

THE LAW OF EUKRATES (336 B.C.): A «DEMOCRATIC TRICK»?

La ley de Eukrates (336 B.C.): un «¿truco democrático?»

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RESUMEN: Desde su descubrimiento en 1952, el muy debatido texto de las leyes de Eukrates ha sido interpretado de forma muy diversa, con el fin de justificar las diferentes situaciones políticas de Atenas en tiempos de Demóstenes. La presente interpretación coloca la disposición bajo una nueva luz, leyéndola como un tipo de «truco democrático» concebido por Demóstenes y su grupo para impedir un potencial y dañino ataque sobre el Areópago por parte de aquellos políticos atenienses que se oponían a Demóstenes y apoyaban a Filipo. Así, de acuerdo con esta opinión, el principal motivo que se encuentra tras la ley de Eukrates no habría sido el miedo a la tiranía, sino la intención de proteger al Areópago, poderoso y crucial elemento de la política de Demóstenes.

Palabras clave: derecho griego, instituciones políticas, Atenas, siglo IV a.C.

ABSTRACT: Since its discovery in 1952, the much debated text of the law of Eukrates has been variously interpreted to support several different political scenarios concerning Athens in the age of Demosthenes. The present interpretation puts the provision under a new light, reading it as a sort of «democratic trick» conceived by Demosthenes and his group to prevent a potential, harmful attack on the Areopagos Council on the part of those Athenian politicians who opposed Demosthenes and supported Philip. Thus, according to this view, the chief motive behind Eukrates' Law would not have been the fear of a tyranny, but rather the intention of protecting the Areopagos council, a powerful and crucial any of Demosthenes' policy.

Key words: Greek right, political institutions, Athens, IV century BC.

On may 3, 1952 excavations by the American School of Classical Studies in Athens' Agora brought to light an extraordinary document, a well preserved stele of white (maybe Pentelic)¹ marble, whose top section was carved with a relief representing the personification of Democracy in the act of crowning the Athenian Demos, figured as a bearded man sitting on a throne². Scholars' attention was immediately drawn to the inscription below the sculpture: perfectly legible as it was, it did not take much time to recognize in it the text of a law issued in 337/6 B.C. during the archonship of Phrynichos, proposed by Eukrates of Peiraius and approved by the *nomothetai*.

The text is inscribed in *stoichedon*, 36 letters per line.

TEXT

Ἐπὶ Φρυνίχου ἄρχοντος ἐπὶ τῆς Λεωντίδος ἐν-
 ἄτης πρυτανείας ἦι Χαιρέστρατος Ἀμεινίου
 Ἀχαρνέως ἐγραμμάτευεν· τῶν προέδρων ἐπεψή-
 φιζεν Μενέστρατος Αἰξωνεύς· Εὐκράτης Ἀρισ-
 5 τοτίμου Πειραιεύς εἶπεν· ἀγαθῆι τύχῃ τοῦ δῆ-
 ῆμου τοῦ Ἀθηναίων· δεδόχθαι τοῖς νομοθέται-
 ς· ἐάν τις ἐπαναστῆι τῶι δῆμῳ ἐπὶ τυραννίδι
 ἢ τὴν τυραννίδα συνκαταστήσῃ ἢ τὸν δῆμον τ-
 ὸν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθήνησιν
 10 καταλύσῃ, ὃς ἂν τὸν τούτων τι ποιήσαντα ἀπο-
 κτείνῃ ὅσιος ἔστω· μὴ ἐξεῖναι δὲ τῶν βουλευ-
 τῶν τῶν τῆς βουλῆς τῆς ἐξ Ἀρείου Πάγου καταλ-
 ελυμένου τοῦ δῆμου ἢ τῆς δημοκρατίας τῆς Ἀθ-
 ῆνησιν ἀνιέναι εἰς Ἀρειὸν Πάγον μηδὲ συνκα-
 15 θίξειν ἐν τῶι συνεδρίῳ μηδὲ βουλευεῖν μη-
 δὲ περὶ ἐνός· ἐάν δέ τις τοῦ δῆμου ἢ τῆς δημοκρ-
 ατίας καταλελυμένων τῶν Ἀθήνησιν ἀνίηι τῶ-
 ν βουλευτῶν τῶν ἐξ Ἀρείου Πάγου εἰς Ἀρειὸν Π-
 άγον ἢ συνκαθίξῃ ἐν τῶι συνεδρίῳ ἢ βουλευῆ-
 20 ι περὶ τινος ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος
 τὸ ἐξ ἐκείνου καὶ ἡ οὐσία δημοσία ἔστω αὐτοῦ
 καὶ τῆς θεοῦ τὸ ἐπιδέκατον· ἀναγράψαι δὲ τόν-
 δε τὸν νόμον ἐν στήλαις λιθίναϊς δυοῖν τὸν γ-
 ραμματέα τῆς βουλῆς καὶ στήσαι τὴν μὲν ἐπὶ τ-

1. MERITT, B. D.: «Greek Inscriptions», *Hesperia*, 21, 1952, pp. 355-359.

2. RAUBITSCHKE, A. E.: «Demokratia», *Hesperia*, 31, 1962, pp. 238-263; BLANSHARD, A. J. L.: «Depicting Democracy: an Exploration of Art and Text in the Law of Eukrates», *JHS*, 124, 2004, pp. 1-15.

25 ἥς εἰσόδου τῆς εἰς Ἄρειον Πάγον τῆς εἰς τὸ βο-
υλευτήριον εἰσιόντι, τὴν δὲ ἐν τῇ ἐκκλησί-
ᾳ· εἰς δὲ τὴν ἀναγραφὴν τῶν στηλῶν τὸν ταμίαν
δοῦναι τοῦ δήμου· ΔΔ· δραχμὰς ἐκ τῶν κατὰ ψη-
φίσματα ἀναλισκομένων τῶι δήμῳι. *vacat*³.

The law clearly deals with a political matter and can be included, at first sight, in the long tradition of the Athenian legislation against tyranny and subversion.

The text is apparently divided into two distinct sections:

- 1) Anti-tyranny provision against anyone attempting to overthrow the democracy;
- 2) Behaviour imposed upon the members of the Areopagos Council in case of tyranny.

The involvement of the Areopagos Council is certainly the hardest matter scholars have had to deal with in undertaking the study of this inscription. Yet any sound attempt to explain the meaning of Eukrates' law must necessarily widen the focus from the simple and, at first glance, perfectly plain and understandable text, so as to contextualize it in light of the political events that led to the issuing of such a law at specifically that time. Consequently it is essential to ask ourselves questions like these:

What was the political situation in Athens in the age of Demosthenes? Is it possible to distinguish any kind of political factions?

What was the role of the Areopagos Council in the second half of the fourth century? Could it really affect the political life of the *polis* by supporting a faction or another?

3. I include here Benjamin Meritt's translation with a change: in line 11 Meritt translates ὄσιος with «blameless»; I prefer «pure»: «In the archonship of Phrynichos, in the ninth prytany of Leontis for which Chairestratos, son of Ameinias, of Acharnai, was secretary; Menestratos of Aixone, of the proedreoi, put the question to a vote; Eukrates, son of Aristotimos, of Peiraieus, made the motion: with Good Fortune of the Demos of the Athenians, be it resolved by the Nomothetai:

If anyone rise up against the Demos for tyranny or join in establishing the tyranny or overthrow the Demos of the Athenians or the democracy in Athens, whoever kills him who does any of these things shall be pure.

It shall not be permitted for anyone of the Councillors of the Council from the Areopagos - if the Demos or the democracy in Athens has been overthrown -to go up into the Areopagos or sit in the Council or deliberate about anything. If anyone- the Demos or the democracy in Athens overthrown -of the Councillors of the Areopagos goes up into the Areopagos or sits in the Council or deliberates about anything, both he and his progeny shall be deprived of civil rights and his substance shall be confiscated and a tenth given to the Goddess.

The secretary of the Council shall inscribe this law on two stelai of stone and set one of them by the entrance into the Areopagos, that entrance, namely, near when one goes into the Bouleuterion, and the other in the Ekklesia. For the inscribing of the stele the treasurer of the Demos shall give 20 drachmai from the moneys expendable by the Demos according to decrees».

How important, in conceiving the terms of Eukrates' proposal, was the role played by the ideology of democracy? Was there a real need for an anti-dictatorship law in 337/6, or should we look instead for a different motive behind this legislation?

In order to give a coherent interpretation of Eukrates' law and purposes, this article will aim to answer these questions.

1. THE POLITICAL SITUATION

One of the most important political trends of fourth-century Athens is the separation of *politeuomenoi* and *idiotai*⁴. According to many sources, the increasing professionalism in politics led to the progressive detachment of private citizens from active political life⁵, and to the formation of a separate class of «politicians». These new leaders, mainly members of the propertied middle classes, divided their influence between the battlefield and the *bema*; the separation of military and political authority in fourth century Athens is attested in many sources⁶. Alongside the generalship, the emergence of rhetoric created a parallel and distinct road to leadership, and led to the rise of the new class of *rhetores*⁷; «at the time of the struggle against Macedon, none of the great politicians, with the possible exception of Phokion, served as strategos»⁸.

Nevertheless, cooperation between generals and orators was rather frequent⁹, and was one of the foundations of Athens' political groups. A considerable dispute has developed about the existence of some kind of political factions in fourth-century

4. See HANSEN, M. H.: «One Hundred and Sixty Theses about Athenian Democracy», *C&M*, 48, 1997, pp. 204-265: *politeuomenos* (n.º 117) «sometimes denotes any politically active citizen, but is mostly used of the political leaders, especially those active in the Assembly». *Idiotēs* (n.º 116) «sometimes denotes the passive citizen who avoids all involvement in the affairs of the city, but often it is almost a technical term for [...] the active ordinary citizen in a true democracy, who attended the meetings, listened, voted and sometimes took it upon himself to act as *ho boulomenos*». See also PERLMAN, S.: «The Politicians in the Athenian Democracy of the Fourth Century BC», *Athenaeum*, 41, 1963, pp. 327-355 (esp. 328-330); MOSSÉ, C.: «Politeuomenoi et idiotai: l'affirmation d'une classe politique à Athènes au iv^e siècle», *REA*, 86, 1984, pp. 193-200; OBER, J.: *Mass and Elite in Democratic Athens*. Princeton, 1989, pp. 105-112; SEALEY, R.: *Demosthenes and His Time: A Study in Defeat*. New York, 1993, p. 31.

5. Isocr. VIII, 52; Dem. III, 30-1; Dein. I, 40; 72; 74.

6. Arist. *Pol.*, 1305a 7-15; Isocr. VIII, 54-5; Aeschin. II, 184; Plut. *Phoc.*, 7, 3.

7. HANSEN, 1997, p. 235 (n.º 121): «*Rhetor* was the technical term denoting a citizen who addressed the Assembly, the Council, the *nomothetai*, or the People's Court. It was used in its legal sense about any citizen who took a political initiative; but it was also used in a much narrower political sense about the citizens who habitually, sometimes even full-time, made speeches or moved proposals or brought prosecutions». Cp. Hyper. III, 7-8.

8. PERLMAN, 1963, p. 347. On this topic see HAMEL, D.: «Strategoī on the Bema: the Separation of Political and Military Authority in Fourth-Century Athens», *AHB*, 9, 1995, pp. 25-39.

9. Aeschin. III, 7; Dein. I, 112; III, 19.

Athens¹⁰, but, despite its interest, the topic cannot be dealt with in the present paper. I tend to agree with Hansen's conclusion, at least in general terms: «Athenian democracy was characterized by an absence of parties in the modern sense: there were groupings of political leaders, but they did not have behind them corresponding groups amongst the public who listened and voted»¹¹.

The 340s came closer than any previous time to a party division, between those who wanted to resist Philip of Macedon at any cost and those who trusted, instead, that Philip would bring back Athens' lost prosperity¹². The orators' vocabulary best attests to this conflict: they make frequent use of such terms as δημοτικοί, μισοφίλιπποι and μισαλέξανδροι¹³, and verbs like φιλιππίζειν and μακεδονίζειν¹⁴. I believe that the importance of the issue –concerning whether Macedon was the enemy to fight or the ally to welcome– as well as the intensity of the political conflict which opposed the group of Demosthenes and Hyperides to that of Eubulos, Aischines and then Demades, allow us to use the often dismissed labels of «anti-Macedonian» and «pro-Macedonian»¹⁵. Nevertheless, such labels

10. HANSEN, M. H.: *The Athenian Democracy in the Age of Demosthenes. Structure, Principle and Ideology*. Oxford, 1991, p. 277 states that «the most hotly disputed question about the Athenian political system is whether or not politically active citizens were divided into parties or political groupings». The old idea of the existence of parties in the modern sense of the term was first disputed half a century ago by two articles by Raphael SEALEY: «Athens after the Social War», *JHS*, 75, 1955, pp. 74-81; «Callistratus of Aphidna and His Contemporaries», *Historia*, 5, 1956, pp. 178-203. On the topic see also PERLMAN, 1963, pp. 350-355; RHODES, P. J.: «On Labelling Fourth Century Politicians», *LCM*, 3, 1978, pp. 207-211; STRAUSS, B. S.: *Athens after the Peloponnesian War*. New York, 1986, pp. 18-19 and pp. 27-28 (mentioning «factions» instead of «groups»); SEALEY, 1993, pp. 116-120 and 163-167.

11. HANSEN, 1991, p. 306.

12. RHODES, 1978, 210.

13. Aeschin. II, 14; III, 73.

14. Dem. XVIII, 176, 294; Aeschin. III, 130; Plut. *Dem.* 24, 2; *Alex.* 30, 8.

15. The actual opposition between two (or more) distinct factions –together with the existence of political groups itself, for which see above, n. 10– has been strongly disputed by Sealey, who has always refused to admit any kind of true rivalry among Athenian politicians (1993, 164 ff.: «To portray Demosthenes and Aischines as counterpoised spokesmen of rival policies is to overlook a contrast in temperament between them»; see also SEALEY, 1955, p. 177). On the contrary, I think not only that in the age of Demosthenes the two rival factions were as definite as never before, but also that it is possible to identify rather precisely at least some of the members of each group. Dem. XVIII, 285, for example, addresses Aischines claiming that «when the people wanted one who should speak over the bodies of the slain, shortly after the battle (*scil.* of Chaironeia), you were nominated but they didn't appoint you... nor Demades... nor Hegemon... nor any of you (οὐδ' ἄλλον ὑμῶν οὐδένα)»; it is reasonable to suppose that by saying «any of you» Demosthenes was referring to a precise group whose members, as well as Demades and Hegemon, were identifiable and known to everyone (significantly, C. A. Vince's translation for Loeb edition is «any of your party»). On the other side, the «list of Alexander» –the group of orators and leading anti-Macedonians whose surrender the king of Macedon demanded in 335– is itself evidence of the existence of a group of politicians very close to Demosthenes (*contra* SEALEY, 1993, pp. 204-205). Arrian, one of the sources for the list (the others are Plut. *Dem.* 23, 4 and Suda s. v. Ἀντίπατρος), informs us that Alexander demanded «οἱ ἀμφὶ Δημοσθένην» (*Anab.* I, 10, 4). The most prominent of them, beyond Demosthenes himself, were Hyperides, Lycourgos, Chares and Charidemus. Their

should not mislead us into thinking that one of the two groups was «more democratic» or «patriotic» than the other. In emphasizing his attachment to democracy and in accusing his opponents of disloyalty to the ideals of freedom and independence, Demosthenes made a precise political choice, thus picturing Philip's fight against Greece as a fight against democracy¹⁶. Consequently, the pro-Macedonians' mild attitude towards Philip became, in the orators' speeches, the hallmark of anti-patriotism, unconditional support for tyranny, and a dangerous internal menace to democracy¹⁷. Indeed, we are aware that 'demotikoi' and 'anti-democrats' were just propagandist labels, rhetorical means to achieve a political end. The development of a consistent political propaganda indicates that the orators were well aware that persuasion of the Athenians was still the key factor in keeping political control of the city. Despite their decreasing interest in public business and lack of self-confidence about active political life, private citizens were much more than just a listening public for the *rhetoires*; they were their judges, their referees, their constant interlocutors.

2. THE AREOPAGOS IN THE 340S AND 330S

For almost three decades, from the mid-fourth century on, the Areopagos Council was given an increasing authority in city politics, being involved in matters beyond its traditional sphere of competence.

The first step in this direction was a decree of 352/1 which did not actually increase the political weight of the Council, but only widened its religious influence: it granted the Areopagos (together with the *Boule* of 500 and several other *archai*) the perpetual supervision of «the holy soil and all the other holy precincts of Athens»¹⁸.

political career shows that their anti-Macedonian faith was undisputable. On the topic, see BOSWORTH, A. B.: *A Historical Commentary on Arrian's History of Alexander*, I. Oxford, 1980, pp. 93-95; COOPER, C.: «A Note on Antipater's Demand of Hyperides and Demosthenes», *AHB*, 7, 1993, pp. 130-135.

16. Dem. VIII, 39-40. Same message in Dem. XV, 19. There are also many passages in which Demosthenes pictures Philip as a strong supporter of tyranny: Dem. IX, 33; XVIII, 71; VI, 21-5; VIII, 36; IX, 17, 27, 58, 62; X, 8; XVIII, 66, 79. In the oration XVII of the Demosthenic *corpus* the same portrait is given of Alexander the Great (see in particular §§ 4, 10, 12; on [Dem.] XVII see CULASSO GASTALDI E.: *Sul trattato con Alessandro*. Padova, 1984). See also RHODES, 1978, p. 210.

17. Dem. X, IV; Hyper. I, 8.

18. IG II² 204, 1. 16-23 = SEG XXV, 64: «Ἐπιμελεῖσθαι δὲ τῆς ἱερᾶς ὀργᾶδος καὶ τῶν ἄλλων ἱερῶν ἀπάντων τῶν Ἀθηνησιν ἀπὸ τῆσδε τῆς ἡμέρας εἰς τὸν αἰὲν χρόνον οὐς τε ὁ νόμος κελεύει περὶ ἐκάστου αὐτῶν καὶ τὴν βουλὴν τὴν ἐξ Ἀρείου πάγου καὶ τὸν στρατηγὸν τὸν ἐπὶ τὴν φυλακὴν τῆς χώρας κεχειροτονημένον καὶ τοὺς περιπολάρχους καὶ τοὺς δημάρχους καὶ τὴν βουλὴν τὴν αἰὲ βουλευούσαν καὶ τῶν ἄλλων Ἀθηναίων τὸν βουλόμενον τρόπῳ ὅτι αἰ ἐπίστωνται». For a comment, see FOUCAUT, P.: «Décret athénien de l'année 352 trouvée à Eleusis», *BCH*, 13, 1889, pp. 433-467; DAVERIO ROCCHI, G.: «La ἱερὰ ὀργὰς e la frontiera attico-megarica», in *Studi di antichità in memoria di Clementina Gatti*. Milano, 1987, pp. 97-109.

Some years later Demosthenes promoted the first concrete increase in the Areopagos' political power¹⁹, introducing a decree (whose precise terms and date of enactment are unknown) that, in Deinarchos' words, gave «the Areopagos absolute authority over all Athenians to punish anyone who offends against the law»²⁰. Such a statement certainly looks suspiciously hyperbolic and must be considered with due caution; yet, because Deinarchos' first oration is our only source for Demosthenes' decree, the whole passage is worthy of the greatest attention. The speech was written and delivered in 323 against Demosthenes in the trial that followed the Harpalos affair²¹.

What was the content of Demosthenes' Areopagos decree? In this regard, the most convincing hypothesis seems to me that of Robert Wallace, who after a careful analysis of Dein. I, 62-3 has come to identify Demosthenes' proposal with the motion that introduced the special procedure of *apophasis*²². This procedure, in use in the second half of the fourth century, consisted in «the investigation (*zētēsis*) and reporting (*apophasis*) by the Areopagos especially of crimes against the state. The most famous use of this procedure was in the Harpalos affair of 324/3. Investigations were most often initiated by the demos; they could also be initiated by the Areopagos itself, certainly against its own members and probably against others.

19. For lack of space, I leave aside the episode of Timarchos' proposal of 346/345 about the regulations of the houses on the Pnyx (Aeschin. I, 81-4), which called the Areopagos to take position on a matter of superintendence of buildings. See WALLACE, R. W.: *The Areopagos Council to 307 B.C.* Baltimore-London, 1989, p. 120 and DE BRUYN, O.: «La compétence de l'Aréopage en matière de procès publics», *Historia Einzelschriften*, 90. Stuttgart, 1995, pp. 147-149.

20. Dein. I, 62: «Ἀλλὰ μὴν πρότερον ἔγραψας σύ, ὦ Δημόσθενες, κατὰ πάντων τούτων καὶ τῶν ἄλλων Ἀθηναίων κυρίαν εἶναι τὴν ἐξ Ἀρείου πάγου βουλήν κολάσαι τὸν παρὰ τοὺς νόμους πλημμελοῦντα, χρωμένην τοῖς πατρίοις νόμοις».

21. Other sources for the Harpalos affair: Hyper. V (*Against Demosthenes*); Plut. *Dem.*, 25-26.2; [Plut.] *Vit. X Or.*, 846a-c, 848f, 850c; Diod. XVII, 108.4-8; Paus. I, 37.5; II, 33.3-5. On the topic see BADIAN, E.: «Harpalus», *JHS*, 81, 1961, pp. 16-43; JASCHINSKI, S.: *Alexander und Griechenland unter dem Eindruck der Flucht des Harpalos*. Bonn, 1981; MARZI, M.: «Il processo arpalico e i suoi protagonisti», *Orpheus*, 2, 1981, pp. 87-104; ASHTON, N. G.: «The Lamian War. A False Start», *Antichthon*, 1983, 17, pp. 47-61; CARAWAN, E. M.: «Apophasis and Eisangelia: The Role of the Areopagos in Athenian Political Trials», *GRBS*, 26, 1985, pp. 115-140 (see esp. 133-134); WORTHINGTON, I.: «The Chronology of Harpalus Affair», *SO*, 61, 1986, pp. 63-76; ENGELS, J.: «Das Eukratesgesetz und der Prozess der Kompetenzerweiterung des Areopagos in der Eubulos und Ligurgära», *ZPE*, 74, 1988, pp. 181-209 (esp. 207-209); WALLACE, 1989, pp. 198-201; SEALEY, 1993, pp. 265-267; DE BRUYN, 1995, pp. 139-142; LANDUCCI GATTINONI, F.: «Demostene e il processo arpalico», in SORDI, M. (ed.): *Processi e politica nel mondo antico*. Milano, 1996, pp. 93-106; WORTHINGTON, I.: «Demosthenes and Alexander the Great», in id.: *Demosthenes. Statesman and Orator*. London, 2000, pp. 102-106.

22. WALLACE, 1989, pp. 113-119. *Contra*, id.: «Investigations and Reports, by the Areopagos Council and Demosthenes' Areopagos Decree», in FLESTED-JENSEN, P. and HEINE NIELSEN, T. (eds.): *Polis and Politics. Studies in Ancient Greek History presented to Mogens Herman Hansen on his Sixtieth Birthday*. Copenhagen, 2000, August 20, pp. 581-593, withdraws his previous conclusions and states that «it is unlikely that Demosthenes' decree introduced the *zetesis* and *apophasis* procedure» (587).

These investigations and reports were not legally binding. They were followed by trials in a dikasterion, and the Areopagos' preliminary judgments could be overturned.²³

In my opinion, the same passage of Deinarchos seems to suggest the beginning of the year 345/4 as the most plausible date for the introduction of the *apophasis* procedure²⁴.

Though Demosthenes' decree gave the Areopagos no absolute authority of arrest and punishment, the right of investigation and reporting of crimes against the state (in particular the crime of treason) represented a major advance in the Council's political power and prestige. Moreover, all the legal actions started in this period by the Areopagos find common ground in the anti-Macedonian sentiment. The council took action against Antiphon, accused of plotting to burn the dockyards on Philip's behalf. It dismissed Aeschines as *sundikos* to the Amphictionic Council, and in his place it appointed Hypereides, known as an uncompromising opponent of Macedon. As a result of Demosthenes' decree the general Proxenos was imprisoned, apparently for military procrastination in 346. Finally, in accordance with the Areopagos' reports and punishments, Charinos was expelled for treason. He had indicted as illegal a decree of the general Thoukydides concerning the *suntaxis* of Thracian Ainos, an indictment that supposedly had led to Ainos' disaffection with Athens and its turning toward Macedon. All of these cases suggest an anti-Macedonian context for the Areopagos' action: «therefore, we may hypothesize that, as a result of the Areopagos' anti-Macedonian sentiments, Demosthenes and that council collaborated in this decree»²⁵.

Further evidence of the Areopagos' unfriendly attitude towards Macedon comes from the much debated executions carried out by the Council after Chaironeia.

23. WALLACE, 1989, p. 113. On the *apophasis* procedure see also CARAWAN, 1985, 124 ff.; WORTHINGTON, I.: *A Historical Commentary on Dinarchus*, Ann Arbor, 1992, pp. 226-228 and 254-256; SEALEY, 1993, pp. 185-187; De Bruyn, 1995, pp. 100-142.

24. I take it for granted that all the four cases quoted by Dein. I, 62-3 belong to the same contest (it is well argued by WALLACE, 1989, p. 117, though he seems again to change his mind in id., 2000, pp. 581-585). The dating 345/4 seems to me the most probable because of the chronology of the episodes of Proxenos and Antiphon. *Contra* SEALEY, R.: «On Penalizing Areopagites», *AJPh*, 79, 1958, pp. 71-73; ENGELS, 1988, p. 189, n. 26 (340/39); WALLACE, 1989, p. 119 (first half of 343); id., 2000, p. 588 (Demosthenes' decree was introduced «sometime in the years 346/340», *apophasis* in the mid 350s – on the basis of elements contained in Dem. LIX); HANSEN, 1991, p. 292 (340s; his earlier opinion considered *apophasis* a reform of *eisangelia* occurring sometime after 362: see HANSEN, M. H.: *Eisangelia. The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians*. Odense, 1975, pp. 52-54).

25. WALLACE, 1989, p. 177. On Antiphon: Dem. XVIII, 132-3; Dein. I, 63; Plut. *Dem.* 14.5. On Aeschines' dismissal: Dem. XVIII, 134; Hyper. frgs. 67-75; [Plut.] *Lives X Or.* 850a. We do not have any decisive evidence to establish whether the Areopagos' rejection of Aeschines came in consequence of an *apophasis* or not; CARAWAN, 1985, pp. 126-127 and ENGELS, 1988, support this opinion. On Proxenos: the general has been identified as the descendant of Harmodius mentioned in Dein. I, 63 and *schol.* Dem. XIX 280; see KIRCHNER, J.: *Prosopographia Attica*. Berlin, 1901-1903, n. 12270; DAVIES, J. K.: *Athenian Propertied Families*. Oxford, 1971, p. 478. On Charinos: [Dem.] LVIII, 37-8; Dein. I, 63.

In the immediate aftermath of the battle, under fear of a Macedonian invasion of Attica, the Athenians took extraordinary measures²⁶, among which was a decree charging the Council with the task of putting to death without trial anyone who tried to leave Athens in time of danger²⁷. Apparently the Areopagos applied and enforced the decree more than once, and those summary executions –though formally legitimate²⁸ and carried out in a moment of deep crisis for the *polis*– must have shocked the highly democratic Athenian sensibility to such an extent that even eight years later general disapproval of the Areopagos' executions after Chaironeia was still strong²⁹. However, what matters for us now is that in the moment of greatest danger the Athenians turned to the Areopagos for support and help, thus increasing its already considerable authority and addressing it against the interests of the Macedonian enemy³⁰.

Resistance to Macedon seems therefore to be the issue around which Demosthenes' group and the Areopagos Council based their cooperation³¹. Their mutual support was indeed a clever political solution and a strategy capable of increasing each other's influence and power³².

3. THE AFTERMATH OF CHAIRONEIA AND THE IDEOLOGY OF DEMOCRACY

Eukrates' law cannot be understood without first analysing the events that occurred in Athens in the years 338-336 B.C. Immediately after the defeat at Chaironeia the Athenians staged what G. Cawkwell has called their «pathetic scenes and

26. Lyc. I, 16; 37-39; 41; Dem. XVIII, 248; XXVI, 11; [Plut.] *Lives X Or.* 849a.

27. Lyc. I, 53: «Ὁ δῆμος, δεινὸν ἡγησάμενος εἶναι τὸ γιγνόμενον, ἐψηφίσατο ἐνόχους εἶναι τῇ προσία τοὺς φεύγοντας τὸν ὑπὲρ τῆς πατρίδος κίνδυνον, ἀξίους εἶναι νομίζων τῆς ἐσχάτης τιμωρίας».

28. *Contra DE BRUYN*, 1995, p. 152.

29. Aeschin. III, 252: «Ἐγένετό τις, ἄχθομαι δὲ πολλάκις μεμνημένος, ἀτυχία τῇ πόλει. Ἐνταῦθ' ἀνὴρ ιδιώτης ἐκπλεῖν μόνον εἰς Σάμον ἐπιχειρήσας, ὡς προδότης τῆς πατρίδος ἀθημερὸν ὑπὸ τῆς ἐξ' Ἀρείου πάγου βουλῆς θανάτῳ ἐζημιώθη. Ἄλλος δ' ἐκπλεύσας ιδιώτης εἰς Ρόδον, ὅτι τὸν φόβον ἀνάνδρως ἤνεγκε, πρῶν ποτὲ εἰσηγγέλθη, καὶ ἴσαι αἱ ψήφοι αὐτῷ ἐγένοντο· εἰ δὲ μία ψήφος μετέπεσεν, ὑπερώριστ' ἄν, ἢ ἀπέθανεν». Lyc. I, 52-3: «Ἡ μὲν γὰρ ἐν' Ἀρείῳ πάγῳ βουλή (καὶ μηδεὶς μοι θορυβήσῃ· ταύτην γὰρ ὑπολαμβάνω μεγίστην τότε γενέσθαι τῇ πόλει σωτηρίαν) τοὺς φυγόντας τὴν πατρίδα καὶ ἐγκαταλιπόντας τότε τοῖς πολεμίοις λαβοῦσα ἀπέκτεινε».

30. See ENGELS, 1988, p. 193: «In seiner Funktion als Gerichtshof erreichte der Areopag nach Chaironeia wohl hiermit den Höhepunkt seiner Machterweiterung [...] Selbst diese außergewöhnliche Ausweitung der Areopagskompetenzen direkt nach Chaironeia fand nach dem Wunsch der Mehrheit des Demos statt und diente der Stabilisierung und dem Schutz der bestehenden Demokratie».

31. It is probably worth mentioning that in 335 the Areopagos refused to enquire with an *apop-basis* into Demosthenes' alleged acceptance of money from the Persian king; see Aeschin. III, 239-240; Dein. I, 10-1, 18-21 (on which see WORTHINGTON, 1992, pp. 139-143 and 164-68); Hyper. V, col. 17; Diod. XVII, 4. 8-9; Plut. *Dem.*, 20.4-5.

32. It is worth noting that the Areopagos' reputation remained unaltered for all the fourth century. In the speeches of the period, even those by the pro-Macedonians, the Council is always mentioned as an example of justice and patriotism: see Aeschin. I, 81, 84, 92; III, 20; Dein. I, 104; Lyc. I, 13, 52.

panic proposals³³, including the Areopagos' executions of those who tried to leave Athens. In the climate of general upheaval, the Council's support for the election as *strategos* of the moderate Phokion instead of the hotheaded Charidemos must be read as a far-sighted act of prudence³⁴.

Philip's treatment of Athens after the battle was notably mild. He never crossed the borders of Attica, he restored the Athenian captives without ransom, and he returned the corpses of the fallen Athenians accompanied by Antipater and Alexander³⁵. Then, he took Oropos from the Thebans and assigned it to Athens³⁶. Philip's intentionally mild behaviour had the effect of relaxing the tension in Athens. Demosthenes was still appointed to deliver the speech in honour of those who had fallen in the battle³⁷, but Philip and his son were given honorary citizenship and their statues were erected in the *agora*³⁸.

In the following spring, eight or nine months after the battle of Chaironeia, terror was certainly over. Nonetheless, epigraphical and literary sources attest a considerable number of provisions showing an anti-Macedonian spirit³⁹.

In the archonship of Phrynikos (337/6) Philip reached the culmination of his influence in Greece calling upon the Synedrion of the Corinthian League basically to settle the war against Persia⁴⁰. Philip was the hegemon of the League, which was «first and foremost a Common Peace»⁴¹. Each member of the Synedrion had to take an oath beginning with the clause ἐλευθέρου εἶναι καὶ αὐτονόμου τοὺς Ἑλληνας, and continuing with provisions aimed at preserving the common peace, such as the prohibition against changing the constitutions of the Greek states that were

33. CAWKWELL, G. L.: *Philip of Macedon*. London, 1978, p. 148; for the provisions see n.º 26.

34. Plut. *Phok.*, 16. 4. For the different opinions about the meaning of this episode see GEHRKE, H. J.: *Phokion. Studien zur Erfassung seiner historischen Gestalt*. Munich, 1976, pp. 61-62; WILL, W.: *Athen und Alexander*. Munich, 1983, pp. 10-11; BEARZOT, C.: *Focione tra storia e trasfigurazione ideale*. Milano, 1985, pp. 137-138; ENGELS, 1988, p. 194; WALLACE, 1989, p. 181; DE BRUYN, 1995, pp. 160-161. TRITLE, L. A.: *Phokion the Good*. London, 1988, comments (p. 112): «Phokion was prepared to negotiate in hope of a future better than that offered by an all-out war. Phokion's proposal held some hope of a future: Demosthenes' held none».

35. Just. 4. 4-6; Pol. V, 10. 4; Diod. XVI, 87. 3.

36. For the general peace settlement and Philip's harsh dealings with Thebes after Chaironeia see SEALEY, 1993, p. 199.

37. Plut. *Dem.*, 21. 1-2.

38. Plut. *Dem.*, 22. 4; Paus. I, 9. 4. See BRUN, P.: *L'orateur Démade. Essai d'histoire et d'historiographie*. Bordeaux, 2000, p. 64 and n. 36.

39. Honorary decrees for Phormio and Karphinas and several other Acharnians: IG II² 237. For Drakontides and Hegesias of Andros: IG II² 238; Lyc. I, 42 (Andros' help to Athens after Chaironeia). Demosthenes in charge of ὁ τεῖχοποιός and ὁ ἐπὶ θεωρικόν: Aeschin. III, 24, 27. Fortifications of the Peiraeus: IG II² 244; Lyc. I, 44; Dem. XVIII, 248; Aeschin. III, 236. On all of these provisions see also SCHWENK, C. J.: *Athens in the Age of Alexander. The dated Laws and Decrees of the Lycourgan Era. 338-322 B.C.* Chicago, *passim*.

40. Diod. XVI, 89.

41. PERLMAN, S.: «Greek Diplomatic Tradition and the Corinthian League of Philip of Macedon», *Historia*, 34, 1985, pp. 153-174, 168.

in force when the treaty was sworn⁴². Perhaps this contributed to weakening, at least momentarily, the success and popularity of the anti-Macedonian faction in Athens, and to increasing the influence of Demosthenes' opponents, Demades in particular. We have evidence of several honorary decrees enacted in favour of Macedonians during the spring of 336 B.C.⁴³.

In this light, it seems that in just a year's time the Athenians followed two opposite trends in policy; before the Synedrion of Corinth they promoted a number of provisions whose hallmark was anti-Macedonism; afterwards, we know of many initiatives taken by Demosthenes' opponents and of awards and tributes of different kinds to Macedonians. One of the few apparent exceptions to this trend is the law of Eukrates, proposed in the ninth prytany (May) of 336.

The first question that should occur to us at this point is whether an anti-tyranny law in 336 was justified. In order to answer this question it will be necessary to sketch out the earlier Athenian legislation against tyranny and subversion upon which Eukrates' law undoubtedly depends⁴⁴. The first anti-dictatorship law we know of is the one quoted by *Ath. Pol.* XVI, 10⁴⁵, which –according to most scholars– was enacted by Drakon⁴⁶; the second is the Solonian law on *eisangelia*⁴⁷;

42. IG II² 236; [Dem.] XVII, 8, 10, 15, 16. On the treaty of the Corinthian League see PERLMAN, 1985, esp. pp. 167-174.

43. We are informed of at least five decrees proposed by Demades between February and June 336: the proxeny decree for Alkimachos, IG II² 239 = SCHWENK, 1985, n. 4 (for Demades as the author of the proposal see TOD, M. N.: *A Selection of Greek Historical Inscriptions*. Oxford, 1946-1948, p. 237, n. 180; see also WILL, 1983, p. 26 and SCHWENK, 1985, p. 29); the proxeny decree for Euthykrates of Olynthos, Suid. s.v. Δημάδης; Plut. *Mor.*, 810c; Hyper. frgs. 76-7; the proxeny decree for another unknown Macedonian who had helped the Athenian envoys to Philip, IG II² 240 = SCHWENK, 1985, n. 7; epigraphical evidence of two more decrees proposed by Demades between the eighth and the tenth prytany: SCHWENK, 1985, n. 5; IG II² 241 = SCHWENK, 1985, n. 8. Moreover, this was the time when Aeschines brought his γραφή παρανόμων against Ctesiphon: Aeschin. III, 27, 49, pp. 236-237; Dem. XVIII, 57. For an exhaustive catalogue of decrees enacted in this time in favour of Macedonians see KRALLI, I.: «Athens and the Hellenistic Kings (338-261 B.C.): the Language of the Decrees», *CQ*, 50 (1), 2000, pp. 113-132, esp. 115, 121; see also BRUN, 2000, pp. 55-69 (esp. 64 ff.).

44. OSTWALD, M.: «The Athenian Legislation against Tyranny and Subversion», *TAPhA*, 86, 1955, pp. 103-128.

45. Θέσμια τάδε Ἀθηναίων ἐστὶ καὶ πατρία· ἐάν τις τυραννεῖν ἐπανιστῶνται ἢ ἐπὶ τυραννίδι τις συγκαθιστῆ τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένον.

46. OSTWALD, 1955, p. 107; WALLACE, 1989, p. 23 (with bibliography nn. 73-75 pp. 234-235). *Contra* CARAWAN, E. M.: «Tyranny and Outlawry: Athenian Politeia 16.10», in ROSEN, R. M. and FARRELL, J. (eds.): *Nomodeiktēs, Greek Studies in Honor of Martin Ostwald*. Ann Arbor, 1993, pp. 305-319.

47. Arist. *Ath. Pol.* VIII, 4: «(Ἡ βουλή τῶν Ἀρεοπαγιτῶν)... τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν, Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν». For the date of the law see OSTWALD, 1955, pp. 104-105; HANSEN, 1975, pp. 17-19 and 56-57; RHODES, P. J.: «Eisangelia» in Athens, *JHS*, 99, 1979, pp. 103-114; HANSEN, M. H.: «Eisangelia in Athens: a Reply», *JHS*, 100, 1980, pp. 89-95; WALLACE, 1989, 64-66; MCGLEW, J. F.: *Tyranny and Political Culture in Ancient Greece*. London, 1993, p. 112; DE BRUYN, 1995, p. 48, n. 174. The amnesty law quoted by Plut. *Sol.*, 19. 4 suggests that between Drakon's and Solon's provisions there must have been one further measure against tyranny. On the matter see DE BRUYN, 1995, pp. 24-28 with bibliography.

later, Cleisthenes' introduction of ostracism was also meant as an answer to «the suspicion felt against men in positions of power»⁴⁸. The law of Eukrates seems, however, to be most strikingly modelled upon Demophantos' decree⁴⁹, which was passed soon after the fall of the Four Hundred in 410/9 B.C. Its text is preserved by Andokides I, 96-8 and consists of two parts: the first contains measures to be taken in case of a subversion of democracy⁵⁰, the second gives the formula of an oath to be sworn by all Athenians, intending to prevent any further overthrow of the constitution⁵¹. After discussing the relations and similarities between Demophantos' decree and the old Draconian law on tyranny⁵², Ostwald concludes that Demophantos' provision was superseded in 403⁵³ by the *nomos eisangeltikos*⁵⁴.

48. Arist. *Ath. Pol.* XXII, 3 («τὴν ὑποψίαν τῶν ἐν ταῖς δυνάμεσιν»); Cp. Andr. 324 F6 and Philoc. 328 F30. See also Arist. *Pol.*, 1284a 17-22 and Thuc. VIII, 73. 3. Anti-tyranny clauses are also present in the Bouleutic and Eliastic oaths, the first quoted by Arist. *Ath. Pol.* XXII, 2 (see RHODES, P. J.: *The Athenian Boule*. Oxford, 1972, pp. 191-199 and id.: *A Commentary of the Aristotelian «Athenaion Politeia»*. Oxford, 1981, pp. 262-264), the latter by Dem. XXIV, 149 (see ASHERI, D.: «Gli impegni politici nel giuramento degli Eliasti Ateniesi», *RAL*, 19, 1964, pp. 281-293; HANSEN, 1991, p. 182). Finally, the Athenian decree concerning Erythrae of ca. 455 B.C. (IG I² 10) «which may reflect Athenian law of the middle of the fifth century, may be considered as an intermediate link between the old (Drakon's) law and the decree of Demophantus», OSTWALD, 1955, p. 114, n. 59.

49. OSTWALD, 1955, pp. 120-122.

50. «Ἐάν τις δημοκρατίαν καταλύη τὴν Ἀθήνησιν, ἢ ἀρχὴν τινα ἄρχῃ καταλελυμένης τῆς δημοκρατίας, πολέμιος ἔστω Ἀθηναίων καὶ νηποινεὶ τεθνάτω, καὶ τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ ἐπιδέκατον· ὁ δὲ ἀποκτείνας τὸν ταῦτα ποιήσαντα καὶ ὁ συμβουλεύσας ὅσιος ἔστω καὶ εὐαγής».

51. «Ὁμόσαι δ' Ἀθηναίους ἅπαντας καθ' ἱερῶν τελείων κατὰ φυλάς καὶ κατὰ δήμους, ἀποκτενεῖν τὸν ταῦτα ποιήσαντα. Ὁ δὲ ὄρκος ἔστω ὅδε· Κτενῶ (καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ καὶ) τῇ ἐμαυτοῦ χειρὶ, ἂν δυνατὸς ᾶ, ὃς ἂν καταλύσῃ τὴν δημοκρατίαν τὴν Ἀθήνησι, καὶ ἐάν τις ἄρξῃ τιν' ἀρχὴν καταλελυμένης τῆς δημοκρατίας τὸ λοιπόν, καὶ ἐάν τις τυραννεῖν ἐπαναστῆ ἢ τὸν τύραννον συγκαταστήσῃ. Καὶ ἐάν τις ἄλλος ἀποκτείνῃ, ὅσιον αὐτὸν νομῶ εἶναι καὶ πρὸς θεῶν καὶ δαιμόνων, ὡς πολέμιον κτείναντα τὸν Ἀθηναίων, καὶ τὰ κτήματα τοῦ ἀποθανόντος πάντα ἀποδόμενος ἀποδώσω τὰ ἡμίσεια τῷ ἀποκτείναντι καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ, καὶ οὐκ ἀποστερήσω οὐδέν. Ἐάν δέ τις κτείνων τινὰ τούτων ἀποθάνῃ ἢ ἐπιχειρῶν, εὖ ποιήσω αὐτὸν τε καὶ τοὺς παῖδας τοὺς ἐκείνου, καθάπερ Ἀρμόδιον τε καὶ Ἀριστογείτονα καὶ τοὺς ἀπογόνους αὐτῶν. Ὅποσοι δὲ ὄρκοι ὁμώμονται Ἀθήνησιν ἢ ἐν τῷ στρατοπέδῳ ἢ ἄλλοθί που ἐναντίοι τῷ δήμῳ τῷ Ἀθηναίων, λύω καὶ ἀφήμι».

52. Arist. *Ath. Pol.* XVI, 10. OSTWALD, 1955, pp. 112-114: «the decree of Demophantus thus constitutes, in a sense, a re-enactment of the old Draconian law, expanded and modernized to fit the conditions of the last decade of the fifth century» (114).

53. This is what most scholars hold, owing to Andokides' statement that, by the time of his trial (399 B.C.), Demophantos' decree was *akuros* (§ 99); see also RHODES, 1981, p. 221. I think there are good reasons, instead, to agree with Douglas MacDowell's opinion that «it more probably remained unannulled in the fourth century» (MACDOWELL, D.: *Andokides. On the Mysteries*. Oxford, 1962, p. 135); see especially Lyc. I, 124-127 and Dem. XX, 159. Also, it was in Andokides' interest to state that Demophantos' decree, like Isotimides' decree on which his indictment was based, was no longer in force «ὅτι τοῖς νόμοις δεῖ χρῆσθαι ἀπ' Εὐκλείδου ἀρχοντος» (Andok. I, 99).

54. Hyper. III, 7-8: «Ἐάν τις τὸν δῆμον τὸν Ἀθηναίων καταλύη, ἢ συνίη ποι ἐπὶ καταλύσει τοῦ δήμου ἢ ἐταιρικὸν συναγάγη, ἢ ἐάν τις πόλιν τινὰ προδῶ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατίαν, ἢ ῥήτωρ ὦν μὴ λέγῃ τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων»; Cp. Theophr. *ap.*

This measure was used –and often abused–⁵⁵ throughout the fourth century, and prescribed a denunciation to the Assembly in cases of an attempt to overthrow the constitution, treason, and political corruption. When Eukrates' law was enacted, the *nomos eisangeltikos*, albeit very weakened, was still in force.

4. THE LAW OF EUKRATES

The continued existence of the *nomos eisangeltikos* is one of the reasons why it seems reasonable to argue that in Athens there was no real need for an anti-tyranny law in 336 B.C. Why, then, did Eukrates make his proposal?

Some of the most important keys for making sense of Eukrates' measure are contained in the prescript (lines 1-6).

First, as stated above, the law was introduced during the ninth prytany of the archonship of Phrynikos (lines 1-2), May 336.

Second, the proponent was Eukrates son of Aristotimos of Peiraieus (lines 4-5), a man otherwise unknown except for a mention in the *Praise of Demosthenes* by Lucian of Samosata. Lucian informs us that when Antipater gained control of Athens in 322 B.C, Eukrates was sentenced to death together with Himeraios of Phaleron, Aristonikos of Marathon, Hypereides and Demosthenes⁵⁶. Eukrates, then, was more than a simple anti-Macedonian: he lost his life at the same time and for the same ideal which Demosthenes and other people of proven anti-Macedonian faith died for. Hence I cannot see any valid reason to doubt that already in 336, when proposing the law, Eukrates was supporting Demosthenes' group⁵⁷.

Third, the formula δεδόχθαι τοῖς νομοθέταις (line 6) shows that Eukrates' provision is a law (not a decree)⁵⁸; as such, it had to go through the procedure of *nomothesia*⁵⁹. This was a complex procedure for which we have only very fragmentary

*Lex. Rhet. Cant. s.v. εἰσαγγελία; ap. Poll. VIII, 51-2. On the possible dating of the *nomos eisangeltikos* see OSTWALD, 1955, pp. 115-119; on the relationship between this provision and the Solonian *nomos* on *eisangelia* see HANSEN, 1975, pp. 17-20.*

55. Hyper. III, 1-3.

56. Luc. *Dem. Enc.*, 31. See MERITT, 1952, p. 357 and n. 35.

57. I am aware that the circumstances of Eukrates' death as mentioned by Lucian do not necessarily prove that he was a member of Demosthenes group fourteen years before (SEALEY, 1958, p. 71; MOSSÉ, C.: *Athens in Decline*. London-Boston, 1973, p. 76). But I think that the complexity of the question should make it desirable not to introduce one more unnecessary assumption; in other terms, we can apply here the scientific principle of Occam's razor –according to which the simplest theory that fits the facts of a problem is the one that should be selected– and choose the hypothesis that Eukrates' political faith in 336 was the same for which he died in 322.

58. On the differences between law and decree in the fourth century see Plat. *Definitiones*, 415b; HANSEN, 1991, pp. 161-177.

59. On Athenian *nomothesia* in fourth century see MACDOWELL, D. M.: «Law Making at Athens in the Fourth Century B.C.», *JHS*, 95, 1975, pp. 62-74; RHODES, P. J.: «Nomothesia in Fourth Century Athens», *CQ*, 35, 1985, pp. 55-60; HANSEN, M. H.: «Athenian Nomothesia», *GRBS*, 26, 1985, pp. 345-371; more

evidence. The sources inform us about the existence of the so-called «Review Law»⁶⁰, requiring an annual revision of the code (Dem. XXIV, 20-3); the «Repeal Law»⁶¹, used to make a new law to replace an existing one considered unsatisfactory or inadequate (Dem. XXIV, 33), and the «Inspection Law»⁶², regulating the repealing of a law in force in case of inconsistencies in the law code (Aeschin. III, 38-9). No explicit mention is made of the possibility of simply making a new law without necessarily having an old one repealed⁶³; nevertheless, this possibility must have existed. We can subscribe to Hansen's statement that the difference between the various procedures lay only in the opening phase, and that, once begun, the procedure was essentially the same in all forms of legislation⁶⁴. Therefore, in light of the sources on the other procedures of *nomothesia* (especially the «Review» and the «Repeal Law»), we can put forward a general hypothesis about the procedure for adding a new law to the law code without repealing an existing one, as seems to be occurring in Eukrates' case. First, *ho boulomenos* among the Athenians could make his proposal and convene the *nomothetai* –who numbered 501, or 1001, or 1501 or even more, according to the importance of the legislation proposed⁶⁵. At «the last of the three meetings of the Ekklesia» (Dem. XXIV, 21), presumably 25-30 days later, the prytaneis and the proedroi arranged a session of the *nomothetai* and probably fixed a date for their next meeting. In the meantime, anyone could propose an alternative law and exhibit it in front of the statues of the eponymous heroes (Dem. XXIV, 23). After no less than a month, early in the morning, the required number of *nomothetai* was appointed by lot from the panel of 6.000 jurors; then, eventually, they met and performed their task of voting on the *nomos* (or choosing between more than one motion, in case of counter-proposals) by show of hands (Dem. XXIV, 33).

This reconstruction explains the procedure that Eukrates' proposal went through. It took several weeks, probably almost two months, for Eukrates' motion to be enforced; hundreds, maybe thousands of people were involved. *Nomothesia* was a cumbersome procedure. This explains why we have evidence for hundreds of decrees but only seven laws⁶⁶.

recently PIÉRART, M.: «Qui étaient les nomothètes à Athènes à l'époque de Démosthène?», in LEVY, E. (ed.): *La codification des lois dans l'antiquité. Actes du Colloque de Strasbourg 27-29 novembre 1997*. Paris, 2000, pp. 229-256; MARTINI, R.: «Il decreto d'investitura dei nomoteti», *Dike*, 3, 2000, pp. 113-123.

60. MACDOWELL, 1975, pp. 66-69.

61. *Ibid.*, pp. 69-71.

62. *Ibid.*, pp. 71-72.

63. MACDOWELL, 1975, pp. 63-66 assumed (on the basis of Dem. XX, 89-92) the existence of an «Old» and a «New Legislation Law» used for this purpose. Yet his view has been contested both by RHODES, 1985 and by HANSEN, 1985, pp. 346-352.

64. HANSEN, 1985, p. 345.

65. HANSEN, 1991, p. 168.

66. *Ibid.*, p. 167.

If there had been a real danger of tyranny, and Eukrates had really intended to prevent the overthrow of democracy, would he have chosen to propose a law? I don't think so. He would have introduced a quick provision, an emergency measure, in a word a decree. I don't mean that, in such a time, the enforcement of an anti-dictatorship provision would not be theoretically justifiable. On the contrary, I agree with those scholars who think that «if Athens was afraid of a tyranny in 336, the most obvious object of that fear was Macedon»⁶⁷; indeed, no other hypothesis about the matter is convincing⁶⁸. Yet, I am not even persuaded that the main purpose of this law was to prevent a subversion of the constitution. Two years had passed since the battle of Chaironeia; Philip's political strategy toward Athens had been marked by *πράοτης, καλοκαγαθία* and *μεγαλοψυχία*⁶⁹; in the treaty of the Corinthian League he had promoted a clause against any attempt to change the existing constitutions. Athens was not under the actual threat of a tyranny in 336, since Philip was too skilful a diplomat to really consider overthrowing the Athenian constitution; at the time, such an act would have represented Philip's political suicide in diplomatic relationships with Greece. The *politeuomenoi* of any side were certainly aware of it, even the anti-Macedonians, in spite of their ever-present propaganda focused on the menace of *κατάλυσις τοῦ δήμου*⁷⁰; and the circumstances of Eukrates' death allow us to consider him –at least at the end of his life– a *politeuomenos*. I think we can reasonably assume that the political consciousness which lay behind Eukrates' law was that of a politician, not that of some private citizen sympathizing with Demosthenes' policy and persuaded by his propaganda. In view of all this, the chief motive behind Eukrates' provision could not have been the fear of tyranny⁷¹.

67. WALLACE, 1989, p. 180. This is also the view of MERITT, 1952; OSTWALD, 1955; CONOMIS, N. C.: «Lycurgus c. Leocr., §§ 124-127, the Decree of Demophantus and the Law of Eukrates», *Hellenika*, 16, 1958, pp. 6-13; SCHWENK, 1985; SORDI, M.: «Il decreto di Eucrate e la liceità del tirannicidio», *Giornale Filologico Ferrarese*, 9, 1986, pp. 59-63; CAMP, J. M.: *The Athenian Agora*. London, 1986; ENGELS, 1988; SQUILLACE, G.: «Un appello alla lotta contro il tiranno: il decreto di Eucrate», *Messana*, 19, 1994, pp. 117-141; DE BRUYN, 1995.

68 That the threat came from the Athenian pro-Macedonians is the opinion of KOUGEAS S. B.: «Ὁ ὑπὲρ τῆς δημοκρατίας Νόμος τοῦ Εὐκράτου», *Nea Hestia*, 1952, pp. 836-839; BRACCESI, L.: «Il decreto ateniese del 337-6 contro gli attentati alla democrazia», *Epigraphica*, 27, 1965, pp. 110-126; GUARDUCCI, M.: *Epigrafia greca*, II. Roma, 1969. For an anti-Demostenic interpretation of the first clause see SEALEY, 1958 and MOSSÉ, 1973. Eventually, MOSSÉ, C.: «A propos de la loi d'Eucrates sur la tyrannie», *Eirene*, 8, 1970, pp. 71-78 and WILL, 1983 read it as a demonstration of loyalty toward Philip's prescriptions at the Synedrion of Corinth.

69. Polyb. V, 10. 1-5.

70. See especially [Dem.] XVII and Hyper. I.

71. Furthermore, the constitution was already safeguarded by the decree of Demophantos (if it is true that it was still in force) and by the *nomos eisangeltikos*; one further measure against the subversion of democracy would have been unnecessary.

To understand the sense of the law, our attention should therefore focus on the second clause. Scholarly consensus explains the Areopagos' involvement in the law with the fear, or the suspicion, that the Council could promote or support the establishment of a Macedonian (or a pro-Macedonian) tyrant⁷². The only support for this assumption is given by the Areopagos' intervention, in 338, to entrust the city to Phokion instead of the radical-democrat Charidemos, and by the summary executions that occurred after Chaironeia; very weak support indeed, compared with all the evidence of the Areopagos' anti-Macedonian policy and «patriotic» cooperation with Demosthenes' group. Moreover, it is hard to see what interests Eukrates, as a member of the anti-Macedonian group, would have had in promoting an attack against such a powerful ally in the pursuit of his own political ends⁷³. Also, it would have been a rather peculiar attack, considering the content of the clause: Eukrates did not narrow the Council's actual authority or competence⁷⁴, he just prohibited the Areopagites from «going up into the Areopagos or sitting in the Council or deliberating about anything» *after* the democracy in Athens had been overthrown. This was a useless prohibition, totally ineffective, powerless and, in addition, *impossible to enforce*; as a matter of fact, the laws enacted under the democratic régime would no more be of use after a κατάλυσις τοῦ δήμου. To put it simply, the law of Eukrates could not effectively prevent the Areopagites from supporting a tyranny, if they had wanted to⁷⁵.

In sum, all the interpretations advanced so far do not seem to stand up to close examination⁷⁶. The first clause of Eukrates' law appears to be superfluous, the

72. LARSEN, J. A. O.: «The Judgement of Antiquity on Democracy», *CPh*, 49, 1954, pp. 1-14; OSTWALD, 1955; SEALEY, 1958; POUILLOUX, J.: *Choix d'inscriptions grecques*. Paris, 1960; BRACCESI, 1965; MOSSÉ, 1970; EAD, 1973; HANSEN, M. H. and ELKROG, B.: «Areopagosrådets Historie i 4. Årh. og Samtidens Forestillinger om Rådets Kompetence for Efiates», *Mus. Tusc.*, 21-22, 1973, pp. 17-47; RHODES, P. J.: «Athenian Democracy after 403 B.C.», *CJ*, 75, 1980, pp. 305-323; ENGELS, 1988; WALLACE, 1989; FARAGUNA, M.: «Atene nell'età di Alessandro», *MAL*, ser. IX, 2, 1992, pp. 164-447; SQUILLACE, 1994; DE BRUYN, 1995; LANDUCCI GATTINONI, 1996.

73. This is a difficulty scholars have sometimes tried to solve by suggesting that Eukrates acted as the spokesman of a group of extreme democrats different from Demosthenes' faction: «a group which may have drawn his strength from the poorer classes» (OSTWALD, 1955, p. 125), or «Die Charidemosanhänger» (ENGELS, 1988, p. 203). The existence of both these groups is still unproved.

74. Cf. WALLACE, 1989, pp. 182-183: «If Athenians objected to Demosthenes' law, why did Eukrates not simply repeal it? If they objected to the executions, why did Eukrates not address this issue? It has not been explained how Eukrates' measure can be understood as a response to these matters».

75. Nevertheless, even the opposite interpretation, which sees in the law the intent to *protect* the Areopagos «from being forced to legitimize a tyrant or to comply with his orders» (SCHWENK, 1985, p. 41; cp. MERITT, 1952; KOUGEAS, 1952) seems to me unconvincing. I find it hard that the Athenians would have used *nomothesia* to enact a law in order to give «tacit acceptance» of the Areopagos' new responsibilities and to acknowledge «the need to revive the laws accordingly» (SCHWENK, 1985, p. 41).

76. A few more interpretations are still to be mentioned: CONOMIS, 1958 and ALESSANDRÌ, S.: «Il problema topografico del decreto di Eucrate», *Annali dell'Università di Lecce*, 6, 1974, pp. 175-182, consider the law of Eukrates not «a new law, but a modification or even better an elucidation... of the clause ἡ ἀρχὴν τινα ἀρχὴν καταλελυμένης τῆς δημοκρατίας» of Demophantos' decree (CONOMIS, 1958, pp.

second ineffective and inexplicable. In order to understand and explain the sense of this provision we apparently need to look in a different direction.

My hypothesis will rely on the few solid proofs I have tried to argue up to this point: 1) There was no real need for a new tyranny law; 2) Eukrates was a member of Demosthenes' group who had no interest in opposing the Areopagos; 3) The clause concerning the Areopagites was in any case ineffective and impossible to enforce.

Following from point 1) is the assumption that it was really the second clause that mattered in this law; points 2) and 3) shall lead us to the conclusion that the second clause was not against the Areopagos Council, but rather *to its advantage*. Only from these premises can we hope to give an explanation of the law which is plausible and consistent with the evidence.

Let's suppose that Eukrates' proposal did not arise out of the will to *act* for a certain purpose, but rather to *react* against something: for example, against the increasing popularity of Demades' group and their pro-Macedonian policy, particularly forceful when Eukrates' law was proposed and then enacted. Let's suppose that the anti-Macedonians were afraid that their opponents could do something more than advancing some proxeny or honorary decree, something that could seriously damage Demosthenes' policy. The Areopagos was probably the best target for an attack at the time, being the most precious ally of the anti-Macedonians and having lately enjoyed a remarkable increase in authority. It is plausible to assume that the Areopagos' new powers and responsibilities could have made someone suspicious and worried about the Council's loyalty to democracy, especially after the summary executions in the aftermath of Chaironeia; the latter «may have been judged offensive because they violated the spirit of the law and the constitution; they were anti-democratic»⁷⁷. A provision aimed at reducing the Areopagos' field of influence (for example the repeal of Demosthenes' decree) would not have been out of place at the time, and would have also had a very good chance of being approved. The anti-Macedonians could not take such a risk; in order to *prevent* a potential, harmful attack on the Areopagos, they conceived Eukrates' law, a provision apparently hostile to the Council but actually inoffensive⁷⁸.

11-12); the need for such an elucidation would have derived from Eukrates' fear of future changes. ΟΙΚΟΝΟΜΙΔΗΣ, Ν.: «Κριτικά καὶ ἐρμηνευτικά εἰς τὸν νόμον τοῦ Εὐκράτου», *Polemon*, 6, 1957, pp. 28-36, assumes that the law was the modification of two previous provisions (whose existence is totally hypothetical). Finally SORDI 1986 states that the law was intended to affirm «la legittimità sacrale del tirannicidio».

77. WALLACE, 1989, p. 183.

78. In this view the obscurity of the proponent can also find an explanation. Such a proposal could never have come from one of the popular politicians, like Demosthenes or Hypereides, without

It is important not to lose sight of the fact that the law had to pass through the process of *nomothesia*, that is to say, it had to be publicly exposed and read, before being judged by hundreds of people. In a word, its text had to be persuasive. And what issue could serve the purpose better than an anti-tyranny clause, reaffirming the highest democratic spirit and, by means of language, echoing previous anti-dictatorship legislation?⁷⁹ Nobody in Athens would ever have opposed the enactment of a law introduced to avert the danger of tyranny; Philip's assurances about safeguarding the existing constitutions might not have been reassuring enough for the Athenians; there could well have been people who still feared for the future of democracy. I am persuaded that the intention and the meaning of the first clause were *purely propagandistic*; its content itself basically guaranteed the approval of the whole provision, overshadowing at the same time the powerlessness of the second clause. Furthermore, the formal and conceptual link between the Areopagos and a potential κατάλυσις τοῦ δήμου was probably enough to satisfy and reassure those who were seriously worried about the Council's great authority; and, what is most important, the enactment of a law (not just a decree) regulating with apparent severity the Areopagos' conduct in case of subversion of democracy would have definitely averted the risk of a seriously damaging provision on a similar issue from the pro-Macedonian side. And if we are dealing with a provision aimed at giving *only the illusion* of regulating an issue while actually leaving it unaltered, then we can also explain the inner ambiguity of the law, its peculiar character as consistent with the purpose of its formulation.

I am aware that this is only an hypothesis. Indeed, after more than fifty years of studies, we should better accept that the true political sense and purpose of the law of Eukrates can only be hypothesised. It is likely that scholars will never agree on a definitive interpretation of the law. But we can certainly argue what the law does not mean, and hence, give a reconstruction which is consistent with the evidence and coherent with the historical facts. This is what I tried to do.

running the risk of being greeted with suspicion. In 336 the unknown Eukrates, though already a member or supporter of Demosthenes' group, must have appeared like the right person to promote such a «delicate» provision. Also, Plutarch (*Dem.*, 21. 3) informs us that after the defeat of Chaironeia «to the decrees which he (*scil.* Demosthenes) proposed he would not put his own name, but rather those of his friends, one after the other, avoiding his own as inauspicious and unfortunate».

79. In addition to the striking echoes of the anti-tyranny provision quoted by *Ath. Pol.* XVI, 10 and of Demophantos' decree, note the emphatic reiteration of the expression ὁ δῆμος καὶ ἡ δημοκρατία τῶν Ἀθηναίων (for which see recently BLANSHARD, 2004, esp. 11), and, in general, the insistence on powerful concepts such as δημοκρατία, τυραννίς, κατάλυσις τοῦ δήμου. This seems also to suit particularly well the cult of Demokratia attested in Athens during the 340s and 330s, for which see RAUBITSCHKE, 1962.