the council and assembly? Some who served as dikasts must have regularly attended assemblies, but it is unclear whether the council and assembly were composed primarily of run-of-the-mill citizens (as the courts were) or elites.[165] The question of how speakers handled documentary texts during diplomatic negotiations in both bodies should to be treated on its own merits. But it has, to my knowledge, received no attention.

No speech written for diplomacy in the council survives. But in surviving assembly speeches we find the same mixture of appeals to written and unwritten norms of interstate relations that we find in diplomatic speeches. Recent scholarship on these speeches has shown that reciprocity was a central framework within which Athenians

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[165] Hansen (1992) 249: "[t]he Council could not have functioned unless a reasonable number of *thetes* (who were formally excluded from all magistracies) had turned up for selection to the Council. On the other hand, the evidence reveals a clear tendency for the 'haves' to be overrepresented on the Council in relation to their proportion of the population." Sinclair (1988) 124-5 and Jones (1957) 36 both independently suggested the assembly was dominated by the better off, but see now Hansen (1992) 127: "[[t]here is, therefore, no good ground to postulate any marked difference between the Assembly and the courts in this regard: indeed, the crush to secure the daily payment indicates that the poorer group of citizens were the majority in both sorts of meeting, as they undoubtedly were in the population as a whole."

deliberated about interstate politics,[166] and that there are, on occasion, subtle and implicit nods to interstate norms like kinship,[167] friendship,[168] the customs of the Hellenes,[169] and even the amoral realism that is usually associated with the Athenians as portrayed by Thucydides.[170] But explicit references to the kinship of Greeks are absent from these speeches, appeals to the obligations of friendship rare,[171] and the customs of the Hellenes never mentioned. Moreover, all but three of the surviving assembly speeches were, so far as we know, not delivered in front of foreign envoys. They reflect the sorts of things said when Athenians were talking amongst themselves, not what they said during diplomatic negotiations in the assembly. And in fact, the three speeches that we know were delivered in the presence of envoys are devoid of any reference to

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[166] Low (2007) 253; Hunt (2010) 205 argues that even though reciprocity was diminished in domestic politics, "it flourished in interstate relations"; for discussion of particular arguments in particular speeches see Hunt (2010) 83; 179; 185.

[167] Hunt (2010) 265: "the use of domestic analogies was pervasive. The different internal practices and values that were applied to the relations of states ranged from the simplest and most intimate, the household metaphors, whose applications to states served mainly to evoke emotional responses, to the more complex and distant relations of reciprocity and law, which allowed for a more complex and analytical approach to issues of foreign relations." On 107 he points out that "Athenian decisions sometimes took notice of ethnicity, relationship to the gods, rank, and political system of other states," and that "they therefore must have carried some weight with the assembled citizens"; but note his suggestion that "[e]thnicity could play a part in Athenian foreign policy decisions, but its application was malleable, tended to follow upon calculations of interest, and was often subordinated to action-based considerations."

[168] Hunt (2010) 100: "the Athenians tended to project onto the relations between states a template that placed a positive value on equal personal relationships."

[169] Hunt (2010) 219.

[170] Hunt (2010) 83: "the amoral pursuit of advantage, Realism, played a large part in Athenian foreign policy."

[171] The word *philia* appears in the Demosthenic corpus 39 times; only 7 instances are found in the demegoric speeches. Comparatively, *sumpheron* ("advantage") appears 299 times, 80 of which are contained in the demegoric speeches.

kinship, real or imagined. Friendship is mentioned in one of them, but only as a benefit of making an alliance on stated terms.[172] Customary law is not explicitly invoked.[173]

One of those speeches, *For the Megalopolitans*, is almost entirely built on an appeal to balance of power.[174] Another, *On the Peace*, is an attempt to persuade the people to ratify a peace treaty with Sparta, largely (though not exclusively) by appealing to prior treaties of peace and the prosperity that followed their passage.[175] The third, *On Halonnesos*, is devoted to unpacking the terms of a letter sent by Philip II of Macedon to

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[172] Dem. 16.19: Ἀλλὰ μὴν ἅ γέ φασιν πεπρᾶχθαι διὰ Θηβαίους τοῖς Μεγαλοπολίταις ὑπεναντία πρὸς ἡμᾶς, ἄτοπον νῦν [μὲν] ἐν κατηγορίας μέρει ποιεῖσθαι, βουλομένων δὲ γενέσθαι φίλων αὐτῶν, ἵνα τοὐναντίον εὖ ποιῶσιν ἡμᾶς, βασκαίνειν καὶ σκοπεῖν ἐξ ὅτου τρόπου μὴ γενήσονται, καὶ μὴ γιγνώσκειν ὅτι, ὅσῳ ἂν σπουδαιοτέρους τούτους περὶ Θηβαίους γεγενημένους ἀποδείξωσι, τοσούτῳ πλείονος ὀργῆς αὐτοὶ δικαίως ἂν τυγχάνοιεν, εἰ τοιούτων συμμάχων τὴν πόλιν, ὅτ' ἐφ' ὑμᾶς προτέρους ἦλθον ἢ Θηβαίους, ἀπεστέρησαν ("However, what, at any rate, they say has been done by the Megalopolitans on account of the Thebans in opposition to you, it is foolish now that this be made in the manner of an accusation; but, inasmuch as now they want to become your friends, in order that, in turn, they may do you well, to malign them and see how they shall not so become friends, and not to recognize that, however much more zealous they show these to have been with regard to the Thebans, so much more should they justly hit upon your anger, if they strip the city of allies of this sort when they come to you first before the Thebans."). Note that here the appeal to friendship is in part based on an argument about benefit: the Megalopolitans worked against us when they were allied with the Thebans, and so will work against the Thebans when they are friends with us. The Athenians were too ready to abandon powerful friends in favor of choosing weaker ones according to Andoc. 3.28: Ἐγὼ μὲν οὖν ἐκεῖνο δέδοικα μάλιστα, ὦ Ἀθηναῖοι, τὸ εἰθισμένον κακόν, ὅτι τοὺς κρείττους φίλους ἀφιέντες ἀεὶ τοὺς ἥττους αἱρούμεθα, καὶ πόλεμον ποιούμεθα δι' ἑτέρους, ἐξὸν δι' ἡμᾶς αὐτοὺς εἰρήνην ἄγειν ("I, however, fear that especially, men of Athens, our customary ill, that letting of stronger friends we always choose the weaker, and we make war on account of others whenever when it is possible to be at peace on our own account."). What follows is a catalogue of instances wherein the Athenians abandoned an offer of friendship for all time made with the king of Persia for the friendship of his revolting satrap Amorges (Andoc. 3.29), wherein the Athenians rejected a treaty of friendship with Syracuse in favor of the Egestaians (with whom the Athenians had a treaty – perhaps a sign that the Athenians would have approved of the logic of following treaty obligations rather than accepting the offer of a new treaty of friendship.).

[173] Though of course it may form the substance of arguments that do not outwardly look like appeals to customary law given the paucity of evidence for this branch of law in domains outside of the rules of war. On the ways that customary law can be discovered even where it is not identified as such see Chaniotis (2004) 198-199 (discussion of the customary definitions of ownership that lay behind [Dem].7.5.).

[174] Trevett (2011) 14.

[175] Missiou (1992) suggests that "the historical parallels have a prescriptive force."

the Athenian people in 343/2 B.C. Close attention to the latter two speeches, with an eye on features that concern treaties, suggests that attention to documents was no less important in diplomacy in the assembly than it was on embassies abroad, though the citation of documentary texts was handled slightly differently in the assembly than when they spoke before other polities on embassies.

3.3.1 On Halonessos

In 343/2 B.C., envoys carrying a letter from Philip II of Macedon arrived in Athens. As was customary, an assembly was held to discuss the letter, and a version of a speech from the debate in that assembly survives, known variously to ancient scholars as the seventh Philippic and as *On Halonessos* and attributed variously to Demosthenes, Hegesippos and Hypereides.[176]

In the very beginning of the speech, the speaker, a politician named Hegesippos recently returned from an embassy to Philip,[177] announces his intention to go through

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[176] Photius s.v. Ἀλέξανδρος· μνημονεύει δὲ καὶ τούτου Δημοσθένης ἐν ἑβδόμῳ Φιλιππικῶν (7, 32), καὶ γνήσιος ὁ λόγος. ("Alexander: Demosthenes mentions this one also in the seventh of the Philippics and the speech is genuine"). Etymologicum Magnum s.v. Ἡγήσιππος: Οὗτος ἐστὶν ὁ Κρώβυλος ἐπικαλούμενος· οὗ δοκεῖ εἶναι ὁ ἕβδομος Φιλιππικῶν Δημοσθένους ἐπιγραφόμενος ("Hegesippos: He is the one so-called Topknot; whose [speech] it seems is the one titled the seventh of the Philippics of Demosthenes").

[177] [Dem.] 7.2: Φίλιππος γὰρ ἄρχεται μὲν περὶ Ἁλοννήσου λέγων ὡς ὑμῖν δίδωσιν ἑαυτοῦ οὖσαν, ὑμᾶς δὲ οὔ φησι δικαίως αὐτὸν ἀπαιτεῖν· οὐ γὰρ ὑμετέραν οὖσαν οὔτε λαβεῖν οὔτε νῦν ἔχειν. ἔλεγε δὲ καὶ πρὸς ἡμᾶς τοιούτους λόγους, ὅτε πρὸς αὐτὸν ἐπρεσβεύσαμεν, ὡς λῃστὰς ἀφελόμενος ταύτην τὴν νῆσον κτήσαιτο, καὶ προσήκειν αὐτὴν ἑαυτοῦ εἶναι. ("For Philip begins by saying, about Halonnesos, how he will give it you even though it is his, but he denies you just are just in demanding it back from him, for it is not yours to take nor do you have it in possession now. And he said the same sorts of things to us, when we went to him on embassy, how, since he had acquired this territory by removing pirates from it, it was fitting that it be his.").

the letter using exactly the same the verb Aeschines used to describe himself working through documents before Philip:

> "Men of Athens, the charges which Philip charges against those speaking before you on issues of justice cannot prevent us from advising about what things benefit you; for it would be terrible if the letters sent by him abrogated frank speech up here on the speaker's platform. So **I wish**, men of Athens, first, regarding what Philip has sent in his letter, **to go through point by point with you**. Later **we will speak** about what the envoys say.[178]

Why does the speaker shift from the singular the plural? He never ends up addressing what Philip's envoys say. Thus, it is unlikely to reflect a genuine division in the organization of the speech, nor is it likely to be a slip. Instead, the shift from what the individual rhetor discusses point by point to what the Athenians collectively address suggests, I urge, that the responsibility to unpack interstate documents fell to a *rhetor*. The *rhetor* in the assembly, like the *rhetor* on embassy, served as explainer and interpreter of the documents that served as formal utterance in diplomacy. His role in the assembly, in that respect, was essentially the same as Aeschines' role on the embassy to Philip.

Much of his speech is dedicated to unpacking the diplomatic significance of Philip's offer to resolve the dispute over Halonessos and other territories through

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[178] [Dem.] 7.1: Ὦ ἄνδρες Ἀθηναῖοι, οὐκ ἔστιν ὅπως αἱ αἰτίαι, ἃς Φίλιππος αἰτιᾶται τοὺς ὑπὲρ τῶν δικαίων πρὸς ὑμᾶς λέγοντας, κωλύσουσι συμβούλους ἡμᾶς γίγνεσθαι ὑπὲρ τῶν ὑμῖν συμφερόντων· δεινὸν γὰρ ἂν εἴη, εἰ τὴν ἐπὶ τοῦ βήματος παρρησίαν αἱ παρ' ἐκείνου πεμπόμεναι ἐπιστολαὶ ἀνέλοιεν. ἐγὼ δ' ὑμῖν, ὦ ἄνδρες Ἀθηναῖοι, βούλομαι πρῶτον μὲν περὶ ὧν Φίλιππος ἐπέσταλκε, περὶ τούτων διεξελθεῖν· ὕστερον δέ, περὶ ὧν οἱ πρέσβεις λέγουσι, καὶ ἡμεῖς λέξομεν. The authorship of the speech was disputed in antiquity, but according to Macdowell (2009) 344: "[v]irtually everyone now accepts that the text which we have is Hegesippos' speech."

recourse to law. That proposal must have seemed attractive to the Athenians, not only because it occupies nearly half of the speech, but also because Hegesippos goes to great lengths to demonstrate that Philip's offer to resolve the dispute through law is neither necessary, nor just, nor advantageous for anyone but Philip. But in the second half of his speech Hegesippos runs a number of arguments to counter Philip's claim to territories that Athenians considered to be their own, and those arguments were based on documents. Thus, for example, Philip wrote, in response to the proposed amendment by which the Athenians would receive Amphipolis, that Amphipolis was his and cited the peace of Philokrates in support of that claim, to which Hegesippos responded:

> He mentions the decree of Philokrates, but he forgets the letter that he sent to you when he was besieging Amphipolis, in which he agrees that Amphipolis is yours; for he said that once he had completed the siege he would give it back to you, as being yours and not belonging to those in possession of it. So they, it seems, who formerly were dwelling in Amphipolis before Philip took it, were in possession of Athenian territory, but since Philip has taken it, he is in possession not of Athenian territory but his own. Nor does Olynthos or Apollonia or Pallene belong to others, but instead he has acquired his own territories. Does he not then seem to you to have crafted everything in the letter with all due care, so that he appears to be both speaking and doing what is acknowledged in the eyes of all man to be just, while he has really scorned you, who says that the land that the Greeks and the king of Persians decreed and agreed to be yours, this he says is his and not yours?[179]

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[179] [Dem.] 7.27-29:καὶ τοῦ μὲν Φιλοκράτους ψηφίσματος μέμνηται, τῆς δ' ἐπιστολῆς, ἣν πρὸς ὑμᾶς ἔπεμψεν ὅτ' Ἀμφίπολιν ἐπολιόρκει, ἐπιλέλησται, ἐν ᾗ ὡμολόγει τὴν Ἀμφίπολιν ὑμετέραν εἶναι· ἔφη γὰρ ἐκπολιορκήσας ὑμῖν ἀποδώσειν, ὡς οὖσαν ὑμετέραν καὶ οὐ τῶν ἐχόντων. κἀκεῖνοι μέν, ὡς ἔοικεν, οἱ πρότερον ἐν Ἀμφιπόλει οἰκοῦντες πρὶν Φίλιππον λαβεῖν, τὴν Ἀθηναίων χώραν εἶχον, ἐπειδὴ δὲ Φίλιππος αὐτὴν εἴληφεν, οὐ τὴν Ἀθηναίων χώραν ἀλλὰ τὴν ἑαυτοῦ ἔχει· οὐδ' Ὄλυνθόν γε οὐδ' Ἀπολλωνίαν οὐδὲ Παλλήνην, οὐκ ἀλλοτρίας ἀλλὰ τὰς ἑαυτοῦ χώρας κέκτηται. ἆρ' ὑμῖν δοκεῖ πεφυλαγμένως ἅπαντα πρὸς ὑμᾶς ἐπιστέλλειν, ὅπως ἂν φαίνηται καὶ λέγων καὶ πράττων ἃ παρὰ πᾶσιν ἀνθρώποις ὁμολογεῖται δίκαια εἶναι, ἀλλ' οὐ σφόδρα καταπεφρονηκέναι, ὃς τὴν χώραν, ἣν οἱ Ἕλληνες καὶ βασιλεὺς ὁ Περσῶν ἐψηφίσαντο καὶ ὡμολογήκασιν ὑμετέραν εἶναι, ταύτην φησὶν ἑαυτοῦ καὶ οὐχ ὑμετέραν εἶναι;

Here Hegesippos answers the current letter of Philip by pointing out that Philip had promised, in a letter sent while he was besieging Amphipolis a decade or so earlier, to "give it back" to the Athenians, and invoking (though without citing the text of) the same interstate agreement, struck in 371 B.C., upon which Aeschines had grounded his argument for the Athenian right to Amphipolis.

It is unclear if this letter was still in the city archive. Other letters just as old were, and the agreement of 371 B.C. was too. Thus it is not implausible.[180] Indeed, another letter that Hegesippos adduced in support of his argument was still in the council-house, though it was now a few years old, and he used it as well to rebut another claim made in the present letter by Philip: that he had never promised to do anything for the Athenians if a peace was struck. Hegesippos pointed out that "he has written in a letter still in the council-house (*bouleuterion*) that he would grant you as many benefits as would stop the mouth of those speaking against him."[181]

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[180] See above p.202 n. 138.

[181] [Dem.] 7.33: Περὶ δὲ τῶν ὑποσχέσεων ὧν ὑμῖν διατελεῖ ὑπισχνούμενος ὡς μεγάλα ὑμᾶς εὐεργετήσων, καταψεύδεσθαί μέ φησιν αὐτοῦ διαβάλλοντα πρὸς τοὺς Ἕλληνας· οὐδὲν γὰρ ὑμῖν πώποτέ φησιν ὑπεσχῆσθαι. οὕτως ἀναιδής ἐστιν ὁ ἐν ἐπιστολῇ γεγραφώς, ἥ ἐστι νῦν ἐν τῷ βουλευτηρίῳ, ὅσ' ἐπιστομιεῖν ἡμᾶς, ἔφη, τοὺς αὐτῷ ἀντιλέγοντας, ἐὰν ἡ εἰρήνη γένηται, τοσαῦτα ὑμᾶς ἀγαθὰ ποιήσειν· ἃ γράφειν ἂν ἤδη, εἰ ἤδει τὴν εἰρήνην ἐσομένην, δῆλον ὡς προκεχειρισμένων καὶ ἑτοίμων ὄντων τῶν ἀγαθῶν, ἃ ἐμέλλομεν πείσεσθαι τῆς εἰρήνης γενομένης ("And about the promises which he continually promises you, how he is going to do you great benefactions, he says that I misrepresented him by slandering him before the Greeks; for he says he promised you nothing ever. So shameful is he who wrote in a letter, which is still now in the council-house, that he would do for you the sorts of good things, if peace should come about, which, he said, would stop the mouths of us, those who spoke out against him. What he would write now, if he knew that there would be peace, is clear from goods things that were ready and were at hand, what was going to happen to us if peace was made.").

Thus, a pair of documents still housed in the city archives was cited in this speech. And it is possible, perhaps even likely, that the letter Philip sent when he was besieging Amphipolis was still in the archives as well, since we know that other rhetors of this period dug up letters just as old to cite in court. Here, I urge, we see a rhetor whose speech and argument suggests that he, like Aeschines, spent some time preparing in the archives, and who used archival records both as a source of legal claims and to rebut the diplomatic maneuvering of a royal letter.

Not that he restricted himself to records from the archives. Part of the Athenians' dispute with Philip concerned territories in the Chersonese, where Philip was campaigning when the letter arrived in Athens:

> Concerning the Chersonese, what he communicated to you in his letter is worth scrutinizing, and moreover what he is doing worth knowing too. For he has given the whole area beyond Agora to Apollonides the Kardian to use, as though it were his own, and did not in any way belong to you. And moreover the boundaries of Chersonese are not Agora, but the altar of Zeus of the Boundaries, which is between Pteleion and Leuke Akte, where the canal of the Chersonese was going to be, as at any rate the epigram on the Altar of Zeus of the Boundaries shows. It is the following: "The inhabitants established this exceedingly beautiful altar to the god, placing it as a boundary marker between Leuke and Pteleon, a marker of the territory and the lord of the Blessed, the son of Kronos, is in the middle of the land sharing borders."[182]

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[182] Dem. 7. 39-40: Περὶ δὲ Χερρονήσου, ἃ τ' ἐπιστέλλει πρὸς ὑμᾶς ἄξιόν ἐστιν ἐξετάσαι, ἔτι δὲ καὶ ἃ πράττει, καὶ ταῦτ' εἰδέναι. τὸν μὲν γὰρ τόπον ἅπαντα τὸν ἔξω Ἀγορᾶς ὡς ἑαυτοῦ ὄντα καὶ ὑμῖν οὐδὲν προσήκοντα δέδωκε καρποῦσθαι Ἀπολλωνίδῃ τῷ Καρδιανῷ. καίτοι Χερρονήσου οἱ ὅροι εἰσίν, οὐκ Ἀγορά, ἀλλὰ βωμὸς τοῦ Διὸς τοῦ ὁρίου, ὅς ἐστι μεταξὺ Πτελεοῦ καὶ Λευκῆς ἀκτῆς, ᾗ ἡ διορυχὴ ἔμελλε Χερρονήσου ἔσεσθαι, ὥς γε τὸ ἐπίγραμμα τὸ ἐπὶ τοῦ βωμοῦ τοῦ Διὸς τοῦ ὁρίου δηλοῖ. ἔστι δὲ τουτί· Τόνδε καθιδρύσαντο θεῷ περικαλλέα βωμὸν / Λευκῆς καὶ Πτελεοῦ μέσσον ὅρον θέμενοι / ἐνναέται, τχώρης σημήϊον· ἀμμορίης δὲτ / αὐτὸς ἄναξ μακάρων ἐστὶ μέσος Κρονίδης.

It is unclear how Hegesippos acquired the knowledge and the text of this epigram. Since he was recently returned from an embassy to Philip, and Philip was currently in the Chersonese, it is possible that he encountered the altar during his journey. Or perhaps he found it in a collection of epigrams.[183] However he came to know about the inscription, the fact that he cited it, in a meeting of the assembly, in the same fashion that ancient historians cited inscriptions,[184] is an important reminder that arguments crafted for deliberation were based not only on texts deposited in the city archives that are easy for moderns to identify as political in nature, but also texts cut into stone that were simultaneously political, religious, and poetic.

Like Aeschines, then, Hegesippos based a portion of his speech on documents, inscribed and not. Unlike Aeschines, Hegesippos does not appear to have gathered together those documents into a dossier in order to read them aloud during his speech. He could have. The secretary of the assembly existed solely to read documents to the people, and rhetors did, on occasion, pause to have documents read in the midst of

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[183] Petrovic (2013) 208: "the cumulative evidence suggests that Athenian orators of the fourth century did indeed consult and use collections that contained inscribed epigrams." Suda s.v. Φιλόχορος mentions a book by Philochoros called Ἐπιγράμματα Ἀττικά. Obviously this was not available for Hegesippos, but it may not have been the first collection of its kind, and other rhetors made heavy use of poetry that was centuries old (see, e.g., Aeschines' use of Solon's poetry in the speech on the false embassy.).

[184] Th. 1.134: καὶ αὐτὸν ἐμέλλησαν μὲν ἐς τὸν Καιάδαν [οὗπερ τοὺς κακούργους] ἐσβάλλειν· ἔπειτα ἔδοξε πλησίον που κατορύξαι. ὁ δὲ θεὸς ὁ ἐν Δελφοῖς τόν τε τάφον ὕστερον ἔχρησε τοῖς Λακεδαιμονίοις μετενεγκεῖν οὗπερ ἀπέθανε (καὶ νῦν κεῖται ἐν τῷ προτεμενίσματι, ὃ γραφῇ στῆλαι δηλοῦσι)…(And they were going to toss him into the Kaiada where they toss wrongdoers. Then it was decided to bury him thereabouts. But the god in Delphi later told them in an oracle to transfer his tomb to where he died (even now he lies in the entry-way, which the stelai show in their text…).

giving a speech.[185] But such was, if the surviving assembly speeches are representative, rather rare. Perhaps it was too risky, rhetorically speaking, to have a break in speech that might have given the people an opporunity to raise its collective voice, and thus a chance to prevent a speaker from finishing his speech if they were displeased with it. Perhaps it was simply unnecessary to verify the texts cited for the people by having them read. In any case we see, in *On Halonessos*, a speech entirely dedicated to unpacking line by line a letter sent by a foreign king. While a good half of it is devoted to unmasking the diplomatic maneuvering hidden in language that conformed to Greek conceptions of justice, the other half brought documentary texts to bear on claims made in the letter. In this speech and in this respect, diplomacy in the Athenian assembly and diplomacy in the court of Philip of Macedon appear to be of a kind.

3.3.2: Text and Context in *On the Peace*

The attention given to prior interstate documents in *On Halonnesos* was not without antecedents. In 391 B.C., envoys sent to Sparta to negotiate a treaty of peace returned with a draft and an agreement that the Athenians have forty days to decide whether to ratify it.[186] The question was divisive and ended with the rejection of the peace. It is hard

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[185] A letter sent by Philip II of Macedon to Euboia is read at Dem. 4.37-78: ὁ δ' εἰς τοῦθ' ὕβρεως ἐλήλυθεν ὥστ' ἐπιστέλλειν Εὐβοεῦσιν ἤδη τοιαύτας ἐπιστολάς. ΕΠΙΣΤΟΛΗΣ ΑΝΑΓΝΩΣΙΣ. Τούτων, ὦ ἄνδρες Ἀθηναῖοι, τῶν ἀνεγνωσμένων ἀληθῆ μέν ἐστι τὰ πολλά, ὡς οὐκ ἔδει, οὐ μὴν ἀλλ' ἴσως οὐχ ἡδέ' ἀκούειν. ("He [sc. Philip] has reached such a height of hubris that he sends letters of this nature now to the Euboians. READING OF THE LETTER. Many of the things just read are true, how could they not be, and yet they are perhaps unpleasant to hear.")

[186] Andoc. 3.40.

to know which of the many arguments leveled against it was decisive in persuading the Athenians to reject the treaty, but one of the most charged objections must have been that, because of the last peace struck with the Spartans in 404 B.C., "the Thirty came to power and many citizens drank hemlock and died while others fled into exile."[187] That objection was answered, in the only surviving speech from one of the assemblies dedicated to the question of peace, by the claim that there was a difference between a treaty of peace and a truce made under compulsion and a difference in the terms of the agreement of 404 and the draft on the table:

> At that time a truce came into being under compulsion from orders, but now you deliberate about peace. Examine, from the clauses themselves, both those that are written for us on the stele and those terms on which it is possible for peace to be made now. For there it is written to take down the walls, in these it is permitted to build them. There to acquire now ten ships, but now as many as we wish. Then those in possession of Lemnos and Imbros and Skyros were to keep them, but now they are ours. And now it is not necessary to accept any exiles, but then it was necessary, whence the democracy was dissolved. In what respect do these terms agree with those ones? So far, do I, at least, men of Athens, distinguish regarding these things: that the peace shall be safety for the people and power, that war shall become the undoing of the people. This, then, is what I say on these matters.[188]

Here, then, is an antecedent for Hegesippos' use of the text of a prior agreement to contextualize a draft on the floor of the assembly. Granted, far more attention was levied

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[187] Andoc. 3.10: Ἤδη δέ τινων ἤκουσα λεγόντων, ὡς ἐκ τῆς τελευταίας εἰρήνης τῆς πρὸς Λακεδαιμονίους οἵ τε τριάκοντα κατέστησαν, πολλοί τε Ἀθηναίων κώνειον πιόντες ἀπέθανον, οἱ δὲ φεύγοντες ᾤχοντο.

[188] Andoc. 3.12: Τότε μὲν οὖν σπονδαὶ κατ' ἀνάγκην ἐξ ἐπιταγμάτων ἐγένοντο, νῦν δὲ περὶ εἰρήνης βουλεύεσθε. Σκέψασθε δὲ ἐξ αὐτῶν τῶν γραμμάτων, ἅ τε ἡμῖν ἐν τῇ στήλῃ γέγραπται, ἐφ' οἷς τε νῦν ἔξεστι τὴν εἰρήνην ποιεῖσθαι. Ἐκεῖ μὲν γὰρ γέγραπται τὰ τείχη καθαιρεῖν, ἐν δὲ τοῖσδε ἔξεστιν οἰκοδομεῖν· ναῦς ἐκεῖ μὲν δώδεκα κεκτῆσθαι, νῦν δ' ὁπόσας ἂν βουλώμεθα· Λῆμνον δὲ καὶ Ἴμβρον καὶ Σκῦρον τότε μὲν ἔχειν τοὺς ἔχοντας, νῦν δὲ ἡμετέρας εἶναι· καὶ φεύγοντας νῦν μὲν οὐκ ἐπάναγκες οὐδένα καταδέχεσθαι, τότε δ' ἐπάναγκες, ἐξ ὧν ὁ δῆμος κατελύθη. Τί ταῦτα ἐκείνοις ὁμολογεῖ; τοσοῦτον οὖν ἔγωγε, ὦ Ἀθηναῖοι, διορίζομαι περὶ τούτων, τὴν μὲν εἰρήνην σωτηρίαν εἶναι τῷ δήμῳ καὶ δύναμιν, τὸν δὲ πόλεμον δήμου κατάλυσιν γίγνεσθαι. Περὶ μὲν οὖν τούτων ταῦτα λέγω.

in this speech on past treaties that are not cited but merely invoked as examples of agreements that have allowed Athens to prosper. And the Athenians were not persuaded to accept the peace (although we cannot say whether this argument fell on deaf ears). But this part of the argument is an important caution against the idea that close attention to documents was an innovation of the mid-4th century.

3.3.3: From Speech to Text

At the end of *On the Peace*, the speaker issues a challenge to "those who say that we must not be at peace":

> Come forward, then, and let them teach you - for we have made that a possibility for them, insofar as we have appended forty days for deliberation - on the one hand, if any of the clauses drafted happens to be unfit, since it is possible to remove it; on the other hand, if anyone wishes to add anything, let him, if he persuades you, draft an addendum. It is possible to be at peace by employing all of the clauses as written.[189]

The endgame of deliberation in the assembly was to establish rules in writing, whether that meant a decree pertaining to domestic affairs or an interstate document (be it decree or treaty).

In *On the Peace*, a draft of the treaty had already been prepared. But if no such draft existed, it was up to the rhetors to draft a decree, in response to deliberations on the floor, for the people to ratify or reject. So, for example, the speaker of *On Halonessos*

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[189] Andoc. 3.40: Παριόντες οὖν αὐτοὶ διδασκόντων ὑμᾶς (ἐξουσίαν δ' αὐτοῖς ἡμεῖς ἐποιήσαμεν, προσθέντες τετταράκοντα ἡμέρας βουλεύσασθαι) τοῦτο μὲν τῶν γεγραμμένων εἴ τι τυγχάνει μὴ καλῶς ἔχον (ἔξεστι γὰρ ἀφελεῖν) τοῦτο δ' εἴ <τί> τις προσθεῖναι βούλεται, πείσας ὑμᾶς προσγραψάτω. Πᾶσί τε τοῖς γεγραμμένοις χρωμένοις ἔστιν εἰρήνην ἄγειν.

concludes thus: "it is left to me still to write, in response to this finely crafted letter and the speeches of the envoys, the answer which I consider to be lawful and beneficial to you."[190] There can be no clearer statement that decrees were drafted in response to prior documents (and speeches too). But it is clear, too, that decrees were modeled on the logic of prior documents. Thus, in *On the Treaty with Alexander*, delivered sometime in the late 330s, the speaker[191] spent the entire speech explaining which clauses of the Common Peace, struck after the battle of Chaironeia (338 B.C.), had been violated by Alexander:

> [The agreement] I urge you (**διακελεύομαι**), men of Athens, to obey exactly as I have explained, and I would maintain, since I have reached such an age, that at the same time we employ our right unimpeachably and the opportunities leading to our advantage safely. For it is also written in the treaty, "if we wish to share in the common peace." This "if we wish" is at the same time its opposite, if it is ever really necessary to stop following others in shame…if, then, you urge

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[190] [Dem.] 7.46: Ὑπόλοιπόν μοί ἐστιν ἔτι πρὸς ταύτην τὴν ἐπιστολὴν τὴν εὖ ἔχουσαν καὶ τοὺς λόγους τῶν πρέσβεων γράψαι τὴν ἀπόκρισιν, ἣν ἡγοῦμαι δικαίαν τ᾽ εἶναι καὶ συμφέρουσαν ὑμῖν.

[191] The identity of the speaker was unclear even in antiquity. It was Hypereides, according to Libanius *Hypothesis to Demosthenes* 17: ὁ δὲ λόγος ψευδεπίγραφος εἶναι δοκεῖ. οὐ γὰρ ἔοικε κατὰ τὴν ἰδέαν τοῖς ἄλλοις τοῖς τοῦ Δημοσθένους, ἀλλὰ τῷ Ὑπερίδου χαρακτῆρι μᾶλλον προσχωρεῖ τά τε ἄλλα καὶ λέξεις τινὰς ἔχει κατ᾽ ἐκεῖνον μᾶλλον εἰρημένας ἢ τὸν Δημοσθένην, οἷον νεόπλουτοι καὶ βδελυρεύεσθαι ("the speech seems to be falsely attributed, since it does not seem in accordance with the same style as the other speeches of Demosthenes, but rather approximates the character of Hyperides, and in other respects it has certain turns of phrase spoken more often in accordance with that speaker than with Demosthenes."). It was a speech of Hegesippos, according to Σ Demosthenes 17.2 [Dilts]: Οὐκ ἔστιν ἄδηλον τοῖς φιλομαθέσιν ἐξ ὧν ἀνεγνώκασιν ὑπομνημάτων, ὅτι νοθεύεται ὁ ὑπὲρ τῶν πρὸς Ἀλέξανδρον συνθηκῶν καὶ νενόμισται εἶναι τοῦ Δημοσθένους ἀλλότριος, ὥσπερ καὶ ὁ ἕβδομος τῶν Φιλιππικῶν, ὃν ὑπὲρ Ἁλοννήσου τινὲς ἐπιγράφουσιν. ἀμφοτέρους γὰρ τούτους ἀναφέρουσιν εἰς Ἡγήσιππον τὸν Κρώβυλον ἐπικληθέντα, Τιμάρχου δὲ ἀγαθὸν φίλον ("it is not unclear to the learned, from the commentaries that they have read, that the speech on behalf of the treaty with Alexander is wrongly attributed and is considered to be in a manner foreign to Demosthenes, just like also the seventh of the Philippics, which some title *On Halonessos*. For they attribute both of these to Hegesippos, the one called Topknot, a good friend of Timarchos."). Culasso Gastaldi (1984) 159-183 argues that the speech was a fabrication of Demosthenes' nephew Democharas, but no one seems to have assented to this interpretation, and there is (to my knowledge) no ancient evidence for it. Thus, Macdowell (2009) 381: "[s]ince the writer seems to know the details of the treaty and of recent events, we should attribute the text to a politician around 331, rather than to an imitator in a later period."

> me to (ἐὰν οὖν **κελεύητ'**), men of Athens, I will write, just as the agreement urges (**κελεύουσι**), 'to make war on the transgressors.'[192]

This speech has been criticized for its proposal to go to war on the grounds that "nothing is said about the practical, as opposed to the legal, reasons for making the attempt."[193] But the narrow focus of the argument "may be due to a division of labor among the advocates of war."[194] That is, the speaker may have been tasked with arguing only that the people were legally bound to go to war by the terms of the treaty. His argument is crystallized, in the conclusion, in a statement that links, through repetition, the interpretation of the treaty that the speaker urges the people to accept, what the people (should they be persuaded) urge him to propose, and what (he argues) the treaty urges him to write in that proposal – for the terms of the oath sworn as part of the treaty seems to have included the clause to the effect that "I will make war against the one in transgression."[195] His proposal, then, like his entire speech, is explicitly grounded in the text and logic of the treaty.

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[192] [Dem.] 17.30: αἷς ἐγὼ διακελεύομαι, ὦ ἄνδρες Ἀθηναῖοι, πείθεσθαι, καθάπερ ἐδίδαξα, καὶ διαβεβαιωσαίμην ἄν, ὡς τοῦθ' ἡλικίας ἔχων, ἅμα καὶ τῷ δικαίῳ ἡμᾶς ἀνεγκλήτως καὶ τοῖς καιροῖς ἀσφαλέστατα χρήσεσθαι τοῖς ἐπὶ τὸ συμφέρον κατεπείγουσιν. καὶ γὰρ ἔτι προσγέγραπται <ἐν> ταῖς συνθήκαις, 'ἐὰν βουλώμεθα τῆς κοινῆς εἰρήνης μετέχειν'· τὸ δ' 'ἐὰν βουλώμεθα' ἐστὶν ἅμα καὶ τοὐναντίον, εἰ ἄρα ποτὲ δεῖ παύσασθαι αἰσχρῶς ἑτέροις ἀκολουθοῦντας, ἢ μηδ' ἀναμνησθῆναι μηδεμιᾶς φιλοτιμίας τῶν ἐξ ἀρχαιοτάτου καὶ πλείστων καὶ μάλιστα πάντων ἀνθρώπων ἡμῖν ὑπαρχουσῶν. ἐὰν οὖν κελεύητ', ὦ ἄνδρες Ἀθηναῖοι, γράψω, καθάπερ αἱ συνθῆκαι κελεύουσι, πολεμεῖν τοῖς παραβεβηκόσιν.

[193] Macdowell (2009) 380.

[194] Trevett (2011) 288 n.8.

[195] Not enough of the text survives but the speaker of Dem. 17 may be referring to the text published as IG II^3 318.17-20.

3.3.4. Conclusion

Athenian envoys and Athenian rhetors, at least in assemblies where envoys were present, made similar kinds of arguments. Neither relied exclusively on documentary texts to make his case. But both cited documents as sources of law, both cited documents to contextualize claims made by other political actors in other documents, and both cited inscriptions and archival records where it suited their argument and without drawing much distinction between texts on perishable materials and on stone.

The signal differences between the envoy and the rhetor in the assembly are twofold and concern material practice. So far as we can tell from surviving speeches, envoys on embassy put together dossiers, while rhetors in the assembly did not. Conversely, envoys on embassy were not tasked with drafting documents. Rhetors in the assembly were. They framed their decrees as responses to what kings wrote and envoys said. They claimed to build their proposals on the text and logic of already-existing documents. They never, in the surviving speeches, claim to base their proposals on the unwritten norms of diplomacy. In the giving of speeches, then, envoys and rhetors left no stone unturned: kinship, friendship, customary law, and even appeals to naked self-interest were invoked, and that would not be the case if envoys and rhetors thought such appeals had no place in deliberations.

But in surviving examples of speeches delivered in the presence of envoys, the rhetor's attention falls heavily on documents and documentary texts. And we can draw

two conclusions from the two speeches wherein a rhetor hints at the nature of the decree he will draft for the people to consider: he might draft a decree that was a direct response to prior documents, or even one that was modeled on prior documents. Were decrees like these outliers? Or did the drafters of decrees tend to focus, selectively, on those aspects of deliberation that revolved around discussion of documents, Athenian and otherwise?

3.4 Documenting Interstate Law in Athenian Decrees

Decrees are thought to bear little trace of deliberation.[196] Granted, Athenian decrees of the Classical era do not contain the long and detailed preambles of Hellenistic decrees that enable scholars to reconstruct some sense of the speeches delivered on behalf of the decree.[197] But if decrees were drafted on the floor of the council and assembly, as the

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[196] Hunt (2010) 21: "Unfortunately, although there are exceptions – such as the programmatic statements and promises of autonomy in the decree of Aristoteles – treaties usually present us with the result of deliberations, not the deliberations themselves." This is an old idea; thus Adcock (1948) 4: "Athenian diplomacy is harder to envisage. The inscriptions and the treaties preserved in literary texts usually show the result, rather than the character, of Athenian diplomatic activity." The virtue of studying decrees as evidence for diplomacy is evident from Hagemajer-Allen (2003) 228-229 (where it is argued, against the common view, based in literature, that Athenians believed in a Greek/barbarian antithesis): "[a] reading of the complete system of representation of non-Greek recipients within individual decrees shows that these "collective" statements about outsiders were consistently positive. Rarely did the categories of "Greek" and "barbarian" occur in the decrees; but when they did occur they did not carry with them value judgments normally associated with these terms in literature."

[197] Rubinstein (2013) 167-175 examines how much oratory can be reconstructed from the longer and more detailed preambles found in Hellenistic decrees, concluding, from close study of *Staatsverträge* III 539, (175): "[d]espite the fact that some of the main themes of the envoys' address can be reconstructed on the basis of the envoys' brief combined with the Milesian response, this information is insufficient for us to answer the question of oratorical genre. The same applies to the vast majority of inscriptions." Sosin (2009) 385-388 shows how much about envoys' speeches can be reconstructed from a single dossier of decrees passed in response.

previous chapter argued, then to some extent they must reflect what business was conducted in a given assembly.

Indeed, it is clear from the conclusion of *On Halonnesos* that some proposers of decrees framed them in direct response to both the speeches and the documents that formed subjects of debate. And it is clear from the end of *On the Treaty with Alexander* that a decree might be modeled on a document that served as the subject of the proposer's argument. Here it is argued that this reflects a broad and longstanding habit of the Athenians who drafted decrees in matters of diplomacy; that documents were drafted in ways that reflect the influence of prior documents; that substantive provisions were often established by citation of prior enactments; that decrees were shaped by the logic of prior enactments no less than practical considerations.

3.4.1 Towards a Taxonomy of Citation in Athenian Decrees

The taxonomy of citation in Athenian decrees, at least the ones that concern interstate affairs, is essentially threefold.

Prior enactments are cited, in the preambles of some decrees, as reasons to pass the resolutions in the decree. Some of these are not exactly citations of legal precedent, but statements that a decree should be passed in light of a prior document like a resolution of an interstate body or a preliminary resolution of the council. Thus, when the Athenians made an alliance with the Arkadians and Achaians and Eleans and

Phleiasians, the proposer of the decree that formally established that alliance, Periander, drafted a decree with the following preamble:

> "Since the allies brought a resolution to the council to accept the alliance in exactly the terms that the Arkadians and Achaians and Eleans and Phleiasians anounce, and the council issued a preliminary decree in accordance with the same terms, be it resolved by the assembly that, to the good fortune of the people, the Athenian people and the allies and the Arkadians and Achaians and Eleans and Phleiasians be allies for all time."[198]

Rhetors and envoys occasionally spoke on behalf of resolutions put forward by the allies and by the council.[199] In fact, a Phleiasian envoy in 370/69 B.C. delivered a speech in which he advocated for the ratification of the preliminary decree by arguing that its terms reflected the natural order of the Greek world: Spartans dominant on land, Athenians on sea.[200] Thus, we know that even speakers who advocated for the passage

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[198] *IG* II² 112.12-19a: ἐπει|δὴ δ]ὲ οἱ σύμμαχοι δόγμα εἰσήνειγκαν εἰς τ[ὴν βουλ]|[ὴν δ]έχεσθαι τὴν συμμαχίαν καθὰ ἐπαγγέλ[λονται ο]|[ἱ Ἀρ]κάδες καὶ Ἀχαιοὶ καὶ Ἠλεῖοι καὶ Φλε[ιάσιοι κα]|[ὶ ἡ βο]υλὴ πρὸβούλευσεν κατὰ ταὐτά, δεδό[χθαι τῶι δ]|[ήμωι εἶ]ναι συμμάχους τύχηι ἀγαθ[ῆι τοῦ δήμου εἰς] | [τὸν ἀεὶ] χρόνον Ἀθηνα[ίων τὸν δῆμον καὶ τοὺς συμμά]|[χος καὶ Ἀ]ρκάδ[ας καὶ Ἀχαιοὺς καὶ Ἠλείους καὶ Φλει]|[ασίους.

[199] Thus, Demosthenes claimed in 343/2 that he spoke in support of the allied resolution at the assemblies where the Peace of Philokrates was ratified (Dem. 19.15): εἰς τὴν ὑστεραίαν, ἐν ᾗ τὴν εἰρήνην ἔδει κυροῦσθαι, ἐμοῦ τῷ τῶν συμμάχων συνηγοροῦντος δόγματι καὶ τὴν εἰρήνην ὅπως ἴση καὶ δικαία γενήσεται πράττοντος…("at the second one, in which it was necessary to ratify the peace, though I spoke for the resolution of the allies and acted in order that the peace be equitable and just…").

[200] X. *HG* 7.1.2: τῇ μὲν οὖν βουλῇ προβεβούλευται ὑμετέραν μὲν εἶναι τὴν κατὰ θάλατταν, Λακεδαιμονίων δὲ τὴν κατὰ γῆν· ἐμοὶ δὲ καὶ αὐτῷ δοκεῖ ταῦτα οὐκ ἀνθρωπίνῃ μᾶλλον ἢ θείᾳ φύσει τε καὶ τύχῃ διωρίσθαι. ("it has been preliminary decreed by the council that prominence on sea shall be yours, on land the Lakedaimonians'. And to me myself these things seem to have been defined not by human but by divine nature and by fortune."). Reprised at 7.1.11: ἐγὼ μὲν οὖν, ὥσπερ τῇ βουλῇ προβεβούλευται, ταῦτα εἴρηκά τε καὶ συμφορώτατα ἡγοῦμαι ἀμφοῖν εἶναι· ("I, then, propose this just as has been preliminarily decreed by the council, and I think they are most beneficial to both sides."). According to X. *HG* 7.1.12, the people first praised the Phleiasian envoy's speech. But ultimately his argument did not convince because the Athenian politician Kephisodotos convinced the assembly that the resolution of the council to divide spheres of power between the Spartans and Athenians was inconsistent with the terms of thed draft-treaty brought by the Spartans and their allies (X. *HG* 7.1.13-14): ἀπόκριναι δέ μοι, ἔφη, ὦ Λακεδαιμόνιε Τιμόκρατες, οὐκ ἄρτι ἔλεγες ὡς ἐπὶ τοῖς ἴσοις καὶ ὁμοίοις ἥκοις τὴν συμμαχίαν ποιούμενος; Εἶπον ταῦτα. Ἔστιν οὖν, ἔφη ὁ Κηφισόδοτος, ἰσαίτερον ἢ ἐν μέρει μὲν ἑκατέρους ἡγεῖσθαι τοῦ ναυτικοῦ, ἐν μέρει δὲ τοῦ πεζοῦ, καὶ ὑμᾶς τε, εἴ τι ἀγαθόν ἐστιν ἐν

of a draft made arguments that appealed to considerations beyond the text, and that is unsurprising, given the wide spectrum of claims that are found in the evidence for diplomacy.

Periander too, or whoever spoke on behalf of the alliance above, is unlikely to have argued that the alliance should be accepted for no other reason than such was advocated by a decree of the allies and a preliminary resolution of the council. That was a reason to ratify his proposal, but it is unlikely to have been the only reason. Still, when drafting his proposal, Periander was selective about what to include in the preamble as reasons to pass his decree, and he chose to cite the prior decrees of the allies and the council that had been introduced on the floor of the assembly at the beginning of the meeting, not because such were legally binding, but to emphasize that his proposal was in line with theirs.

But some Athenians did cite prior legislation in the preambles of their decrees in ways that suggest the proposer felt that he was legally bound to put forward a particular clause in his proposal. Thus, in 357/6 B.C.,

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τῇ κατὰ θάλατταν ἀρχῇ, τούτων μετέχειν, καὶ ἡμᾶς ἐν τῇ κατὰ γῆν; ἀκούσαντες ταῦτα οἱ Ἀθηναῖοι μετεπείσθησαν, καὶ ἐψηφίσαντο κατὰ πενθήμερον ἑκατέρους ἡγεῖσθαι ("Answer me, he said, o Timokrates the Spartan, were you not just now saying how you come here to make a treaty on equal and like terms? 'I said this.' 'Is anything more equal, then, said Kephisodotos, than that each side should exercise leadership in turn of the naval force, in turn of the land force, and that you, if there is anything good in the rule of the sea, should have share of these, and that we share in rule on land? Hearing this the Athenians were persuaded to change their minds and voted that each should exercise the leading role or five days at a time.").

> "Hegesandros proposed: so that Andros be secure for the Athenian people and the Andrian people and the garrisons in Andros have their pay out of the *syntaxeis* in accordance with the resolutions of the allies and the watch not be dissolved, choose a general of those who have been elected, and the one chosen is to take care of Andros; and moreover Archedemos is to exact from the islanders the money owed to the soldiers and to give it the archon in Andros."[201]

Here, then, is a preamble in which the proposal is established not only on the Athenians' interest in maintaining Andros for its and the Andrians' use, but also out of a sense that they were legally bound to provide pay for the garrisons in view of prior resolutions passed by the Athenian allies. It is hard to see why else Hegesandros would include the citation in his decree were it not that the Athenians felt legally bound to carry out the terms of the resolutions. And it is likely enough that Hegesandros or another rhetor based the argument on behalf of this proposal in part by reference to the resolutions of the allies, though it is unclear whether these were recently passed and put forward essentially as proposals (as in Periander's decree) or an older set of resolutions.

Athenians even cited the texts of prior enactments in the preambles of decrees, invoking them as justifications for the passage of those decrees. The same Hegesippos who is the author of *On Halonnesos* proposed, in a decree passed shortly after the battle of Chaironeia:

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[201] *IG* II² 123.7-20: Ἡγή]σανδρ[ο]ς εἶπεν· ὅπως [ἂ]ν Ἄνδ[ρο]||[ς] ἦ[ι] σ[ᾶ] τῶι δ[ή]μωι τῶι Ἀθη[να]ίων [κα]||[ι] τῶι δήμωι τῶι Ἀνδρίων καὶ ἔχ[ωσ]||ιν ο[ἱ] φρουροὶ οἱ ἐν Ἄ[νδρω]ι μισ[θὸ]||ν ἐκ τῶν συντάξεων κ[α]τ[ὰ τ]ὰ δόγ[μα]||[τ]α τ[ῶ]ν συμμάχων καὶ μὴ καταλύ[ητ]||αι ἡ φυλακή ἐλέσθαι στρ[α]τηγ[ὸν ἐ]||κ τῶγ κεχειροτονημένων, [τ]ὸ[ν δὲ α]||[ἱ]ρ[ε]θέντα ἐπιμελεῖσθαι [Ἄνδρου]. | εἰσπρᾶξαι δὲ καὶ τὰ ἐγ ν[ήσων χρή]||ματα Ἀρχέδημον τὰ ὀφ[ειλόμενα τ]||οῖς στρατιώταις το[ῖς ἐν Ἄνδρωι] | [κ]αὶ παραδοῦναι τῶ[ι ἄρχοντι τῶι] | [ἐν] Ἄνδρωι…

> Since the Athenian people made Phormio the grandfather of Phormio and Karphinas an Athenian and his descendants too, and the decree in accordance with which the naturalization occurred is written on the acropolis, [sc. it is decreed] that the grant which the people granted to Phormio their grandfather shall be valid for Phormio and Karphinas and their descendants.[202]

It has been observed before that Hegesippos has an inscription in mind when he refers to the decree that "is written on the acropolis."[203] But it does not appear to have been observed that Hegesippos made sure to refer, in his proposal, to the clause in decrees that established a legal reason for granting citizenship to Phormio and Karphinas: "and his descendants too" is exactly how citizenship was extended to the honorand's descendants in an honorific decree.[204]

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[202] *IG* II² 237.15-21: [ἐ]πειδὴ δὲ Φορ[μ]ίωνα τὸν Φορμίωνος καὶ Καρ[φ]ίν[α] | [πάππο]ν ἐποιήσατο ν Ἀθηναῖον ὁ δῆμος ὁ Ἀθηναίων κ[α]||[ὶ τ]οὺ[ς] ἐκείνου ἐκ[γό]νους καὶ τὸ ψήφισμα καθ' ὃ ἡ [π]οίη||[σι]ς ἐγένετο, ἀναγ[έγρ]απται ἐν ἀκροπόλει, εἶ[ναι] Φορ||[μ]ίων[ι κ]α[ὶ] Καρφί[ναι] καὶ τοῖς ἐκγόνοις αὐτῶν κυρία||[ν τὴ]ν [δωρει]ὰν ἣν [ἔδωκ]εν ὁ δῆ[μ]ος Φορμίωνι τῶι πάππω||ι [α]ὐ[τ]ῶν.

[203] Sickinger (2002) 162.

[204] *IG* II² 109.8-13: Κρατῖνος εἶπεν· τ[ὰ μὲν ἄλλα καθάπερ τῆ]||ι βουλῆι περὶ ὧν Ἀστυκρ[άτην ὁ Δελφὸς λ]||έγει· εἶναι δὲ Ἀστυκρ[άτην Ἀθηναῖον κα]||ὶ ἐκγόνους αὐτο͂, καὶ εἶνα[ι αὐτὸν φυλῆς] | ἧστινος [ἂ]ν ἀπογράφηται κ[α]ὶ [δήμου καὶ] | φρατρίας ("Kratinos proposed: the rest else exactly as was resolved by the council regarding what Astykrates the Delphian says, and that Asytkrates be an Athenian and his descendants, and that he belong to whatever phyle he be registered in and deme and phratry."). Hegesippos may have had to do some searching, for the naturalization clause and the extension to descendants were not always joint; thus *IG* II² 17.25-34: ἔναι αὐ]τὸν Ἀθ[ηναῖον, γρά]ψασθαι δ[ὲ] | αὐτὸν εἰς φυ[λὴν κα]ὶ δῆμον ἵ[να βούλεται], τὸς δὲ [στ]||ρατηγὸς τὸς [ἐνθ]άδε ἀποδο͂να[ι αὐτῶι τὸν μι]σθ[ὸν ὅ]||σομπερ πέρυ[σι]ν ἔφερε· τὸν δὲ [γραμματέα τῆς βολῆ]ς ἀναγράψαι [τ]ὸ ψήφισμα τόδε [καὶ τὰς ἄλλας δωρεὰ]||ς ἐν στήληι [ἵ]ναπερ αὐτῶι τὰ π[ρό]τερ[ον γενόμενα ἀ]||ναγέγραπται· ἐὰν δέ τις τα[ῦτ]α ἄκυρ[α ποῆι, ὀφελέ]||τω χιλίας [δ]ραχμὰς ἱερ[ὰς τῆ]ι Ἀθηνα[ίαι καὶ τῶι Ἀπό]||λλωνι τῶ[ι] Πυθίωι ἑτέρα[ς]. ἔναι δὲ ταῦ[τα καὶ τοῖς ἐ]||κγόνοις τοῖς Σθόρυος· ("that he be an Athenian, and be registered into the phyla and deme where he wishes, that the generals the ones who are here give him as much pay as he got last year; that the secretary of the council inscribe thus very decree and the other grants on a stele where the prior enactment for him are recorded; if anyone renders these invalid, let him owe a thousand drachmas sacred to Athenian and another thousand to Pythian Apollo. That these things be for the descendants of Sthorys as well.").

Thus, we can infer that not only did Hegesippos know of "the earlier decree, its contents, and apparently its location,"[205] but also that he may have incorporated in his own proposal the very part of the earlier decree that legally justified his reaffirmation of that grant and its extension to the descendants of Phormio the elder's descendants. And although here it is clear that the reference is to a decree on stone, there are equally clear instances where the decree cannot have been on stone: when Democharis the son of Nymphaios renewed a grant of proxeny that he showed to have been granted to his ancestors, the council voted to introduce his business to the assembly since the stele was missing.[206] Democharis, then, unlike Hegesippos, must have had his family's copy of the grant or found one in the city archives. And the proposer, Kratinos, was as willing to refer to this document, wherever it came from, as Hegesippos was to the inscription for Phormio the elder.[207]

Prior enactments were cited in the main resolutions of decrees no less (perhaps even more frequently) than in the preambles. In these instances the citation of prior enactments seems to have performed a quite different role: establishing the substance of

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[205] Sickinger (2002) 162.

[206] *IG* II² 172.4-15 (before 353/2): [Κρατ]|[ῖ]νος εἶπεν· ἐπειδὴ τὴ[ν προ]|[ξ]ενίαν ἀνανεοῦται Δ[ημόχ]|[α]ρις ὁ Νυμφαίου τοῦ Ν….- | .του, ἣν ἀποφαίνει δε[δομέ]|[ν]ην τοῖς αὐτο͂ προγόν[οις, ἐ]|[ψ]ηφ[ί]σθι τῆι βουλῆι, [ἐπει]|[δὴ] ἠφάνισται αὐτῶ̃[ι ἡ στήλ]|[η], τοὺ[ς π]ροέ[δρ]ους, [οἳ ἂν τυγ]|[χ]ά[νωσιν π]ρο[εδρ]ε[ύ]ο[ντες ε]|[ἰ]ς τ[ὴν] πρώτην ἐκκ[λησίαν π]|ρ̣οσ[αγ]αγεῖ[ν] αὐτὸν κ[αὶ χρη|μα[τίσ]αι…

[207] There are decrees that may fall into the same category as these but are less explicit in their citation of prior enactments. Thus *IG* II² 226.1-5: ἡ πολιτ]|εία ἡ δοθ[εῖ]σα [τῶι πατρὶ κα]|ὶ τῶι πάππωι κα[ὶ αἱ ἄλλαι δ]|ωρειαὶ νν ὑπάρχ[ο]υσ[ι καὶ α]|ὐτῶι καὶ τοῖς ἐκγόνο[ι]ς κα|ί εἰσι κύρ̣ιαι ("the citizenship given to his father and grandfather and the other gifts exist for him and his descendants and are valid.").

the legislation itself. One of the oldest and most vivid examples is a decree passed, in or around 427 B.C., for residents of Aphytis in the Chalkidike, in which the residents were granted certain trade privileges and saddled with certain financial responsibilities, all of which were modeled on the terms of a prior decree passed for a neighboring city, Methone:

> Let them import up to to ten thousand *medimnoi* of grain. And let the price for them be exactly [sc. as was decreed] for the Methonaians, and let the Thrambaioi maintain the archons in Aphytis from their own resources in accordance with their number. And let the other cities pay exactly as for the Methonaians in accordance with the selfsame decree.[208]

It is remarkable, odd even, that the price and the payment are never explicitly stipulated. Consequently, the decree for the Methonaians is not merely cited as justification. Instead, it contains the specific price that is not named in the decree for the Aphytoi and Thrambaioi. The substance of the decree for the Aphytoi and Thrambaioi, therefore, can only be understood in light of the decree for the Methonaians. And this cannot be chalked up to sloppy drafting or a sign that Athenians were still figuring out how to draft legislation, because it seems to have happened somewhat regularly.

Nearly a century later it was resolved "that there be also for the Elaiousioi those very things which the people decreed for the Chersonites" without instructing us what

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[208] *IG* I^3 62.4-7: ἡ δὲ τιμ]ὴ ἔστω αὐτο[ῖς καθάπερ Μ]|[ε]θωναίοις· τὸς δὲ ἄρχοντας σι[τοδοτό]ντων τὸς ἐν Ἄ[φυτι παρ᾽ ἑαυ]|[τῶ]ν Θραμβαῖοι κατὰ [τ]ὸ πλήθος· σ[υντελ]όντων δὲ καὶ α[ἱ ἄλλαι πόλ]|[ε]ις καθάπερ Μεθωναίοις κατὰ τὸ [αὐτὸ]ν ψήφισμα

was decreed for the Chersonites.[209] Twenty years before this decree was passed, the Athenians enacted a treaty, via decree, in which it was resolved that so long as the Greek cities in the Chersonese paid their traditional tribute to the Thracian royals and the contribution to the Athenians, "they are to be free and independent allies of the Athenians on exactly the same terms as they swore to Berisades and Amadokos and Kersebleptes."[210] Those terms were not defined any further in the text. A resolution passed for Hebryzelmis king of the Odrysians offered him praise and established "that he have the very same things as his ancestors" without explicitly identifying what those things are.[211] In the decree that established the Second Athenian Confederacy, the proposer of which went to great lengths to specify that his terms did not violate the terms of the so-called King's Peace,[212] it was resolved that it be possible for anyone who wanted to be allies of the Athenians and their allies "on the same terms as the Chians and Thebans and the other allies."[213] This was not a habit of one or two proposers

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[209] *IG* II³ 309.8-11: εἶναι κα|ὶ τοῖς Ἐλαιουσίοις τὰ αὐτά, ἄπ[ερ] | ὁ δῆμος ἐψήφισται τοῖς Χερρ[ονη]|σίταις·

[210] *IG* II² 126.13-18: τὰς δὲ πόλει]ς τὰς Ἑλληνίδας τὰς ἐ[ν Χερρονήσω]||ι ὑποτελούσας Β]ηρισάδει καὶ Ἀμαδόκ[ωι καὶ Κερσ]||εβλέπτηι τὸμ φό]ρον τὸμ πάτριον καὶ Ἀ[θηναίοις τ]||ὴν σύνταξιν, ἐλε]υθέρας εἶναι καὶ αὐτονό[μους συ]||μμάχους οὔσας Ἀ]θηναίοις καθὰ ὤμοσαν κα[ὶ Βηρισ]||άδει καὶ Ἀμαδόκω]ι καὶ Κερσεβλέπτηι·.

[211] *IG* II² 31.4-9: Ε]||ὔα]ν[δρ]ος εἶ[πε]ν· ἐ[π]αινέσαι μὲν Ἐβ[ρύζε]|λμ[ι]ν τὸν βα[σ]ιλέα τὸν Ὀδρυσῶν, ὅτ[ι ἐστ]|ὶ[ν] ἀνὴ[ρ ἀγαθ]ὸς [π]ερὶ τὸν δῆμον τὸ[ν Ἀθη]||ναίων [κα]ὶ ἔναι αὐτῶι ἅπερ τοῖς π[ρογό]|νοι[ς] ἅπα[ν]τ[α].

[212] Sickinger (2002) 159-16; Dmitriev (2011) 51.

[213] *IG* II² 43.15-25: ἐάν τις βόλ|[ηται τῶν Ἑλ]λήνων ἢ τῶν βαρβάρων τῶν ἐν | [ἠπείρωι ἐν]οικόντων ἢ τῶν νησιωτῶν, ὅσ|[οι μὴ βασι]λέως εἰσίν, Ἀθηναίων σύμμαχ|[ος εἶναι κ]αὶ τῶν συμμάχων, ἐξεῖναι αὐ[τ]|ῶ[ι ἐλευθέρ]ωι ὄντι καὶ αὐτονόμωι, πολι|τ[ευομέν]ωι πολιτείαν ἣν ἂν βόληται μή|τε [φρορ]ὰν εἰσδεχομένωι μήτε ἄρχοντα | ὑπο[δεχ]ομένωι μήτε φόρον φέροντι, ἐπὶ | δὲ τ[οῖς] αὐτοῖς ἐφ οἷσπερ Χίοι καὶ Θηβαῖ|οι κα[ὶ] οἱ ἄλλοι σύμμαχοι. A treaty with Byzantium is published as *IG* II² 41.4-7: ἐψηφ[ίσθαι τῶι δήμωι] | ἔναι Βυζ[αντίος Ἀθηναίων] | συμμάχος κ[αὶ τῶν ἄλλων συ]|μμάχων· τὴν [δὲ συμμαχίαν ἔ]|ναι αὐτ[οῖς καθάπερ Χίοις].

drafting minor legislation. This was a habit that persisted at least from the Peloponnesian war through the latter half of the fourth century.

In all of these decrees, the citation of a prior enactment is enough to establish the specific substance of the agreement. None of them could be fully understood except by reference to these prior enactments. Perhaps they were read and cited on the floor of the council or assembly, so that it was unnecessary to specify, in the proposal, what privileges were being granted, if we assume that Athenians cared to know the specific details of what they were voting for.[214] Even if we do not, anyone who wanted to invoke those privileges in the future would by necessity have to cite both enactments.

The manner in which prior enactments in Athenian decrees were cited may reflect the fact that decrees were sometimes drafted on the floor of the council or assembly. There it may have been clear to all what price the Methonians (and hence the Aphytoi) were to import grain at, what privileges were granted to the Chersonites, what were the terms of the treaty sworn with the Thracian kings, the grants bestowed on the ancestors of Hebryzelmis – especially if the decree in which those privileges and terms were set out had been introduced into discussion. On the other hand, some kind of

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[214] It is harder to interpret a text like *IG* II² 33.5-9: εἶ]ναι δὲ [καὶ το]|[ῖ]ς ἄλλο[ι]ς το[ῖς φεύγοσι] Θασί[ων ἐπ' ἀ]|ττικισμῶι τ[ὴν ἀτέλει]αν καθά[περ Μ]|αν[τ]ινε[ῦ]σιν [ἦν· ἀπογρά]ψαι δὲ [αὐτῶν] | τὰ ὀνόματα Ν[αύμαχον? κ]αὶ Ἔχφα[ντον]. ("There shall be also for the others of the Thasians who are in exile because of their siding with Athens tax-immunity exactly as there was for the Mantineans, and Naumachos and Echphantos are to record their names.)" If the grant of *ateleia* was defined any further in the decree for the Mantineans, then the specific terms of *ateleia* for the fugitives Thasians would be defined by that prior decree. If the grant of *ateleia* in the decree for the Mantineans was just a blanket grant, then the decree for the Thasians is not citing that for the Mantineans to establish specific legal rights but simply as justification.

attention to the text of a prior enactment seems to lie behind a decree like the one drafted for Phormio and Karphinas by Hegesippos. In the rest of this chapter it will be argued, on the basis of close study of a handful of decrees that survive mostly intact, that attention to the details and logic of documents on the floor and of prior enactments was a feature of Athenian decree-drafting all the way back into the fifth century.

3.4.2: Hewing to the Letter of the Law in *IG* II³ 298 and *IG* II³ 299

As luck would have it, two decrees passed in the same assembly in 347/6 B.C. have survived. Both are framed as responses to letters. Both were written by well-known politicians of the 340s: Stephanos son of Antidorides of the deme Eroiadai and Androtion the son of Andron of the deme Gargettos. In one of the decrees enough of the text survives for us to gather that envoys from Mytilene had delivered speeches and that the treasurer of the Paralos and the commander Phaidros had sent a joint letter in which they made recommendations concerning the financial contributions owed by the Mytileneans, who appear to have come to ensure that a treaty between Athens and Mytilene was still in force.[215] The other decree survives almost intact and was proposed

[215] *IG* II³ 299.1-14: Στέφανος Ἀντιδωρίδου Ἐ[ροιάδης] | εἶπεν· περὶ ὧν λέγουσιν οἱ πρ[έσβεις τ]|ῶν Μυτιληναίων καὶ ὁ ταμίας [τῆς Παρά]|λου καὶ Φαῖδρος ὁ στρατηγὸς ἐ[πέστει]|λεν, δεδόχθαι τῶι δήμωι· τὴν μὲ[ν φιλία]|ν καὶ τὴν συμμαχίαν [ὑ]πάρχειν [τῶι δήμ]|ωι τῶι Μυτιληναίων [π]ρὸς [τ]ὸν δ[ῆμον τὸ]|ν Ἀθηναίων, ἢ[ν] δ[ι]έθεντο πρὸς ἀ[λλήλας] | αἱ πόλεις· τὰ δὲ χρήματα τὰ ἐκ τ[ῆς συντ]|άξεως Μυτ[ιλ]ηναίο[ι]ς γιγνόμε[να ("Stephanos son of Antidorides of the deme Eroia proposed: regarding what the envoys of the Mytileneans say, and the treasurer of the Paralos and the general Phaidros have sent via letter, be it resolved by the people that there exists the friendship and alliance with the Athenian people for the Mytilenean people, which the cities arranged with each other; moreover, that the money accruing from the syntaxis to the Mytileneans…").

in the assembly by Androtion in response to a letter and an embassy sent by the Spartokid royals, who had long been supplying Athens with a large amount of grain.[216]

The decree is framed as a response both to the letter and to the speeches delivered by the envoys.[217] While it is difficult to prove exactly which parts respond to the letter or the speeches, a series of clauses in the middle of the decree cite not only the letter but also prior decrees passed for Satyros and Leukon, Spartokos' and Pairisades' grandfather and father, respectively:

> Since they grant the very same gifts that Satyros and Leukon granted, [sc. be it resolved] that Spartokos and Parisaides shall have the gifts which the *demos* bestowed on Satyros and Leukon, and crown them at the great Panathenaia with a golden crown worth a thousand drachmas each; the *athlothetai* are to make the crowns in the year before the great Panathenaia in accordance with the decree of the people previously decreed for Leukon, and announce that the Athenian people crowns Spartokos and Pairisades the sons of Leukon because of their excellence and goodwill toward the Athenian people. And since they dedicate the crowns to Athena Polias, the *athlothetai* are to deposit the crowns in the temple having inscribed on them: Spartokos and Pairisades the sons of Leukon dedicated these to Athena having been crowned by the Athenian people.[218]

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[216] Thus Moreno (2007) 207: "The figures of the yearly quantities of imported grain can be plainly read in Demosthenes and Strabo. Demosthenes gives approximately 400,000 medimnoi per year from the Bosporan kingdom alone. Strabo says that Leucon sent 2,100,000 medimnoi from Theodosia to Athens; that equals about 260,000 medimnoi per year in the eight years between the opening of that port shortly before 355 and the death of Leucon in 349/8."

[217] *IG* II² 212.8-11: Ἀνδρωτίων Ἄνδρωνος Γαργήττ[ι]ος [ε]ἶπεν· π[ε]|ρὶ ὧν ἐπέστειλε Σπάρτοκος κ[αὶ] Παιρ[ισά]δ[η]|ς καὶ οἱ πρέσβεις οἱ ἥκοντ[ε]ς π[α]ρ' αὐτῶν ἀπ[α]|γγέλουσιν, ἀποκρί[ν]ασθαι αὐ[τ]οῖ[ς] ("Androtion son of Andron of Gargettos proposed: concerning what Spartokos and Pairisades wrote in their letter and the envoys arrived from them report, answer them…").

[218] *IG* II² 212.20-39: [ἐπ]ε[ι]δὴ δὲ [τὰ]ς δω[ρει]ὰς διδόασι|ν Ἀθηναίοι[ς ἅσ]περ Σ[άτ]υρος καὶ Λεύκων ἔδο|σαν, εἶναι [Σπαρτ]ό[κ]ωι [κ]αὶ Παιρισάδει τὰς δ|ωρειάς, ἃς [ὁ δῆμ]ος ἔδωκε Σατύρωι καὶ Λεύκω|νι καὶ στεφ[ανοῦν] χρυσῶι στεφάνωι Παναθη|ναίοις το[ῖς μεγ]άλοις ἀπὸ χιλίων δραχμῶν | ἑκάτερ[ο]ν· [ποιε]ῖσθαι δὲ τοὺς στεφάνους το|ὺς ἀθλοθέ[τας] τῶι προτέρωι ἔτει Παναθηνα|ίων τῶν μεγ[άλ]ων κατὰ τὸ ψήφισμα τοῦ δήμου | τὸ πρότερον ἐψηφισμένον Λεύκωνι καὶ ἀνα|γορεύειν ὅτι στεφανοῖ ὁ δῆμος ὁ Ἀθηναίων | Σπάρτοκον καὶ Παιρισάδην τοὺς Λεύκωνος | παῖδας ἀρετῆς καὶ εὐνοίας ἕνεκα τῆς εἰς τ|ὸν δῆμον τὸν Ἀθηναίων· ἐπειδὴ δὲ τοὺς στεφ|άνους ἀνατιθέασι τῆι Ἀθηνᾶι τῆι Πολιάδι | τοὺς ἀθλοθέτας εἰς τὸν νεὼ ἀνατιθέναι το|ὺς στεφάνους ἐπιγράψαντας· Σπάρτοκος | καὶ Παιρισάδης Λεύκωνος παῖδες ἀνέθεσα|ν τῆι Ἀθηναίαι στεφανωθέντες ὑπὸ τοῦ δήμ|ου τοῦ Ἀθηνα[ί]ων.

"Gift" is the generic word, in Athenian law, for a legal privilege, granted by letter if bestowed by a king or by decree if granted by the Athenian people. And in the gifts bestowed by each of the parties involved in this diplomatic relationship were not insignificant: honorary citizenship and tax-immunity for the royals,[219] importation and tax-privileges for merchants bringing grain to Athens.[220] It is unclear, on the basis of this decree, whether the privileges were specified in the letter. But the kings must have specified in the letter that, if they were to be granted the crown, they would dedicate it to Athena. How else are we to explain the fact that as soon as the crown is granted Androtion wrote, in the present tense, that the kings "dedicate the crowns to Athena Polias?" Clear too that the manufacture of the crown was to be carried out in accordance with a prior decree for Leukon and that the texts could (eventually) be read nearly side-by-side: a little further down in the decree, it was resolved "that the secretary of the council inscribe this very decree on a stone stele near the stele of Satyrus and Leukon."[221]

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[219] Dem. 20.29-30: ἐν δὲ τῷ 'τῶν ξένων' μὴ διορίζειν τῶν οἰκούντων Ἀθήνησιν, ἀφαιρεῖται καὶ Λεύκωνα τὸν ἄρχοντα Βοσπόρου καὶ τοὺς παῖδας αὐτοῦ τὴν δωρειὰν ἣν ὑμεῖς ἔδοτ' αὐτοῖς. ἔστι γὰρ γένει μὲν δήπου ὁ Λεύκων ξένος, τῇ δὲ παρ' ὑμῶν ποιήσει πολίτης· κατ' οὐδέτερον δ' αὐτῷ τὴν ἀτέλειαν ἔστιν ἔχειν ἐκ τούτου τοῦ νόμου. ("in not distinguishing "foreigners" from "those foreigners dwelling in Athens," he deprives Leukon the ruler of the Bosporos and his children of the gift which you granted them. For by birth Leukon is a foreigner, in his adoption by you a citizen. But in neither respect can he have tax-immunity from this law.").

[220] Dem. 20.31: οὐ γὰρ μόνον διὰ τὸ τὸν τόπον τοῦτον σῖτον ἔχειν πλεῖστον τοῦτο γίγνεται, ἀλλὰ διὰ τὸ κύριον ὄντα τὸν Λεύκων' αὐτοῦ τοῖς ἄγουσιν Ἀθήναζε ἀτέλειαν δεδωκέναι, καὶ κηρύττειν πρώτους γεμίζεσθαι τοὺς ὡς ὑμᾶς πλέοντας. ("for this happens not only because the place has the most grain, but because Leukon, who is in power over it, has given to those bringing grain to Athens immunity from taxation and announces that those sailing to you are the first to load their ships.").

[221] *IG* II² 212.44-47: ἀναγρ|άψαι δὲ τὸ ψήφισμα τόδε τὸγ γραμματέα τῆ[ς] | βουλῆς ἐν στήληι λιθίνηι καὶ στῆσαι πλη[σ]|ίον τῆς Σατύρου καὶ Λεύκωνος.

Either Androtion consulted the prior decree for Leukon, in its inscribed form or in the archives, before the assembly met and decided to propose that the crown be made in accordance with the decree through which a crown was previously bestowed on Leukon.[222] Or Spartokos and Pairisades cited, in their letter, the decree in which the directions for Leukon's crown were written, and then Androtion, since he was drafting a decree that explicitly responded to that letter, cited it accordingly. In either case, we have here an Athenian decree that is in part a line-by-line response to a royal letter, and that hangs some of its resolutions explicitly on the citation of a prior enactment for one of the kings. This is, I urge, a kind of miniature, in documentary form, of the kind of speech delivered by Hegesippos.

Together, these two decrees offer a perspective on Athenian diplomacy that is useful precisely because they reflect deliberations in a selective and narrow way. Assemblies lasted half a day at least and sometimes a full day.[223] It is certain that the Mytileneans, given that they had revolted and were seeking to return to the alliance with Athens, did not simply show up and ask whether the alliance still existed or not. Certain, too, that the envoys sent by Spartokos and Leukon did not just read the letter and take their seats. And yet it is clear that in the case of the Mytileneans, that one of the

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[222] Sickinger (2002) 161 suggests that "Androtion learned of these specific honors for Leucon, including the gold crown that he explicitly describes, from the stele that he mentions. He had consulted the inscription's text."

[223] Hansen (1991) 136-37.

justifications for the decree was whatever the *tamias* of the Paralos and the general Phaidros had written in their letter. And even clearer, in the case of the Bosporan royals, that Androtion, when drafting his proposal, paid more attention to the letter than to the speeches delivered by the envoys. Although it is unclear how often letters were sent by generals or by kings and how often decrees like the ones discussed above were drafted, such decrees were not an innovation of the middle and later fourth century B.C.[224]

3.4.3: Keeping to the Letter of the Law in *IG* I³ 40

Androtion was following in the footsteps of fifth-century politicians, as *IG* I³ 40 shows. This is a well-known decree, the most complete to survive from the age of the Athenian empire, one that has attracted scholarly attention because it appears to be an index of the popularity of the Athenian empire, a lexicon of the language of empire, and a window onto "the legal, political, and economic realities of its implementation."[225] It is also, I urge, early evidence of an Athenian tendency to build legislation out of legislation.

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[224] *IG* II² 103.6-13: [Πάν]διος εἶπεν· περὶ ὧν οἱ πρέσβεις ο[ἱ π]||[αρὰ] Διονυ[σ]ίο ἥκοντ[ε]ς λέγοσιν, δεδ[όχθ]||[αι τῆ]ι βουλῆι· περὶ μὲν τῶν γρα[μ]μά[των ὧ]||[ν ἔπε]νψεν Διονύσιος [τῆς] ο[ἰκ]οδομ[ίας τ]||[οῦ νε]ὼ καὶ τῆς εἰρή[ν]ης τὸς συ[μ]μά[χους δ]||[όγμ]α ἐξενενκε[ῖν εἰς] τὸν δῆμον, [ὅτι ἂν α]||[ὐτο]ῖς βουλευ[ο]μ[έ]νοι[ς δοκ]ῆι ἄρι[στον ε]||[ἶνα]ι ("Pandios proposed: regarding what the envoys arrived from Dionysios say, be it resolved by the council; regarding, on the one hand, the documents which Dionysios sent for the building of the temple and the peace, that the allies introduce a resolution to the people, however it seem to them, when deliberating, to be best."). It is tempting to see a request made in the royal letter behind ll.26-30: καὶ [Δ]ιο[ν]υσίωι μὲν ἀ[ποπέμψαι τὸ]||[ν στέφ]ανον ὃν ἐψηφίσ[σ]το ὁ [δῆμος, στεφα]||[νῶσαι δὲ τὸς ὑ]εῖς τὸς Διον[υσίου χρυσῶ]||[ι στεφάνωι ἑ]κ[άτ]ερον [ἀ]πὸ χ[ιλίων δραχμ]||[ῶν ἀνδραγαθί]ας [ἕ]νε[κα καὶ φιλίας ("and send to Dionysios the crown which the people voted for him, and crown also the sons of Dionysios with a golden crown worth a thousand drachmas for their manliness and friendship.").

[225] Sosin (2014) 263-64.

Indeed, the very first clause of the decree that begins in line 40 runs: "Antikles proposed, to good fortune, that the Athenians and Chalkidians make the oath on the exact same terms the Athenian people decreed for the Eretrians."[226] From the start, then, this decree was premised on the text of another. That simple fact shaped the rest of the decree, and even an amendment to it, in ways that seem to have gone unremarked by scholars, whose attention has fallen more heavily on the interpretation of clauses in the decree that concern taxation, clauses that will not concern us here.

Once it was established that the Chalkidians were to swear the same oath as the Eretrians and that the Athenian generals were to see that this happened as quickly as possible, the proposer, Antikles, turned to the issue of the Chalkidian hostages (ll. 47-52):

> περὶ δὲ τῶν *h*ομέρον ἀποκ|ρίνασθαι Χαλκιδεῦσιν, *h*ότι νῦμ μὲν Ἀθε|ναίοις δοκεῖ, ἐᾶν κατὰ τὰ ἐφσεφισμένα· *h*|όταν δὲ δοκῆι, βολευσάμενοι ποέσοσι τὲ|ν διαλλα[γ]έν, καθότι ἂν δοκῆι ἐπιτέδ̣ειο|ν ἦναι Ἀθεναίοις καὶ Χαλκιδεῦσιν.

The Greek is normally taken to mean that the Athenians declined to release the hostages: "let them [sc. be as they are] in accordance with what was decreed."[227] On this view, "the things decreed" refers to a separate decree in which a prior decision to take hostages had

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[226] *IG* I³ 40.40-43: Ἀντικλῆς εἶπε· ἀγαθῆι τύχει τῆι Ἀθεναί|ον ποῆσθαι τὸν *h*όρκον Ἀθεναίος καὶ Χαλ|κιδέας, καθάπερ Ἐρετριεῦσι ἐφσεφίσατ|ο *h*ο δῆμος *h*ο Ἀθεναίον.

[227] Balcer (1978) 55: "concerning the hostages, a reply shall be given to the Chalkidians that for the present it seems best to the Athenians to leave the matter as decreed. But whenever it may seem best (to reconsider the matter), they shall come into council and make a truce, in whatever manner might seem suitable between the Athenians and the Chalkidians)." Dillon & Garland 302: "Regarding the hostages, they are to reply to the Chalkidians that the Athenians have for now resolved to leave things as decreed." Crawford and Whitehead (1983) 134: "that concerning the hostages reply should be made to the Chalkidians that for the moment Athenians have decided to leave things as they had voted."

already been made, which this decree upholds.[228] But there is no evidence for a prior decision. Nor is there evidence for the second stele that scholars think was joined to the left side of the stele on which Antikles' decree was cut,[229] on which this prior decision is thought to have been inscribed.[230] It is simpler to understand "the things decreed" to refer to the clauses of the oath established first for the Eretrians and then, by the initial clause of this decree, for the Chalkidians. For one thing, "the things decreed" is usually self-referential, that is, essentially a synonym for "this very decree."[231] And when "the

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[228] Ehrenberg (2010) 231: "refuses to change the preset position of Chalcidian hostages held by Athens."

[229] Meiggs and Lewis (1969) 140 suggest: "[t]his stele [i.e. *IG* I³ 40] concerns the settlement with Chalkis; it does not, however, record the main terms which will have been set out on the stele which was originally attached to the left. Our stele refers to this earlier decree and is a corollary to it: τὰ ἐφσεφισμένα l.49, possibly τὸ φσέφισμα in l.76, and the article in τὸν *h*όρκον of l.3." But now Lambert (2017) 21, on the basis of Rhodes & Osborne (forthcoming), notes: "the shallow cutting in the top of the stone probably served as a socket for the tenon of a decorative finial rather than the clamp that would be expected if there was an adjoining stele."

[230] The sole evidence for this prior agreement is Th. 1.114: καὶ Ἀθηναῖοι πάλιν ἐς Εὔβοιαν διαβάντες Περικλέους στρατηγοῦντος κατεστρέψαντο πᾶσαν, καὶ τὴν μὲν ἄλλην ὁμολογίᾳ κατεστήσαντο, Ἑστιαιᾶς δὲ ἐξοικίσαντες αὐτοὶ τὴν γῆν ἔσχον ("And the Athenians again having crossed over to Euboea reduced all of it under the generalship of Pericles, and the rest of it they settled by agreement, but uprooting the Hestiaians they took possession of the land.") But it is not clear that Thuycides here refers to a particular agreement, whether *IG* I³ 40 or one distinct from it.

[231] *IG* II² 223.8-10: ὅπως δ' ἂν καὶ ὁ | δῆμος εἰδὼς τὰ ἐψηφισμένα τῆι βουλῆι περὶ Φανοδήμου τιμήσει καὶ αὐτὸς [κ]αὶ στεφανώσει ἐὰν δοκῆι τῶι δήμωι καθάπερ τῆι βουλῆι, τοὺς προέδρους οἳ ἂν λάχωσιν προεδρεύειν ἐν | τῶι δήμωι εἰς τὴν πρώτην ἐκκλησίαν χρηματίσαι περὶ Φανοδήμου, καὶ ἀναγ[νῶ]ναι τόδε τὸ ψήφισμα τὸγ γραμματέα τῶι δήμωι ("so that therefore the people, knowing the things decreed by the council concerning Phanodemos, will itself honor and crown him if it seem good to the assembly as it does to the council, the *proedroi*, whoever happen to serve as *proedroi* in the assembly at the next session of the assembly, introduce the matter concerning Phanodemos, and that the secretary read this decree to the assembly…"). *IG* I³ 98.21-23: ταῦτ[α μὲν ἔστω ἐψ]||ηφισμένα ὅσης Ἀθηναῖοι [κρατοῖσι πᾶσ]||ι τοῖς Πυθοφάνος κατὰ τα[ὐτά·(let these be decrees wherever the Athenians hold sway for all those belonging to Pythophanes in accordance with the same"). *IG* I³ 46.24-26: ἐ]ὰν δει τις ἐπιφσεφίζει παρὰ τὲ[ν στέλ]||[εν ἢ ῥέ]τορ ἀγορεύει ἢ προσκαλε͂σθα[ι ἐγχερ]||[ει ἀφαι]ρε͂σθαι ἢ λύεν τι τὸν *h*εφσεφι[σμένον] ("if anyone puts a motion to a vote contrary to the stele, or rhetor proposes or attempts to call to remove or annul any of the things decreed."). *IG* I³ 84.18-20: ὁ δὲ βασιλεὺς ἐὰν μὲ ποιέσει τὰ ἐφσεφισμένα ἢ ἄλλ|ος τις οἷς προτέτακται περὶ τούτον ἐπὶ τε͂ς Αἰγείδος πρυτανεί|ας, εὐθυνέσθω μυρίεσι δραχμε͂σιν. (If the king does not do the things decreed, or anyone else to whom instructions have been given in regards to these matters, in the prytany of Aegeis, let him be fined ten thousand drachmas.").

things decreed" does not refer to "this very decree", it refers to prior legislation of present concern and perhaps even on the floor of the council or assembly.[232] The latter, I urge, is the most sensible meaning of "the things decreed" in *IG* I³ 40; it refers to the oath to be sworn by the Chalkidians, the terms of which had already been established by the decree passed for the Eretrians, in accordance with which the hostages were to be handled.

But they were not, as consensus holds, to be kept as hostages, at least not technically. Instead, I suggest, Antikles proposed:

> Concerning the hostages, answer the Chalkidians that for the moment it seems best to the Athenians to permit them [sc. to be] in accordance with what is decreed, but whenever it seems best they shall, having taken counsel, make the exchange, in whatever way seems good to the Athenians and Chalkidians.

Among other things, the oath required the Athenians to swear: "I will not seize anyone" (ll.7-8: οὐδὲ χσυλλέφσο|μαι). One seized hostages.[233] To let the Chalkidians remain as hostages after the Athenians swore the oath, which was to be undertaken as soon as possible, would have made the Athenians look like they were already not honoring the

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[232] *IG* II² 1.53-54: ἐψηφίσθαι δὲ Ἀθηναίων τῶι δήμωι κύρια | [ἦναι τὰ ἐψηφισ]μένα πρότερον περὶ Σαμίων καθάπερ ἡ βολῆ προβολεύσασα | [ἐς τὸν δῆμον ἐσ]ήνεγκεν. Here "the things decreed previously" were actually discussed on the assembly floor (see above ch. 2 36-38).

[233] Thus Electra tells Orestes to seize Hermione, the daughter of Helen, on her way back from the tomb of Clytemnestra (Euripides *Orestes* 1189): συλλάβεθ' ὅμηρον τήνδ', ὅταν στείχηι πάλιν. ("take her hostage whenever she makes her way back again"). The simple form of the verb is more commonly used, as in Thucydides 1.57: ἐπιστέλλουσι τοῖς ἄρχουσι τῶν νεῶν Ποτειδεατῶν τε ὁμήρους λαβεῖν καὶ τὸ τεῖχος καθελεῖν ("they ordered the archons of the new Potidaians both to take hostages and to tear down the wall.").

oath.[234] On the other hand, the Chalkidians would not swear the oath until the envoys elected by the assembly reached Chalkis, assembled all of the citizens above the determined age, and made them swear the oath.[235] To hand over the hostages meant giving up the only carrot the Athenians could dangle in front of the Chalkidians, who might conceivably, if the hostages were immediately returned, change their mind about swearing an oath that bound them in fealty to their conquerors.[236]

This was a real bind. Antikles solved it, I propose, by drafting a set of clauses that conformed to the logic of the oath insofar as it released the Chalkidians formally from captivity, but delayed the formal exchange of hostages. He did not propose, as scholars have long understood, "let [the hostages] remain [here in Athens] in accordance with what is decreed [in an earlier enactment according to which the

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[234] The generals were ordered to make sure the entire council and all the dikasts swore the oath (*IG* I³ 40.19-20: *h*όπος δ ἂν [ὀ]μόσοσιν *h*άπαντες, ἐπιμελ\όσθον *h*οι στ[ρ]ατεγοί). To this Antikles added another stipulation, that the generals should see to it that the oath was taken as possible (*IG* I³ 40.43-44: *h*όπος δ ἂν τάχιστ|α γίγνεται, ἐπιμελόσθον *h*οι στρατεγοί.)

[235] *IG* I³ 40.32-39: ὀμόσαι δὲ Χαλκιδέον τὸς *h*εβῦντ|ας *h*άπαντας· *h*ὸς δ ἂμ μὲ ὀμόσει, ἄτιμον αὐτ|ὸν ἦναι καὶ τὰ χρέματα αὐτῦ δεμόσια καὶ | τῦ Διὸς τῦ Ὀλυμπίο τὸ ἐπιδέκατον *h*ιερὸ|ν ἔστο τῶν χρεμάτον.*h*ορκῦσαι δὲ πρεσβε|ίαν Ἀθεναίον ἐλθῦσαν ἐς Χαλκίδα μετὰ τ|ῶν *h*ορκοτῶν τῶν ἐν Χαλκίδι καὶ ἀπογράφ|σαι τὸς ὀμόσαντας Χαλκιδέον ("[sc. resolved that] all of the Chalkidians past puberty swear the oath, and whoever does not swear, he shall be deprived of his civic rights and his property shall be made public and let a tenth of the property be the sacred property of Olympian Zeus. The embassy of Athenians is to see the oath sworn once they have arrived in Chalkis with the oath-swearers in Chalkis and are to register those of the Chalkidians who swear.").

[236] Amit (1970) 147. Photius s.v. Ὅμηρον: ἐνέχυρον τὸ εἰς εἰρήνην διδόμενον ("Hostage: a security given with a view to peace.").

hostages were taken and for which there is no evidence]."[237] He proposed to "permit them [sc. to be] in accordance with what is decreed," which was a diplomatic way of acknowledging the oath, established by the decree for the Eretrians that preceded his own decree and that stipulated there would be no detainment of hostages, without immediately calling for the Chalkidians' release.

Now, there is, admittedly, no direct parallel for use of "permit" (ἐάω) to mean free hostages. But one did "release" (ἀφίημι) hostages.[238] And the two verbs were nearly synonyms.[239] They are sometimes hardly distinguishable in meaning except perhaps that the one chosen by Antikles was a bit more abstract, a bit less concrete than "release."[240] It

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[237] Ostwald (2002) 139-140 understands the clause to mean: "determinations made in an earlier decree (presumably the ὁμολογία) are to stand, pending final settlement in future negotiations between Chalkis and Athens."

[238] Plb. 21.3.4: παραπλησίως δὲ καὶ τοὺς τῶν Λακεδαιμονίων ὁμήρους ἀφῆκε πλὴν Ἀρμένα τοῦ Νάβιδος υἱοῦ ("around this time they also released the hostages of the Lakedaimonians except for Armen the son of Nabis"). One could be released from hostagehood, as in *IG* I³ 118.37-42: Ἀπο]λλόδορον δὲ τὸν Ἐμπέδο ἐπαινέσαι καὶ ἀφε͂ν|[α]ι αὐτὸν τε͂ς ὁμερέας καὶ [ἐ]χσαλεῖφσαι τὰ ὀνόμα|[τα] τῶν ὁμέ̣[ρ]ον τῶν Σελυμ[β]ριανῶν καὶ τὸν ἐγγυε|[τὸν α]ὐτὸν [α]ὔριον τὸν γραμ[ματ]έα τε͂ς βολε͂ς [ὅ]πο | [ἐσὶ ἀν]ᾳγεγ[ρ]αμμένοι̣ ἐναντίον τῶμ πρυτάνε|[ων· ….] ("[sc. resolved] to praise Apollodoros the son of Empedos and release him from captivity and that the secretary of the council erase, in front of the prytaneis, the names of the hostages of the Selymbrians and their guarantors tomorrow where they are recorded.").

[239] Hesychius s.v. **ἐᾶν**· ἀφιέναι. The equivalency is asserted all over the scholia to fifth century Athenian literature. It does appear to be ancient from the way Xenophon reports the request made by Derkylidas of Sparta and the eventual answer to that request, the King's Peace. When the Persians asked Derkylidas what would bring the Spartans to peace, according to X. *HG* 3.2.20: ὁ μὲν δὴ Δερκυλίδας εἶπεν, εἰ αὐτονόμους ἐῴη βασιλεὺς τὰς Ἑλληνίδας πόλεις ("Derkylidas said, if the king should leave the Greek cities independent."). The rescript read by Tiribazos ran thus (X. *HG* 5.1.31): Ἀρταξέρξης βασιλεὺς νομίζει δίκαιον τὰς μὲν ἐν τῇ Ἀσίᾳ πόλεις ἑαυτοῦ εἶναι καὶ τῶν νήσων Κλαζομενὰς καὶ Κύπρον, τὰς δὲ ἄλλας Ἑλληνίδας πόλεις καὶ μικρὰς καὶ μεγάλας αὐτονόμους ἀφεῖναι πλὴν Λήμνου καὶ Ἴμβρου καὶ Σκύρου· ταύτας δὲ ὥσπερ τὸ ἀρχαῖον εἶναι Ἀθηναίων ("Artaxerxes the king thinks it just that the cities in Asia be his and of the islands Klazomenai and Kypros, but that [it is just] to let free the other Greek cities both large and small except Lemnos and Imbros and Skyros; and that these are to be the Athenians' as of old.").

[240] Andoc. 3.20: ὅμως Ὀρχομενὸν ἀφιέντες αὐτόνομον τὴν εἰρήνην ποιοῦνται καὶ ταῦτα μάτην πεπόνθασιν· ἐξῆν γὰρ αὐτοῖς καὶ τὴν ἀρχὴν ἐῶσιν Ὀρχομενίους αὐτονόμους εἰρήνην ἄγειν ("all the same, having released

seems plausible that Antikles opted for the less concrete, more abstract term as a way of keeping the oath without compelling the Athenians to release the hostages immediately. If right, then in this decree we have, in a document dated either to 446/5 or 424/3, a case in which the proposer drafted a proposal that conformed to the logic of a prior decision that he himself invoked as a model and that met the strategic demands of the present situation.

There would be nothing odd, surprising, or anachronistic about that. We know Athenians were careful, diplomatic even, to frame decrees in a way that technically conformed to existing treaties and allowed them, at the same time, to pursue their interests and advantage. When the Athenians decided, after two assemblies and much debate, to form an alliance with the Corcyreans, they were careful to frame the language of that alliance in such a way as to make sure that it did not compel them to break the treaty with Sparta.[241] And when they decreed that their generals were to sail to Corcyra,

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Orchomenos as independent they are making peace and they have done this in vain, for it had been possible for them to be at peace by yielding Orchomenians independent at the beginning."). S. *Aj.* 753-55: τὸ νῦν τόδε / Αἴανθ' ὑπὸ σκηναῖσι μηδ' ἀφέντ' ἐᾶν, / εἰ ζῶντ' ἐκεῖνον εἰσιδεῖν θέλοι ποτέ. ("at present do not leave Ajax be, leaving him in the tents, if you ever wish to see him alive again."). Euripides F 974 [Nauck]: τῶν ἄγαν γὰρ ἅπτεται θεός, τὰ μικρὰ δ' εἰς τύχην ἀφεὶς ἐᾷ (for god seizes the great, but gives up the small to fortune).

[241] Th. 1.44: ἐν δὲ τῇ ὑστεραίᾳ μετέγνωσαν Κερκυραίοις ξυμμαχίαν μὲν μὴ ποιήσασθαι ὥστε τοὺς αὐτοὺς ἐχθροὺς καὶ φίλους νομίζειν (εἰ γὰρ ἐπὶ Κόρινθον ἐκέλευον σφίσιν οἱ Κερκυραῖοι ξυμπλεῖν, ἐλύοντ' ἂν αὐτοῖς αἱ πρὸς Πελοποννησίους σπονδαί), ἐπιμαχίαν δ' ἐποιήσαντο τῇ ἀλλήλων βοηθεῖν, ἐάν τις ἐπὶ Κέρκυραν ἴῃ ἢ Ἀθήνας ἢ τοὺς τούτων ξυμμάχους ("in the second [sc. assembly] they changed their mind toward an alliance with the Corcyreans being made not so as to consider the same people enemies and friends (for if the Corcyreans urged them to sail against Corinth, the treaty with the Peloponneans would have been broken

they were careful to frame their orders in such a way as to avoid breaking the treaty.[242] The point was to hedge their bets through careful attention to the text of a formal enactment while still gaining the benefit of an alliance with Corcyra, all without technically in their eyes breaking the terms of the peace. The Corinthians felt otherwise.[243]

One suspects that the Chalkidians did too when Antikles proposed to yield their citizens as established by the terms of the oath, but not to give them up until a later time when the Athenians and Chalkidians could determine how to make the exchange. The Chalkidians wanted justice. Or at least mercy. They got diplomacy instead, and not the diplomacy of hearts and minds. Athenian diplomacy, as this chapter has argued, was sometimes a matter of close and attention to obligations defined on paper. In many cases that must have seemed to their fellow Greeks like no justice at all.

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by them), but they made a defensive alliance, to help each other if anyone should attach Corcyra or Athens or their allies.").

[242] Th. 1.45: τῶν Κορινθίων ἀπελθόντων οὐ πολὺ ὕστερον δέκα ναῦς αὐτοῖς ἀπέστειλαν βοηθούς· ἐστρατήγει δὲ αὐτῶν Λακεδαιμόνιός τε ὁ Κίμωνος καὶ Διότιμος ὁ Στρομβίχου καὶ Πρωτέας ὁ Ἐπικλέους. προεῖπον δὲ αὐτοῖς μὴ ναυμαχεῖν Κορινθίοις, ἢν μὴ ἐπὶ Κέρκυραν πλέωσι καὶ μέλλωσιν ἀποβαίνειν ἢ ἐς τῶν ἐκείνων τι χωρίων· οὕτω δὲ κωλύειν κατὰ δύναμιν. προεῖπον δὲ ταῦτα τοῦ μὴ λύειν ἕνεκα τὰς σπονδάς. ("the Corinthians went away, and not much later they sent to them ten ships in aid; Lakedaimonios the son of Kimon and Diotimos the son of Strombichos and Proteas the son of Epikles were generals. They instructed them not to fight the Corinthians in a sea-battle, unless they sailed against Corcyra and were going to disembark there or at any of the latter's territories, and thus to prevent them as they were able. And they instructed them in these things in order not to break the truce.").

[243] Th. 1.87-88.

3.5 Conclusion

If Athenians felt no pull toward the demands of kinship (even the fictive kind), of friendship, of the customs of the Greeks, then there would be no evidence for those demands in diplomacy as it was done by Athenians. Still, it is telling that references to those demands appear mainly in works of literature and in speeches delivered to oligarchs and kings. With one or two exceptions they are absent from the decrees that were Athenians' chief instrument of communication on the international stage. And these decrees reveal, on close study, that Athenian diplomacy was shaped as much by the demands of documents as by the norms of international life, the stuff of hearts and minds.

That our evidence for the diplomacy of culture and the diplomacy of documents splits so neatly between literature and the documentary record suggests that Athenians (consciously or not) policed the boundaries between these domains. Some of the Athenians who drafted many of the documents and compiled the dossiers discussed in the pages above had been students of the Athenians in whose literary works we find the most vivid evidence for the diplomacy of culture. Androtion, for example, was no minor politician: "[f]or at least forty years he served the state, as *epistates*, as *bouleutes*, as governor of allied territory and as ambassador."[244] He was elite in birth and in wealth.[245]

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[244] Harding (1976) 199.

He was not a new politician, an upstart, or an innovator, and although he was perhaps not entirely democratic in his sympathies, he was no oligarch, just a run-of-the-mill Athenian elite.[246] He was a student of Isocrates, whose speeches contain some of our richest evidence for the diplomacy of hearts and minds.[247] He was known to be a clever speaker.

We have seen in this chapter that he applied that cleverness to decrees that were diplomatic in nature. And we know that he handled the drafting of decrees with the same rigor that he brought to the crafting of speeches.[248] The fact that he drafted a decree with a close eye on the documents that formed part of the debate suggests that attention to the mundane details of paper was as much a part of being a rhetor as crafting and delivering fine speeches.

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[245] His wealth must have been considerable enough to lend as much as he did to Arkesine, by whom he was honored in *IG* XII 7 5.7-15: χρήματα δανείσας ἐγ καιρῶι τῆι π|όλει τόκον οὐδένα λαβ̃ὲν ἠθέλησεν, κ|αὶ τὸν μισθὸν τοῖς φρουροῖς ἀπορού|[σ]ηι τῆι πόλει παρ' ἑαυτ̃ὸ προαναλώσας, ἐ|π' ἐξόδωι τοὐνιαυτ̃ὸ κομισάμενος οὐ|δένα τόκον ἐπράξατο, καὶ τὴμ πόλιν ἐ|λάττω χρήματα δαπανᾶν δώδεκα μναῖ|ς παρὰ τὸν ἐνιαυτὸν ἕκαστον ἐποίησ|ε ("having loaned money in crisis to the city he was willing to take no interest, and having prepaid the pay to the garrisons for the city by himself when it was without resources, and taking he exacted no interest for a year, and reduced the city's expenditure by twelve minas each year.").

[246] Harding (1976) 199: "[b]elonging to neither party, perhaps he belonged to his own."

[247] Suda **s.v.** Ἀνδροτίων, Ἄνδρωνος, Ἀθηναῖος, ῥήτωρ καὶ δημαγωγὸς, μαθητὴς Ἰσοκράτους.

[248] Dem.22.70: κᾆτ' ἐπὶ μὲν ταῖς εἰσφοραῖς τὸν δημόσιον παρεῖναι προσέγραψεν ὡς δὴ δίκαιος ὤν, ὧν ἕκαστος ἀντιγραφεὺς ἔμελλεν ἔσεσθαι τῶν εἰσενεγκόντων ("And then in the matter of the levies he also wrote that a clerk should be present, as though he were being quite rigorous, as though each of those contributing to the levy was going to check every contribution."). On δίκαιος as "legally precise" see LSJ B.1b.

Conclusion

After a long discussion about the nature of rhetoric, Socrates sends Phaedrus off with a message for Lysias, for Homer, and "for Solon and whoever, calling them laws, wrote texts in *politikoi logoi*."[1] The phrase is elsewhere applied to genres like the funeral oration,[2] the literary compositions of Isocrates, and the speeches delivered in the council, assembly, and courts.[3] It has been translated as "democratic rhetoric."[4] It has been described as "a creative process through which speakers and audiences collaborate to invent ever more eloquent statements of who they are and what they should do."[5] It may even have been "a comprehensive, fluid term for rhetorical language in general."[6] Thus, to describe legislation in Athens as *politikos logos* is to suggest that legislation there was, like speech, a part of the rhetorical culture that developed in Athens from the last few decades of the fifth century onward.

As this dissertation has argued, this is true in the narrow sense that the paperwork of decree-making was carried out by rhetors in front of audiences in the council and assembly. But this dissertation has also emphasized that legislation in

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[1] Pl. Phdr. 278c: Σόλωνι καὶ ὅστις ἐν πολιτικοῖς λόγοις νόμους ὀνομάζων συγγράμματα ἔγραψεν·

[2] Pl. *Mx.* 249e. Loraux (1986) 241 n.107 stresses that the reference is to the genre of funeral oration, and given the fact that the center of the *Menexenus* is the reading of Aspasia's funeral oration, this seems likely.

[3] [Arist.] *Rh.Al.* 1421b.

[4] Poulakos (2004) 92.

[5] Hariman (2007) 225.

[6] Too (1995) 27.

Athens was 'rhetorical' in the broader sense that rhetors applied the care and craft that they brought to crafting speeches to drafting documents, and to employing those documents in deliberations at home and abroad. Thus, in this concluding chapter we shall examine a number of episodes in which it is clear, in light of the arguments made in the preceding chapters, that Athenians themselves conceived of the paperwork of decree-making in particular as another domain in which technicians of *logoi* could apply their craft.

As the first chapter of this dissertation argued, beyond the epigraphic habit so often treated as a paradigm of democratic writing was a nascent culture of documents, written on a variety of perishable materials, that were a central part of politics in Athens: call it a papyrological habit. If we picture that habit as Aristophanes and his audience did, then a papyrology of democratic Athens would include rhetors wielding decrees written on papyri and citizens devouring them in the council and the assembly. Moreover, we would have to imagine the rhetor as capable of applying his craft to that all-important paperwork of the council and assembly, decrees.

And they did apply that craft to decrees, as the second chapter of this dissertation argued. Athenian rhetors were the drafters of Athenian decrees, and they brought the same finesse to that work that they brought to oratory. We are given, in a speech of Aeschines, a picture of just how inventive rhetors were when drafting decrees. Magistrates who were embezzling public funds would arrange to be awarded crowns

before their term was up, so that the dikasts would be too ashamed to convict a citizen awarded a crown of embezzlement. According to Aeschines,

> A certain lawgiver, noticing this, framed a law, and an exceedingly fine law it is, explicitly forbidding the crowning of those who are subject to audit. And even though the lawgiver frustrated this [sc. giving out of crowns before audits] so well, expressions greater than the law have been discovered (εὕρηνται κρείττονες λόγοι τῶν νόμων), which will escape your notice, since you are deceived, unless someone explains them to you. For there are some, among those who contrary to the laws crown men who are subject to audit, who are by nature moderate – if at any rate anyone drafting decrees contrary to the law is moderate – and put something in front of their shame. For they additionally write in their decrees to crown a person subject to audit "whenever he has given his account and audits of his office." Now, the city is wronged equally. For the audits are frustrated by votes of praise and crowns. But the drafter of the decree shows to his readers that he has written an illegal clause and is ashamed of the wrong he has done.[7]

Now, in Aeschines' day it was law that "no decree neither of the council nor of the assembly is to have more authority than a law."[8] But there was apparently nothing illegal about a decree awarding a crown to a magistrate liable to audit, provided it incorporated an escape-clause "whenever he has submitted his audits." It is claimed throughout the speech that the absence of this clause is one of the things that made

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[7] Aeschin. 3.11-12: Κατιδὼν δέ τις ταῦτα νομοθέτης τίθησι νόμον καὶ μάλα καλῶς ἔχοντα, τὸν διαρρήδην ἀπαγορεύοντα τοὺς ὑπευθύνους μὴ στεφανοῦν. Καὶ ταῦτα οὕτως εὖ προκατειληφότος τοῦ νομοθέτου, εὕρηνται κρείττονες λόγοι τῶν νόμων, οὓς εἰ μή τις ὑμῖν ἐρεῖ, λήσετε ἐξαπατηθέντες. Τούτων γάρ τινες τῶν τοὺς ὑπευθύνους στεφανούντων παρὰ τοὺς νόμους οἱ μὲν φύσει μέτριοί εἰσιν, εἰ δή τις ἐστὶ μέτριος τῶν τὰ παράνομα γραφόντων, ἀλλ' οὖν προβάλλονταί γε τι πρὸ τῆς αἰσχύνης. Προσεγγράφουσι γὰρ πρὸς τὰ ψηφίσματα στεφανοῦν τὸν ὑπεύθυνον, ἐπειδὰν λόγον καὶ εὐθύνας τῆς ἀρχῆς δῷ. Καὶ ἡ μὲν πόλις τὸ ἴσον ἀδίκημα ἀδικεῖται· προκαταλαμβάνονται γὰρ ἐπαίνοις καὶ στεφάνοις αἱ εὔθυναι· ὁ δὲ τὸ ψήφισμα γράφων ἐνδείκνυται τοῖς ἀκούουσιν ὅτι γέγραφε μὲν παράνομα, αἰσχύνεται δὲ ἐφ' οἷς ἡμάρτηκε.

[8] Andoc. 1.87; ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι. Canevaro and Harris (2012) 118-119 have shown that the document is a forgery. But the authenticity of the law itself is confirmed by Dem. 23.218: οὐκ ἐᾷ ψήφισμ' ὁ νόμος κυριώτερον εἶναι νόμου ("the law does not allow a decree to have more authority than a law").

Ktesiphon's decree illegal.[9] More importantly, the expression appears in surviving copies of decrees, and we would not expect a decree to be published on stone with a phrase that was perceived to be illegal, even if there were citizens who, like Aeschines, felt that it ought to be.[10]

Thus, we need not accept Aeschines at face value when he claims that those who incorporated this escape clause into their decrees are showing that they recognize that they have drafted those decrees contrary to the laws. Rather, he is painting a picture in which drafters of decrees apply rhetorical craft to their work, as is implied by his charge that "expressions greater than the law have been discovered." The phrase is borrowed from the vocabulary of the rhetors, for whom "to discover a *logos"* implied skill and craft in the devising of speeches (often ones that are marked by cunning).[11] We are meant, I

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[9] See Aeschin. 3.20, 24, 26, 31, 203, and 230.

[10] The earliest example is IG II^3 306.11-13 (343 B.C.): ἐπειδὴ Φανόδημος Διύλλου Θυμαιτάδης καλ[ῶς κ]αὶ φ[ι]λοτίμως καὶ ἀδωροδοκήτως βεβούλευκεν λέγων καὶ πράττων τὰ ἄριστα ὑπὲρ τῆς βουλῆς καὶ | τοῦ δήμου τοῦ Ἀθηναίων καὶ τῶν συμμάχων, ἐπαινέσαι αὐτὸν ἀρετῆς ἕνεκα καὶ δικαιοσύνης τῆς εἰς τὴν βουλὴν καὶ τὸν δῆμον τὸν Ἀθηναίων [καὶ τοὺς συμμ]άχους καὶ στεφαν[ῶ]|σαι χρυσῶι στεφάνωι ἀπὸ : Χ : δραχμῶν, ἐπειδὰν τὰς εὐθύνας δῶι ("Since Phanodemos the son of Diullos Thumaitades well and honorably and incorruptibly has served as councillor, saying and doing the best things on behalf of the council and the assembly of the Athenians and the allies, [sc. it is resolved] to praise him for his excellence and justice toward the council and the Athenian people and the allies and crown him with a gold crown of a thousand drachmas, whenever he has submitted his audits.").

[11] Thus Dem. 20.125: Ὃν τοίνυν κακουργότατον οἴονται λόγον εὑρηκέναι πρὸς τὸ τὰς ἀτελείας ὑμᾶς ἀφελέσθαι πεῖσαι, βέλτιόν ἐστι προειπεῖν, ἵνα μὴ λάθητ' ἐξαπατηθέντες. ("it is better to explain beforehand, in order that it not escape your attention that you have been deceived, the most villainous argument they think they have devised with a view to persuading you to cancelling the grants of tax-immunity."). Note the parallel wiith Aeschines (above n. 7 where it is emphasized that the *logos* was devised in order to deceive the listeners). One of Isocrates former students, upon hearing his former teacher deliver a draft of the *Panathenaikos,* told him that he was trying to seem to censure the Spartans (for those were ill disposed to them) without actually doing so (Isoc. 12.240): ζητῶν δὲ τὰ τοιαῦτα ῥᾳδίως εὑρεῖν λόγους ἀμφιβόλους καὶ μηδὲν μᾶλλον μετὰ τῶν ἐπαινούντων ἢ τῶν ψεγόντων ὄντας, ἀλλ' ἐπαμφοτερίζειν δυναμένους καὶ πολλὰς ἀμφισβητήσεις ἔχοντας, οἷς

urge, to picture the rhetors who coined the expression "whenever he has submitted his audits" using their considerable ingenuity to skirt the spirit (without violating the letter) of the law.

Though Aeschines suggests that the rhetors who coined the phrase "whenever he has submitted his audits" pulled a fast one on their fellow Athenians, they were not always so easily conned, especially, it seems, in matters of diplomacy, as the third chapter of this dissertation argued. For evidence we need look no further than an anecdote about the deliberations held in 346 B.C., when the Athenians met to hear proposals for peace with Philip II of Macedon, in which it is evident that the people paid careful attention to decrees in diplomacy:

> Since they were unable (as they attempted) to write into the peace "except the Halians and the Phocians, but rather Philokrates was compelled by you to cancel this and to write openly "that the Athenians and their allies" [sc. partake in the decree of peace], Philip did not want any of his allies to swear this oath, since then they would not campaign with him against territories of yours which he now holds, and would have the oath as a pretext.[12]

Neither the Phocians nor the Halians were allies at the time. But the amendment

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χρῆσθαι περὶ μὲν συμβολαίων καὶ περὶ πλεονεξίας ἀγωνιζόμενον αἰσχρὸν καὶ πονηρίας οὐ μικρὸν σημεῖον, περὶ δὲ φύσεως ἀνθρώπων διαλεγόμενον καὶ πραγμάτων καλὸν καὶ φιλόσοφον. ("Seeking these things you easily devised arguments that were ambiguous and none more on the side of praisers or blamers but were able to play to both sides and with many ambiguities, which are shameful for one to use in the matter of contracts when contesting about one's greed, and no small sign of wickedness, but fine and philosophical when one is discoursing on the nature of men and affairs.").

[12] Dem. 19.159: τήν τε γὰρ εἰρήνην οὐχὶ δυνηθέντων ὡς ἐπεχείρησαν οὗτοι, 'πλὴν Ἁλέων καὶ Φωκέων,' γράψαι, ἀλλ' ἀναγκασθέντος ὑφ' ὑμῶν τοῦ Φιλοκράτους ταῦτ' ἀπαλεῖψαι, γράψαι δ' ἄντικρυς, 'Ἀθηναίους καὶ τοὺς Ἀθηναίων συμμάχους,' οὐκ ἐβούλετο τοῦτον ὀμωμοκέναι τὸν ὅρκον οὐδένα τῶν αὑτοῦ συμμάχων (οὐ γὰρ αὐτῷ συστρατεύσειν ἐφ' ἃ νῦν ἔχει τῶν ὑμετέρων ἔμελλον, ἀλλ' ἕξειν πρόφασιν τοὺς ὅρκους)

allowed for the possibility that, were either of them to become allies, they would fall under the scope of the oath. In other words, the people compelled Philokrates to draft a decree whose text was more flexible in scope, and hence was more useful for future purposes. Thus, this anecdote (whether fact or fiction) suggests that the Athenians were more attentive to proposals on the floor of the assembly than scholarship on deliberation in that forum has revealed. And that should come as no surprise given the material collected and discussed in the third chapter of this dissertation.

There we discovered that Athenians were conscious that the decree was their instrument of communication with other polities. There we saw that Athenian envoys built rigorous arguments out of close attention to the texts of documents that were decades old. There we encountered a number of decrees in which references to other documents seem to assume that all or some of the Athenians in the assembly were paying close attention to the language and logic of decrees. Many of those decrees involved minor honors for minor players. It is hardly surprising, then, that Athenians were keenly attuned to words on the page in 346 B.C., when Philip and his army were on their doorstep.

The rigorous attention paid to the paperwork of Athenian decrees in this dissertation reveals, I urge, that paperwork in Athens was not carried out or

conceptualized, as scholars have urged, in ways that can be called 'modern.'[13] Rather, as the anecdotes above suggest, Athenians conceive of the paperwork of decrees as a practice to which a citizen trained in rhetoric (broadly conceived) could apply his training.

Though these anecdotes belong to the fourth century, it is clear that Athenians citizens were drafting decrees in the council and assembly by the last decades of the fifth century. And even clearer that Athenians quickly realized that it was possible to apply the cunning and craft acquired in the study of rhetoric to decrees. For example, in Aristophanes' *Knights* the character Demos declares that "no one unbearded will address the people in assembly," and while his friend the Sausage-maker thinks he means the politicians Kleisthenes and Straton, he clarifies that he meant the young men who sit around discussing rhetoric, and whom he will "force to go hunting, keeping them from decrees."[14]

In *Clouds* we see why: one of the things that the young man Pheidippides will get out of his studies is a long decree,[15] and when he returns to his father, he has learned not

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[13] As it has been called by Pébarthe (2006) 348.

[14] Ar. *Eq.* 1373-1384: Δημ. οὐδ' ἀγοράσει γ' ἀγένειος οὐδεὶς ἐν ἀγορᾷ./Αλ. ποῦ δῆτα Κλεισθένης ἀγοράσει καὶ Στράτων;/ Δημ. τὰ μειράκια ταυτὶ λέγω τἀν τῷ μύρῳ,/ ἃ τοιαδὶ στωμύλλεται καθήμενα,/ "σοφός γ' ὁ Φαίαξ, δεξιῶς τ' οὐκ ἀπέθανεν./ συνερτικὸς γάρ ἐστι καὶ περαντικός,/ καὶ γνωμοτυπικὸς καὶ σαφὴς καὶ κρουστικός,/ καταληπτικός τ' ἄριστα τοῦ θορυβητικοῦ."/ Αλ. οὔκουν καταδακτυλικὸς σὺ τοῦ λαλητικοῦ;/ Δημ. μὰ Δί', ἀλλ' ἀναγκάσω κυνηγετεῖν ἐγὼ/ τούτους ἅπαντας, παυσαμένους ψηφισμάτων.

[15] Ar. *Nub.* 1019. Modern commentators have treated this as a joke about the size of his penis, but the scholiasts took it at face value. Thus Σ Clouds 1019 Holwerda understands the phrase to mean: ἀντὶ τοῦ "μεγάλα ψηφίσματα γράψεις." (For 'you will write long decrees.').

only how to undermine the law with sophisticated arguments but also that he can remake the law by drafting a new one. Thus, he tells his father, when his father objects to his proposal that sons should be beaten on the grounds that "nowhere is it law that a father should endure this:"

> Well was it not a man like you and I who first framed this law, and in speech persuaded the ancients to ratify it? Why then is it any less possible for me to frame a new law for sons that henceforth in the future they are to beat their fathers in turn, to release them from responsibility for any blows we took before the law was established, and to grant them the beatings as a gift? Consider roosters and other such beasts, how they defend themselves against their fathers; and yet how are they any different from us except insofar as they do not write decrees?[16]

Pheidippides makes the kind of argument associated with Protagoras and other intellectuals known to have visited Athens in the later fifth century.[17] But in addition to his knowledge of sophistic argument, he reveals, as scholars have shown, a deep

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[16] Ar. *Nub.* 1420-1429: Στ. ἀλλ' οὐδαμοῦ νομίζεται τὸν πατέρα τοῦτο πάσχειν./ Φε. οὔκουν ἀνὴρ ὁ τὸν νόμον θεὶς τοῦτον ἦν τὸ πρῶτον,/ ὥσπερ σὺ κἀγώ, καὶ λέγων ἔπειθε τοὺς παλαιούς;/ ἧττόν τι δῆτ' ἔξεστι κἀμοὶ καινὸν αὖ τὸ λοιπὸν/ θεῖναι νόμον τοῖς υἱέσιν, τοὺς πατέρας ἀντιτύπτειν;/ ὅσας δὲ πληγὰς εἴχομεν πρὶν τὸν νόμον τεθῆναι,/ ἀφίεμεν, καὶ δίδομεν αὐτοῖς προῖκα συγκεκόφθαι./ σκέψαι δὲ τοὺς ἀλεκτρυόνας καὶ τἄλλα τὰ βοτὰ ταυτί,/ ὡς τοὺς πατέρας ἀμύνεται· καίτοι τί διαφέρουσιν /ἡμῶν ἐκεῖνοι, πλήν γ' ὅτι ψηφίσματ' οὐ γράφουσιν;

[17] The fact that Pheidippides is to learn the Weaker Argument and the Stronger Argument evokes Protagoras, who claimed to teach how to make the weaker argument stronger (Arist. *Rhet*. 1402a). So do the references to refutation (*antilegein*), which is associated with Protagoras by Plato (see e.g. *Euthd.* 286b-C) and Isoc. 10.1-2, though note Schiappa (1991) 134: "there is nowhere a passage that represents the 'impossible to contradict' statement unequivocally as Protagoras' original words." And Pheidippides' argument, that the law can be changed because it is merely the product of a human lawgiver who long ago persuaded his fellow men to accept his law, evokes Protagoras' dictum that man is the measure of all things (Pl. *Tht.* 161c). But Papageorgiou (2004) 62 urges: "[i]t is too simplistic to argue…that Hetton logos is meant to represent only Protagoras. This would be to limit a complex nexus of ideas to one single figure. In his presentation of the Inferior logos, Aristophanes is lampooning not only Protagoras but also the whole sophistic movement."

knowledge of the vocabulary and syntax and principles of Athenian legislation.[18] Thus, his time with the sophists has equipped him to use that knowledge to undermine the law. And he does so not only with his arguments but with a newly fashioned decree, perhaps one that he himself has just drafted (if we may imagine him with a reed in his hand or perhaps holding up the text of his new law, given his reference to writing decrees).

This confluence of sophistic ingenuity and deep knowledge of the language of legal documents is not, I urge, a figment of the comic imagination. Rather, Athenians were already aware by the last decades of the fifth century that those who had experience with sophistic approaches to *logoi* could apply that craft to documents.[19] And did.

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[18] Harris (2002) 5 points out that "Aristophanes would not have imitated the language of Athenian laws and decrees so carefully unless he thought his audience was knowledgeable enough to appreciate the joke. His use of legal language clearly indicates that he expected the Athenians to be familiar with the expressions commonly found in laws and decrees."

[19] So, for example, according to Plato: "as cosmetics is to gymnastic training, so sophistry is to legislation, as cooker is the medicine, so rhetoric is to justice" (Pl. *Grg.* 465c: ὃ κομμωτικὴ πρὸς γυμναστικήν, τοῦτο σοφιστικὴ πρὸς νομοθετικήν, καὶ ὅτι ὃ ὀψοποιικὴ πρὸς ἰατρικήν, τοῦτο ῥητορικὴ πρὸς δικαιοσύνην.).

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