

## THE «DEMOCRATIC VERSION» OF THE SOLONIAN CONSTITUTION: ITS DATE AND ORIGIN

Within the bitter political antagonisms which followed the Sicilian disaster at Athens towards the end of the fifth century B.C., the slogan *πάτριος πολιτεία* was brought up and became the living issue in the political life of Athens for almost a century. It is not the purpose of this article to investigate how and when this slogan came into being and what its content was every time it was used by the oligarchs or the democrats<sup>1</sup>; we are interested in how and when Solon's name was associated with an «ancestral constitution» advocated by the political parties at Athens.

The commonly held view on the matter is that towards the end of the fifth century Solon's name was used as a slogan for the restoration of an ancestral constitution. At that time, says Jacoby, «democracy signed its programme with the name of Kleisthenes, and the conservatives set Solon in opposition to him»<sup>2</sup>. C. Hignett thinks that traces of these two versions can be seen clearly in the *Athenaion Politeia*; he dates the «oligarchic» version to the end of the fifth century but considers the «democratic» version «something of a mystery» by the following reasoning: «If the publication of the first *Atthis* written by an Athenian, Kleidemos, is correctly dated after 354<sup>3</sup>, the genesis of the democratic version cannot be ascribed to him, for Isokrates in a well-known passage of his

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1. A. Fuks, *The Ancestral Constitution*, London 1953, pp. 108-109, has rightly remarked that «it is difficult to determine how far the 'ancestral constitution' was for the moderates a propagandist slogan, and how far they intended to model their polity on that of the past, previous to the democratic developments dating from the sixties and the fifth century onwards. Ideology and propaganda seem to be here mixed up beyond the possibility of disentanglement». See also S. A. Cecchin, *Πάτριος Πολιτεία: un tentativo propagandistico durante la guerra del Peloponneso* (Historia Politica Philosophica, 1), Turin 1969.

2. F. Jacoby, *Atthis*, Oxford 1949, p. 154.

3. He uses the date proposed by Jacoby, *ibid.*, p. 74; also *FGrHist* 3 b Suppl. 1, p. 58.

*Areopagitikos*, written not later than 355, refers to that democracy which Solon ὁ δημοτικώτατος γενόμενος established by law<sup>1</sup>. Thus Hignett concludes that Cleidemus was not the creator of the democratic version which attached Solon to the democrats<sup>2</sup>, and Isocrates cannot have created it either, for the account of the democratic version «could not be reconciled with his own views on the ancient power of the Areopagus»<sup>3</sup>. A. Fuks maintained that «some time before 411 the moderates developed a view of Solon's constitution as a basically non-democratic 'ancestral constitution' to be striven for»<sup>4</sup>. But it was in the fourth century that the «democratization of Solon» took place gradually<sup>5</sup>. G.E.M. de Ste Croix is of a similar opinion; he thinks that what the moderate oligarchs had wanted in the spring of 411 was the ancestral constitution, conceived «as the constitution of Solon or Cleisthenes»<sup>6</sup>. He goes further and defines the desired Solonian constitution as one in which the Thetes «had the franchise in the Solonian constitution, and could sit in assembly and courts, although they were denied access to all ἀρχαί»<sup>7</sup>.

1. C. Hignett, *A History of the Athenian Constitution*, 2nd ed., Oxford 1958, p. 7.

2. F. Jacoby, *op. cit.*, pp. 74-75, believes apparently that Cleidemus' *Atthis* was the basis for the democratic version which related Solon to the radical democracy. But in view of the suggestion that Cleidemus' *Atthis* should be dated before 378/7 B.C., R. Thomsen, *Eisphora in Humanitas III*, Copenhagen 1964, pp. 85-89, such a belief becomes less probable.

3. C. Hignett, *op. cit.*, p. 8.

4. A. Fuks, *op. cit.*, p. 14. Fuks' opinion that references to Solon in Aristophanes' *Nubes* and Eupolis' *Demoi* «might perhaps be taken as an indication that Solon was regarded as a philodemocratic statesman», *loc. cit.*, cannot be substantiated; on the contrary, the evidence of the fifth century shows that Solon was not colored at all as philodemocratic statesman and these references are mere inferences from his legislation: Aristophanes' remark that Solon was φιλόδημος τὴν φύσιν (*Nubes* 1187) refers to the democratic character of the cited law and cannot be related to the constitutional reforms. The fragment of Eupolis' comedy *Demoi* (J. M. Edmonds, *The Fragments of Attic Comedy*, no 128a) shows clearly the contrast between the idealized past and the demoralized present. The intention of the poet is not to emphasize a general demoralization in the Athenian life but rather a deterioration in the political sphere, as is evident from the use of the verb ἀρχω [ἤρχετον], and there is no ground to be taken as an indication that Solon was a philodemocratic statesman.

5. A. Fuks, *op. cit.*, p. 15.

6. G.E.M. de Ste Croix, *The Constitution of the Five Thousand*, *Historia* 5 (1956) 10.

7. *Ibid.*; the information comes from Aristotle's *Ath. Pol.* 7-9 and *Pol.* 1273b 35-1274a 21; 1281b 32-34.

Against the view that by the end of the fifth century Solon's name was used by the political parties as a slogan for an «ancestral constitution» stands E. Ruschenbusch who, after a systematic re-examination of the evidence found in the Attic orations, came to the conclusion that «entgegen der von der modernen Forschung vertretenen Ansicht wurde die bestehende Verfassung im 5. Jahrhundert nicht als das Werk des Solon betrachtet. Dies bezeugt eindeutig das Psephisma des Teisamenos vom Jahre 403, wenn es sagt: (And. 1.83) πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος»<sup>1</sup>. M. Finley has pointed out that τὰ πάτρια here «mean merely the way Athens was governed before the Thirty Tyrants took charge»<sup>2</sup>, and that the wording of the decree does not afford any distinction «between the laws of Draco and Solon and a constitution, not by Draco and Solon»<sup>3</sup>. He also examines Cleitophon's amendment in which the πάτριον νόμον «can mean 'traditional' in the specific sense of 'what we have been doing for some time now'», and concludes that «Athenians at the end of the fifth century B.C. were intellectually capable of distinguishing among the laws which defined the powers of the assembly, council and magistrates, the laws which laid down penalties for assault and theft [...]. However, they had not yet begun to work out a conceptual framework for either jurisprudence or political science, let alone political theory»<sup>4</sup>. It seems, therefore, that the Athenians of the last decade of the fifth century B.C. did not make any clear distinction between constitutional laws (*Grundgesetze*) and other laws (*Gesetze*), and that they often used the word νόμος to indicate both. On the other hand it seems clear that by the mid-fourth century B.C. this distinction had been made and Solon appears for the first time as a democratic constitutional reformer. In that sense the conclusion that E. Ruschenbusch has reached is still valid: «während

1. E. Ruschenbusch, Πάτριος Πολιτεία, *Historia* 7 (1958) 408; although A. Fuks accepts that Solon's name was used in party politics at the end of the fifth century, *op. cit.*, p. 14, he is quite in accordance with Ruschenbusch on the specific case of Teisamenos Decree (*ibid.*, p. 38-39): «There is a distinction in the decree between πολιτεύεσθαι and νόμοις χρῆσθαι. Athens' constitution is to be κατὰ τὰ πάτρια, whereas the general body of laws in force are to be the nomoi of Solon with the thesmoi (concerning homicide) of Drakon (νόμοις δὲ κλπ.). Evidently only the code of law was to be Solonian, not the constitution».

2. M. Finley, *The Ancestral Constitution*, (1971), reprinted in his *Use and Abuse of History*, London 1975, p. 39.

3. *Ibid.*, p. 218, n. 14.

4. *Ibid.*, pp. 37-38.

Kleisthenes schon in der Mitte des 5. Jahrhunderts als Verfassungsgeber bekannt war, Solon, Theseus und Drakon überhaupt erst in den Jahren 356, 343 und 328/2 als Schöpfer von Verfassungen entdeckt worden sind»<sup>1</sup>.

Before we continue the discussion on the problem raised above, it is necessary to investigate briefly the validity of Ruschenbusch's suggestion concerning Solon. His conclusion is based on the evidence of the Attic orations dated from 411 to 322. He noticed that Solon's name is often used after the year 356, whereas it occurs only in three speeches before that year. He proceeds then to show that in the years after 356 Solon's name is often attached to expressions like δημοτικός, δημοκρατία, προστάτης τοῦ δήμου and εὔνους ὑμῖν, whereas in the three cases before that year it is related only to the laws<sup>2</sup>. The other sources which are dated between 411 and 356 do not offer evidence against Ruschenbusch's conclusion; on the contrary they make clear that Solon was known as a lawgiver, a poet and one of the Seven Wise Men until 356, when for the first time he appears as the creator of a constitution<sup>3</sup>. It is also evident, as Ruschenbusch has pointed out, that «während Isokrates ihn den Schöpfer der gemässigten Demokratie nennt, betrachtet ihn Demosthenes als Schöpfer der radikalen Demokratie»<sup>4</sup>. Both these

1. *Op. cit.*, p. 422.

2. The evidence found in Andocides' speech, dated in 400, is the following: 1.81-82: τέως δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς. ἐπειδὴ δὲ βουλὴν τε ἀπεκληρώσατε νομοθέτας τε εἴλεσθε, εὔρισκον τῶν νόμων τῶν τε Σόλωνος καὶ τῶν Δράκοντος; 1.83: νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς; 1.95: ἄλλο τι οὖν, ὦ Ἐπίχαρες, ἢ νῦν ὁ ἀποκτείνας σε καθαρὸς τὰς χεῖρας ἔσται, κατὰ γε τὸν Σόλωνος νόμον; 1.111: ἡ γὰρ βουλή ἐκεῖ καθεδεῖσθαι ἔμελλε κατὰ τὸν Σόλωνος νόμον, ὃς κελεύει... Lysias' speech against Nicomachus, dated c. 399/8, mentions Solon four times: 30.2: προσταχθὲν γὰρ αὐτῷ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος, ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν; 30.26: οὗτος αὐτοῦ μένων τοὺς Σόλωνος νόμους ἐλυμαίνετο; 30.28: οἱ μὲν πρόγονοι νομοθέτας ἠροῦντο Σόλωνα καὶ Θεμιστοκλέα... In the speech against Theomnestus, dated in 384: 10.15: καὶ μοι ἀνάγνωθι τούτους τοὺς νόμους τοὺς Σόλωνος τοὺς παλαιοῦς. According to Ruschenbusch, *op. cit.*, p. 405, the cited evidence signifies that «während die Erwähnung Solons nach 356 lediglich der Beeinflussung der Richter dient, ist sie in der vier [twice in 20.3] Fällen aus der Zeit vor 356 durch die Sache bedingt. Demnach ist die Nennung Solons bei den Rednern in der Tat ein erst um 356 aufgekommener Brauch».

3. Isoc. *Areop.* (7)16: ἦν ἐθελήσωμεν ἐκείνην τὴν δημοκρατίαν ἀναλαβεῖν, ἣν Σόλων μὲν ὁ δημοτικώτατος γενόμενος ἐνομοθέτησε, Κλεισθένης δ' ὁ τοὺς τυράννους ἐκβαλὼν καὶ τὸν δῆμον καταγαγὼν πάλιν ἐξ ἀρχῆς κατέστησεν.

4. E. Ruschenbusch, *op. cit.*, p. 408.

views are found close in time, the former in 356 and the latter in 355 <sup>1</sup>.

But if these two versions, which consider Solon a constitutional reformer, appear so late and no earlier reference to a Solonian constitution can be found, our problem on how these two versions came into being is not adequately answered by the suggestion that the one or the other emerged from the political antagonisms late in the fifth century B.C. <sup>2</sup>. Again Ruschenbusch, on the basis of certain passages from the first two orations, which introduce Solon as a constitutional reformer <sup>3</sup>, suggests that «von diesem Angriff des Isokrateskreises gegen die radikale Demokratie her erklärt sich einmal der Ausfall des Demosthenes gegen Androtion mit der Behauptung, Solon habe als Demokrat seine Gesetze zur Erhaltung der Demokratie gegeben, weiterhin aber auch die Tatsache, dass ab 356 die Advokaten in ihren Reden von Solon sprechen» <sup>4</sup>. The evidence is compelling and does not permit any doubt that Demosthenes considers Solon a democrat who gave his laws for the preservation of

1. The only information on Solon's constitution which comes from a later source but refers to the events before the revolution of 411 is found in Cleitophon's Rider cited by Aristotle in the *Ath. Pol.* 29.3: προσαναζητῆσαι δὲ τοὺς αἰρεθέντας ἔγραψεν καὶ τοὺς πατέριους νόμους, οὓς Κλεισθένης ἔθηκεν ὅτε καθίστη τὴν δημοκρατίαν, ὅπως [ἄν] ἀκούσαντες καὶ τούτων βουλευσῶνται τὸ ἄριστον, ὡς οὐ δημοτικὴν ἀλλὰ παραπλησίαν οὖσαν τὴν Κλεισθέτους πολιτείαν τῇ Σόλωνος. Modern scholars have offered different explanations for the last clause of the Rider ὡς...Σόλωνος: according to H. T. Wade-Gery, *Studies in the Structure of Attic Society: II. The Laws of Kleisthenes*, *CQ* 27 (1933) 19-20, it is a statement of Cleitophon's motive in moving the Rider and therefore it «is not part of the Rider» but it came to Aristotle through his sources; J.A.R. Munro, *The Ancestral Laws of Cleisthenes*, *CQ* 33 (1939) 84-97, suggested that it is an addition by Aristotle. F. Jacoby, *op. cit.*, p. 384, n. 30, considers it «an addition of Aristotle or of his source which is to explain the sense of the amendment»; he thinks that it is more probable to have been added by Androtion. C. Hignett, *op. cit.*, p. 15, n. 2, G.E.M. de Ste Croix, *op. cit.*, p. 10, and E. Ruschenbusch, *op. cit.*, pp. 420-421, incline to one of these suggestions. A. Fuks made quite an effort to show that even if it does not belong to the amendment itself, «Aristotle may be explaining here Kleitophon's Rider on the basis of what he knew of the constitutional views of Kleitophon, or of the Therameneans in general», *op. cit.*, p. 7, but Ruschenbusch's conclusion that Solon was not mentioned as a constitutional reformer before 356 makes Fuks' suggestion improbable. M. Finley, who accepts F. Jacoby's suggestion, adds that it is «an anachronism to impose on Cleitophon, say, a distinction between constitutional law and some other kind of law», *op. cit.*, p. 38.

2. *Supra*, p. 225f.

3. *Dem. Andr.* (22) 30, 47, 51, 52; *Isocr. Areop.* (7) 15, 16, 18, 56.

4. E. Ruschenbusch, *op. cit.*, p. 407.

democracy<sup>1</sup>. It is also quite clear that Isocrates is opposed to the radical democracy and advocates that democracy which Solon legislated and Cleisthenes re-established and which actually was an ideal formed in the orator's mind<sup>2</sup>. In the case of Isocrates the Solonian democracy is merely an Utopia formed in opposition to the present circumstances and to the anticipated future dangers: *καὶ τῶν μελλόντων κινδύνων ἀποτροπὴν καὶ τῶν παρόντων κακῶν ἀπαλλαγὴν*. On the contrary for Demosthenes the Solonian democracy has a concrete content prescribed by the extant laws which aim at the preservation of democracy<sup>3</sup>. It is, therefore, evident that Demosthenes' belief, that Solon was concerned about a democratic constitution, emanates from the extant laws which are attributed to Solon<sup>4</sup>. The new element in Demosthenes and in Isocrates—each one, however, coming to the same notion from different motives and reasoning—is that Solon was the creator of a constitution<sup>5</sup>. But the opinion that the Solonian legislation was democratic in its character, had been formed before 356. It occurs for the first time as an inference made by Aristophanes on the occasion of Solon's calendar reform concerning the *ἔτη τε καὶ νέαν*<sup>6</sup>. But since there is no evidence before 411 which could justify and support the interpretation that the Solonian legisla-

1. Dem. *Andr.* (22) 30-31: ἀξιον τοίνυν, ὦ ἄνδρες Ἀθηναῖοι, καὶ τὸν θέντα τὸν νόμον ἐξετάσαι Σόλωνα, καὶ θεάσασθαι ὅσην πρόνοιαν ἐποίητο ἐν ἅπασιν οἷς ἐτίθει νόμοις τῆς πολιτείας, καὶ ὅσω περὶ τούτου μάλλον ἐσπούδαζεν ἢ περὶ τοῦ πράγματος οὗ τιθεὶ τὸν νόμον. πολλαχόθεν μὲν οὖν ἂν τις ἴδοι τοῦτο, οὐχ ἥκιστα δ' ἐκ τούτου τοῦ νόμου, μήτε λέγειν μήτε γράφειν ἐξεῖναι τοῖς ἡταιρηκόσιν. ἐώρα γὰρ ἐκεῖνο, ὅτι τοῖς πολλοῖς ὑμῶν ἐξὸν λέγειν οὐ λέγετε, ὥστε τοῦτ' οὐδὲν ἡγεῖτο βαρὺ, καὶ πόλλ' ἂν εἶχεν, εἴ γε κολάζειν ἐβούλετο τούτους, χαλεπώτερα θεῖναι. ἀλλ' οὐ τοῦτ' ἐσπούδασεν, ἀλλὰ ταῦτ' ἀπέειπεν ὑπὲρ ὑμῶν καὶ τῆς πολιτείας. ἦδει γάρ, ἦδει τοῖς αἰσχροῦς βεβιωκόσιν ἀπασῶν οὖσαν ἐναντιωτάτην πολιτείαν, ἐν ἣ πᾶσιν ἔξεστι λέγειν τάκεινων ὀνειδή. ἔστι δ' αὕτη τις; δημοκρατία.

2. See E. Ruschenbusch, *op. cit.*, p. 407; cf. Isoc. *Areop.* (7)16: εὐρίσκω γὰρ ταύτην [sc. τὴν ὑπὸ τῶν προγόνων καταληφθεῖσαν πολιτείαν] μόνην ἂν γενομένην καὶ τῶν μελλόντων κινδύνων ἀποτροπὴν καὶ τῶν παρόντων κακῶν ἀπαλλαγὴν, ἣν ἐθελήσωμεν ἐκείνην τὴν δημοκρατίαν ἀναλαβεῖν, ἣν Σόλων μὲν ὁ δημοτικώτατος γενόμενος ἐνομοθέτησε, Κλεισθένης δ' ὁ τοὺς τυράννους ἐκβαλὼν καὶ τὸν δῆμον καταγαγὼν πάλιν ἐξ ἀρχῆς κατέστησεν.

3. *Supra* n. 1.

4. Cf. Dem. *De Cor.* (18)6: ὥσπερ οἱ νόμοι κελεύουσιν, οὕς ὁ τιθεὶς ἐξ ἀρχῆς Σόλων, εὖνους ὦν ὑμῖν καὶ δημοτικός, dated in 330.

5. E. Ruschenbusch, *op. cit.*, p. 422.

6. Ar. *Nub.* 1187; the predicative use of φιλόδημος shows that the poet has inferred it from that *particular* law and for that *particular* occasion, since the *ἔτη καὶ νέαν* was instituted—this is what Aristophanes intends to show—as a relief for the debtors.

tion was politically colored<sup>1</sup> or that the families or parties had raised any claim on Solon, it seems that Solon's legislation as democratic was characterized as such sometime after 411. Our sources for the period 411-356 contain little descriptive information on Solon's laws<sup>2</sup>, but the circumstances under which the laws themselves were re-edited can help in understanding their character. After the restoration of a democratic government in 411/10 two important measures considerably affected the character of the Solonian laws: 1) the decree against tyranny which passed soon after the restoration and 2) the appointment of a board to re-edit the laws of Athens.

1. J. Schreiner, *De corporis iuris Atheniensium*, Bonn 1913, pp. 51-52, had remarked that in the fifth century already Solon's laws were considered «corpus iuris democraticae saeculi V», and A. Fuks, *op. cit.*, p. 39, thought that Schreiner had made out a good case in supporting that Solon's laws «came, already in the fifth century, to mean in general use 'Athenian laws', or 'the body of laws of democratic Athens'». K. Dover also, *Aristophanes: Nubes*, Oxford 1968, p. 236, thinks that «it was axiomatic with public speakers in the fifth and fourth centuries (as remarked by ΣRV) that Solon's legislation was democratic». Dover's statement is an inference made from Demosthenes, *De Cor* (18)6, but there is no evidence that it applies as well to the fifth-century Athens before 411; the remark found in ΣRV concerns only the first part of his statement but not the second; see *Scholia Aristophanica* I (R), ed. W. Rutherford, London 1896, p. 254. That the «Athenian laws» had been related to the *status quo* before 411 is an undeniable fact, but no one had pointed out their democratic or oligarchic character until the party-antagonisms of the last decade brought up the issue.

2. Generally they are cited in forensic speeches introduced by expressions such as: κατὰ γε τὸν Σόλωνος νόμον (Andoc. 1.95), κατὰ τὸν Σόλωνος νόμον (Andoc. 1.111), καί μοι ἀνάγνωθι τούτους τοὺς νόμους τοὺς Σόλωνος τοὺς παλαιούς (Lys. 10.15 here follow several laws), οἷς γὰρ δίδωσιν ὁ νομοθέτης τὴν ἀγχιστεῖαν καὶ τὴν κληρονομίαν, τούτους ἀναγνώσεται ὑμῖν τοὺς νόμους ([Dem.] 43.50), ἀναγίγνωσκε καὶ τοὺς ἑτέρους νόμους ([Dem.] 43.56), ἔτι δὲ σαφέστερον γνώσασθε, ὦ ἄνδρες δικασταί, καὶ ἐκ τοῦδε τοῦ νόμου, ὅτι Σόλων ὁ νομοθέτης σπουδάζει περὶ τοὺς οἰκείους...λέγε τὸν νόμον ([Dem.] 43.62), ταῦτ' ἀλεγει περὶ τῶν προσηκόντων τοῖς νόμοις τοῖς τοῦ Σόλωνος ([Dem.] 43.66), ὁ δὲ νόμος κελεύει ὁ τοῦ Σόλωνος κρατεῖν ([Dem.] 43.78). In other cases the context makes the author's sentiments discernible: ὅτι Ἀθηναῖοι τοῖς Σόλωνος νόμοις χρῆσάμενοι εὐδαιμόνησαν (Alcidamas in Arist. *Rh.* 1398b), τίμιος δὲ παρ' ὑμῖν καὶ Σόλων διὰ τὴν τῶν νόμων γέννησιν (Pl. *Symp.* 209d), σὲ δὲ τίς αἰτιᾶται πόλις νομοθέτην ἀγαθὸν γεγονέναι καὶ σφᾶς ὠφελημέναι; Χαρώνδαν μὲν γὰρ Ἰταλία καὶ Σικελία, καὶ ἡμεῖς Σόλων (Pl. *Resp.* 599e), ἀθρητέον δὲ πῶς ποτε Σόλων φιλοσοφῆσας νόμους κρατίστους τῇ πόλει κατέθηκεν (Xen. *Symp.* 8.39), καίτοι τὰ μὲν καὶ ἐκ τῶν Δράκοντος νόμων, τὰ δὲ καὶ ἐκ τῶν Σόλωνος περὶ ὧμαι, ἔφη, λαμβάνων ἐμβιβάξεν εἰς τὴν δικαιοσύνην τοὺς οἰκέτας...ὅτι ἔγραψαν αὐτὰ βουλόμενοι ἀλυσιτελῆ ποιῆσαι τοῖς ἀδίκους τὴν αἰσχροκέρδειαν (Xen. *Oec.* 14.4).

The decree against tyranny cited by Andocides<sup>1</sup> can be dated from its prescript in 411/10, when the transition from the Five Thousand to full democracy took place<sup>2</sup>. M. Ostwald has put forward the view that this law was the re-enactment of an old law which through *Ath. Pol.* 16.10<sup>3</sup> can be traced back to Drako<sup>4</sup>. The phrase *κατά γε τὸν Σόλωνος νόμον* which is used by Andocides in 400 B.C. to introduce the decree «means no more than that the decree in the form given goes back to earlier regulations»<sup>5</sup> which after 403, at least, were known as *Σόλωνος νόμοι*<sup>6</sup>. From our point of view the attribution of a law aiming at the preservation of democracy to Solon towards the end of the fifth century has a particular importance: Regardless whether this law was passed then for the first time or was re-enacted, whether it was original with Drako or not, it remains a fact that in the sharp political antagonisms of the last decade of the fifth century the law for preservation of democracy was attached to the Solonian legislation and after 403, at least, a reference to Solon's laws had to be understood as democratic. What was tacitly or unconsciously understood as democratic before 411<sup>7</sup> became conscious and avowed thereafter. The decree of

1. 1. 96-98.

2. B. Meritt, Athenian Calendar Problems, *TAPA* 95 (1964) 211. R. Meiggs and D. Lewis, *A Selection of Greek Historical Inscriptions*, Oxford 1969, no 84 (p. 258).

3. Θέσμις τάδε Ἀθηναίων καὶ πάτρια· ἐάν τινες τυραννεῖν ἐπανιστῶνται [ἐπὶ τυραννίδι], ἢ συγκαθιστῆ τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος.

4. The Athenian Legislation against Tyranny, *TAPA* 86 (1955) 106 ff. M. Ostwald takes the view that the decree of 411/10 is derived from the law against tyranny cited in *Ath. Pol.* 16.10; the law is attributed by M. Ostwald to Drako on the basis of certain characteristics inherent in the language of the fifth century. He concludes that the decree of Demophantus, «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».

5. *Ibid.* p. 111, n. 41.

6. Andoc. 1.83 (Teisamenos decree): *νόμοις δὲ χρῆσθαι τοῖς Σόλωνος*; see D. Macdowell, *Andocides: On the Mysteries*, Oxford 1962, pp. 120-124, 134-135; E. Ruschenbusch, *op. cit.*, p. 404 explains it as follows: «Wenn man nun in Betracht zieht, dass in der amtlichen Terminologie der voreuklidische Code ohne Rücksicht auf Nachträge und Ergänzungen als *νόμοι Σόλωνος* bezeichnet wird, so ergibt sich, dass die Worte *κατά γε τὸν Σόλωνος νόμον* nichts anderes bedeuten, als eine für die Argumentation unentbehrliche chronologische Formel, das vor 403 geltende Recht im Gegensatz zu dem ab 403 geltenden Recht, dem Code des Eukleides».

7. *Supra*, p. 261, n. 1.



Teisamenos which passed after the restoration of democracy in 403<sup>1</sup> stressed even more the character of the legislation especially in view of the fact that the Thirty had abolished some of the laws «claiming to correct and make the constitution indisputable»<sup>2</sup>.

With regard to the decree of Demophantus which aimed at the preservation of democracy, M. Ostwald preferred the view that it was superseded by the νόμος εισαγγελτικός<sup>3</sup>, which, according to him, was passed in or soon after 403 B.C.<sup>4</sup> It is not the place here to examine the whole problem since it does not pertain directly to our purpose. Thus we confine ourselves to the two later references to the decree of Demophantus which after 403 was labelled as Σόλωνος νόμος<sup>5</sup>. Demosthenes in his speech against Leptines, which is dated in 355/4 B.C.<sup>6</sup>, writes: ἀλλ' ἀναμνησθέντες...καὶ τῆς Δημοφάντου στήλης...ἐν ἧ γέγραπται καὶ ὁμώμοται, ἃν τις ἀμύνων τι πάθη τῆ δημοκρατίᾳ τὰς αὐτὰς δώσειν δωρεῖας ἄσπερ Ἀρμοδίῳ καὶ Ἀριστογείτονι<sup>7</sup>; again Lycurgus in the speech against Leocrates in 331/0 B.C.<sup>8</sup> refers to that decree as follows:

μετὰ γὰρ τοὺς τριάκοντα οἱ πατέρες ὑμῶν, πεπονθότες ὑπὸ τῶν πολι-  
τῶν, οἷα οὐδεὶς πώποτε τῶν Ἑλλήνων ἠξίωσε, καὶ μόλις εἰς τὴν ἑαυ-

1. The decree is cited by Andocides in the course of his account of the events which followed the expulsion of the tyrants, 1.80-85, and makes specific reference to Solon's legislation. The problems related to the decree of Teisamenos do not concern us here, since they deal mostly with the question whether the decree orders a fresh revision or a continuation of the revision which had started in 410 and was interrupted by the Thirty; for a recent bibliography on the subject see D. Macdowell, *op. cit.*, p. 194. Whatever the answer to this central question, our point that the restoration of democracy brought back into use the code of Solon remains indisputable.

2. *Ar. Ath. Pol.* 35.2: καὶ τῶν Σόλωνος θεσμῶν ὅσοι διαμφισβητήσεις ἔσχον, καὶ τὸ κῦρος δ' ἦν ἐν τοῖς δικασταῖς κατέλυσαν, ὡς ἐπανορθοῦντες καὶ ποιοῦντες ἀναμφισβήτητον τὴν πολιτείαν.

3. *Hyp. Pro Eux.* 7-8.

4. *Op. cit.*, pp. 115-119; cf. G. Colin, *Hypéride: Discours*, Paris 1946, p. 148. For a bibliography on different opinions see M. Ostwald, *op. cit.*, p. 155, nn. 67, 69. D. Macdowell, *op. cit.*, p. 135, remarks that the account of the decree «given in Lyk. 124-7 (cf. also D. 20.159) indicates that it more probable remained unannulled in the fourth century».

5. *Supra*, p. 262, n. 3.

6. O. Navarre and P. Orsini, *Démosthène: Plaidoyers Politiques I*, Paris 1954, p. 55.

7. 20.159.

8. For the date see F. Blass, *Die attische Beredsamkeit*, 3B, Leipzig 1898, p. 111; F. Durrbach, *Lycurgue: Contre Léocrate*, Paris 1932, p. 25.

τῶν κατεγλυθότες, ἀπάσας τὰς ὁδοὺς τῶν ἀδικημάτων ἐνέφραξαν, πεπειραμένοι καὶ εἰδότες τὰς ἀρχὰς καὶ τὰς ἐφόδους τῶν τὸν δῆμον προδιδόντων. ἐψηφίσαντο γὰρ καὶ ὤμοσαν, ἐάν τις τυραννίδι ἐπιτιθῆται, ἢ τὴν πόλιν προδιδῶ, ἢ τὸν δῆμον καταλύῃ, τὸν αἰσθανόμενον καθαρὸν εἶναι ἀποκτείναντα, καὶ κρεῖττον ἔδοξεν αὐτοῖς τοὺς τὴν αἰτίαν ἔχοντας τεθνάναι μᾶλλον ἢ πειραθέντας μετὰ ἀληθείας αὐτοὺς δουλεύειν<sup>1</sup>.

From these two passages it becomes evident that the notion of a democratic Solonian legislation originated in the last decade of the fifth century. The restoration of the radical democracy and its association to Solon's laws (especially the decree of Demophantus which after 403 was known as Solon's law) gave ground for later authors to infer that Solon, through his legislation, was aiming at the preservation of democracy<sup>2</sup>, and thus Solon became the creator of a democratic constitution.

The codification of the Athenian laws after the first restoration of democracy in 411/10 B.C. and the supplementation of the code to meet the needs of 403 B.C.<sup>3</sup>, after the expulsion of the Thirty and the re-establishment of democracy, made Solon's laws an indispensable vehicle of a democratic constitution<sup>4</sup>.

1. 124-125; for the dating of the Demophantus decree see J. Schreiner, *op. cit.* pp. 71-72 and M. Ostwald, *op. cit.*, p. 115, n. 61. Lycurgus' erroneous dating (403 B.C. instead of 411/10 B.C.) does not affect the following argument.

2. *Supra*, p. 256, n. 2, p. 259, n. 3, p. 260, n. 1.

3. See A. Fuks, *op. cit.*, pp. 37-38; the discovery of an inscription at the Athenian agora containing a fragment of that code written in the Attic alphabet on the one side and in Ionic on the reverse, has made clear that the revision of 403 was actually a continuation of the previous effort to re-edit the laws and that it was accomplished by 401. See J. Oliver, Greek Inscriptions, *Hesperia* 4 (1935) 8; C. Hignett, *op. cit.*, pp. 17-18, notes that «the inscriptions on two sides of the stones, one in the Attic, the other in the Ionic alphabet, point to the conclusion that an official copy on stone of the revised code was started in the Attic alphabet after 410 and completed in 403-401 in the Ionic alphabet, which was adopted in 403 for official use». See also W. Ferguson, *The Athenian Law Code and the Old Attic Trittyes*, in *Classical Studies presented to E. Capps*, Princeton 1936, p. 144; S. Dow, *The Athenian Calendar of Sacrifices: The Chronology of Nikomakhos' Second Term*, *Historia* 9 (1960) 270-293.

4. The appointment of a commission of *anagrapheis* for an investigation into Solon's law and a new edition of them is known from the speech of Lysias against Nicomachus (30.2) in 399/98: ἐπειδὴ δὲ τῶν νόμων ἀναγραφεὺς ἐγένετο, τίς οὐκ οἶδεν οἷα τὴν πόλιν ἐλυμήνατο; προσταχθὲν γὰρ αὐτῶ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος, ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν.

Now it becomes evident that the decree against tyranny and the appointment of a commission to re-edit the «Athenian Laws», which were also known as «Solon's laws» after the restoration of democracy, contributed greatly to the formation of the view that Solon's laws were democratic. This notion was formed in the last decade of the fifth century<sup>1</sup>. What else might have contributed to that is not well known, since our information on the internal history of that period and the political strife which followed the restoration of democracy is derived mainly from the orators and for that reason it is casual and sometimes untrustworthy<sup>2</sup>. Aristotle, however, informs us that Cleophon, a leader of the radical democrats, κατὰ Κριτίου τοῖς Σόλωνος ἐλεγείοις ἐχρήσατο, λέγων ὅτι πάλαι ἀσελγῆς ἡ οἰκία· οὐ γὰρ ἂν ποτε ἐποίησε Σόλων εἰπεῖν μοι Κριτίᾳ πυρρότριχι πατρός ἀκούειν<sup>3</sup>.

The use of Solon's poem by the democrats in their attacks against the oligarchs must have added a democratic color to Solon. We would not be far from the truth in supposing that Solon's poems, especially those which oppose *tyrannis*<sup>4</sup>, were used by the democrats against their opponents.

The above discussion allows us to conclude that until the last decade of the fifth century the Athenians used their traditional legislation, called «Solon's laws», without any political hue, democratic or oligarchic. But after their decision for a revision of the extant laws, which was carried out during the last decade of the fifth century in a climate of bitter political strifes, the Solonian legislation, in which the law against tyranny was incorporated, was finally related to the restored democracy and, thus, it was understood as democratic thereafter. The revival of the Solonian tradition at that time<sup>5</sup> and Solon's well-known

1. *Supra*, p. 262.

2. See P. Cloché, Remarques sur la réaction anti-oligarchique à Athènes en 411 et 410 avant J.-C., in *Mélange M. Octave Navarre*, Toulouse 1935, pp. 81-94; *id.*, *La restauration démocratique à Athènes en 403 avant J.-C.*, Paris 1915, part II, pp. 252 ff; C. Hignett, *op. cit.*, p. 280.

3. Rh. 1375b; the prosecution of Critias probably took place after 407, when the party-strife was revived under the leadership of Cleophon; see D. Stephans, *Critias, Life and Literary Remains*, Diss. Cincinnati 1939, p. 37; also *cf.* B. Keil, *Die Solonische Verfassung in Aristoteles Verfassungsgeschichte Athens*, Berlin 1892, p. 49. Against the view that Critias was a democrat, as H. C. Avery has supported, Critias and the Four Hundred, *CP* 58 (1963) 165-167, stands G. Adeleye, Critias: Member of the Four Hundred?, *TAPA* 104 (1974) 1-9.

4. Diehl fr. 23; Plut. *Sol.* 13.8-15.1.

5. S. S. Markianos, Ἡ ἀξιοπιστία τοῦ Ἡροδότου γιὰ τὴ χρονολόγηση τῆς νομοθε-

opposition towards tyranny may also have contributed to the democratic character of the revised legislation. However, since the Athenians did not make yet any distinction between constitutional laws and other laws, they continued using the revised legislation as Σόλωνος νόμους until the development of political science and theory<sup>1</sup> allowed the orators to discern the democratic character of the Solonian legislation and to attribute to Solon the creation of a democratic constitution. From the extant evidence it seems that the notion of Solon being the creator of a democratic constitution was formulated by Isocrates and Demosthenes in 350's B.C. and was later expounded by Aristotle.

Athens

S. S. MARKIANOS

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σίας και τῆς ἀποδημίας τοῦ Σόλωνα, *Ἑλληνικά* 28 (1975) 21f.

1. See Plato's *Republic* (c. 390-c. 370) and *Statesman* (c. 367-c. 362). See also M. Finley, *op. cit.*, p. 50f.