

Delfim F. Leão - Livio Rossetti  
Maria do Céu G. Z. Fialho (eds.)

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# THE LAWS OF ATHENS IN THE ARISTOTELIAN *ATHENAION POLITEIA*<sup>1</sup>

P. J. RHODES

For early Athens the *Athenaion Politeia* followed as its main source a work on Solon which used and cited both Solon's poems and his laws: there will not have been good evidence for the state of affairs before Solon, but the account of what Solon did is based on his laws and is to be relied on. For the remainder of its historical part the *Athenaion Politeia* followed a variety of sources: some of these sources sometimes consulted the texts of decrees of the assembly, but they did not do so on all the occasions when they could have done. For the analysis of the contemporary constitution the *Athenaion Politeia* had no predecessor, and that part of the work is based largely on direct research in the laws of Athens.

The first, historical part of the *Athenaion Politeia* is based, as far as we can tell, not on original research in the archives but on earlier literary material: Herodotus and Thucydides when they provided relevant information (which was not often: Herodotus on the rise and fall of the Pisistratid tyranny, Thucydides on the fall of the tyranny and the oligarchic régimes of 411–410); other historians, particularly those historians of Athens known as Atthidographers and most particularly Androtion, the most recent when the *Athenaion Politeia* was written (likely to have been used, for instance, for the dated items in chapters 22 and 26.2–4); and what ever other works could provide the kind of information in which our author was interested. For the second, analytic part, there were as far as we know no predecessors, no literary accounts which provided what our author needed, and this second part seems to have been based on direct consultation of the laws, and (whether or not the author was an Athenian citizen and able to participate) observation of the machinery in operation and conversation with men involved in its operation. Reports of and quotations from laws and decrees in the first part will be indirect, found by our author in his literary sources; use of the laws and decrees in the second part will be direct<sup>2</sup>.

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<sup>1</sup> My thanks to Dr. Leão for inviting me to contribute to this book.

<sup>2</sup> For evidence and arguments supporting assertions which are made summarily here see RHODES (1981) passim. For the sources of the *Athenaion Politeia* see RHODES (1981) 15–30, 32–6, and dis-

## EARLY ATHENS: DRACO AND SOLON

As far as we know, Athens' first written laws were those of Draco (cf. 41.2); and if Draco wrote down any laws other than those concerning homicide those other laws were repealed and replaced by Solon (7.1). The account of early Athens, in the lost beginning and in chapters 1–3, therefore owes nothing to documents but is the result of later reconstruction. Draco's laws on homicide were inscribed on *axones* (*IG* i<sup>3</sup> 104. 10, 56, republishing those laws in 409/8, cites the first and the second *axon*), which I shall discuss below in connection with Solon; yet chapter 4 has no mention of the homicide laws but instead gives us a «constitution of Draco», of which there is no trace in any other ancient text, and with which we can contrast the remark in Aristotle's *Politics* that there were laws of Draco but they were enacted for the existing constitution (2.1274B15–16). This seems in fact to have been inserted when the *Athenaion Politeia* was revised<sup>3</sup>. Awkward passages elsewhere were probably written to accommodate the constitution of Draco to a text originally written without it: in particular, in the numbered list of constitutional changes in 41.2 which summarises the first part of the work, Theseus' change is «second, and first after Ion's», next comes Draco's, giving Athens its first written laws, without number, and after that Solon's change is third<sup>4</sup>. It is almost universally agreed that the constitution of Draco is a later invention, probably of the late fifth century or the early fourth<sup>5</sup>: unfortunately the first piece of documentation which the reader finds in the *Athenaion Politeia* is a false document, which deceived the reviser of the work. However, it is likely that the original version of the *Athenaion Politeia* said something about Draco's laws, which has been displaced by the constitution. The first sentence of chapter 4 assigns the laws to the otherwise unattested archonship of Aristaechmus, probably 621/0<sup>6</sup>, and it is possible that this sentence has survived from the original version and that the date has a documentary basis of some kind<sup>7</sup>.

We then come to Solon, who is given an extended treatment (5–12). There is little on Solon in Herodotus and nothing in Thucydides; Aristotle's *Politics* has a few allusions, showing knowledge both of his laws and of his poems. There is also a *Life*

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cussions of the individual sections of the work; the work was certainly written in Athens in Aristotle's school, but for argument that it was written not by Aristotle himself but by a pupil see RHODES (1981) 58–63. I discuss the use of the laws of Athens in the first part of the *Athenaion Politeia* in RHODES (1993) and (forthcoming). References in the form 26.2–4, with no author or work specified, are to the *Athenaion Politeia*.

<sup>3</sup> It is one of a number of passages, in both the historical and the analytic part, which belong to the revision; those in the analytic part indicate that the original text was written in the second half of the 330's and the revisions were made in the 320's: see RHODES (1981) 51–8.

<sup>4</sup> Cf. also the ancient constitution «before Draco», 3.1; and perhaps Solon's division of the citizen body into four property classes, «as it had been divided before», 7.3.

<sup>5</sup> See RHODES (1981) 84–7.

<sup>6</sup> See STROUD (1968) 66–70.

<sup>7</sup> See RHODES (1981) 5 n. 21, 86.



of *Solon* by Plutarch: that shows a considerable overlap with chapters 1–13 of the *Athenaion Politeia*, in the general narrative and in the quotations from Solon's poems and mentions of Solon's laws, but while Plutarch mentions «Aristotle» among his sources (Plutarch, *Solon*, 25.1) each includes material which the other omits. The most reasonable conclusion is that there lies behind them a common source, a work on early Athens in general and Solon in particular, and that that source had access to Solon's poems and to his laws<sup>8</sup>.

Here we encounter a major controversy. Solon's laws were inscribed on wooden objects called *kyrbeis* or *axones*, whose nature has been much disputed (my own view is that these are alternative names for the same objects, which were four-sided wooden pillars rotating on vertical axles)<sup>9</sup>. A fragment from a comedy of the late fifth century suggests that by then they could be used for firewood (Cratinus, fr. 274 Kock = 300 Kassel & Austin ap. Plutarch, *Solon*, 25.2); but some items in the revised religious calendar completed in 399 were apparently described as «from the *kyrbeis*» (Lysias, 30. *Nicomachus*, 17–18: that rubric is not preserved in the surviving epigraphic fragments, but comparable rubrics are), and it appears that the *axones* survived substantially intact into the hellenistic period (evidence assembled at Eratosthenes, *FGrH* 241 F 37), though by the time of Plutarch, about A.D. 100, only meagre fragments remained (Plutarch, *Solon*, 25.1). As Draco's *axones* were numbered (cf. above), Solon's laws could be cited as, for instance, the eighth law on the thirteenth *axon* (Plutarch, *Solon*, 19.4). However, it is a notorious fact that Athenian orators in the fourth century could attribute to Solon any of Athens' current laws, including some which were demonstrably much more recent, and sceptics have argued that this can only have been possible because Solon's laws did not in fact survive into the hellenistic period but had already been lost by the fourth century<sup>10</sup>. The practice of the orators is puzzling, because the attributions to Solon appear to be intended seriously<sup>11</sup>, yet, whether Solon's laws survived to the fourth century or not, some of the laws which they attribute to him can easily be identified by us and could equally easily have been identified by them as post-Solonian.

However, the fact that some of the misattributed laws could on other grounds be proved to be later indicates that the misattributions were not possible only because they could not be disproved; and there are indications that, in spite of that practice, in the fourth century Solon's laws could be consulted and were consulted by those with serious historical interests. In one of Lysias' speeches archaic language in «Solon's laws» is explained (Lysias, 10. *Theomnestus i.* 15–20)<sup>12</sup>: strictly, that does

<sup>8</sup> See RHODES (1981) 28, 83–4, 88, 118.

<sup>9</sup> See RHODES (1981) 131–5, and, for a drawing, RHODES (1984) 123 fig. 1.

<sup>10</sup> Earlier doubters include HIGNETT (1952) 14–28; more recent include MOSSÉ (1979), HANSEN (1989).

<sup>11</sup> Cf. HANSEN (1989) 79–82.

<sup>12</sup> For further instances of archaic language see RUSCHENBUSCH (1966) p. 84 F 41.



not rule out the possibility that the laws cited are in fact post-Solonian but still early. However, the *Athenaion Politeia* quotes from «the laws of Solon which they no longer use» (8.3): this indicates that it was possible in the fourth century to distinguish between laws of Solon and currently valid laws; and I believe that those qualifications in «Solon's» law of inheritance to which the Thirty took exception in 404 (9.2, 35.2) were indeed part of Solon's law. Rosivach, to explain the *Athenaion Politeia*'s listing for the property classes of qualifications which are unlikely to be correct (7.4), has suggested that the text of the laws was painted on the *axones* and could be covered over and replaced with new texts when particular laws were superseded<sup>13</sup>; but I doubt whether the *axones* would have been kept up to date in that way<sup>14</sup>; and, even if they were, I should be surprised if laws concerning the *naukrariai* survived when the *naukrariai* were abolished but laws defining the classes were obliterated when the classes continued in theory to exist. (I shall return to the problem of these qualifications below.)

I believe that Solon's *axones* did survive long enough for a transcription to be made, and that those who wanted to consult the laws of Solon in the fourth century were able to do so<sup>15</sup>. What did Solon's laws contain? Hansen claims that they «did not include many, if any at all, of the statutes that we would consider constitutional»<sup>16</sup>. More optimistically, Ruschenbusch suggests «individual constitutional prescriptions, but not a fundamental constitutional law in the modern sense»<sup>17</sup>; and Rosivach suggests «a body of laws, some of which dealt with what we would consider constitutional matters»<sup>18</sup>. Certainly Solon will not have systematically compiled a complete constitution, like the American constitution. He will not necessarily have enacted laws in areas where he made no change, and to that extent I accept Hansen's claim that the constitution will have been regulated partly by custom. But, if he did indeed make constitutional changes, he will have had to enact constitutional laws to give effect to them; some of his laws may also have stated or restated current practice; and I believe that these laws survived and later investigators could have consulted them and did consult them<sup>19</sup>.

<sup>13</sup> ROSIVACH (2002) 39–41.

<sup>14</sup> RUSCHENBUSCH (1966) argues that the laws were inscribed on the *axones* (p. 24: cf. Gellius, 2.12.1) and that the *axones* were not kept up to date (pp. 36–7).

<sup>15</sup> Cf. RUSCHENBUSCH (1966) 37–8; ANDREWES (1974). STROUD (1978) gives a very optimistic view of the survival of early documents and the use of them by later writers. OSBORNE (1996), though on other matters very willing to be sceptical, believes here (p. 220) that «the certainty that there was a written text, and that that text could be correctly cited, justifies valour rather than discretion».

<sup>16</sup> HANSEN (1989) 83–5, comparing the Gortyn code and other ancient and mediaeval codes.

<sup>17</sup> RUSCHENBUSCH (1966) 26 («vereinzelte verfassungsrechtliche Bestimmungen, aber kein Verfassungsgrundgesetz im modernen Sinne»).

<sup>18</sup> ROSIVACH (2002) 39.

<sup>19</sup> For constitutional laws in other states in archaic Greece cf., e.g., the Great Rhetra at Sparta (ap. Plutarch, *Lycurgus*, 6), the law on tenure of the office of *kosmos* at Drerus (*I. Cret.* 1. ix 2 = Meiggs & Lewis 2).

Solon in his poetry talks of freeing the earth, uprooting *horoi* and liberating slaves (fr. 36 West ap. 12.4). Most scholars accept that this refers to abolishing the obligations of the dependent peasants called *hektemoroi*<sup>20</sup>: the word is one which 2.2, and Plutarch, *Solon*, 13.4, both tried to explain, and I imagine that it was used in the relevant law. The property classes (7.3–8.1, Plutarch, *Solon*, 18.1–2) are problematic, in that the qualifications given for the second and third classes, the *hippeis* and *zeugitai*, would probably have made the three highest classes a small, élite minority within the whole citizen body. I suspect that those qualifications are fourth-century guesswork based on the name of the *pentakosiomedimnoi*, the «500-bushel» class (and that Solon did not create the classes from scratch but separated the *pentakosiomedimnoi* from the rest of the already-existing class of *hippeis*); and that he did not define the qualifications for membership of the other classes but did enact laws which made membership of particular classes the basis for eligibility for particular offices<sup>21</sup>. For the appointment of archons there is a notorious disagreement between 8.1–2 and Aristotle, *Politics*, 2.1273B35–1274A17, 3.1281B25–34. I believe that for what Solon did the *Athenaion Politeia* is based on Solon's law and should be accepted (but that what is said about the previous practice is fourth-century guesswork)<sup>22</sup>. The *naukrariai* clearly were mentioned in laws of Solon, and we are given quotations from the laws (8.3: cf. above). The council of four hundred (8.4, Plutarch, *Solon*, 19.1–2) has been doubted by some<sup>23</sup>, but I believe that it should be accepted and that what we are told is based on a law of Solon — while Plutarch's comparison of this council and the Areopagus with a ship's two anchors may be, but is not necessarily, derived from Solon's poetry<sup>24</sup>. There may have been a law directing *eisangeliai*, prosecutions for major offences, to the Areopagus; but if this was a continuation of previous practice no law may have been needed: the language of 8.4 on this point, referring to «conspiracy for overthrowing the *demos*», looks like a later formulation, not early-sixth-century formulation<sup>25</sup>. The law against neutrality (8.5) is accepted by some but rejected by others<sup>26</sup>: in this case the formulation is acceptable for Solon's time.

Of the «most democratic features» in 9.1, a ban on personal security for debts looks like a later simplification of what Solon actually did<sup>27</sup>; prosecution by *ho boulomenos*, «whoever wishes», and appeal to a jury (cf. Plutarch, *Solon*, 18.2–3, 6–7)

<sup>20</sup> The chief exception is HARRIS (1997), cf. (2002).

<sup>21</sup> On the property classes see FOXHALL (1997), with RHODES (1997) 4; ROSIVACH (2002).

<sup>22</sup> Against, e.g. HIGNETT (1952) 323–4, HANSEN (1991) 49–52.

<sup>23</sup> E.g. HIGNETT (1952) 92–6, MOSSÉ (1979) 434–5; HANSEN (1989) 89 is agnostic; its authenticity was effectively defended against earlier sceptics by CLOCHÉ (1924).

<sup>24</sup> Suggested by SCHÖMANN (1854) 78; doubted by HANSEN (1989) 98 with n. 121, citing conversation and correspondence with A. B. Bosworth.

<sup>25</sup> Cf. RHODES (1981) 156, where I was inclined to believe in a law of Solon.

<sup>26</sup> Recently, in favour, MANVILLE (1980); against, DAVID (1984).

<sup>27</sup> Cf. HARRIS (2002).

will have required legislation; but for all three points the summary here may well be based on general knowledge rather than directly on the laws<sup>28</sup>. For weights, measures and coinage the *Athenaion Politeia* (10) probably used a source other than its main source on Solon<sup>29</sup>, while Plutarch, *Solon*, 15.3–4 used Androtion (= *FGrH* 324 F 34); the two say very different things in similar language, which suggests that we have here two different attempts to make sense of the law. Almost all now accept that Athens' first coins were later than Solon — but since the names of weights were used for coins it was easy for later Greeks to suppose that what Solon had done affected coinage. Solon was credited with measures and weights as early as 403 (decree ap. Andocides, 1. *Mysteries*, 83); I am prepared to believe that he legislated for the use of existing standards but did not (as our sources suppose) change Athens' standards<sup>30</sup>. Overall, I believe that there was a basis in Solon's laws for most of what the *Athenaion Politeia* tells us about his reforms.

#### FROM PISISTRATUS TO THE RESTORED DEMOCRACY OF 403

On the Pisistratid tyranny the *Athenaion Politeia* devotes most of its space to the rise and fall of the tyranny, on which there was information in Herodotus and Thucydides, but chapter 16 deals with the rule of Pisistratus. Pisistratus is said to have ruled in accordance with the laws (16.8)<sup>31</sup>; probably the chapter is not based on the laws<sup>32</sup>, except that it ends by claiming that at that time the laws about tyranny were mild, and quoting a law which prescribes *atimia* [which at that time was not in fact mild but meant outlawry] for attempting to set up a tyranny (16.10). What is quoted looks like a later reaffirmation, at an unknown date, of a law which can hardly be later than Solon: it need not be doubted that it is an authentic text, but we cannot say where it will have been found<sup>33</sup>.

For Cleisthenes 20.1–3 is based on Herodotus; 20.4–5, on the Alcmaeonids' opposition to the tyranny, perhaps comes from the author's general knowledge rather than from any written source; 21 is from a source other than Herodotus, and it is possible but by no means certain that this source is Androtion<sup>34</sup>. What was the

<sup>28</sup> The word (*h*)*eliaia* is not used in 9.1 or by Plutarch, but it and prosecution by *ho boulomenos* did appear in a law of Solon, ap. Demosthenes, 24. *Timocrates*, 105. Appeals instituted by Solon are accepted by OSBORNE (1996) 220; HANSEN (1982) is doubtful; MOSSÉ (1979) 433–4 guesses that under Solon appeals were heard by the Areopagus.

<sup>29</sup> Cf. RHODES (1981) 28, 47.

<sup>30</sup> RHODES (1975) with (1977), cf. (1981) 164–9; CRAWFORD (1972) rejects Solonian legislation in this field altogether.

<sup>31</sup> Cf. Herodotus, 1.59.6, Thucydides, 6.54.6, Plutarch, *Solon*, 31. 8; but later in *Athenaion Politeia* we read that the tyranny obliterated Solon's laws by not using them (22.1).

<sup>32</sup> Cf. RHODES (1993) 59.

<sup>33</sup> Cf. RHODES (1981) 220–3. GAGARIN (1981) suggests that the original law belongs to the trial *in absentia* of Cylon's supporters and the reaffirmation to Solon.

<sup>34</sup> Cf. RHODES (1981) 21, 28–9, 240–1.



basis of this source's information? In 411 Clitophon instructed the *syngrapheis* paving the way for the oligarchy to «*prosanazetesthai* . . . the traditional laws which Cleisthenes enacted when he established the democracy» (29.3). I believe that *prosanazetesthai* means «search for», and implies that it was not known where or whether texts of Cleisthenes' laws [in fact, decrees of the assembly] still existed (though it was perhaps assumed that they did)<sup>35</sup>. Some of the information in chapter 21 could have been inferred from knowledge of fourth-century practice, but not all of it could. There will have been decrees of the assembly, for instance to order the registration of the citizens by deme, *trittys* and tribe, to organise the council of five hundred and the appointment of ten generals on a tribal basis, to introduce the procedure of ostracism. They may not have been inscribed on *stelai*, and even if they were inscribed the *stelai* may not have been preserved in 480; but it is at any rate possible, though we cannot be confident of it, that papyrus copies of Cleisthenes' decrees were preserved and were seen by the source of the *Athenaion Politeia*<sup>36</sup>.

For the next century the *Athenaion Politeia* uses a variety of sources. 22, with a dated list of items from the years between 508/7 and 480, probably comes from Androtion's *Atthis*<sup>37</sup>: there is much in it which cannot be documentary – such as the garbled account of the change in the appointment of the archons (22.5) and the story of Themistocles' shipbuilding proposal (22.7) – but the imposition of the oath of allegiance on the council (22.2), the actual change in the appointment of the archons (22.5), the recall of the ostracised and the fixing of territorial limits for those to be ostracised in the future (22.8) will all have required decrees of the assembly, while there must have been dated records of who was ostracised when to avoid disputes about when these men were entitled to return. It is possible that Androtion's investigations included, though they were certainly not limited to, reading documents in the archives.

Decrees and other documents from after 479 ought to have survived: it appears that consultation of the texts may sometimes but certainly does not always underlie what we read in the *Athenaion Politeia*. Chapters 23–4, on Athens after the Persian Wars, are not based on documentary material. The text of Ephialtes' decrees reforming the council of the Areopagus was set up on the Areopagus, to be removed by the Thirty in 404 (35.2, which I believe is to be taken literally)<sup>38</sup>; but 25.1–2 on Ephialtes is frustratingly unspecific, and gives a pro-democratic account while Plutarch in his *Cimon* and *Pericles* gives anti-democratic accounts. 25.3–4, on Themistocles'

<sup>35</sup> Cf. RHODES (1981) 241, 375–6.

<sup>36</sup> Cf. RHODES (1993) 57–9. That Cleisthenes' decrees survived was believed by WADE-GERY (1933) 19–20 = (1958) 139–40, disbelieved by HIGNETT (1952) 129–31.

<sup>37</sup> Cf. 22.3–4 on ostracism with Androtion, *FGrH* 324 F 6, and see RHODES (1981) 267–9.

<sup>38</sup> This need not mean that the evidence was destroyed so thoroughly that in the fourth century Ephialtes' decrees could not be consulted: cf. RHODES (1993) 55–6.

involvement with Ephialtes, is like 4 an unfortunate addition by the reviser; and 26.1, on Cimon, seems to be based on some kind of propagandist writing. By contrast, 25.2-4, with three dated decrees of the 450's, recalls 22: probably this too is from Androtion and could result from his consultation of the actual decrees. But Pericles' introduction of jury pay (27.3-4, undated) is presented in an anecdotal way, in the course of a rag-bag of material on Pericles – and the fact will have been well known without any need for the consultation of documents<sup>39</sup>. Then comes chapter 28, with its list of democratic and anti-democratic leaders.

On the oligarchies of 411–410 (29–33) the *Athenaion Politeia* is based partly on Thucydides, partly on a source using documents through which the revolutionaries tried to make their revolution look respectable by democratic criteria of respectability: two possibilities often canvassed are Antiphon's defence when he was put on trial (cf. Thucydides, 8.68.1–2) and the *Atthis* of Androtion (whose father Andron proposed the trial of Antiphon and others: Craterus, *FGrH* 342 F 5 ap. Harpocration, *Andron*; [Plutarch], *Lives of the Ten Orators*, 833E)<sup>40</sup>. This second source has provided the decree of Pythodorus and amendment of Clitophon about the *syngrapheis*, identifying (as a document is unlikely to have done) Melobius as the principal speaker (29.1–3); a more detailed account than we have from Thucydides of the preliminary recommendations of the *syngrapheis* (29.4); what is probably an accurate report, as far as it goes, of the decisions of the assembly at Colonus (29.5); and the «future» and «immediate» constitutions (30–1), which I believe were drawn up by the hundred men of 30.1 and promulgated when the régime of the Four Hundred was formally inaugurated on 22 Thargelion (32.1)<sup>41</sup>. Unfortunately for historians, on the intermediate régime of 411/0 (33), apart from the dating information at the beginning of the chapter, the *Athenaion Politeia* merely paraphrases the unspecific account of Thucydides and gives us no documentary material. 34.1–2 is a short and inaccurate section bridging the gap between the first period of oligarchy and the second, and I have argued that for this the author wrote down what he thought he knew without taking the trouble to consult written sources<sup>42</sup>.

The narrative of the rise and fall of the Thirty (34.2–40) appears to be a tendentious account in which the chronology has been distorted to minimise the responsibility of Theramenes for the Thirty's misdeeds and an additional board of Ten has been invented to improve the democratic credentials of Rhinon<sup>43</sup>. Comparison with

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<sup>39</sup> As with Ephialtes' decrees, the fact that the text was not consulted by the source of the *Athenaion Politeia* does not necessarily mean that the text was not available and could not be consulted: cf. RHODES (1993) 55.

<sup>40</sup> Cf. RHODES (1981) 29, 365–7, with references to scholars who have argued for Antiphon or for Androtion as a source.

<sup>41</sup> On the two constitutions see RHODES (1981) 387–9.

<sup>42</sup> Cf. RHODES (1981) 29, 415–6.

<sup>43</sup> Cf. RHODES (1981) 29, 416–22.

other texts suggests that the claim that the peace treaty with Sparta required Athens to be governed under the «traditional constitution» (34.3) is wrong, or at best a misrepresentation of some reference to tradition in the treaty<sup>44</sup>. However, there is some documentary material here: the proposer of the decree under which the Thirty were appointed (34.3); the name of the Thirty's archon (35.1); perhaps the Thirty's early activities, including their repeal of laws which they disliked (35.1–2); the laws used to eliminate Theramenes (37.1; but the language in which they are reported is not noticeably documentary). Clearly documentary (and not supplied by any other source) are the provisions for reconciliation and for a semi-independent state at Eleusis in 403 (39); but, while decrees and proposed decrees will have underlain the account of Archinus' moderation (40.1–2), what the *Athenaion Politeia* supplies here is a narrative rather than a catalogue of documents.

To sum up this section. We can be more confident of the survival of Athenian documents from after 480–479 than before. If there were Pisistratid documents, there is no trace of them in the *Athenaion Politeia*; it is possible that Cleisthenes' decrees survived and that some of the material in chapter 21 results from the source's having consulted them. After 480–479 there are points on which decrees have been, or at any rate may have been, consulted; but there are other points where we may assume that decrees were available and could have been consulted but nevertheless they were not consulted. Ancient historians were not totally unlike modern historians, and they realised that laws, decrees and other documents were an important source; but it did not occur to them that documents should always be used if they were available.

#### THE FOURTH-CENTURY CONSTITUTION

As far as we know, no previous work had given an account of the working of Athens' constitution as the second part of the *Athenaion Politeia* does; this part must have been based on direct research<sup>45</sup>.

The analysis may be divided into three sections: the registration and training of citizens (42); officials, sortitive and elective (43–62, with particular sub-sections on the council of five hundred, 43.2–49, and the archons, 55–9); jury-courts (63–9). Similar categories are used in [Demosthenes], 25. *Aristogiton* 1. 20 and in various places in Aristotle's *Politics*, but there are indications that the particular arrangement of the *Athenaion Politeia* is based on the revised Athenian code of laws completed between 410 and 399. We have an inscription in which laws about the council were collected (*IG* i<sup>3</sup> 105); and a law providing for the annual revision of the code uses the four categories laws of the council, common laws [probably those

<sup>44</sup> Cf. RHODES (1981) 427.

<sup>45</sup> On the second part of the *Athenaion Politeia* see RHODES (1981) 30–7.



common to all *archai*<sup>46</sup>], laws for the nine archons, laws of the other *archai* (law ap. Demosthenes, 24. *Timocrates*, 20). The four categories could themselves be subdivided, giving us, for instance, the law of the *basileus* (Athenaeus, 6.235c) and the law of *eisangelia* (Hyperides, 4. *Euxenippus*, 3).

The *Athenaion Politeia* does not prescribe what should be done, in the manner of the laws, but states what is done. Often, however, the statement includes «the law orders» or «the laws order» (43.6, 49.4, 51.3, 53.5, 53.6) or some other reference to the law's requirements (e.g. 45.1, 48.1); and similarly we often read that something«must» be done (*dei* or *ananke*: e.g. 44.4, 48.1) or «is not allowed» (*ouk exestin*: e.g. 44.1, 44.3). We can compare the original law with what the *Athenaion Politeia* has made of it in the case of the archon's responsibility for orphans and heiresses: [Demosthenes], 43. *Macartatus*, 75 quotes the law, and 56.7 gives us the *Athenaion Politeia*'s statement based on the law. Wilamowitz supposed that the statement was taken over from a literary source, but there is no reason to believe that such a source existed, and it is generally accepted that it was our author himself who formulated the statement on the basis of the law<sup>47</sup>. Similarly, 57.3 gives us a statement based on the homicide law which we find in Demosthenes, 23. *Aristocrates*, 22 with 24, 53, 77.

At several points there is a note on the difference between current practice and earlier practice (e.g. the *dokimasia* of the next year's councillors by the current council, 45.3; decisions about *paradeigmata* [perhaps plans for public works in general] and the *peplos* for the Great Panathenaea, 49.3). Usually we cannot tell whether knowledge of earlier practice comes from the original law (and of current practice from an amending law) or from the author's general knowledge; but general knowledge is to be presumed for the council's earlier powers of punishment, accompanied by the story of Eumelides and Lysimachus (45.1), and for the claim that laws still valid are no longer enforced with reference to trials for damaging the sacred olives and the generals' power to impose fines (60.2, 61.2). Most of the contrasts between current and earlier practice are likely to belong to the original text, but the awkward reference to the quadrennial festival added in 329/8 (54.7) is due to the reviser. Sometimes, though not often, we find the author using language which will not be derived from the law: in addition to the story of Eumelides and Lysimachus (above), there is «this man is called the inserter [*empektes*]», of the man whose job it was to insert into the *kleroterion* the *pinakia* of the men presenting themselves for jury service (64.2); «these [the *logistai*] are the only men who check the accounts of men subject to *euthynai* and introduce their *euthynai* into the jury-court» (54.2, if the text is sound<sup>48</sup>).

<sup>46</sup> Cf. MACDOWELL (1975) 67.

<sup>47</sup> WILAMOWITZ-MOELLENDORFF (1893) i. 258–9; contr., e.g. BUSOLT & SWOBODA (1920–6) i. 97 with n. 1.

<sup>48</sup> On the text see RHODES (1981) 598.

There are some surprising omissions from the second part of the *Athenaion Politeia*, which may be due to the author's reliance on the organisation of the laws. Particularly striking is the omission of *nomothesia* itself, the procedure for the enactment of laws (*nomoi*) by *nomothetai*, which after the completion of the new code of laws in 399 was distinct from the procedure for the enactment of decrees (*psephismata*) by the assembly (though the procedure of *nomothesia* had to be set in motion by the assembly): the reason for this may be that the *Athenaion Politeia* does not have a separate section on the assembly but treats the assembly in connection with the council. There is no mention of the important financial office held first by Lycurgus and then by associates of his, probably with the title *ho epi tei dioikesei*, «the man in charge of [financial] administration», in the 330's – 320's, when the *Athenaion Politeia* was written: here a possible explanation is that the office may have been created by a decree of the assembly and may therefore not have been mentioned in the laws.

It is probably because of the organisation of the laws that, for instance, taxation and liturgies are not treated in one place as a single subject but are mentioned where they are the concern of one of the *archai* (e.g. tax-collecting and the *poletai*, 47.2; *choregoi* and the archon, 56.3; trierarchs and the *strategos epi tas symmorias*, 61.1). Similarly the council of the Areopagus is not treated directly but receives incidental mention at various points (47.2, 57.3–4, 59.6, 60.1, 2).

In paraphrasing the laws our author has had to select and abbreviate, and in places the results are frustrating. «Sometimes [in the assembly] they transact business without a *procheirotomia*» (43.6) – but we are not told how the *procheirotomia* worked or when it was required and when not<sup>49</sup>. We know three uses of the procedure for making complaints known as *proboule*: two are mentioned in 43.5 and 59.2, but the third, in connection with major offences at festivals (Demosthenes, 21. *Midias*, 1–2, 8–11), is not mentioned. After the principal secretary of the state (54.3) the *Athenaion Politeia* mentions one «in charge of the laws», *epi tous nomous* (54.4): readers might suppose that this secretary recorded and published laws as the principal secretary recorded and published decrees, but we know from fourth-century inscriptions that the principal secretary was responsible for publishing both laws and decrees (e.g. *Agora* xvi 73.22–4), and that there was another secretary, «in charge of the decrees», *epi ta psephismata*, who is not mentioned in the *Athenaion Politeia* (*epi ta psephismata*, *Agora* xv 43.230; *epi tous nomous*, *ibid.* 53.19; both, *ibid.* 58.78, 82).

The Athenian is the only one of the collection of 158 *politeiai* which survives, but research in the laws seems to have been undertaken for at any rate some of the others: for instance, the *Lakedaimonion Politeia* is probably the source for Sparta's Great Rhetra in Plutarch, *Lycurgus*, 6. Research of this kind continued in later

<sup>49</sup> For two discussions see RHODES (1981) 529–31, HANSEN (1983) 123–30.

works, such as the *Nomoi (Laws)* of Aristotle's successor Theophrastus and the Athenian *Psephismaton Synagoge (Collection of Decrees)* of Craterus.

The author of the *Athenaion Politeia* was not a first-class historian, as we see from his problems in handling conflicting sources<sup>50</sup>. Likewise he was not a first-class analyst of the constitution of his own time. But (through his own sources) his history was in many places (though not consistently) based on the laws and decrees of Athens, and his analysis of the contemporary constitution, in which he had no predecessors, was based very largely on the laws in force when he was writing his work. Whoever he was, he has produced a work of great interest and importance.

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<sup>50</sup> Cf. RHODES (1981) 29-30.



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