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γεγενῆσθαι. μνηύεται οὖν ἀπὸ μετοίκων τέ τινων καὶ ἀκο-  
λούθων περὶ μὲν τῶν ἑλλήνων δὲ ἀγαλμάτων  
περικοπαί τινες ἐπὶ τῶν παλαιῶν παιδιᾶς καὶ  
οἶνου γεγενημένας. ὡς ποιεῖται ἐν  
οἰκίαις ἐφ' ὅβρει τῶν καὶ τῶν Ἀλκιβιάδην ἐπηγιγνόντο. καὶ  
αὐτὰ ὑπολαμβάνοντες οἱ μάλιστα τῷ Ἀλκιβιάδῃ ἀχθόμενοι  
ἐμποδῶν ὄντι σφίσι μὴ αὐτοῖς τοῦ δήμου βεβαίως προεσθάναι,  
καὶ νομίσαντες, εἰ αὐτὸν ἐξελάσειαν, πρῶτοι ἂν εἶναι, ἐμεγά-  
λυνον καὶ ἐβόων. ἐπὶ δὲ δήμῳ καταλύσει τὰ τε μυστικά καὶ  
ἡ τῶν Ἑρμῶν τοῦ τεκμήρια εἴη αὐτῶν ὅτι οὐ  
μετ' ἐκείνου ἐπράχθη, ἐπιλέγοντες τεκμήρια τὴν ἄλλην αὐτοῦ  
ἐς τὰ ἐπιτηδεύματα οὐ δημοτικὴν παρανομίαν. ὁ δ' ἐν τε  
τῷ παρόντι  
πρὶν ἐκπεῖν  
γὰρ καὶ τὰ τῆς  
τι εἰργαστο, δίκην δοῦναι, εἰ δ' ἀπολυθείη, ἄρχειν. καὶ  
ἐπεμαρτύρητο μὴ ἀπόντος πέρι αὐτοῦ διαβολῆς ἀποδέχεσθαι,  
ἀλλ' ἤδη ἀποκτείνειν, εἰ ἄλλοι καὶ ὅτι σωφρονέστερον εἴη  
μὴ μετὰ τοιαύτης αἰτίας, πρὸς διαγνώσιν, πέμπειν αὐτὸν ἐπὶ  
τοσοῦτ' στρατεύματι. διότις τό τε στράτευμα  
μὴ εὖνουν ἔχρη, ἦν ἤδη ἀγωνίζηται, ὃ τε δῆμος μὴ μαλα-  
κίζεται θεραπεύων ὅτι δι' ἐκείνου οἱ τ' Ἀργεῖοι ξυνεστράτευον  
καὶ τῶν Μαντινέων τινές, ἀπέτρεπον καὶ ἀπέσπενδον, ἄλλους  
ρήτορας ἐνιέντες οἱ ἔλεγον νῦν μὲν πλεῖν αὐτὸν καὶ μὴ  
κατασχεῖν τὴν ἀναγωγὴν, ἐλθόντα δὲ κρίνεσθαι ἐν ἡμέραις  
ρήταις, βουλόμενοι ἐκ μέλζονος διαβολῆς, ἦν ἐμελλον βῆρον  
αὐτοῦ ἀπόντος ποριεῖν, μετὰ πειπτον κομισθέντα αὐτὸν ἀγω-  
νίσασθαι. καὶ ἔδοξε πλεῖν τὸν Ἀλκιβιάδην.  
Μετὰ δὲ ταῦτα θέρους μεσοῦντος ἤδη ἡ ἀναγωγὴ ἐγγίγνεται

### The Authenticity of the Document at Andocides On the Mysteries 95-98

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### The Authenticity of the Document at Andocides *On the Mysteries* 96-98

In his speech *Against Leocrates* delivered in 331 BCE, the orator Lycurgus tells the judges that their fathers enacted a decree that if anyone killed a person attempting to establish a tyranny, to overthrow the democracy, or to betray the city, he would be free from pollution (i.e. for homicide) (*Leoc.* 125).<sup>1</sup> Lycurgus then has the decree read out to the court. He twice reminds the judges that the decree has been inscribed on a stele set up in the Bouleuterion (*Leoc.* 124, 126). After the decree is read out, Lycurgus lays great stress on the oath contained in this decree of Demophantus, which requires every Athenian to kill the person betraying their fatherland “by word and deed and hand and vote” (*Leoc.* 127). In his speech *Against Leptines*, Demosthenes (20.159) also mentions the decree of Demophantus, which contains an oath including the phrase “if anything happens to someone defending the democracy, the same rewards shall be given to him as were given to Harmodius and Aristogeiton”.

Inserted into the text of Andocides’ speech *On the Mysteries* (96-98) is a document that purports to be a decree proposed by Demophantus containing an oath using some of the same phrases found in the paraphrases and quotations of the decree of Demophantus given by Demosthenes and Lycurgus. In the nineteenth century J. Droysen defended the authenticity of all the major documents in Andocides’ *On the Mysteries* and dated the decree of Demophantus to the year 410/9 BCE.<sup>2</sup> In recent years, most scholars have also accepted the authenticity of these documents.<sup>3</sup> For

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1. For the date of the speech see E.M. Harris in I. Worthington, C.R. Cooper and E.M. Harris, *Dinarchus, Hyperides, Lycurgus* (Austin TX 2001) 159, n. 1. A.H. Sommerstein, “The Authenticity of the Demophantus Decree”, *CQ* 64.1 (2014) 49-57, misdates the speech to 330 BCE, but this is contradicted by the evidence at Lycurg. *Leoc.* 45 (in the eighth year after Chaeronea, that is seven years after 338, or 331. Cf. Lycurg. *Leoc.* 58, 145). J. Engels, *Lykurg: Rede gegen Leokrates* (Darmstadt 2008) 113 defends the date of 330 BCE, but his arguments are not convincing. See E.M. Harris, *The Rule of Law in Action in Democratic Athens* (Oxford 2013) 233, n. 54.

2. J. Droysen, *De Demophanti Patroclidis Tisameni populiscitis quae inserta sunt Andocidis orationi Peri Mysterion* (Berlin 1873).

3. See for example, C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford 1952) 280 with n. 2, 372, 378; M. Ostwald, “The Athenian Legislation against

instance, in their commentaries on the speech, D.M. MacDowell and M. Edwards accept the authenticity of all these documents without question.<sup>4</sup> In a paper published in 2012, M. Canevaro and I showed that all the documents in sections 77-98 of *On the Mysteries* are forgeries.<sup>5</sup> Several scholars have now accepted our conclusions.<sup>6</sup> In an article published in 2014, however, A.H. Sommerstein attempts to defend the authenticity of the document found at sections 96-98, the so-called “Decree of Demophantus”.<sup>7</sup> He agrees with our conclusions about the other documents in the speech but questions our views about this document. I welcome the challenge to our case against the document’s authenticity, which has stimulated me in some cases to revise our arguments and in others to discover additional evidence supporting the case against the document’s authenticity. On the other hand, I shall show that with two exceptions all of Sommerstein’s arguments are unconvincing, some built on misunderstandings of the evidence, others depending on conjectures and assumptions that are either unprovable or untenable.<sup>8</sup> I appreciate, however, the opportunity to refine our individual arguments and to strengthen our overall case.

The document’s authenticity is crucial for our understanding of Athenian history at the end of the fifth century BCE. In recent years, one scholar has used the document in an argument about the political nature of the festival of Dionysus.<sup>9</sup> Another scholar claims that the oath contained in the decree played a major role in

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Tyranny and Subversion”, *TAPA* 86 (1955) 103-128 at 113-114; R. Osborne, “Changing the Discourse”, in Kathryn Morgan (ed.), *Popular Tyranny: Sovereignty and Its Discontents in Ancient Greece* (Austin TX 2003) 251-272, at 261, 265; J. Ober, *Athenian Legacies: Essay on the Politics of Going on Together* (Princeton 2005) 224-225; J. McGlew, “Fighting Tyranny in Fifth-Century Athens: Democratic Citizenship and the Oath of Demophantus”, *BICS* 55.2 (2012) 91-99.

4. D.M. MacDowell, *Andokides: On the Mysteries* (Oxford 1962) 134-136; M. Edwards, *Greek Orators IV: Andocides* (Warminster 1995) 181.

5. M. Canevaro and E.M. Harris, “The Documents in Andocides’ *On the Mysteries*”, *CQ* 62.1 (2012) 98-129.

6. N. Luraghi, “To Die Like a Tyrant”, in N. Luraghi (ed.), *The Splendors and Miseries of Ruling Alone: Encounters with Monarchy from Archaic Greece to the Hellenistic Mediterranean* (Stuttgart 2013) 49-71 at 51, n. 12; Chr. Joyce, “Μὴ μνησικακεῖν and ‘all the laws’ (Andocides *On the Mysteries* 81-2): A Reply to E. Carawan”, *Antichthon* 48 (2014) 37-54; Leslie Threatte *per litteras*; Denis Knoepfler in conversation.

7. Sommerstein, “Authenticity” (see n. 1) 49-57.

8. The two exceptions do not affect the overall case against the document’s authenticity.

9. P. Wilson, “Tragic Honours and Democracy. Neglected Evidence for the Politics of the Athenian Dionysia”, *CQ* 59 (2009) 8-29, at 23-27.

mobilizing the opposition to the Thirty in 404/3 BCE.<sup>10</sup> And a third scholar has drawn far-reaching conclusions about the aftermath of the events of 411 BCE on the assumption that the document found in the text of Andocides' *On the Mysteries* is authentic and that the oath about killing tyrants is to be dated to the year 410/9.<sup>11</sup> There is therefore much at stake in the debate about the document's authenticity. An analysis of the document's authenticity also raises important methodological issues about evaluating the information contained in the other documents inserted into speeches of the Attic orators. Finally, the discussion of the language of the decree affects our understanding of the relationship between the formal language of laws and decrees and the language of literary prose.

Before addressing our main arguments about the decree, Sommerstein questions an important tenet of our methodology. We pointed out that when evaluating the authenticity of the documents inserted into the texts of Andocides, Aeschines and the Demosthenic corpus, one must pay careful attention to the language of these texts, which should conform to the standard formulas and vocabulary of these decrees. When a document contains language without parallels in documentary prose, this is an indication that the document is not authentic.<sup>12</sup> Sommerstein attempts to question this tenet by pointing to Lysias' discussion of the decree of Demophantus (*Leoc.* 127) in which he uses the verb *κτείνειν*, which he claims is "archaic-poetic" because it is "completely absent from Attic prose inscriptions except for IG I<sup>3</sup> 104, the reinscription of the homicide laws ascribed to the seventh-century legislator Dracon". On the basis of this single example (which we will see is not an actual example), Sommerstein concludes "we should not be surprised, or automatically suspicious, if D contains other linguistic

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10. D.A. Teegarden, "The Oath of Demophantus, Revolutionary Mobilization, and the Preservation of the Athenian Democracy", *Hesperia* 81.3 (2012) 433-465, and *id.*, *Death to Tyrants! Ancient Greek Democracy and the Struggle against Tyranny* (Princeton 2014) 15-53.

11. J. Shear, "The Oath of Demophantus and the Politics of Athenian Identity", in A.H. Sommerstein and J. Fletcher (eds.), *Horkos. The Oath in Greek Society* (Exeter 2007) 148-160 and *Polis and Revolution: Responding to Oligarchy in Classical Athens* (Cambridge 2011) *passim*.

12. Canevaro and Harris, "Documents" (see n. 5) 100. The only evidence there is for documentary prose is what is found on public inscriptions and the quotations of laws and decrees in the speeches of the Attic orators. In some cases the text of a decree preserved in the Metroon may have contained more information – see W.C. West, "The Public Archives in Fourth-Century Athens", *GRBS* 30 (1989) 529-543. On the other hand, there is no reason to believe that the language and phraseology of the texts preserved in the archives and that of those published on stone differed from one another.

features that are found in poetic, or rhetorically elevated texts but are rare or unknown in inscribed decrees”.

First, we must point out that the form *κτείνειν* is not “archaic-poetic”. The form occurs in Thucydides, an author who is neither “archaic” nor “poetic”.<sup>13</sup> Second, one finds both the form *κτείνειν* and the form *ἀποκτείνειν* in laws from the Archaic period. The text of Draco’s law about deliberate homicide contains the form *ἀποκτείνῃ* (Dem. 23.22, 24) and that about just homicide contains the form *ἀποκτείνῃ* and the form *κτείναντα* (Dem. 23.53).<sup>14</sup> Conversely, we find forms of the verb *κτείνειν* in other parts of the Demosthenic corpus in which the speaker is not quoting from laws of the Archaic period ([Dem.] 47.69 and [Dem.] 59.10). And Demosthenes uses forms of the verb *κτείνειν* and *ἀποκτείνειν* when paraphrasing the law about killers in exile (Dem. 23.38) and when paraphrasing the fourth-century decree for Charidemus (Dem. 23.60-61). For Sommerstein to question our methodology in this way, he would have to produce an inscribed copy of a law or decree using “linguistic features that are found in poetic, or rhetorically elevated texts”, something that he has not done so far.<sup>15</sup> This has important implications for several of Sommerstein’s arguments for the document’s authenticity.

We can now turn to Sommerstein’s replies to our individual arguments, which we have numbered in the same way that he does. For the reader’s convenience, I provide a text and translation of the document inserted into the text of Andocides’ *On the Mysteries*.

NΟΜΟΣ. ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ. Αἰαντὶς ἐπρυτάνευε, Κλεογένης ἐγραμμάτευε, Βοηθὸς ἐπεστάτει. τάδε Δημόφαντος συνέγραψεν. ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος ἡ βουλὴ οἱ πεντακόσιοι (οἱ) λαχόντες τῷ κυάμῳ, ὅτε Κλεογένης πρῶτος ἐγραμμάτευεν.

13. Thuc. 1.50.1; 1.132.5; 2.51.6; 2.102.5 and 6; 3.47.3; 3.58.1, 3, and 5; 3.66.2 and 3; 3.70.6; 3.81.5; 3.111.3; 4.67.4; 4.74.3; 4.127.2; 6.59.2; 7.29.4.

14. M. Canevaro, *The Documents in the Attic Orators: Laws and Decrees in the Public Speeches of the Demosthenic Corpus* (Oxford 2013) 40-48 and 64-70 has shown that these documents are reliable. For the linguistic phenomenon of the complex form being followed by the simplex form with the same meaning see C. Watkins, “An Indo-European construction in Greek and Latin”, *HSCP* 71 (1966) 115-119.

15. We should also note that Sommerstein is inconsistent and implicitly contradicts himself. He has no objection to our using this tenet when rejecting the authenticity of the inserted documents at Andoc. 1.77-87 but only objects when we use this criterion against the document at 96-98. But if the criterion is valid when assessing those documents, why should it not be valid for assessing the document at 96-98?

ἐάν τις δημοκρατίαν καταλύει τὴν Ἀθήνησιν, ἢ ἀρχὴν τινὰ ἄρχει καταλελυμένης τῆς δημοκρατίας, πολέμιος ἔσται καὶ νηποινεὶ τεθνάτω, καὶ τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ ἐπιδέκατον· ὁ δ' ἀποκτείνας τὸν ταῦτα ποιήσαντα καὶ ὁ συμβουλεύσας ὅσιος ἔστω καὶ εὐαγής. ὁμόσαι δ' Ἀθηναίους ἅπαντας καθ' ἱερῶν τελείων κατὰ φυλὰς καὶ κατὰ δήμους, ἀποκτείνειν τὸν ταῦτα ποιήσαντα. ὁ δὲ ὅρκος ἔστω ὅδε· κτενῶ τῇ ἐμαυτοῦ χειρὶ, ἂν δυνατὸς ᾶ, ὅς ἂν καταλύσῃ τὴν δημοκρατίαν τὴν Ἀθήνησιν, καὶ ἐάν τις ἄρξῃ τιν' ἀρχὴν καταλελυμένης τῆς δημοκρατίας τὸ λοιπόν, καὶ ἐάν τις τυραννεῖν ἐπαναστῇ ἢ τὸν τύραννον συγκαταστήσῃ· καὶ ἐάν τις ἄλλος ἀποκτείνῃ, ὅσιον αὐτὸν νομιῶ εἶναι καὶ πρὸς θεῶν καὶ δαιμόνων, ὡς πολέμιον κτείναντα τῶν Ἀθηναίων, καὶ τὰ κτήματα τοῦ ἀποθανόντος πάντα ἀποδόμενος ἀποδώσω τὰ ἡμίσεα τῷ ἀποκτείναντι καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ, καὶ οὐκ ἀποστερήσω οὐδέν, ἐάν τις κτείνων τινὰ τούτων ἀποθάνῃ ἢ ἐπιχειρῶν, εὖ ποιήσω αὐτόν τε καὶ τοὺς παῖδας τοὺς ἐκείνου καθάπερ Ἀρμόδιον τε καὶ Ἀριστογείτονα καὶ τοὺς ἀπογόνους αὐτῶν. ὅποσοι δὲ ὅρκοι ὁμώμονται Ἀθήνησιν ἢ ἐν τῷ στρατοπέδῳ ἢ ἄλλοθί που ἐναντίοι τῷ δήμῳ τῶν Ἀθηναίων, λύω καὶ ἀφίημι.” ταῦτα δὲ ὁμοσάντων Ἀθηναῖοι πάντες καθ' ἱερῶν τελείων τὸν νόμιμον ὅρκον, πρὸ Διονυσίων· καὶ ἐπεύχεσθαι εὐορκοῦντι μὲν εἶναι πολλὰ καὶ ἀγαθὰ, ἐπιορκοῦντι δ' ἐξώλῃ αὐτόν εἶναι καὶ γένος.

LAW. Resolved by the Council and People, in the prytany of Aiantis, Cleogenes was the secretary, Boethus presided. Demophantus made the following proposal. The period of this decree begins – the Council of Five Hundred selected by lot – when Cleogenes was the first secretary. If anyone destroys the democracy at Athens, or once the democracy is destroyed holds an office, he will be an enemy and let him die without compensation, and let his property be confiscated, and a tenth (dedicated) to the goddess. Whoever kills the person who does this, and whoever plots with him, let him be ritually pure and sacred. All Athenians are to swear on perfect victims by tribes and by demes to kill the person who does these things. Let the oath be as follows: “I will kill by my own hand, if I am able, whoever destroys the democracy at Athens, and if anyone holds an office once the democracy is destroyed in the future, and if anyone attempts to become a tyrant or collaborates in setting up a tyrant. And if anyone else kills him, I shall consider him to be ritually pure both before the gods and the heroes like a person who has killed an enemy of the Athenians, and I shall sell all the property of the dead man and hand over half to the killer by word and by deed and by vote, and I shall deprive him of nothing. If anyone dies while killing one of these people or attempting to, I shall treat him well and his children just as Harmodius and

Aristogeiton and their descendants. And as many oaths as have been sworn at Athens and in the army-camp or anywhere else contrary to the Athenian people, I renounce and abjure.” Let all the Athenians swear this oath on perfect victims, the legal oath, before the Dionysia. For him who keeps his oath, let there be many blessings; as for him who perjures himself, let him and his family be destroyed.

(1a) We pointed out that the verb used for the action of making a proposal in the document is *συνέγραψεν* when in all the prescripts preserved in inscriptions from the fifth and fourth centuries BCE the verb is always *εἶπε*. We observed that the verb *χσυνέ[γρ]αψαν* following the noun *χσυγγραφεῖς* is found IG I<sup>3</sup> 78a (c. 422 BCE), ll. 3-4, but observed that this is not a true parallel because the verb is used in the plural after a subject in the plural. The reason why the verb is used in this case should be obvious: the board of *χσυγγραφεῖς* wrote the proposal “together” and were thus jointly responsible for its provisions. The verb is used in the same way in an Athenian inscription from the fourth century about the Sacred *Orgas*, in which the *proedroi* of the Council are instructed to “write jointly” with the *poletai* (IG II<sup>2</sup> 204, ll. 67-69). The verb makes no sense after a subject in the singular: “he wrote together”. Together with whom? one might ask. Sommerstein replies that “the phraseology of D is precisely that of IG I<sup>3</sup> 78a, ll. 3-4 except that on this occasion there was apparently only one *συγγραφεύς* (who could be named easily) rather than a board of, say, ten of them (whom it would have been inconvenient to list by name)”. First, how does Sommerstein know that Demophantus was a *syngrapheus*? Sommerstein provides no evidence. Second, the word *syngrapheis* is always found in the plural in the fifth century BCE, not in the singular as Sommerstein would like to believe. In Thucydides’ account of the events leading up to the establishment of the Four Hundred in 411 BCE (Thuc. 8.67.1-2; cf. Isoc. 7.58), it is used for a board of ten officials as it is in IG I<sup>3</sup> 78a, ll. 3-4. Here it is followed by the participle *ξυγγράψαντας*, that is, “to write jointly” a proposal to be submitted to the Assembly. When describing the same events, the author of the Aristotelian *Constitution of the Athenians* (29.2) does not use the term *syngrapheis* and says that there were twenty members of the board, but once more uses the verb to indicate that the task of “writing jointly” a proposal is to be submitted to the Assembly (*συγγράφειν, συγγράφουσι*) (cf. Xen. *Hell.* 2.3.11). In the prescript of another decree, we find the phrase *γνόμ]ε τὸν συγγραφέον*, again in the plural (IG I<sup>3</sup>

99, l. 8).<sup>16</sup> In prescripts and in legislative contexts, we always find the term *syngrapheis* in the plural, never a single *syngrapheus* as Sommerstein assumes without evidence (“apparently”), and the verb *συγγράφειν* in the plural.<sup>17</sup> As for his point that “Presumably the verb is used rather than *εἶπε* because Demophantus did not propose the decree on his own initiative but was instructed (either by the Council or the Assembly) to draft one”, Sommerstein once more presents no evidence to show either that Demophantus had been so instructed by the Council or Assembly or that, if this procedure was in fact used, the proposal submitted on the basis of this invitation would be introduced by the verb *συνέγραψεν* in the singular in a prescript. *Pace* Sommerstein, our points stand: one never finds this verb in a prescript for the motion-formula, which for an individual is always the verb *εἶπε*, and IG I<sup>3</sup> 78a, ll. 3-4 does not provide a parallel because the verb in that passage occurs in the plural.

(1b) Canevaro and I pointed out that the expression ἡ βουλὴ οἱ πεντακόσιοι λαχόντες τῷ κῶνᾳ never occurs in decrees of the fifth and fourth centuries BCE. What is especially striking is that we have several decrees with preserved prescripts from the year 410/9 BCE. To show how unusual the features of the prescript in the document are, I provide these prescripts below:

IG I<sup>3</sup> 99, ll. 1-7:

[Φ]ίλιππος [Φιλ]έο Δ[ειραδιό]τες

[ἐ]γγραμμᾶτευεν Οἱ[νείδι φυλᾷ]

ἔδοχσεν τῷ βουλῇ[ι καὶ τῷ]

δέμοι· Οἰνεῖς ἐπ[ρυτάνευ]-

ε, Φίλιππος ἐγγρα[μμᾶτευε]-

ν, Χαρίας ἐπεστᾶ[τει, Γλαύ]-

[κ]ίππος ἔρχεν

Philippus, the son of Phileus, from the deme  
of Deiras, was secretary for the tribe Oeneis.

16. One might add an inscription from Cos dated to the second or first century BCE, which has prescript with a phrase τᾷδε συνέγραψαν, followed by five names (Syll.<sup>3</sup> 1012 [= LSCG no. 166], ll. 2-6).

17. The verb can be used to express the idea of drawing up a plan (*συγγραφαί*) to be submitted to the Council (IG I<sup>3</sup> 35, ll. 7-8. Cf. ll. 13 and 17 [design for a temple]; 71, ll. 40 [collection of first-fruits of oil], but that is different from making a formal proposal to the Assembly.

It was resolved by the Council and the Assembly. Oeneis held the prytany. Philippus was secretary. Charias was *epistates*. Glaucippus was the archon.

IG I<sup>3</sup> 101, ll. 4-6:

[ἔ]δοχσεν τῇ β[ο]υ[λῇ] καὶ τοῖ δῆμοι· Λεοντίς ἐπρυτά[νευεν],  
Σιβυρτιάδης ἐγγρα[μμάτευεν, Χα]ριμένης ἐπεστ[άτει, Γλ]-  
αύκιππος ἤρχ[ε, . . . .]θεός εἶπεν

It was resolved by the Council and the Assembly. Leontis held the prytany. Sibyrtiades was secretary. Chaerimenes was *epistates*. Glaucippus was the archon. [--]theus made the proposal.

IG I<sup>3</sup> 102, ll. 1-6:

[ἐπὶ Γλαυκί]ππο ἄ[ρ]χον[τ]ος.  
[Λόβον ἐκ] Κεδῶν ἐγγραμμάτευε.  
[ἔ]δοχσεν τῇ β[ο]υλῇ καὶ τοῖ δέμοι· ἱπποθοντί-  
[ς ἐπρυτάνε]υε, Λόβον ἐγγραμμάτευε, Φιλιστίδε-  
[ς ἐπεστάτε], Γλαύκιππος ἔρχε : Ἐρασινίδες εἶπ-  
[ε· . . . ]

In the archonship of Glaucippus. Lobon from Kedoi was secretary. It was resolved by the Council and the Assembly. Hippothontis held the prytany. Lobon was secretary. Philistides was *epistates*. Glaucippus was the archon. Erasinides made the proposal.

IG I<sup>3</sup> 103, ll. 2-5:

[ἔ]δοξεν τῇ βουλῇ καὶ τῷ δήμῳ· Ἐρεχ-  
[θίς ἐπρυτάνευε, Ἀμ]υθ[έ]ων ἐγγραμμάτε-  
[υε, . . . .<sup>9</sup> . . . ἐπεστά]τει, Γλαύκιππος  
[ἤ]ρχε, . . .<sup>7</sup> . . . εἶπε ἐπ[α]ινέσαι . . .

It was resolved by the Council and the Assembly. Erechtheis held the prytany. Amytheon was the secretary. [ . . . ] was *epistates*. Glaucippus was the archon. [ . . . ] made the proposal.

In all four of these prescripts one finds the name of the tribe holding the prytany, the name of the secretary, the name of the *epistates* and the name of the archon. Let us contrast the prescript of the document at Andoc. 1.96.

ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ. Αἰαντὶς ἐπρυτάνευε, Κλεογένης ἐγραμμάτευε, Βοηθὸς ἐπεστάτει. τάδε Δημόφαντος συνέγραψεν. ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος ἡ βουλὴ οἱ πεντακόσιοι <οἱ> λαχόντες τῷ κυάμῳ, ὅτε Κλεογένης πρῶτος ἐγραμμάτευεν.

The prescript in the document is similar to the preserved prescripts insofar as the enactment formula is followed by the name of the tribe holding the prytany, the name of the secretary, and the name of the *epistates*. The document however then deviates from this pattern in four striking ways. First, it contains the phrase ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος ἡ βουλὴ οἱ πεντακόσιοι <οἱ> λαχόντες τῷ κυάμῳ, to which we will return. Second, the motion formula is different (τάδε Δημόφαντος συνέγραψεν vs. εἶπε) as we noted above. Third, the document strikingly omits the name of the archon, which is found in all the other prescripts preserved from this year. This however is not a significant difference because the name of the archon is omitted in the prescripts of several decrees in this period.<sup>18</sup> Fourth, the secretary is named twice in the document, but the second time he is named, he is also described as the “first” secretary of the bouleutic year and linked to the preceding words by the subordinating conjunction ὅτε.

Sommerstein claims that the term ἡ βουλὴ οἱ πεντακόσιοι <οἱ> λαχόντες τῷ κυάμῳ “is here used for a specific and unique purpose, to define an epoch, that of the restoration of the democracy” and that the addition of the phrases giving the number of members and their method of selection (not found in any other decrees of the fifth and fourth centuries) was meant to “mark the inauguration of the old democratic council chosen by lot”. He notes that in 411 BCE the Council of Five Hundred was replaced by a Council of Four Hundred in the archonship of Mnesilochus (412/1 BCE). Sommerstein then claims that under the regime of the Five Thousand, which began in the third month of the archonship of Theopompus (411/0 BCE) ([Arist.] *Ath. Pol.* 33.1-2), there was a council “that symbolically reverted to the traditional number of five hundred but was chosen by election, not by lot”.

There are several problems with this argument. First, Sommerstein provides no evidence to prove that such a Council of Five Hundred existed under the Five Thousand, that is, in the ten months leading up to the first months of the

18. See Shear, “Oath” (see n. 11) 252, n. 13, who cites *IG I<sup>3</sup>* 92; 119; 123; 126; *IG II<sup>2</sup>* 3; 6; 7; 17.

archonship of Glaucippus when he claims the decree was enacted. In fact, those who have claimed that there was a Council of Five Hundred during the Five Thousand have done so on the basis of this phrase in the document at Andoc. 1.96-98, assuming that the Five Thousand would have wished to signal a change from the Four Hundred, but the reasoning is completely circular.<sup>19</sup> Second, if, as Sommerstein assumes, there was a Council of Five Hundred for the last ten months of the archonship of Mnesilochus, the mention of the Council of Five Hundred in the archonship of Glaucippus would not mark any new epoch because it would not indicate any change in the number and would thus not achieve the aim that Sommerstein invents for the deviation from the standard formula. Third, the Constitution of the Five Thousand preserved at [Arist.] *Ath. Pol.* 30.2-5 states that the members of the Council under this regime were to be selected by lot ([Arist.] *Ath. Pol.* 30.3: εἰς ἐνιαυτὸν βουλευεῖν λαχόντας), not elected as Sommerstein claims. There is no reason to question the evidence of this document.<sup>20</sup> This means that here too the phrase used in the document would not mark a change in the method of selection for the Council. Fourth, if the Athenians used deviations from the standard formulas in prescripts in this way to indicate the start of a new era, why didn't they do so in the prescripts of the other decrees enacted in this year? And why didn't they do so in the year after the democracy was restored in 403 BCE? Or after the democracy was restored in 308/7 BCE?

But there was no need for the prescripts of the archon-year 410/9 BCE to deviate from the standard formulas to indicate the transition from the regime of the Five Thousand to the restored democracy. There is an inscription from this period now designated as *IG I<sup>3</sup> 98*, which has the name of the *epistates* followed by the phrase "with him" and space for four more names. As Wilhelm noticed and has been accepted by many scholars, the Constitution for the Future ([Arist.] *Ath. Pol.* 30.5), which was framed for the Five Thousand, calls for five persons to preside over meetings of the Assembly, which would indicate that this decree must come from the archonship of Theopompus (411/0 BCE).<sup>21</sup> It also appears that the regimes of the Four Hundred and Five Thousand did not use the system of ten tribes. In fact, a document (*IG I<sup>3</sup> 373*) dated to the previous year, the archonship of Mnesilochus

19. For such circular reasoning see P.J. Rhodes, "The Five Thousand in the Athenian Revolution of 411 B.C.," *JHS* 92 (1972) 115-127 at 117 with n. 24 and the works listed there.

20. See E.M. Harris, "The Constitution of the Five Thousand," *HSCP* 93 (1990) 243-280 at 247-259.

21. See Harris, "Constitution" (see n. 20) 257-258. In *IG I<sup>3</sup> 98* D.M. Lewis accepts Wilhelm's argument and dates the decree to 411/0.

(412/1 BCE), omits the name of the tribe and dates payments by the name of the month.<sup>22</sup> In similar documents, the payments are dated by the prytany. To show that the democracy had been restored, therefore, all the prescript had to do was to add the name of the tribe, which was omitted during the previous regimes, and to change the number of the *epistatai* from five back to one. This is in fact what the other prescripts from decrees in the year 410/9 BCE did (see above). And this is exactly what the democracy did in 403/2 BCE: it simply reverted to the standard democratic formulas to indicate the restoration of the democracy (*IG II<sup>2</sup> 1*, ll. 5-7, 41-42, 56-57). When the democracy was restored in 318 BCE, in 307 BCE, and in 287 BCE, the Athenians did not mark the restoration by changes in the form of prescripts, but simply restored the standard formulas.<sup>23</sup> Sommerstein's attempt to account for the deviations from the standard formulas in prescripts is without parallel and, more seriously, simply does not explain anything.

(1c) We noted that the formula found in the prescript ὅτε Κλεογένης πρῶτος ἐγραμμάτευεν is without parallel in the prescripts of Athenian inscriptions. By the middle of the fourth century BCE, prescripts had the "name of the tribe in the genitive followed by the participle πρυτανευούσης and the relative pronoun ἧ followed by the name of the secretary and ἐγραμμάτευεν".<sup>24</sup> Sommerstein misses the point of our observation and analysis. First, he claims that the text of the document is "unparalleled and indeed nonsensical". Because the text is nonsensical, he therefore feels entitled to emend the text (it is more likely "that a scribe should miscopy a word at some point in the course of at least a millennium and a half of transmission"). We did note that the formula is "unparalleled", but we never stated that it was nonsense (which it is not).<sup>25</sup> This cuts the ground from under Sommerstein's attempt to justify emendation. Sommerstein then adopts Droysen's emendation οἷς for ὅτε (which would agree with the antecedent "five

22. See E.M. Harris, "A Note on the Constitution of the Five Thousand", *ZPE* 116 (1997) 300.

23. See P.J. Rhodes and D.M. Lewis, *The Decrees of the Greek States* (Oxford 1997) 37-49. One finds no additional and unusual phrases in the prescripts similar to the one found in the document at Andoc. 1.96-98.

24. In Canevaro and Harris, "Documents" (see n. 5) 121-122 we thought that prescripts never give the name of the secretary twice and used this as an argument against the authenticity of the document in Andocides. This is actually not true – see, for example, *IG I<sup>3</sup> 102*, ll. 2 and 4. We therefore withdraw this argument.

25. On when one can and cannot emend the text of an inserted document see Canevaro, *Documents* (see n. 14) 35.

hundred"). But this emendation does not solve the problem. In fact, it creates more problems not noticed by Sommerstein.

First, we should note that after roughly 370 BCE the phrase ὁ δεῖνα ἐγραμμάτευεν is never linked by a relative pronoun with the Council as the antecedent, but to the name of the tribe holding the prytany (as Canevaro and I noted in our previous essay). As a result, the emendation does not bring the text of the document into conformity with the standard formulas found in prescripts and is therefore no solution to the problem. Second, what we should have noted earlier is that in prescripts from decrees preserved on stone from the middle of the fifth century BCE and the fourth century BCE until roughly 370 BCE (the period to which both we and Sommerstein would date the actual decree), one finds always the phrase ὁ δεῖνα ἐγραμμάτευε in parataxis, never linked to the preceding noun either by a subordinating conjunction or by a relative pronoun.<sup>26</sup> A complete list of the evidence is given in the Appendix.

Third, two more serious objections to the prescript escaped our notice. In all extant decrees of the Assembly preserved on stone, the final element of the prescript is the motion formula (ὁ δεῖνα εἶπε). After the motion formula, the text of the decree is given. This makes sense because the dating formula does not form part of the proposal. In the document inserted into the text of Andocides, however, the motion formula (τάδε Δημόφαντος συνέγραψεν) is followed by a phrase about the date the decree goes into effect, a long phrase describing the Council, and a subordinate clause about the secretary. The text of the actual proposal made by the person moving the decree follows only after these phrases. This sequence of clauses is without parallel in all Athenian decrees of the fifth or fourth century BCE (for examples from the year 410/9 BCE, see above). The only way Sommerstein can remedy this problem is to propose the deletion of everything from the word ἄρχει to the word ἐγραμμάτευεν. And one never finds the word τάδε (as in the document's phrase τάδε Δημόφαντος συνέγραψεν) in the proposal formula (for examples from the year 410/9 BCE see above).<sup>27</sup> One has no choice but to face up to the implications of these numerous deviations in the

26. The one exception is *IG I<sup>3</sup> 54* (433/2 BCE), ll. 8-10, which does not provide a parallel for Droysen's emendation. We should also note that this occurs over twenty years before 410/9 BCE, the date Sommerstein proposes for the actual decree.

27. *Pace* Shear, "Oath" (see n. 11) 150: "The opening preamble is in the standard form for decrees".

document's prescript from the standard formulas found in all decrees preserved on stone and conclude that the document is a forgery.

(1d) We observed that the syntax of the phrase ἄρχει χρόνος τοῦδε τοῦ ψηφίσματος ἢ βουλῇ οἱ πεντακόσιοι <οἱ> λαχόντες τῷ κυάμῳ is faulty. Sommerstein points to several passages cited by MacDowell, which he claims provide good parallels.<sup>28</sup> *Pace* Sommerstein, the passages cited by MacDowell may provide parallels for the syntax, but they are not true parallels in other regards. If one is going to make an argument on the basis of a parallel, the parallel must be similar in all regards, not just one. First, as we noted before, one passage cited by MacDowell (IG II<sup>2</sup> 2492 [345/4 BCE]) comes from a lease, not the prescript of a decree of the Assembly.<sup>29</sup> Second, the dates given in the lease are the names of archons, which was indeed the normal way of indicating the year. In the document, however, the year is dated by the Council.<sup>30</sup> Third, the other passage cited by MacDowell comes from a financial document and dates the start of a loan and a lease by the month of a year indicated again by the name of the archon (IG I<sup>3</sup> 402, l. 14 [434/2 BCE] (χρόνος ἄρχει Μεταγρετινῶν μὲν Ἀθήν[ησιν ἄρχοντος]) and 21-22 (χρόνος [ἄρχει Ἀθήνησι — — —] | μὲν ἄρχοντος Ἀψεύδος). Neither passage provides a parallel first because each is found in a different type of document (a lease and a financial record, not a decree of the Assembly) and second because the passages cited by MacDowell date the year by the archon and not by the Council.<sup>31</sup>

(1e) Sommerstein summarizes our next point against this phrase as follows: “The specification of the date of commencement is said to be otiose”. This omits key points and relevant evidence and seriously misrepresents our argument. To defend the authenticity of this phrase, Sommerstein claims that the decree “is designed to be literally epoch-making” but, as we have pointed out above, this assumption is questionable and cannot be used as an argument in support of the document's authenticity. Moreover, as shown above, there is no evidence that the

28. MacDowell, *Andokides* (see n. 4) 136.

29. A referee notes a similar phrase in SEG 24:203, ll. 27-28 (χρόνος ἄρχει), which is also a lease of land, and adds “In laws and decrees it would have been superficial to indicate the date of coming into effect, since they were thought to apply immediately”.

30. For another lease dated by the archon see Dem. 37.6.

31. The other passage cited by MacDowell comes from a literary text, but in this case too the year is dated by the archon, not the Council (Aeschin. 3.62: ἐπὶ χρόνος Θεμιστοκλῆς ἄρχων).

Athenians would use innovative language and formulas to mark a decree as epoch-making. In fact, all the evidence contradicts Sommerstein's assumption: whenever we can check, they mark the democratic restoration by carefully returning to standard language and formulas.

Sommerstein then claims "by stating that the decree shall have effect as from the installation of the democratic Council guarantees that it will not be so construed as to apply to earlier events". There are two points against this argument. First, that is not what the text of the document actually states. The phrase about the "period" of the decree (χρόνος τοῦδε τοῦ ψηφίσματος) is followed by the phrase about the Council without any connective indicating the relationship between the two phrases or any verb following the noun Council (such as "came into office"). What Sommerstein claims the text contains is simply not in the document. Second, as we pointed out before (a point suppressed by Sommerstein), when a proposer wished to indicate that his decree would not apply retroactively, he inserted the phrase "in the future" (τὸ λοιπόν), not a phrase of this kind, which is without parallel in the prescripts of all extant laws and decrees of the Athenian Assembly.<sup>32</sup> Finally, as Sommerstein himself points out in note 20, the decree could not have come into effect when the Council came into office because the Council already held office before the decree was enacted. If Sommerstein's view is accepted, the Assembly enacted an *ex post facto* law, making its provisions retroactive. This too is without parallel and for good reason: it was illegal. As Canevaro and I pointed out before, Athenian decrees went into effect when they were passed or at a later date, not before they were enacted (Dem. 24.41-44).

(1f) As we noted, the prescript of the decree gives Κλεογένης as the name of the secretary not once, but twice. Sommerstein adopts the solution of Böckh to emend the name to Κλειγένης who was the secretary in the year 410/9 BCE (IG I<sup>3</sup> 375, ll. 1-2) even though the name Κλεογένης is a perfectly good Athenian name (IG I<sup>3</sup> 1187 [c. 450-400 BCE], l. 25; *Agora* 15: 142, l. 5), and the text otherwise shows no signs of corruption. His reasoning is circular; Sommerstein assumes that the document is authentic, then on the basis of this assumption claims that one should emend the text.<sup>33</sup>

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32. E.M. Harris, *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society and Politics* (Oxford 2006) 425-428.

33. On when it is legitimate to emend an inserted document, see Canevaro, *Documents* (see n. 14) 34.

But the most serious problem with the dating of the decree to the year 410/9 BCE on the basis of the emendation is that, as we pointed out, Lycurgus (*Leoc.* 124) states explicitly that the decree of Demophantus was enacted after the Thirty, not before. After emending the text, Sommerstein claims that “Lycurgus may have been wrong”. He then tries to explain the alleged error of Lycurgus by drawing attention to the fact that “in the speeches of Demosthenes and his contemporaries the Thirty are mentioned twenty times; the Four Hundred are referred to only twice, both times in conjunction with the Thirty, never on their own”. He concludes that “under these circumstances it would not be surprising if a decree passed in the aftermath of the earlier oligarchy came to be associated instead with the later one”. Sommerstein however forgets that there was also a copy of this decree in front of the Bouleuterion, where everyone could read it, including the dating formula. Anyone reading the decree in front of the Bouleuterion would have known that it was dated after the Thirty. The two passages in which Demosthenes and Lycurgus mention the decree indicate that it was well known. And when the clerk read the decree of Demophantus to the court, he would also have read the prescript, containing the name of the archon, which would have indicated to the judges that it had been passed after the Thirty. Furthermore, there is no reason to believe that Lycurgus or other orators ever confused the regimes of the Four Hundred and the Thirty. In fact, Lycurgus is clearly aware that the two regimes were different (*Leoc.* 61, 124 [Thirty] vs. 112 [Phrynichus, a member of Four Hundred]). As we will see in the final part of this essay, there were good reasons why the orators would not confuse the two regimes. To defend the dating of 410/9 BCE for the decree, therefore, Sommerstein has to make two assumptions for which he has no supporting evidence: first, the document contains not one but two errors in the name of the secretary, and, second, Lycurgus made a mistake about the year.<sup>34</sup> Both assumptions are implausible. Our approach to the document requires no special pleading or unwarranted assumptions.

(2a) We observed that the word πολέμιος “is always used for an enemy in war” [and] is never employed as the equivalent of the word ἄτιμος, which is the standard term in this context. Sommerstein agrees that the word πολέμιος “is not being employed as the equivalent of ἄτιμος here”. Sommerstein then goes on to argue that “the person who was ἄτιμος was thereby deprived of some or all of his

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34. We might add that Sommerstein can point to no similar mistake about Athenian history in the fourth century BCE made by Lycurgus in *Against Leocrates*.

rights as a citizen; but he was not deprived of his right to life – nobody had the right, let alone the duty, to kill him out of hand even if he was found violating one of the prohibitions to which he was subject”.<sup>35</sup> Sommerstein claims that the use of the word πολέμιος in the document makes the killing of a tyrant as “comparable to the killing of an enemy in war, which incurs no pollution (Eur. *Ion* 1334) and cannot be prosecuted”. The document used the word πολέμιος here because “[n]o other word could have conveyed that message”. In point of fact, this is not true: to show that the person who killed a tyrant incurred no pollution, all the law had to do was to declare this person *katharos* as Lycurgus (*Leoc.* 125) says the oath of Demophantus did.<sup>36</sup> This is also the way that the idea is expressed in the oath about killing tyrants in the decree of Eucrates (*IG II<sup>3</sup> 320* [337/6 BCE], l. 11), which does not find it necessary to use the term πολέμιος. Alternatively, a law could use the expression νηποινει τεθνάναι (“let him die without compensation”) to convey the idea that the killer was not subject to prosecution, which is found in the inserted document (*Dem.* 23.60; *Andoc.* 1.95; *Xen. Hier.* 3.3 [where the context is killing tyrants]). Pace Sommerstein, one could easily convey the intended message about the ritual and legal status of the person who killed a tyrant without using the term πολέμιος.

Sommerstein then claims to find a parallel for the way the term πολέμιος is used here in the decree about Arthmius of Zeleia (*Dem.* 9.41-44; 19.271; *Din.* 2.24-25; *Aeschin.* 3.258). There are several flaws in this argument. First, and most important, this decree does not provide an exact parallel. The oath of Demophantus is aimed at anyone who attempts to overthrow the democracy; the decree about Arthmius is directed at a single individual. The oath of Demophantus is aimed at Athenian citizens who attempt to become tyrants and traitors (the inserted document explicitly covers those holding office in Athens, who could

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35. Actually this is not certain. In an earlier period, the term ἄτιμος could be used to express the concept of outlawry, which meant that the person who was ἄτιμος could be killed with impunity. See M.H. Hansen, *Apagoge, Endeixis, and Ephegesis against Kakourgoi, Atimoi and Pheugontes: A Study in the Athenian Administration of Justice in the Fourth Century B.C.* (Odense 1976) 54-98. Note that Sommerstein contradicts himself: he claims that *atimia* was not equivalent to outlawry, but then uses the decree about Arthmius, where the term is used with the meaning of “outlawry”, as a parallel and claims that its language was used as a model for the decree of Demophantus!

36. For the equivalence between the terms *katharos* and *anaitios* see E.M. Harris, “Is Oedipus Guilty?”, in E.M. Harris, D. Leao, and P.J. Rhodes (eds.), *Law and Drama in Ancient Greece* (London 2010) 122-146 at 133-134.

only be Athenian citizens, and Lycurgus says it was aimed at traitors [*Leoc.* 124-127], who must be Athenians betraying the city); the decree about Arthmius is directed at a foreigner, who could be declared an enemy. While there are no parallels for the Athenians declaring an Athenian an enemy, there are good parallels for the Athenians declaring a foreigner an enemy (*IG II<sup>2</sup>* 73 (before 378/7 BCE), l. 9; *IG II<sup>3</sup>* 452 [c. 334 BCE], ll. 32-33). The oath of Demophantus is aimed at the crimes of tyranny and treason in Athens; the decree about Arthmius is directed at preventing a foreigner bribing Greeks in general (*Dem.* 9.42 mentions attempts to bribe Peloponnesians; cf. *Dem.* 19.271; *Din.* 2.24-25), not just Athenians. Second, can we be certain that the decree about Arthmius was a genuine decree of the fifth century BCE? There is no reference to the decree in our fifth-century BCE sources, and all the references to the decree date to after 360 BCE. This was a time when, as Habicht has pointed out in a classic article, the orators start to mention several fifth-century decrees of dubious authenticity.<sup>37</sup> For instance, J.K. Davies has shown that the decree for Lysimachus proposed by Alcibiades and mentioned by Demosthenes in 355/4 BCE cannot be an authentic document.<sup>38</sup> It is certainly suspicious that the sources do not agree the identity of the person who moved the decree about Arthmius.<sup>39</sup>

Both of Sommerstein's arguments about the use of the word *πολέμιος* in the document are flawed. The Athenians did not have to use the word *πολέμιος* to convey the notion that the person who killed a tyrant was free from pollution for homicide, and the use of the term in the decree about Arthmius (a dubious source at best) does not provide a parallel because the differences between the two documents are too great.

(2b) We noted that in the document one finds the word *εὐαγής*, which is never found in Attic documentary prose in inscriptions. Sommerstein tries to undermine our point by asserting that "the decree (i.e. the document in the text of Andocides) certainly included at least one archaic-poetic word". As I have shown earlier in

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37. Chr. Habicht, "Falsche Urkunden zur Geschichte Athens im Zeitalter der Perserkrieg", *Hermes* 89 (1961) 1-35, at 27. R. Meiggs, *The Athenian Empire* (Oxford 1972) 508-512 attempted to defend the decree's authenticity, but notes that the orators differ in their wording of the decree's contents.

38. *Dem.* 20.115 with J.K. Davies, *Athenian Propertied Families 600-300 B.C.* (Oxford 1971) 51-52.

39. *Plut. Them.* 6.3 says it was Themistocles, yet Craterus *FGrHist* 342 F 14 names Cimon but also mentions that Aristides says it was Themistocles. On Craterus see Donatella Erdas, *Cratero, il Macedone: testimonianze e frammenti* (Rome 2002).

this essay, the word that Sommerstein labels “archaic-poetic” is neither exclusively archaic nor poetic. Furthermore, we have found that one cannot state that this word “certainly” stood in the actual text of Demophantus’ decree. Sommerstein next notes that the word εὐαγής is found in Demosthenes’ *Third Philippic* (44) in a passage in which the laws of homicide are mentioned. Sommerstein himself, however, notes that the word occurs “in connection with (though not as a part of) a quotation from the laws of homicide”, which means that we cannot know from this passage alone whether the word was found in these laws because it does not occur in the quotation. Unsurprisingly, Sommerstein does not stress the fact that when Demosthenes actually quotes from the law, he uses the word καθαρός for “free from pollution”, not εὐαγής. Sommerstein then proceeds to speculate: “it is quite possible, though it cannot be proved, that the adjective was actually to be found in the laws of Draco”. One should also bear in mind that an inscription purporting to contain the law of Draco about homicide is extant (IG I<sup>3</sup> 104 [409/8 BCE]) and that Demosthenes’ speech *Against Aristocrates* contains extensive quotations from Draco’s laws about homicide. In neither place do we find the adjective εὐαγής. Our point stands: the adjective εὐαγής never occurs in the documentary prose of inscriptions or (we might add) in the texts of laws. Its occurrence in the document found at Andoc. 1.96-98 is good evidence that the document is not genuine.

But there is more: the word εὐαγής is used at Dem. 9.44 specifically in Demosthenes’ tentative explanation of the meaning of ἀτιμος καὶ πολέμιος τοῦ δήμου τοῦ Ἀθηναίων in the decree for Arthmius of Zeleia. It is remarkable that two completely inappropriate words, πολέμιος and εὐαγής, which should have no place in the context of the decree of Demophantus and yet are found within two lines in the document at Andoc. 1.96, should also be found together, in close connection (one explains the other) at Dem. 9.42-44, in a different context and used in ways that are entirely appropriate. Rather than providing improbable parallels, it is more likely that Dem. 9.42-44 may have been the (misunderstood) source of the forger of the document.<sup>40</sup>

(3a) We noted that Lycurgus states that in the oath each Athenian pledged “to kill by word and by deed and by hand and by vote” (λόγῳ καὶ ἔργῳ καὶ χειρὶ καὶ ψήφῳ). In the inserted document the oath requires each Athenian to swear that “I

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40. For another case in which a forged document uses a phrase found in a literary text see Harris in Canevaro, *Documents* (see n. 14) 225-227.

shall kill with my own hand” (τῇ ἐμαυτοῦ χειρὶ) then a few lines down that “I shall sell the property of the dead man and give half to the killer by word and by deed and by vote” (λόγῳ καὶ ἔργῳ καὶ ψήφῳ). We noted that both the clash with the text given by Lycurgus and that the phrase “by word and by deed and by vote” appears to be out of place (though not impossible in terms of grammar).<sup>41</sup> We further noted that the word ἐμαυτοῦ does not occur in laws and decrees in the Classical and Hellenistic periods. To remove one ground against authenticity, Sommerstein again resorts to emendation and claims that the copyist skipped a line, and then a few lines down the copyist or a corrector “mistakenly copied back into the text the phrase where it had been written in”.<sup>42</sup> This might be a plausible explanation if the entire phrase had been transferred intact and in the same order from one part of the text to another, but that is not what has happened. The document does not give the first of the four elements, then place the following omitted three elements in a later sentence. The document selects the third element (χειρὶ) and adds an article (τῇ) and a word (ἐμαυτοῦ), then further down the page we find the first (λόγῳ), second (ἔργῳ) and fourth (ψήφῳ) elements of the phrase found in Lycurgus. It is just not true that the copyist started to copy the line, and then placed an entire line lower down in the text; Sommerstein misrepresents what is in the manuscripts of Andocides’ speech. To account for the text as it stands, Sommerstein would have to claim that the eye of the copyist skipped ahead from κτενῶ to χειρὶ, then correctly copied the word χειρὶ, then skipped ahead once more to ἂν δυνατὸς ᾖ, omitting καὶ ψήφῳ. Further down the page, the copyist or corrector did not copy an entire phrase, but stitched together three discontinuous parts of the phrase. Sommerstein’s explanation does not account for the actual order of the words in the text and is quite implausible. His argument for emendation is also circular: he assumes that the text is authentic, and then uses this as a justification for emending the text to remove any grounds against authenticity.

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41. Sommerstein claims that our “rigid methodology” requires us to believe that the forger composed a text in which a phrase was mechanically copied in from another source without paying attention to the context. But this is exactly what happened in the document inserted at Andoc. 1.78-79, where we show that the forger mechanically copied a phrase from Plut. *Sol.* 19 without noticing that it did not fit the context. Sommerstein endorses our analysis and conclusions about that document. If our methodology is valid there (and not “rigid”), it should also be valid (and not “rigid”) for the document at 96-98.

42. Sommerstein does not give a single example of such an error in the text of Andocides or any other orator.

As for our point that the word ἐμαυτοῦ never occurs in inscriptions until the Roman period, Sommerstein has no reply.<sup>43</sup> And Sommerstein cannot explain why Lycurgus' version of the clause omits the word ἐμαυτοῦ. This argument against the authenticity of the document stands.

(3b) We observed that the inserted document contains two different clauses about what is to happen to the property of the would-be tyrant. In one place, the document states that if anyone overthrows the democracy or serves in office after the democracy has been overthrown, his property is to belong to the state with one-tenth paid to the goddess (i.e. Athena). In another, however, the oath requires that if anyone kills a tyrant, "he (i.e. the person who swears) will sell all the possession of the deceased and give half to the killer". The two clauses are in clear contradiction to one another. To resolve the contradiction, Sommerstein claims that the two clauses refer to different situations. One might refer to the case where a would-be oligarch would be tried and put to death. In this case, there was no assassin to reward: "if the man was put to death by court sentence, the remaining nine-tenths will belong to the state; if he was killed by an individual, this amount is to be divided equally between the state and the killer". The problem with this is that both Lycurgus (*Leoc.* 124-127) and Demosthenes (20.159) say that the decree concerned only those who killed a tyrant (or traitor) and do not mention the possibility of a trial for offenders. But what is more important is that the document also does not mention the possibility of a trial and gives the penalty of confiscation of property with one-tenth to Athena in a clause about being killed without compensation, which is a reference to killing without a trial. The contradiction cannot be removed by supplying what is not contained in the text of the document.

(3c) We noted that the document uses the term ἀπόγονος that is not found in decrees until the Imperial period. In decrees conferring honors on individuals that are extended to their descendants, the term that is always found is ἔκγονος.<sup>44</sup> Sommerstein admits the force of this argument ("the strongest argument . . . against authenticity") and cannot cite a single use of the term ἀπόγονος in a decree

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43. Sommerstein only responds to our rhetorical question, "who would use someone else's hand to kill a tyrant?" by citing Aeschin. 3.224. But this does not answer the point about the word never occurring in Attic inscriptions before the Roman period.

44. For references see Canevaro and Harris, "Documents" (see n. 5) 123, n. 128.

of the Council and Assembly preserved in inscriptions from the Classical and Hellenistic periods. Sommerstein notes that Dinarchus (1.101) speaks of the ἀπόγονοι of Harmodius and Aristogeiton, but this passage is irrelevant because it comes from literature, not an inscription. The language of the document should conform to the vocabulary found in inscriptions.<sup>45</sup> Because the language of the document does not conform to the language of contemporary inscriptions, we have another reason to consider the document a forgery.

(3d) The terms κατὰ φυλὰς and κατὰ δῆμους refer to two different ways of organizing citizens and are therefore never used together. The phrase κατὰ φυλὰς is found in a decree from the fifth century BCE about manning the fleet (IG I<sup>3</sup> 60, ll. 11, 17, 20). In an honorary decree for ephebes dated to the second century BCE, the names of the ephebes are to be listed by tribes (SEG 19:96, l. 14). The phrase κατὰ δῆμους is found in ephebic inscriptions about listing ephebes by deme (IG II<sup>2</sup> 478 [305/4 BCE], l. 28 [plausibly restored]). What is more important is that in all decrees requiring the Athenians to swear an oath, these phrases never occur. Sommerstein claims that this was an exceptional oath and if “the members of each deme swore as a separate unit, every citizen would be taking the oath together with, and under the eyes of a group that included many of his relatives, friends and (not least importantly) enemies, and would know that all these were directly aware of the formidable obligation that he had undertaken”. There are several objections to this. First, there is no reason to believe that citizens swearing an oath in the Assembly would not also have been surrounded by friends and neighbors. Second, this explanation of the phrase does not account for the phrase κατὰ φυλὰς and does not explain why both phrases would be used when in other passages either one or the other is used, but never both together. Third, Sommerstein does not explain how swearing by tribes and demes would work. Because each phrase refers to a different way of organizing the people, everyone would have to swear twice, first with the members of his tribe, second with the members of his deme.<sup>46</sup>

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45. Sommerstein notes that in IG I<sup>3</sup> 131 (c. 440-32 BCE), ll. 5-6 the descendants are called τοῖς [H]αρμο[οδίου καὶ τοῖς Ἀριστογεί]τονος and in the law of Leptines (Dem. 20.18, 127, 128, 160) they are called τῶν ἀφ’ Ἀρμοδίου καὶ Ἀριστογείτονος *vel sim.*, but if that was the normal way of referring to their descendants in inscriptions, this should count as another argument against the authenticity of the document, not as a point against our argument.

46. Teegarden, *Death to Tyrants!* (see n. 10) 35-37 claims that each of the ten tribes held a separate ceremony for the oath. There are two objections to this: first, all the other

But we never hear of the Athenians or any other Greeks swearing an oath twice. If one were to argue that this would not be necessary because when one swore with the members of one's deme, one also automatically swore with the members of one's tribe, if demes of the same tribe were gathered together, one would then have to explain why the phrase *κατὰ φυλὰς* had to be added after *κατὰ δήμους*. Shear claims that the same procedure was used for the reconciliation oath in 403/2 BCE, but the passages that mention this oath do not mention any requirement to swear "by demes and by tribes" (Xen. *Hell.* 2.4.43; Lys. 25.23, 28, 34; Isoc. 18.67, 68).<sup>47</sup> As we will see in the final section of this essay, the events preceding the oaths of reconciliation in 403/2 BCE were far more bloody than those preceding the restoration of the full democracy in 410/10 (see below). If there was no need for such an elaborate procedure in 403/2, BCE *a fortiori* there was no need for one in 410/9 BCE.

(3e) We noted that Lycurgus says that the decree applied not only to those who killed men aiming at tyranny or attempting to overthrow the democracy, but also to traitors (*Leoc.* 124-127). He states this not once but four times.<sup>48</sup> Sommerstein would have us believe, however, that "Lycurgus is misrepresenting" the decree "in order to give the impression that it is relevant to his case, which is a charge of treason, not of tyranny or subverting the democracy". If the text of the decree read to the court was the document found in Andocides "only about one-sixth of it was concerned with defining the crimes to be punished; the rest of the text was devoted to other matters". This of course is an assumption that we do not share. As a result, Sommerstein claims, "there was a good chance that the jurors (*sic*) would hear, as it were, what they had been told to expect to hear, and not notice that there had been no actual mention of treason". Sommerstein therefore asks us to believe that several hundred judges listened carefully to what Lycurgus himself said about the contents of the decree, then did not pay close attention (or all dozed off in unison) when the clerk read out the decree. How Sommerstein knows

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examples of oaths sworn by all the Athenians do not use this arrangement, and second, it does not explain the addition of the phrase *κατὰ δήμους*.

47. Shear, "Oath" (see n. 11) 155.

48. Sommerstein misrepresents the evidence of Lycurgus by mentioning only three of the sections in which treason is mentioned (124, 125, and 127). He misses the mention of *προδοσίας* at 126, which means that his assertion "treason appears alone only at §127, well after the document has been read" is both inaccurate and misleading. *Pace* Sommerstein treason is mentioned immediately after the reading of the decree.

exactly what the judges would have paid attention to and what they would have ignored is a mystery he leaves unexplained. But as Canevaro has shown with many examples, the orators do not misrepresent the documents read out by the secretary of the court.<sup>49</sup> Once more, all the evidence is against Sommerstein's unsupported assumption.

What the judges heard from Lycurgus not once, but twice before the decree was read to the court was that the decree applied to the killing of traitors. They were thus led to expect that the decree when read out would mention traitors prominently. And after the actual text of the decree was read out, Lycurgus told them not once but twice that it applied to traitors. The subject of treason was not just a minor detail as Sommerstein appears to imply; it was one of the main subjects of the decree according to Lycurgus. If one were to follow this imaginary scenario, however, the judges would have heard his version of the contents of the decree, then heard the actual text of the decree read by the clerk, which would have shown that he was a liar. To make the situation worse, after the judges heard the decree, Lycurgus (*Leoc.* 126, 127) repeated the point about traitors not once but twice. If Lycurgus wanted to misrepresent the contents of the decree, he would not have had the text of the decree read out in the first place.<sup>50</sup>

One must also bear in mind that the decree of Demophantus was not any routine piece of legislation. As Lycurgus (*Leoc.* 124, 126) twice reminds the judges, a copy of the decree was placed on a stele in front of the Council-house, where five hundred new councilors a year could see and read it, not to mention all the other Athenians who came to attend sessions of the Council or to transact business there. This means that even before the clerk read out the text of the decree, many of the judges would have already known the decree's contents. For Lycurgus to misrepresent the contents of the decree would have been similar to a modern politician misrepresenting the words of the national anthem or a clause in the constitution. Finally, one should bear in mind that earlier in the speech, Lycurgus (*Leoc.* 76-78) paraphrases the Ephebic Oath.<sup>51</sup> We can check his paraphrase against the actual text of the oath that has been preserved in an inscription from Acharnae, which shows that Lycurgus does not misrepresent its contents.<sup>52</sup>

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49. See Canevaro, *Documents* (see n. 14) 27-32.

50. Litigants do sometimes refer to documents without having the clerk read them out. See, for example Andoc. 107, 115; Din. 2.24-25; Aeschin. 3.258.

51. On the Ephebic Oath see now Danielle Kellogg, *Marathon Fighters and Men of Maple: Ancient Acharnai* (Oxford 2013) 95, 161, 162-13, 164, 206-208, 238.

52. P.J. Rhodes and R. Osborne, *Greek Historical Inscriptions, 404-323 B.C.* (Oxford 2003) no. 88.

Because he did not misrepresent the contents of that oath, it would therefore have been uncharacteristic of Lycurgus to misrepresent the contents of the oath in Demophantus' decree. Nor could Lycurgus have lied about the contents of the decree without seriously damaging his credibility. On the other hand, if we conclude (as we should) that the document inserted into the text of Andocides' *On the Mysteries* is a forgery, we are not forced to conclude that Lycurgus was both a liar for misrepresenting the oath and a fool for having the clerk read out the document revealing him to be a liar.

To the arguments that we have presented here, four more can be added. First, decrees of the Athenian Assembly often mention the names of various gods and the word *θεός*.<sup>53</sup> In the document in the text of Andocides, however, we find the word *δαιμόνων* in the phrase *πρὸς θεῶν καὶ δαιμόνων*. The word *δαίμων* is never found in any decrees of the Assembly in any period.<sup>54</sup> And the phrase *πρὸς θεῶν* (usually in the phrase *πρὸς θεῶν καὶ ἡρώων*) is found only in funerary inscriptions from the Roman period, never in any inscriptions (let alone decrees of the Council and Assembly) from the Classical and Hellenistic periods.<sup>55</sup> Second, the oath requires every citizen to pledge that "after selling all the property of the dead man (i.e. the person who attempted to become tyrant), I shall give half to the killer". In a previous clause of the document, however, the property of the person who overthrows the democracy or serves in office after the democracy is overthrown is to be confiscated by the state. The only citizens who had the right to sell confiscated property were the *poletai*, not all citizens ([Arist.] *Ath. Pol.* 47.2; 52.1). Citizens could only report (*apographein*) property subject to confiscation to the Eleven ([Arist.] *Ath. Pol.* 52.1; [Dem.] 53.1-2, 19-29). If the property was found to belong to someone whose property was forfeit to the state, the person who reported it had only a right to a portion of the proceeds of the sale conducted by the *poletai* ([Dem.] 53.2). He did not have the right to sell the property himself. Third, if the decree of Demophantus had been passed in 410/9 BCE, it would have applied during the events of 404/3 when the Thirty seized power and were

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53. For Athena, see for example, *IG I<sup>3</sup>* 52, face A, ll. 3, 15, 18, and 28; face B, ll. 12, 18, 24; 82, l. 15. For the word *θεοί* in headings of decrees see R.L. Pounder, "The Origin of *θεοί* as Inscription Heading", in K.J. Rigsby (ed.), *Studies Presented to Sterling Dow on his Eightieth Birthday* (Greek, Roman and Byzantine Monographs 10, Durham NC 1984) 243-250.

54. The word *δαίμων* is not found in the indices to *IG I<sup>3</sup>* and *IG II<sup>3</sup>* volumes 2-3, pars 1, fasc. 2.

55. See, for instance, *IG II<sup>2</sup>* 13190, l. 1 (c. 150 CE); 13193, ll. 1-2 (c. 150 CE); 13194, l. 5 (c. 150 CE); 13195, l. 1 (c. 150 CE).

overthrown by the democrats who went to Phyle and then returned to the Piraeus. One of the provisions of the decree was that those who died fighting to defend the democracy would have the same awards as were given to Harmodius and Aristogeiton (Dem. 20.159). But none of the sources for the history of Athens after the overthrow of the Thirty mention any such rewards for those who died in that struggle. One inscription records honors for metics who participated in the campaign against the Thirty (IG II<sup>2</sup> 10 [401/0 BCE]). Another decree provided support to the orphans of those killed under the Thirty.<sup>56</sup> If Sommerstein, following Böckh, is correct in dating the decree of Demophantus to 410/9 BCE, the Athenians appear to have forgotten about their oath to honor those who fell fighting for democracy a mere seven years later, but remembered it in 355/54 BCE when Demosthenes (20.159) quoted this part of the oath. On the other hand, if the document in *On the Mysteries* is a forgery, and the actual decree was not enacted until after the Thirty (as Lycurgus states), this problem does not arise. Fourth, in oaths preserved in Athenian decrees preserved on stone (and in one literary text), those who swear promise to carry out the terms of the oath “to the best of their ability” (κατὰ τὸ δυνατόν).<sup>57</sup> But the document in *On the Mysteries* has a different (and weaker) phrase (ἐν δυνατός ὧ “if I am able”), which never occurs in oaths contained in decrees.

The case against the document’s authenticity is overwhelming. The prescript contains several deviations from the standard language and formulas of prescripts, deviations without parallels in the epigraphic record that cannot be explained away by claiming that the circumstances were unusual; the decree itself uses vocabulary never found in Athenian laws and decrees; and the document omits a key part of the oath of Demophantus, attested in Lycurgus’ summary of the decree, which there is no reason to doubt. Attempts to emend the document to remove several of the grounds against authenticity are unjustified, and one of the proposed emendations would date the decree almost a decade earlier than the date given by Lycurgus (which there is no reason to question).

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56. See R.S. Stroud, “Theozotides and the Athenian Orphans”, *Hesperia* 40 (1971) 280-301 with Lysias frs. 128-152 (Carey).

57. IG I<sup>3</sup> 40 (around 446/5 BCE), l. 14; 75 (424/3 BCE), ll. 23-24 (plausibly restored); 89 (417-13? BCE), l. 30; IG II<sup>2</sup> 15 (c. 395/4 BCE), l. 6; 16 (394/3 BCE), l. 8; 34 (384/3 BCE), ll. 20, 26; 35 (384/3 BCE), l. 16 (plausibly restored); 43 (378/7 BCE), l. 51; 97 (375/4 BCE), ll. 6, 10, 17 and 28; 105 (368/7 BCE), ll. 17-18 [plausibly restored]; 112 (362/1 BCE), ll. 28-29, 34; 116 (361/0 BCE), ll. 16-17, 27; 126 (357/6 BCE), l. 9; IG II<sup>3</sup> 412 (c. 341/0 BCE), ll. 10-11. Cf. Dem. 3.6.

### The Historical Context of the Decree of Demophantus

We can now turn to an issue that neither Sommerstein nor we have addressed so far: the historical context of the decree of Demophantus. A comparison between the events of 411 BCE and the oligarchy of the Thirty will show that the decree fits better in the context into which Lycurgus places it.

The change of government in 412/1 BCE was set in motion by Alcibiades, who wrote to leading men on Samos in late 412, promising to bring the Persian satrap Tissaphernes over to their side if they would recall him and change from democracy to oligarchy. The trierarchs and leading men on Samos welcomed his proposals because they were also thinking about overthrowing the democracy (Thuc. 8.47). A delegation headed by Peisander reported Alcibiades' message to the Assembly in Athens (Thuc. 8.53). The Athenians objected at first, then yielded and asked Peisander to work out an arrangement with Alcibiades and Tissaphernes (Thuc. 8.54). The Assembly then elected a committee of *syngrapheis* to draft measures for reforming the constitution ([Arist.] *Ath. Pol.* 29.1-3; Thuc. 8.67.1).<sup>58</sup> The proposals put forward included the abolition of pay for office and that the administration be placed in the hands of not less than five thousand men who were most capable of serving the state (i.e. the wealthiest) ([Arist.] *Ath. Pol.* 29.4-5; Thuc. 8.67.2-3). They also created two constitutional arrangements, the first a transitional one, the second one "for the future" ([Arist.] *Ath. Pol.* 30-31). Some time after this, the Council of Five Hundred was replaced by a Council of Four Hundred which was selected by lot from a preliminary list ([Arist.] *Ath. Pol.* 31.1; Thuc. 8.69).<sup>59</sup> The Five Thousand were enrolled by the new council ([Arist.] *Ath. Pol.* 29.1; Lys. 20.4).<sup>60</sup> Although Thucydides (8.65-66) stresses the role of the political clubs (*hetaireiai*) in intimidating the opponents of the changes, he probably exaggerates their impact: both Lysias (12.65), a contemporary observer, says that the Athenians were "persuaded" to change the constitution, and Diodorus (13.34.1-3) states that the Athenians "willingly" voted to transfer power to the

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58. Thucydides states that the number of *syngrapheis* was ten, but the *Constitution of the Athenians* (29.2) puts the number at thirty, which is confirmed by Androtion *FGrHist* 324 F 43 and Philochorus *FGrHist* 328 F 136. See Harris, "Constitution" (see n. 20) 259, n. 40.

59. On the method of selection of the Council of Four Hundred see Harris "Constitution" (see n. 20) 260-261 with n. 42.

60. For discussion see Harris, "Constitution" (see n. 20) 260-261.

Four Hundred.<sup>61</sup> After the Four Hundred took over, a reaction started on Samos against the new government after a group of oligarchs organized by Peisander and Charminus had Hyperbolus murdered. This caused the democrats on Samos to attack the three hundred oligarchic conspirators and to kill thirty of them (Thuc. 8.73). These events emboldened Thrasybulus and Thrasyllus to come out against the government in Athens and to re-establish democracy on Samos (Thuc. 8.75-76). When an embassy from the Four Hundred arrived on Samos, the assembly of soldiers there shouted them down, and there was talk of sailing to Athens and restoring the democracy by force (Thuc. 8.86.1). At this point Alcibiades intervened and persuaded them not to attack Athens. He said that he was not opposed to the Five Thousand, but insisted that the Four Hundred relinquish power (Thuc. 8.86.4-7). When his proposals were reported back to Athens, they caused a division in the supporters of the changes in the constitution. Theramenes and Aristocrates called for power to be given to the Five Thousand while Phrynichus, Aristarchus, Peisander, Antiphon and others, who had been sending ambassadors to Sparta, resisted (Thuc. 8.89). The oligarchs also started to fortify Eetionia, which aroused the suspicions of the soldiers in the Piraeus (Thuc. 8.90.3). Theramenes claimed that this was a plot to bring the Spartan fleet in support of the regime (Thuc. 8.91). After returning from the unsuccessful embassy to Sparta, Phrynichus was murdered, which encouraged Theramenes to take a bolder approach and convinced the hoplites constructing the fort at Eetionia to stop work and arrest Alexicles, an oligarch (Thuc. 8.92.2-11). The divisions in the city distracted the leaders from military affairs, which resulted in the loss of Euboea to the Spartans and further undermined confidence in the Four Hundred (Thuc. 8.94-95). At a meeting at the Pnyx, the Athenians voted to put an end to the Four Hundred and turn over the administration to the Five Thousand (Thuc. 8.97.1). This turn of events caused the extreme oligarchs to panic: Peisander and Alexicles fled to the Spartan fort at Deceleia, and Aristarchus went to the fort at Oenoe, where he tricked the garrison into turning over the fort to the Boeotians (Thuc. 8.98). There is no evidence that the Four Hundred in Athens carried out many executions of opponents or large-scale confiscation of their property; Thucydides (8.70) says that they executed a few, but does not give any names. The two democratic leaders who were killed and identified by Thucydides, Androcles and Hyperbolus, were murdered by conspirators acting on their own without any

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61. For an analysis of the reasons for the willing transfer of power see Harris, "Constitution" (see n. 20) 267-270.

authorization from the Four Hundred (Thuc. 8.65, 73). The Four Hundred never gained complete control, never disarmed the people, and were easily overthrown with little bloodshed. After their overthrow, rewards were given to Thrasybulus of Calydon and Apollodorus of Megara, who killed Phrynichus (Lys. 13.70-72; Lycurg. *Leoc.* 112; *IG* I<sup>3</sup> 102). There is no record of honors given to the others who led the movement to overthrow the Four Hundred. The only two oligarchs who were arrested, tried and executed were Antiphon and Archeptolemus ([Plut.] *Mor.* 833D-834B). In sum, the movement to overthrow the democracy had little impact and was easily put down.

By contrast, the rule of the Thirty lasted far longer, caused far more suffering, and proved to be much harder to overthrow. Toward the end of the summer of 404 BCE, the Athenians held a meeting of the Assembly at which two Spartan officers Philocharis and Miltiades appeared with Lysander and advised the Athenians to choose thirty men to administer the city's affairs ([Arist.] *Ath. Pol.* 34.3; Plut. *Lys.* 15; Lys. 12.70-76; Diod. Sic. 14.3.5-7). Once in power, the Thirty appointed five hundred men to the Council ([Arist.] *Ath. Pol.* 35.1).<sup>62</sup> They also appointed ten men to rule the Piraeus ([Arist.] *Ath. Pol.* 35.1; Xen. *Hell.* 2.4.19; Plut. *Lys.* 15.5). Their next move was to try in the Council and execute the sycophants and other offenders, which was welcomed by the people ([Arist.] *Ath. Pol.* 35.3; Xen. *Hell.* 2.3.12; Diod. Sic. 14.4.2; Lys. 25.19). The Thirty then started to arrest any men whom they considered suspect (Xen. *Hell.* 2.3.14). After Theramenes suggested that they needed to increase their support, the Thirty enrolled three thousand who were to be the only citizens (Xen. *Hell.* 2.4.2). All those not in the Three Thousand were disarmed (Xen. *Hell.* 2.3.20) and could be put to death without a trial (Xen. *Hell.* 2.3.51; [Arist.] *Ath. Pol.* 37.1). The Four Hundred never had this power. At this point, the Thirty started to put men to death either out of personal enmity or to seize their property (Xen. *Hell.* 2.3.21-22; [Arist.] *Ath. Pol.* 35.4). Either at this point or later, the Thirty attempted to strengthen their position by inviting Spartan troops to occupy the Acropolis.<sup>63</sup>

Opposition to the Thirty quickly arose. During the winter of 403/2 BCE Thrasybulus led seventy Athenians from Thebes and seized Phyle (Xen. *Hell.* 2.4.2;

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62. According to [Arist.] *Ath. Pol.* 35.1 they were selected from a list of one thousand. Lysias (13.20) says that most were members of the previous Council.

63. According to Xenophon (*Hell.* 2.3.13-14) and Diodorus (14.4.3-4) the Thirty requested the Spartan troops soon after coming to power. According to the Aristotelian *Constitution of the Athenians* (37.2) the garrison arrived later after civil war had broken out. For discussion see P. Krentz, *The Thirty at Athens* (Ithaca 1982) 131-152.

Paus. 1.29.3). The Thirty sent the Three Thousand with some cavalry to attack them, but these troops were hampered by a snow storm and repulsed (Xen. *Hell.* 2.4.2-3). Thrasybulus' success attracted more followers, and soon there were seven hundred at Phyle (Xen. *Hell.* 2.4.5), which encouraged him to make a surprise attack on the oligarchs (Xen. *Hell.* 2.4.4-7; Diod. Sic. 14.32.6-33.1). After his troops increased to either one thousand or twelve hundred, Thrasybulus led his forces to the Piraeus (Xen. *Hell.* 2.4.10 [1,000]; Diod. Sic. 14.33.1 [1,200]). The Thirty sent an army to meet the exiles at Munychia, but Thrasybulus defeated them (Xen. *Hell.* 2.4.10-22; Diod. Sic. 14.33.2-4; Justin 5.9.14-10.3; [Arist.] *Ath. Pol.* 38.1). According to Xenophon (*Hell.* 2.4.13-17), Thrasybulus gave a speech to his troops before the battle. It is impossible to know how close Xenophon's version is to the speech Thrasybulus actually delivered; what is significant for this essay is that he makes no reference to an oath to kill tyrants or those who overthrew the democracy. The grounds of his appeal were very different: he stressed the violations of the individual rights of many Athenians, who were driven into exile and insulted. Nothing is said about the duty to defend democracy. After the battle, Cleocritus, the herald of the initiated, appealed to both sides and asked them to remember the rituals, sacrifices, and festivals they had shared and the campaigns on which they had fought together. When Cleocritus addressed the oligarchs and tried to turn them against the Thirty, he did not mention any oath sworn less than a decade before or any duty to protect the democracy but decried the Thirty's violations of the rights of all the individual Athenians they had killed (Xen. *Hell.* 2.4.20-22). In both of these speeches, the oath of Demophantus is conspicuous by its absence.<sup>64</sup>

Critias died during the battle at Munychia, and on the next day the Thirty held a meeting in the Council-chamber. A decision was made to depose the Thirty and to elect a committee of ten to replace them (Xen. *Hell.* 2.4.23; [Arist.] *Ath. Pol.* 38.1). The exiles now increased their forces with foreigners by promising them the status of *isoteleis* if they joined them (Xen. *Hell.* 2.4.25). The Thirty retreated to Eleusis and sent ambassadors to Sparta asking for help. Lysander was sent with troops and his brother Libys in command of a fleet to blockade the Piraeus (Xen. *Hell.* 2.4.28).

According to Cleocritus, the Thirty killed more Athenians than the Peloponnesians had in ten years of war (Xen. *Hell.* 2.4.21). At this point, king Pausanias

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64. The evidence of these speeches undermines the view of Teegarden, "Oath" (see n. 10) that the oath of Demophantus played a key role in mobilizing the democrats against the Thirty. When Thrasybulus was invited by the Thirty to join them, he did not justify his refusal by citing the oath of Demophantus (Diod. Sic. 14.32.5).

intervened to prevent Lysander from gaining a personal victory. He came to Athens and told the exiles to disperse to their homes; when they refused, he defeated them in battle (Xen. *Hell.* 2.4.29-34). Pausanias was able to broker a truce with the aid of fifteen ambassadors (Xen. *Hell.* 2.4.35-38; [Arist.] *Ath. Pol.* 38.4). The property of the Thirty was confiscated and sold.<sup>65</sup>

Because the campaign to overthrow the oligarchy had been so bloody and difficult, the Athenians thought that it was important to reward those who opposed the Thirty. The non-citizens who fell while supporting the men of the Piraeus were given a public funeral and the “same honors” as citizens (Lys. 2.66). The men of Phyle were given olive crowns and a sum of money in gratitude for their bravery (Aeschin. 3.187-190 with *Hesperia* 10 [1941] 284-295, no. 78). Fragments have been preserved from a decree enacted in 401/0 BCE about foreigners who joined the Athenian exiles at Phyle, foreigners who returned with the exiles to the Piraeus, and foreigners who supported the exiles in the battle at Munychia, but there is disagreement about what rewards each of these groups received.<sup>66</sup> What is clear however is that the rewards granted after the overthrow of the Thirty were far more numerous and significant than those given after the overthrow of the Four Hundred when the Athenians only offered rewards to the men who killed Phrynichus.<sup>67</sup> Finally, the Athenians established a sacrifice on 12 Boedromion of every year for the return of exiles from Phyle and the restoration of the democracy after the overthrow of the tyrants in 403 BCE.<sup>68</sup> The Athenians established no similar commemoration for the overthrow of the Four Hundred.

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65. M.B. Walbank, “The Confiscation and Sale by the Poletai in 402/1 B.C. of the Property of the Thirty Tyrants”, *Hesperia* 51 (1982) 74-98.

66. See the text and a summary of views in Rhodes and Osborne, *Inscriptions* (see n. 52) 20-26.

67. For the rewards given to those who killed Phrynichus see Lys. 13.70-72; *IG* I<sup>3</sup> 102. Fragments of a decree enacted by Theozotides for those who died a violent death “during the oligarchy” have been found and have been connected with the fragments of a speech by Lysias *Against Theozotides* (frs. 129-150 [Carey]). There is a dispute however about the date of the decree. Stroud, “Theozotides” (see n. 56) 280-301 (= *SEG* 28:46) places the decree after the Thirty; I. Calabi Limentani, “Vittime dell’oligarchia: A proposito del decreto di Teozotide” in *Studi in onore di Cesare Sanfilippo* 6 (Milan 1985) 115-128 and A.P. Matthaiou, *Τὰ ἐν τῇ στήλῃ γεγραμμένα* (Athens 2011) 71-81 identify the oligarchy as the Four Hundred. The strongest arguments in favor of the earlier dating are the mention of the *Hellenotamiai*, an office that no longer existed after 404/3 BCE, and the smaller number of victims of the oligarchy (forty-six or fewer as opposed to the fifteen hundred under the Thirty).

68. Plut. *Mor.* 349f with R. Parker, *Athenian Religion: A History* (Oxford 1996) 228-229 with n. 43.

One can understand the reasons for the different responses. The extremists among the Four Hundred never succeeded in gaining complete control of the state; the Thirty enjoyed unrivalled power until Thrasybulus and his supporters came to the Piraeus. The Four Hundred put very few Athenians to death or confiscated their property; the Thirty were said to have killed more Athenians than died in battle during ten years of war with the Peloponnesians (Xen. *Hell.* 2.4.21), and three sources say that they killed as many as fifteen hundred (Isoc. 7.67; Aeschin. 3.235; [Arist.] *Ath. Pol.* 35.4). The extremists among the Four Hundred tried unsuccessfully to negotiate with the Spartans; the Thirty actually invited Spartan troops into Athens and allowed them to occupy the Acropolis. The Four Hundred were easily ousted after a demonstration of troops in the Piraeus and a meeting of the Assembly without serious bloodshed at Athens; it took several battles and much loss of life to resist the Thirty and the Ten who followed them. There was a smooth transition from the Four Hundred to the Five Thousand and from the Five Thousand to the restored democracy. Unity in 403 BCE was achieved only by Spartan intervention and the conclusion of a detailed reconciliation agreement. It was the Thirty who taught the Athenians the horrors of oligarchy and the value of defending democracy. That is why the Athenians enacted the decree of Demophantus in 403 BCE or shortly afterwards to prevent another bloody *coup d'état*. This is the historical context in which Lycurgus places the decree of Demophantus; this is the period in which the decree clearly belongs.<sup>69</sup>

### Appendix

#### Mentions of the Secretary in the Prescripts of Decrees of the Assembly before 375 BCE

In all the preserved prescripts of decrees of the Assembly dated to before roughly 370 BCE, the name of the secretary is given before the verb in asyndeton. The first prescript that gives the name of the secretary and the verb preceded by the feminine relative pronoun in the dative (ἥι) with the antecedent being the name of the tribe holding the prytany occurs in 394/3 BCE – *IG II<sup>2</sup>* 18, ll. 2-4. The

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following list contains references to all prescripts fully preserved or containing the name of the secretary and the preceding word.

*IG I<sup>3</sup>* 9 (c. 458 BCE), ll. 2-3; 10 (c. 469-50 BCE), l. 3; 28 (450-40? BCE), ll. 7-8 (heavily restored); 31 (c. 450? BCE), ll. 1, 4; 34 (448/7? BCE), ll. 3-4; 36 (424/3 BCE), ll. 2-3; 48 bis (434/3 BCE), l. 2; 52 (433/2 BCE), ll. 1-2; 54 (433/2 BCE), ll. 13-14; 59 (before 430 BCE), l. 1 (restored); 61 (424/3 BCE), l. 4; 68 (426/5 BCE), l. 4; 75 (424/3 BCE), ll. 3-4 (plausible restoration); 78a (422? BCE), ll. 2-3; 79 (422/1 BCE), ll. 3-4; 80 (421/0 BCE), ll. 1-2, 5-6; 84 (418/7 BCE), ll. 2-3; 91 (416/5 BCE), ll. 2 and 4-5; 92 (416/5 BCE), ll. 3-4; 95 (415/4 BCE), ll. 2-3 (plausibly restored); 97 (412/1 BCE), l. 4; 99 (410/9 BCE), ll. 5-6; 102 (410/9 BCE), ll. 2 and 4; 104 (409/8 BCE), ll. 1, 3-4; 110 (408/7 BCE), ll. 3-4; 119 (407 BCE), l. 2; 123 (407/6 BCE), l. 2 (heavily restored); 127 (405/4 BCE), ll. 5-6.

In *IG I<sup>3</sup>* 54 (433/2 BCE), ll. 8-10 we find the formula ἐπὶ Ἀφσεύδος ἄρχοντος καὶ τῆς βουλῆς ἡῶι Κριτιάδης ἐγραμμάτευε. A similar phrase has been restored at *IG I<sup>3</sup>* 53 (433/2 BCE), ll. 4-6.

*IG II<sup>2</sup>* 13 (399/8 BCE), ll. 5-6; 26 (394-87 BCE), l. 5; 27 (394-87 BCE), ll. 3-4; 28 (387/6 BCE), l. 3; 31 (386/5 BCE), l. 4; 32 (385/4 BCE), ll. 2 (plausibly restored), 4-5; 43 (378/7 BCE), ll. 2-3; 44 (378/7 BCE), ll. 5-6; 49 (early fourth century BCE), ll. 7-8; 77 (375 BCE), l. 4; 86 (before 378/7 BCE), ll. 3-4.

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### Summary

This article shows that the document found in Andocides' *On the Mysteries* 96-98, which purports to be the decree of Demophantus containing an oath to kill tyrants, is a forgery. The prescript of the decree contains features found in no other decrees of the Classical period (the use of the verb συνέγραψεν, the phrase ἡ βουλὴ οἱ πεντακόσιοι λαχόντες τῷ κυάμῳ, the phrase about the secretary introduced ὅτε, the motion formula not found at the end of the prescript, the word τᾶδε used in the prescript). These unusual features cannot be explained by any unusual circumstances surrounding the enactment of the decree. The language of the decree is also not consistent with the language of contemporary decrees (e.g., the use of the word εὐαγής). Finally, the clauses of the decree do not agree with information about the decree of Demophantus found in Demosthenes (20.159) and Lycurgus (*Leoc.* 124-127) and with the evidence for Athenian law and legal procedure. The decree clearly belongs in the historical context of the period after the overthrow of the Thirty in 403 BCE, which is where Lycurgus (*Leoc.* 124) places it.