

DEMOCRACY AND THE RULE OF LAW IN CLASSICAL ATHENS

ESSAYS ON LAW, SOCIETY,
AND POLITICS



EDWARD M. HARRIS
UNIVERSITY OF DURHAM

 **CAMBRIDGE**
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

40 West 20th Street, New York, NY 10011-4211, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521852791

© Edward M. Harris 2006

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2006

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Harris, Edward Monroe.

Democracy and the rule of law in classical Athens : essays on law, society, and politics / Edward M. Harris.

p. cm.

Includes bibliographical references and index.

ISBN 0-521-85279-X (hardback)

1. Constitutional history – Greece – Athens. 2. Rule of law – Greece – Athens – History.

3. Democracy – Greece – Athens – History. 4. Law, Greek. I. Title.

KL4361.32.A75H37 2006

340.5'38 – dc22 2005029329

ISBN-13 978-0-521-85279-1 hardback

ISBN-10 0-521-85279-X hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

TO ARIELLE

I.1 SOLON AND THE SPIRIT OF THE LAW IN ARCHAIC AND CLASSICAL GREECE



THE SCATTERED REMAINS OF THE LAWS ENACTED BY THE GREEK *POLEIS* (CITY-states) during the Archaic and Classical periods hardly appear to form a unified body of law.¹ Most of our evidence for Greek Law in this period comes from two *poleis*, Athens and Gortyn on the island of Crete. Several statutes from the collection of laws created by Solon in 594 have been preserved, but many of these are found in late sources such as Plutarch and lexica compiled by scholars during the Roman Empire or the Byzantine period, and it is often difficult to tell how much of the information they provide is reliable.² There are two main problems encountered when studying the laws attributed to Solon. On the one hand, a law attributed to Solon may have been a genuine law dating from the Archaic or Classical period, but not a law that Solon himself enacted. One thinks for example of the laws about the appointment of *nomothetai* attributed to Solon by Demosthenes (20.93–4). These were actual laws that were in force at the time, but we know that these *nomothetai* were not created until after 403 BCE.³ On the other hand, a law attributed to

¹ I would like to thank Josin  Blok and Andr  Lardinois, the organizers of the Solon conference, for inviting me to present an oral version of this essay in Soeterbeeck and for their help in revising it for publication. An earlier version of this essay was presented to the American Society of Legal History in San Diego, CA (November 2002), to the Department of Classical Studies, University of Michigan (November 2002), and to the Classics Department, Tulane University (October 2003). A slightly different French version was presented to the Centre Glotz, Universit  de Paris I (Panth on-Sorbonne) in January of 2003. A shorter version was presented in Italian to a class at the Istituto di Diritto Romano at the University of Milan in October 2004. I would also like to thank several friends and colleagues who have read various versions of this essay and offered help and encouragement: Eva Cantarella, Alberto Maffi, Lorenzo Gagliardi, Lene Rubinstein, Fred Naiden, Donna Wilson, Robin Osborne, Jean-Marie Bertrand, Pauline Schmitt-Pantel, and Pierre Fr hlich. I owe a special debt of gratitude to Raymond Westbrook for his advice about the Near Eastern material and his timely gift of the two volumes of Westbrook (2003). All translations of the poems attributed to Solon are my own.

² The problem of determining which laws are genuinely Solonian has been discussed by Ruschenbusch (1966), but see now the essays by Blok, Gagarin, Rhodes, and Scafuro in Blok and Lardinois (2005).

³ See Hansen (1991) 167–8.

Solon may have been a forgery completely invented by a later author. For instance, Aeschines (1.6–23) discusses several laws of Solon about schools for boys, the prosecution of *hybris*, and the penalties for male prostitutes. In the manuscripts of his speech we find inserted several documents purporting to be the texts of these laws of Solon, but it has long been recognized that these are all forgeries.⁴

For Gortyn there are two major inscriptions containing laws on property and the family. The longer inscription, often called “the Gortyn Lawcode,” is hardly a code in the modern sense, that is, a complete and systematic collection of all the main laws governing the life of a community; for instance, missing from its provisions are any statutes about homicide and public crimes like treason.⁵ What is more, we know nothing about the historical context that produced this collection of laws nor about the aims of the legislators at Gortyn. The evidence for laws in other Greek *poleis* comes mainly from inscriptions, many of which are preserved only in fragments or are hard to interpret. Moreover, we often know little or nothing about the circumstances surrounding the enactment of these laws: At first glance, the possibility of discerning any single living spirit in this heap of dry bones seems quite remote.

M. I. Finley once went so far as to claim that one cannot speak of “Greek Law” in any meaningful sense since Greece was divided into hundred of different *poleis*, each with its own laws and institutions.⁶ Yet though there certainly existed significant differences among these *poleis*, they were all united by certain values that enabled them to share a common Greek identity. Prominent among these values was the ideal of the “rule of law.”⁷ Even if one cannot speak of early Greek law as a unified legal system, we can still discover several common features in the statutes of the Greek *poleis*, which, taken together, reflect a unified set of principles shared by many of these different communities in the period 650–400 BCE. As P. J. Rhodes has recently observed, “There is enough similarity between what is attested for different states (...) to suggest that, in spite of justified protests against the use of inference from one place at one time to fill gaps in our knowledge of another

place at another time, some valid generalizations can be made about Greek law and Greek judicial procedures.”⁸ It is this underlying set of general principles that I call “The Spirit of Greek Laws.”⁹

Despite the many problems created by our sources, historians of Greek Law are fortunate in one regard: they have the poetry attributed to Solon, the most famous lawgiver of the period. We may never be able to determine who is the actual author of these verses; they may have been written by the person who created a set of laws for the Athenians in 594 or be the product of a tradition of poetry that created the persona of an ideal lawgiver.¹⁰ What is important for legal historians is that this poetry expresses the aims and values of the Archaic Greek lawgivers and therefore helps us understand the spirit in which the Greek *poleis* created their laws. The Greeks also circulated many myths about their lawgivers, which, if used with caution, also provide valuable information about contemporary attitudes.¹¹ These stories, though generally worthless as evidence for actual events, can still reveal Greek views about the role of the ideal lawgiver and the aims of legislation.

The first section of this essay begins with a study in contrast. I start by examining the way in which the Near Eastern lawgivers such as Hammurabi and Lipit-Ishtar envisioned their role in society and their relationship to the laws that they created. Their attitude is then contrasted with the way in which the poems of Solon present the task of the lawgiver and also with the image of the lawgiver found in several traditional stories. This will help us understand not only what is distinctive about the Greek attitude toward the role of the lawgiver, but also what is original about the persona of the lawgiver found in the poems attributed to Solon. The second part of the essay studies how these contrasting views about

⁴ See Drerup (1898) 305–8.

⁵ On the meaning of the term “lawcode,” see Westbrook (2000) 33–4 and the essays in Lévy (2000). For objections to calling any of the collections of early Greek laws a lawcode, see Hölskeskamp (1999).

⁶ Finley (1975) 134–46.

⁷ For the importance of the ideal of the rule of law in Greek identity, see E. Hall (1989) 198–200. In J. Hall (2002) I can find no discussion of the role played by the ideal of the rule of law in the formation of Greek cultural identity.

⁸ Rhodes with Lewis (1997) 529–30 note 2. In a careful study of territorial claims in Classical and Hellenistic Greece, Chaniotis (2004) has demonstrated that the Greeks attempted to follow a set of common principles when settling territorial disputes between *poleis*. Despite the differences between their legal systems, the Greeks appear to have recognized the validity of basic modes of conveyance in determining the ownership of land belonging to a *polis*. Three of these modes of conveyance find parallels in the private law of the Greek *poleis*. On the “established laws” recognized and followed by the Greek *poleis*, see Harris (2004a) 26–33.

⁹ When I use the word “spirit,” I do not mean to contrast the “spirit of the law” with the “letter of the law.” Nor do I wish to promote the idea that there existed a transcendent *Geist* that united all the Greeks and pervaded their institutions.

¹⁰ On this issue see the essays of Blaise, Lardinois, and Stehle in Blok and Lardinois (2005).

¹¹ On these legends see Szegedy-Maszak (1978).

the role of the lawgiver and the place of law in society affected the shape and form of laws in the Greek *poleis* of the Archaic and Classical periods.

1. THE IMAGE OF THE LAWGIVER IN THE ANCIENT NEAR EAST AND ARCHAIC GREECE

Perhaps the best way to appreciate what is original about the Greek view of the lawgiver and his role in society is to contrast it with the manner in which the lawgivers of the Ancient Near East viewed their relationship to law and justice. Although the collections of laws discovered in the Near East and those of the Greek *poleis* treat many of the same topics (e.g., adoption, theft, slavery and debt-bondage, leases, homicide), the Near Eastern kings had a very different conception of their position in the community from that of the early Greek lawgivers.¹² Monarchs like Hammurabi acted both as lawgiver and as the supreme judge in their kingdom at the same time. They did not just lay down laws but also administered these laws either directly or through their subordinates. As we will see, they did not grant permanent powers to magistrates, who had the right to administer the law by virtue of holding an office. This had a profound impact on their view of the law and its role in society and set them apart from the image of the Greek lawgivers.

The preface that Hammurabi (ca. 175 BCE) placed at the beginning of his laws provides the best evidence for his view of his role.¹³ Hammurabi does not tell us that he had his laws inscribed on a stele in response to a request by his people; he claims to have been appointed king by the gods Anu and Enlil to bring justice to his subjects:

The gods Anu and Enlil, for the enhancement of the well-being of the people, named me by name Hammurabi: the pious prince, who venerates the gods, to make justice prevail in the land, to abolish the wicked and the evil,

¹² For instance, both the law collections of Hammurabi and Lipit-Ishtar as well as the laws of several Greek *poleis* contained regulations about slavery and debt-bondage. See Harris (2002a) with the literature cited there.

¹³ For the laws of Hammurabi and Lipit-Ishtar, I have used the translations and system of reference found in Roth (1995). This is not the place to enter into the debate about the extent to which Hammurabi's laws were actually followed in practice. Bottéro (1992) 156–84 argues that his "lawcode" is "a work of science devoted to the exercise of justice," not a set of actual laws. Finkelstein (1961) 102 calls them "pious hopes and moral resolve rather than effective law," but see now Westbrook (2000) and especially Lafont (2000). For a brief summary of the debate see Roth (1995) 4–7, who analyzes several cases where subjects appealed to the provisions in Hammurabi's laws and clearly expected them to be followed.

to prevent the strong from oppressing the weak, to rise like the sun-god Shamash over all humankind, to illuminate the land.

(i 27–49)

In a similar way, Lipit-Ishtar (ca. 1930 BCE) says Anu and Enlil called upon him to bring justice and order to his kingdom:

At that time, the gods Anu and Enlil called Lipit-Ishtar to the princship of the land, Lipit-Ishtar – the wise shepherd, whose name has been pronounced by the god Nunamnir – in order to establish justice in the land, to eliminate cries for justice, to eradicate enmity and armed violence, to bring well-being to the lands of Sumer and Akkad.

(i 20–37)

Rendering justice is only one of Hammurabi's many roles: he is a king (ii 22–31), a military leader who defeats his enemies in battle (ii 68–iii 16; cf. iii 70), and a religious leader who builds temples and offers prayers and sacrifices to every god in the pantheon (ii 22–31, iii 55–64, iv 7–22, 32–52, etc.). Hammurabi is thus not an outsider who comes from abroad merely to resolve disputes as an impartial arbitrator. He is an absolute monarch who rules all aspects of his subjects' lives. Like Lipit-Ishtar, he compares himself to a shepherd who takes good care of his flock (i 50–62; xlvii 9–58): "I am indeed the shepherd who brings peace, whose scepter is just." Hammurabi does not concern himself with the details of administering justice; in his laws he does not assign different kinds of cases to various magistrates or grant specific powers to individual officials. The laws on his stele are *his* laws, and they demonstrate that the verdicts he renders as king are just:

Let any wronged man who has a lawsuit come before the statue of me, the king of justice, and let him have my inscribed stele read aloud to him, thus may he hear my precious pronouncements and let my stele reveal the lawsuit for him; may he examine his case, may he calm his (troubled) heart, (and may he praise me) saying: Hammurabi, the lord, who is like a father and begetter to his people, submitted himself to the command of the god Marduk, his lord, and achieved victory for the god Marduk everywhere. He gladdened the heart of the god Marduk, his lord, and he secured the eternal well-being of the people, and provided just ways for the land.

(xlvi 3–38)

Hammurabi does not place his laws in the hands of his people for them to administer their own affairs. Although Hammurabi delegated tasks to his officials, "(a)ll these officials were appointed by the central administration and reported ultimately to the king. Hammurabi's correspondence with his high officials shows him intervening directly in day-to-day administration, frequently giving instructions on individual cases." In the judicial sphere, Hammurabi "had jurisdiction both at first instance and on appeal."¹⁴ The only other person who can administer his laws is his successor, who will assume his multiple duties as king and judge (xlvi 59ff.). If another king does not abide by Hammurabi's rules, the only ones who can punish him are the gods; Hammurabi's laws contain no measures that would enable his human subjects to hold their rulers accountable. In answer to the question "quis custodiet custodes?" (who will guard the guardians?), Hammurabi has no other answer than "the gods."

But should that man not heed my pronouncements, which I have inscribed on my stela, and should he slight my curses and not fear the curses of the gods, and thus overturn the judgments that I rendered, change my pronouncements, alter my engraved image, erase my inscribed name and inscribe his own name (in its place) – or should he, because, out of fear of these curses, have someone else do so – that man, whether he is a king, a lord, or a governor, or any person at all, may the great god Anu, father of the gods, who has proclaimed my reign smash his scepter and curse his destiny.
(xlix 18–52)

Of course, if Hammurabi were to give others the power to discipline the king, this would undermine his entire conception of monarchy. After all, one cannot have the sheep telling the shepherd he is wrong.¹⁵

¹⁴ Westbrook in Westbrook (2003) 365–6. Cf. Bottéro (1992) 165: "We know that in Mesopotamia the rendering of justice was a royal prerogative. The ruler often delegated the duty to his representatives, even to professional judges, but it belonged to him in his own right. The procedural accounts, as well as the royal correspondence, that have survived, show more than once how lower authorities refer certain difficult or unusual cases to the royal tribunal." The situation was similar in Pharaonic Egypt during the New Kingdom – see Jasnow in Westbrook (2003) 289, 295. In *Exodus* Moses also serves as chief judge and lawgiver, but the books of *Judges* and *Kings* are more critical of kings – see Frymer-Kenski in Westbrook (2003) 981–3 and 991–2.

¹⁵ As Josine Blok points out to me, the prophets of the Hebrew Scriptures often criticize the kings of Israel for not upholding the law in the same way as Greek *manteis* could object when a king or other powerful men did not obey *themis* and *dike*. But the laws in *Exodus* and *Deuteronomy* do not provide

The Greeks saw the justice of the Near Eastern kings in a more sinister light. The story told by Herodotus (1.96–100) about the rise of Deioces to power among the Medes reveals their suspicions about such an approach to law.¹⁶ According to Herodotus, the Medes lived independently (*autonomon*) in scattered villages after they won their freedom from the Assyrians. Ambitious to unite the Medes under his rule, Deioces set about gaining a reputation for honesty. The men in his village grew to trust him and invited him to settle their disputes. As his reputation grew, more and more people submitted their disputes to him until he finally declared he had had enough and would judge no more lawsuits. His withdrawal plunged the country into lawlessness (*anomia*) and forced the Medes to make him king. Once in office, Deioces demanded that his subjects build him a vast palace at Ecbatana. When the palace was complete, Deioces remained inside to keep himself safe from plots and communicated with his people through messengers. He continued to judge lawsuits, but all cases were now submitted to him in writing so that he could keep his distance from the people.

In Herodotus' story about Deioces, there is a contrast between independence and lawlessness, on the one hand, and monarchy (*basileia*), which brings law and order (*eunomia*), on the other. But the Greeks considered kingship tyranny (*tyrannis*), the absolute power of one man who is not accountable to the people whom he rules. Deioces' constitutional position is symbolized by his physical distance from the people: he rules from his palace, hidden behind seven high walls. Deioces does not view the achievement of law and order as an end in itself, but as a means to gain power. And just as law and order is associated with tyranny, lawlessness is associated with the independence of the villages before Deioces' accession to power.

In the eyes of the Greeks, the *tyrannis* of Deioces was the very antithesis of the rule of law. According to the Herodotus (7.104), the Spartan exile Demaratus told the Persian monarch Xerxes that their countries were very different from each

legal procedures for bringing formal charges against the king, and the Hebrew Scriptures do not record any trial of a king of Israel similar to the trials of the Spartan kings in the Archaic and Classical periods. On the trial of the Spartan kings, see David (1985).

¹⁶ On the historicity of the story of Deioces, see Briant (2002) 26: "The institutions set up by Deioces (capital, personal guard, audience ritual, Eyes and Ears of the king) are strangely similar to Achaemenid institutions frequently described in Greek authors, so much so that we are tempted to think that Herodotus (...) applied, or could have applied what he knew of the Persian court practices of his own day as a veneer over an entirely imaginary Media." The story therefore tells us more about Greek attitudes toward the Near Eastern kings than about actual historical events.

other. Whereas the Persians feared their king as their master (*despotes*, the word for one who owns slaves) and did his commands, the Spartans had the law alone as their master. When violence and disorder gave the Athenian lawgiver Solon the chance to seize power for himself, he acted in a very different way from the Near Eastern kings. To begin with, Solon (or the persona of the lawgiver presented in Solon's poetry) refused to accept the position of tyrant:

If I spared the land of my country,
and did not grasp after tyranny and violence, which
would have defiled and dishonored my reputation,
I am not ashamed. Thus I think my fame will surpass that of all men.

Solon fr. 32 [West]

For Solon monarchy does not bring about law and order, but is associated with violence and is equivalent to slavery:

From a cloud come the might of snow and hail,
Thunder from shining lightning,
By the powerful men a city is destroyed, and into the slavery
Of a single ruler (*monarchou*) the people falls through its folly.
Once you raise a man up too high, it is not easy to restrain
Him later; right now you must heed this advice.

Solon fr. 9 [West]

Unlike Hammurabi, Solon does not hand down his laws and judgment to the people from his position as ruler or as a member of the ruling class. He never compares himself to a shepherd guarding over his flock or a father looking after his children.¹⁷ Solon stands apart from both the people and its leaders and acts as an impartial arbiter. In one poem Solon compares himself to a boundary stone: "I

stood between them, like a boundary stone in the middle ground" (fr. 37.9–10 [West]). He places himself on the same level as the Athenians but in an impartial position, apart from each side. In another poem he compares himself to a wolf surrounded by dogs that threaten him on all sides. Had Solon favored one side or another, the result would have brought destruction for the city (fr. 36.22–7 [West]).

Solon does not hand down just decisions from an impregnable position of authority as Hammurabi and Lipit-Ishtar did. Justice is achieved when there is a proper balance of power between the people and their leaders. To create this balance, Solon distributes power to each group while protecting both from injustice.

To the people I gave as much privilege as was sufficient
Neither removing nor granting more honor.
As for those who have power and excel in wealth,
I saw to it they suffered no harm.
I stood casting a mighty shield over both sides,
I allowed neither group to win an unjust victory.

Solon fr. 5 [West]

The best way would be for the people to follow its leaders,
Neither too unrestrained nor forced by violence.

Solon fr. 6.1–2 [West]

In contrast to Deioces, Solon did not use his position as lawgiver to gain a position as absolute ruler. Nor did he attempt to combine the roles of king and judge. According to legend, once Solon finished setting down his laws, he made the Athenians swear to abide by his laws, then left Athens for ten years (Hdt. 1.29). In similar fashion, the Spartan lawgiver Lycurgus was not one of the kings, but served merely as guardian and regent for his nephew King Leobotas during his youth (Hdt. 1.65). Several of the lawgivers mentioned by Aristotle in the *Politics* (2.9.5–7.12.74a) were complete outsiders in the communities to which they gave laws. Philolaus, who formulated many laws for the Thebans, was an exile from Corinth. Charondas gave laws to his native Catana, but also to other colonies of Chalcis

in Callipolis, he compares them to watchdogs (R. 2.375e–376b). For the imagery of political leadership, I am indebted to a forthcoming essay by Roger Brock.

¹⁷ The image of the leader as the shepherd of his people is frequent in Homer (e.g., *Il.* 1.263; 2.85, 105, 243, 254, 772; 4.296, 413) — see, however, Haubold (2000) 28–32, who argues that in Homer "The shepherd is a failed ideal, exposing to scrutiny a social world without effective social structures." In democratic Athens by contrast we never find a politician who describes his role in this way. The image of the shepherd is replaced by the image of the watchdog, who looks after the interests of his master and obeys his commands, or of the captain, who steers the passengers on his ship to safety. For the image of the watchdog, see Dem. 25.40; 26.22 and the parody of the image by Aristophanes (*Eg.* 1017–35). By contrast, the image of the shepherd appears to have acquired negative associations. In Plato's *Republic* (1.343b–c) Thrasymachus compares the ruler to a herdsman who keeps sheep and cattle with a view only to his own profit and that of his master. When Socrates discusses the character of the Guardians

in Sicily and Southern Italy. The Chalcidians in Thrace brought Androdamas all the way from Rhegium in Southern Italy to provide them with laws. When the people of Cyrene in North Africa were unhappy with the monarchy of Battus and wished to improve their government, Herodotus (4.161) informs us they consulted the priestess of Apollo at Delphi. She told them to consult the Mantineans on the Greek mainland. In response the people of Mantinea sent their most distinguished citizen Demonax to Cyrene. Demonax took some powers away from the king and distributed them to the people, but did not create an office for himself. Once his work was done, he appears to have departed.¹⁸ For Hammurabi the roles of judge, who administered the law, and king went hand in hand; the Greek *polis* often preferred to assign the position of lawgiver to someone who did not, or could not, hold political power. In Hammurabi's eyes the laws and the will of the king were inseparable; in fact, Herodotus (3.31.4) believed that there was a law among the Persians that allowed the king to do whatever he wanted. By handing their laws over to the people to administer and remaining outsiders, Solon and Demonax made it possible for legislation to become detached from the legislator.¹⁹

Instead of using the law to create a position for himself and justify his power, Solon envisions law as a way of creating the right relationship between leaders and the people. The resulting balance ensures justice and order. In the tale of Deïoces, law and order were associated with monarchy and contrasted with disorder and lawlessness (*anomia*). Solon does not see law and order (*eunomia*) as one part of a simple opposition between authority and chaos, but as a mean between the extremes of anarchy and tyranny (cf. Aeschylus *Eum.* 526–30). Obedience to leaders will not necessarily bring justice since they are prone to *hybris*, insolence that leads to greed and violence. This in turn can lead to anarchy, which brings slavery for the poor.

There is no justice in the leaders of the people, who are about
To suffer much anguish for their great arrogance.
For they do not know how to restrain their insolence or keep
Order and the pleasures they have now in peaceful feasts.

¹⁸ A similar figure is Epimenides, who according to Plutarch (*Solon* 12.4–5) came from Crete to change Athenian religious practices and thus paved the way for Solon's legislation. On this story see the contributions of De Blois and Blok in Blok and Lardinois (2005).

¹⁹ I owe this point to Westbrook (2000) 42: "legislation became detached from the legislator."

They grow rich by trusting in unjust deeds

Nor do they spare the goods of gods and men,
But one loots and steals from one, another from another,
And they do not respect the firm foundation of Justice,
Who watches in silence all deeds done in the past and present,
And will come in time to bring retribution for all.
This inescapable wound comes to the entire community,
And it has fallen quickly into slavery,
Which stirs up civil strife and arouses war from its sleep,
Which destroys the splendid youth of many men.
Our beloved city is swiftly ground down by enemies
In conspiracies where friends harm friends.
These evils range among the people; many of the poor
Come to the land of foreigners,
Sold into slavery, bound in degrading chains.

Solon fr. 4.7–25 [West]

Solon's laws bring not only order and justice but also freedom and deliverance from slavery in two senses, figurative and literal: first, the land is no longer enslaved by those who oppressed it during the preceding *stasis*, and second, peace has made it possible to free those men who had been carried off as slaves. When describing his achievements, Solon boasts that he has removed division from Attica and made the land free again (fr. 36.4–7 [West]). The end of *stasis* has also brought freedom to those who had been seized and sold abroad (fr. 36.8–12 [West]) and those who were being held as slaves in Attica (fr. 36.13–15 [West]).²⁰ For Hammurabi, obedience to the king and respect for law go together. There is not a word in

²⁰ On the interpretation of these lines, see Blaise (1994) 31–2 and Harris (1997) 107–10. Mülke (2002) 378 claims that since Earth is invoked in Solon's prayer, it must be treated as a real substance ("tatsächlich die attische Erde als Substanz betroffen war"); he thereby seriously misrepresents my arguments; and thus his objections carry no weight. I do not claim that the earth is here used as a symbol, but that the expression "remove boundary-markers from the earth" is a metaphorical way of saying "removing strife from the land." My analysis depends on the view that these verses are about the actual land of Attica, which was afflicted by *stasis*. For additional evidence and arguments that strengthen my interpretation of this passage, see Harris (2002a). For a modernizing approach to the issue of the *horoi*, see the contribution of Ober in Blok and Lardinois (2005). On Ober's modernizing approach, see the trenchant criticisms of Rhodes (2003) 72–6, 80, 82–3, 88.

his laws about preserving the freedom of his subjects. Solon sees the rule of law as an alternative to the rule of one man and does not use the law to seize power as a tyrant. In his opinion, the rule of law should serve to liberate the community as well as to bring order. The greatest threat to freedom is the greed of those in power. To preserve freedom, therefore, the lawgiver should restrain the leaders of the people. The way to prevent disorder is not to require that all obey one leader, but to allocate power to various groups to achieve the correct balance. The lawgiver may create the laws, but he must then turn them over to the people of Attica for them to run their affairs on their own. Then he must depart.

II. THE RULE OF LAW IN ACTION IN THE GREEK *POLEIS*

In the first section we discovered how the views expressed in Solon's poetry about the role of the lawgiver and the function of law in society differed profoundly from those of the Near Eastern monarchs. But how did the lawgivers of the Greek *poleis* attempt to put their ideals into practice? How did their views about law in general affect the shape of specific laws passed during the Archaic and Classical periods?

One of Solon's main concerns was to prevent tyranny, the concentration of power in the hands of one person. For the laws to rule, the power to enforce them should not be entrusted to a single man, but distributed widely throughout the community. Solon's concern about tyranny was not a fear of an imaginary threat: a few decades before Solon's archonship, Cylon had seized the acropolis and attempted to take control of the city (Hdt. 5.71; Th. 1.126). And less than fifty years after Solon established his laws, Peisistratus succeeded in making himself tyrant of Athens (Hdt. 1.59–64; [Arist.] *Ath. Pol.* 14–17). According to Thucydides (1.18), many of the Greek *poleis* endured a period of tyranny. Solon created penalties for those who attempted to set up a tyranny ([Arist.] *Ath. Pol.* 8.4), but his main strategy for avoiding the concentration of power was to distribute it among various boards of officials or political bodies.²¹ To assign rights and duties to different parts of the community, Solon created four property classes and specified

the property qualifications needed for various offices ([Arist.] *Ath. Pol.* 7.3–4). Those who fell beneath a certain minimum were classified as Thetes and allowed only to attend the Assembly and judge cases in the law courts. He also created a Council of Four Hundred and distributed different powers to the Areopagus and to the Assembly ([Arist.] *Ath. Pol.* 8.4). To keep all leaders accountable, he made their conduct in office subject to review by the people. To some extent Solon was only continuing a process that had begun before him. The attempt to divide power among various officials can already be seen in the duties of the nine archons: the Polemarch led the army, the six Thesmothetai judged trials, and the King Archon had religious duties ([Arist.] *Ath. Pol.* 3.1–5). Already in the law of Draco about homicide from about 620 BCE, the task of judging cases is not assigned to one official, but to two boards of magistrates: the Basileis are to pronounce judgment while the Ephetai are to decide the verdict.²²

The contrast with the laws of Hammurabi and Lipit-Ishtar could not be more stark. The laws of Hammurabi and Lipit-Ishtar never specify which magistrates are to enforce the laws nor grant judicial powers to different officers. Nor do they provide measures to make magistrates accountable. Take for example the following provisions on adoption from the laws of Hammurabi (paras. 185–90):

If a man takes in adoption a young child at birth and then rears him, that rearing will not be reclaimed.

If a man takes in adoption a young child, and when he takes him, he is seeking his father and mother, that rearing shall return to his father's house.

A child of (i.e., reared by) a courtier who is a palace attendant or a child of (i.e., reared by) a *sekretu* will not be reclaimed.

If a craftsman takes a young child to rear and then teaches him his craft, he will not be reclaimed.

If he should not teach him his craft, that rearing shall return to his father's house.

If a man should not reckon the young child whom he took and raised in adoption as equal with his children, that rearing shall return to his father's house.

²¹ On the reliability of the sources for Solon's constitution, I am in general agreement with the excellent essay by Peter Rhodes in Blok and Lardinois (2005). See also Rhodes (1981) 136–62.

²² Meiggs and Lewis (1969) #86 = Koerner (1993) #11, lines 11–13. For a summary of the debate about the different tasks performed by these two sets of officials, see now M. Gagarin (2000).

The laws found in the Jewish Scriptures also do not generally state which official is assigned to each type of case (e.g., *Exodus* 21–3; *Leviticus* 18–27). The laws of Athens were quite different and could be very specific about the precise jurisdiction of magistrates. By the fifth century the laws and decrees of Athens often went into considerable detail about the duties of various magistrates. For instance, a decree passed by Callias and dated to 434/3 gives a very detailed job description for the new office of Treasurers of the Other Gods (*IG* i³ 52). The new treasurers are to be selected by lot at the same time as other officials (lines 13–15); they are to perform their duties on the Acropolis in the Opisthodomos (lines 15–18); they will count out and weigh in the presence of the Council the money they receive from the present treasurers, Epistatai, and Hieropoioi in the temples (lines 18–21); they will record the amounts they receive and the total but list silver and gold separately (lines 24); in the future they will write up the amounts they receive and spend on a stele and submit this to the Logistai and submit to an examination (*euthynai*) when they leave office (lines 21–7); their term of office is to last from Panathenaea to Panathenaea (lines 27–9). The decree goes into such detail that it even grants them the power to open and shut the doors of the Opisthodomos (lines 16–17)! Here the Assembly carefully delineates the duties of different officials and clarifies the relationships among them in a way that is unparalleled in the laws of the Near Eastern kings.

This careful division of duties among different officials is characteristic not only of the Athenian laws in the period of Solon and later, but also of laws in many Greek *poleis* during the Archaic and Classical periods. This feature sets them apart from the laws of Hammurabi and Lipit-Ishtar. One of the earliest Greek laws is the Rhetra from Sparta. There is still considerable debate among scholars about the precise meaning of its provisions, but the document distinguishes Kings, Council of Elders, and the People and allots different powers to each body (D. S. 7.12.6; Plu. *Lycurgus* 6.1–10).²³ The text of a law from Chios dated to the early sixth century is fragmentary and difficult to decipher but grants different responsibilities to various bodies and magistrates (Koerner [1993] #61 = *Nomima* I 62). There appear

to be laws passed by the people (A, line 1). The Demarchs may have had the power to levy fines (A, lines 3–6), and the Council hears appeals and can inflict fines (C, lines 1–15).

By distributing powers to different officials, these laws made it possible for one set of officials to act as a check on other officials. In an early fifth-century law from Athens, the Treasurers of the sanctuary on the Acropolis are to open the temple not less than three times a month. If they fail to do their duty, the Prytaneis will fine them two drachmas (Koerner [1993] #5 = *IG* i³ 4B). Another law from Athens in the late fifth century sets out regulations for the captains of triremes and gives the Overseers of the Navy-yard the power to fine them for any infractions (Koerner [1993] #15 = *IG* i³ 153). A law from Olympia dated to the early fifth century imposes penalties on those holding the highest office and the Basileis who do not enforce its provisions, then instructs the Hellanodikas to collect a fine from them (Koerner [1993] #37). A law from Chios dated to the late fifth century requires the Boundary Guards to make sure no one moves boundary stones; if they do not impose legal penalties, the Fifteen are to fine them [Koerner [1993] #62A, lines 9–19]. A law from Lyttos in Crete dated to around 500 forbids the Kosmoi to receive foreigners except in certain cases. When they violate this rule, they are to be tried before judges (Koerner [1993] #87). A fifth-century law from Erythrai forbids anyone to serve as secretary to the same magistrate more than once and instructs the Exetastai to inflict fines on those magistrates who violate this ban (Koerner [1993] #74 = *I Erythrai* 1). A sixth-century law from Olympia grants certain guarantees to the Theokolos (“one who cares for the god”), a religious official, but forbids him to appropriate goods belonging to others. Cases involving violations are to be heard by the Iaromaos (Koerner [1993] #39). In a similar fashion, the Ephors of Sparta had the power to depose other magistrates who did not obey the laws (Xen. *Lac. Pol.* 8.4). The laws of the Greek *poleis* thus illustrate in concrete terms how these communities put into practice the idea, found both in Solon’s poetry and in the story of Demonax, that one of the chief tasks of the legislator was not just to lay down rules for individuals to follow but also to distribute power to various bodies and to avoid the concentration of power.

Solon and the early Greek lawgivers are also credited with devising four other ways of preventing tyranny and promoting the rule of law. These were: 1) establishing term-limits for magistrates, 2) imposing penalties for magistrates who did

²³ Cf. Maffi (2002) 196: “È l’opinione largamente condivisa che il testo della G. R. (= Grande Rhetra) enunci la struttura costituzionale della Sparta arcaica, articolata su tre organi: i due re, la *gerousia* e il *damos*.” Maffi’s essay contains a helpful review of past scholarship on the Rhetra and offers an interesting new interpretation of the relationship among these three bodies.

not uphold the law, 3) assigning powers not to a single magistrate but to a board of officials, and 4) adding entrenchment clauses to ensure that those in power did not overturn the laws.

1) An important means of avoiding the accumulation of power in the hands of one person was to forbid magistrates to hold office for more than a year at a time and to prevent them from holding the same office ever again (or only after a certain interval). Already before Solon the Areopagus had appointed men to serve as Archon for only a year at a time ([Arist.] *Ath. Pol.* 8.2). This rule was extended to cover all offices except military ones, which required training and experience ([Arist.] *Ath. Pol.* 62.3).²⁴ One of the earliest Greek laws comes from the Cretan city of Dreros (650–600 BCE) and states that if a man holds the office of Kosmos, he should not be Kosmos again for ten years (Koerner [1993] #90 = *Nomima I* #81). A sixth-century law from Gortyn stipulates that the same man must not hold the office of Kosmos again within three years, the office of Gnomon within ten years, and the office of Kosmos for foreigners within five years (Koerner [1993] #121 = *ICret IV* 14, G-P). In a decree from Erythrai dated to the fifth century BCE, citizens are forbidden to serve as one of the Heleorontes again within ten years. Those who defy this ban must pay ten staters (Koerner [1993] #77 = *I Erythrai* 17). Another decree from Erythrai, dated to the middle of the fifth century, makes it illegal to be a member of the Council again within four years (Koerner [1993] #76 [= *I Erythrai* 4], line 12; cf. Koerner [1993] #74 = *I Erythrai* 1). In Sparta the most important office aside from the kingship was that of the Ephors, who held wide powers to police the activities of all citizens. But the position was so powerful that the Spartans did not entrust it to one man alone, but to a board of five men, each of whom were elected by the Assembly and could serve for only one year (Plu. *Agesilaus* 4 with Richer [1998] 304–9). The same was true for the navy at Sparta (Xen. *Hell.* 2.17; D. S. 13.100.18; Plu. *Lysander* 7.3).

2) One of the most striking features of early Greek laws is the number of penalties that are laid down for officials who do not uphold the law. As van Effenterre and Ruzé observe, “la législation archaïque paraît aller bien au-delà de cet aspect dissuasif ou répressif. Elle traduit une méfiance systématique à l’égard

des pouvoirs.”²⁵ This is another feature of early Greek laws that set them apart from the laws of Lipit-Ishtar, Hammurabi, or the Jewish Scriptures: the latter rarely, if ever, stipulate what is to be done if the magistrate responsible for enforcing a law fails to do his duty.²⁶ Solon was not so trusting of those in power. He saw the greed and arrogance of leaders as a potential threat to order in the *polis* (fr. 4.7–25 [West]) and made conduct of officials subject to review by the Areopagus ([Arist.] *Ath. Pol.* 8.4). The laws were to apply to leaders as well as subjects. This included the lawgiver himself. In fact, there are several myths where the lawgiver breaks his own law and willingly submits to punishment. For instance, Charondas made it illegal to carry weapons in the Assembly under penalty of death (D. S. 12.19.1–2; Valerius Maximus 6.5 ext. 4). One day he armed himself with a dagger to protect himself from brigands in the countryside, but forgot he was still carrying it when he entered the Assembly. When someone criticized him for breaking his own law, he took out his dagger and killed himself.²⁷ Such myths have no value as historical evidence but show that the Greeks believed no one was above the law and that officials were not exempt from the law’s provisions.²⁸ Hammurabi or any other Near Eastern monarch would hardly tell such a story about himself or one of his predecessors.

The same distrust of magistrates is evident in the laws from many *poleis*. Penalties for magistrates that do not carry out the law are attested in laws from many *poleis* throughout the Greek world. One of the most striking features of early Greek laws are the numerous penalties for magistrates who fail to perform their duties. One of the earliest Greek laws, dated to the seventh century BCE, comes from Tiryns near Argos in the Peloponnese (Koerner [1993] #31). The law instructs magistrates called the *Platiwoinarchoi* to fine the *Platiwoinoi* thirty *medimnoi* (a large amount of

²⁴ For discussion see Rhodes (1981) 696. The only exception was the Council, where citizens were allowed to serve twice. For the link between the prohibition of *iteratio* and preventing tyranny, see the third-century law from Ilion against tyranny in Dareste, Haussoullier, and Reinach (1891–1904) #22.II.32–42 (ἐάν δὲ τις τὸ δεύτερον [σ]τρατηγήσῃ ἢ ἄλλην ἀρχὴν ἄρξῃ).

²⁵ van Effenterre and Ruzé (1994–95) I.393.

²⁶ In the actual text of his laws Hammurabi does provide one provision about the punishment of corrupt judges (para. 5) and another about corrupt military officers (para. 34). See also Laws of Eshnunna para. 50. The idea that the king should be subject to the law appears in an embryonic form in *Deuteronomy* 17:14–20, but the passage provides no legal mechanism to make the king accountable. I owe this point to Raymond Westbrooke.

²⁷ For similar examples see Szegedy-Maszak (1978) 206, note 37.

²⁸ As M. H. Hansen (1998) 118, has noted, “The Renaissance and Baroque concept of the sovereign as supreme legislator who himself stands above the laws is foreign to the ancient Greeks who invariably emphasized the supremacy of the laws and held that a *polis* ruled by a monarch who set himself above the law was a tyranny, a perverted form of community, which, in its extreme form, had ceased to be a *polis*.”

grain) for some violation, which is not preserved, then threatens Platiwoinarchoi with a double penalty if they do not levy this fine. A fragment of a fifth-century law or decree from Argos contains two penalties for magistrates. The initial part of the inscription, which probably contained the substantive provision of the measure, is missing but the extant part threatens an official (ἄρρεύο[ν]) with the same penalty inflicted on traitors (πολεμί[ον]ς ἐπάγον – “the one who introduces enemies”).²⁹ Another early law from Arcadia, dated to the sixth or fifth century, forbids women to wear fine clothes at a festival for Demeter and orders the Demiorgos to fine them thirty drachmas if they do not dedicate such clothing to Demeter (Koerner [1993] # 35). If they do not collect this fine, they are subject to punishment, possibly a curse for ten years. An amusing regulation from Olympia inscribed around 500 forbids sex in the temple and requires those who violate the ban to sacrifice a cow and perform purificatory rites (Koerner [1993] # 41 = *IvOl* #7). This penalty applies not only to the offender but also to the Thearoi (“one who watches”) in charge of the temple, probably for allowing the offense to take place – or perhaps (as his title implies) for watching it happen. Another provision from the same inscription declares that if anyone passes a judgment contrary to the written law, his decision is null and void (Koerner [1993] #42 = *IvOl* 7). Although no magistrate is named, the provision clearly applies to those who have the authority to judge legal disputes. A law from Naupactus from the same period forbids the Demiorgoi to make a greater profit than what is written in the law – if they violate this, they must dedicate a statue to Apollo (Koerner [1993] #48).

A law from the Aegean island of Thasos inscribed during the fifth century sets forth a penalty for some violation, then imposes a double fine on magistrates who allow violators to escape scot-free (Koerner [1993] #67, lines 9–10). A law from Eretria of the late sixth century appears to impose a penalty on the Archos who does not follow the law in collecting fines (Koerner [1993] #73). An inscription from Miletus dated to between 470 and 440 pronounces banishment on several individuals and offers a reward to those who kill them. The city assigns the task of paying the reward to the Epimenioi. If they do not pay the reward, they will owe the money themselves. If the city seizes the banished men, the Epimenioi have the responsibility for executing them. Should they fail to do so, each will owe a penalty of fifty staters (Koerner [1993] #81 = *Nomima* #103). A recently

discovered inscription from Thasos dated to the early fifth century contains several regulations about keeping public roads clean and assigns their enforcement to the Archoi and the Epistatai. If these officials do not impose the required fines, they are themselves to owe double this amount (Duchêne [1992] 19–20, lines 11–13, 48–9).

These provisions find several parallels in Athenian decrees from the fifth century. The Standards Decree orders the generals to send off heralds to announce its new rules to the cities under Athenian control; if they do not perform their duty, each is to be fined 10,000 drachmas (Meiggs and Lewis [1969] #45 §9). A decree about the citizens of Phaselis grants them the privilege of having their cases heard before the Polemarch; if any other magistracy tries their cases, the judgment is to be null and void and the magistrate shall owe a fine of 10,000 drachmas to Athena (Meiggs and Lewis [1969] #31, lines 15–22). A decree of tribute payment orders the Prytaneis to bring cases about its provisions into the Council and threatens them with a penalty (the amount is not preserved) if they fail to do so (Meiggs and Lewis [1969] #46, lines 35–7). A decree about the collection of first fruits (ἄπαρχαι) for the sanctuary at Eleusis requires the Hieropoioi to receive within five days any grain offered to them from the Greek cities; if they do not receive it, they are subject to a penalty of 1,000 drachmas (Meiggs and Lewis [1969] #73, lines 18–21). A decree proposed by Thoudippos in 425/24 threatens the Prytaneis with severe penalties, one of 1,000 drachmas for failure to introduce a discussion about tribute to the Assembly (Meiggs and Lewis [1969] #69, lines 28–33), another of 10,000 drachmas, a huge sum, for not completing work concerning the tribute before the end of their term of office and for preventing the collection of the tribute (lines 36–8).

This distrust of those in power is another feature that is found not only in democratic constitutions such as that of Athens but also in aristocratic constitutions such as that of the Spartans. The Spartans too believed that no person, no matter how powerful, was above the law, and did not hesitate to bring even their kings to trial for overstepping their powers.³⁰

3) Another means of avoiding the concentration of power was to assign functions not to a single individual assisted by several subordinates, but to a group of officials, each of whom was on the same footing as his peers. This feature is perhaps best seen in Athenian democracy. The Aristotelian *Constitution of the*

²⁹ For the text see Mitsos (1983) 245 with the translation in van Effenterre and Ruzé (1994–95) #110.

³⁰ On the trials of the Spartan kings see note 15.

Athenians, dated to the 320s, gives the names of many boards of officials, but the following list includes only those boards attested in the period 600–400 BCE:

- Archons – [Arist.] *Ath. Pol.* 3.2–3 with Develin (1989) 2–3
- Basileis – *IG* ¹ 104, line 11 with Gagarin (2000)
- Eleven – [Arist.] *Ath. Pol.* 7.3; 52.1
- Generals – [Arist.] *Ath. Pol.* 22.1 with Rhodes (1981) 264–5
- Hellannotamiai – Th. 1.96.2
- Hieropoioi of Eleusis – *IG* ¹ 391, lines 10–11
- Kolakretai – [Arist.] *Ath. Pol.* 7.3; *IG* ¹ 7, line 9; 11, line 13; 36, line 8; 73, lines 26, 28 with Rhodes (1981) 139–40
- Logistai – [Arist.] *Ath. Pol.* 54.2 with Rhodes (1972) 111
- Naukraroi – [Arist.] *Ath. Pol.* 8.3 with Rhodes (1981) 151–3
- Poletai – [Arist.] *Ath. Pol.* 7.3; 47.2–3 with Rhodes (1981) 552–5
- Supervisors of Eleusis – *IG* ¹ 32
- Supervisors of the Mint – *IG* ¹ 1453, lines 8, 12
- Treasurers of Athena – [Arist.] *Ath. Pol.* 4.1; 7.3; 8.1; *IG* ¹ 590
- Treasurers of the Other Gods – *IG* ¹ 52, lines 13–31 with Linders (1975)

Athens is perhaps unusual in the number of boards attested in this period, but several other *poleis* in this period are known to have one or more boards of magistrates. Even though the literary and epigraphical evidence is not as plentiful for these *poleis* as it is for Athens, Argos has nine boards attested, Thasos six, and Olympia five. Even small communities have several boards: Dreros has at least three, Gortyn five. (See the Appendix.) The tendency to entrust powers to a board of officials rather than to a single magistrate is thus characteristic not only of democratic *poleis* like Athens and Argos, but also of *poleis* without democratic constitutions like Gortyn and Sparta.

4) For the law to rule over everyone in the community, there must be safeguards to prevent the powerful from altering the law to suit their wishes. In the famous Constitutional Debate among the Persian nobles, Herodotus (3.80.5) has Otanes say that two of the worst vices of tyrants were that they violate women and disrupt the ancestral laws. Demosthenes (24.139–43) praised the Locrians because they had a law that the person who proposed a new law had to make his proposal with a noose around his neck; if the proposal did not pass, the noose was tightened and the proposer strangled. Not surprisingly, the Locrians for many years passed only

one new law. The Greeks saw changes in the law not as a sign of legal progress or as a healthy adaptation to new realities, but as a symptom of disorder.³¹ Thucydides (1.18.1) reports that the Spartans had had the same laws for over four hundred years. For him this was not the mark of mindless adherence to tradition, but an indication of their *eunomia* and their freedom from tyranny. According to Herodotus (1.29), Solon, after laying down his laws, made the Athenians swear an oath that they would not alter his laws for ten years. The reason why he left Athens to go abroad was because he did not want to be forced to change any of his laws. According to Plutarch (*Solon* 25), the Athenians agreed not to change his laws for a hundred years.

The early laws of the Greek *poleis* show their concern for the stability of their laws by adding entrenchment clauses that punish those who propose changes with harsh penalties. For instance, Demosthenes (23.62) quotes a provision from Draco's law on homicide, which reads: "let any magistrate or private citizen who is responsible for annulling this law or changing it be outlawed and his children and his property." We find an equally harsh entrenchment clause in a law about property from Halicarnassus around 465–50: "If anyone wishes to destroy this law or propose a vote to annul it, let his property be sold and dedicated to Apollo and let him go into exile. If it (i.e., his property) is not worth ten staters, let him be sold into slavery abroad and let there be no (possibility of) return to Halicarnassus" (Koerner (1993) #84 [= *Nomima* I #19], lines 32–41). There is a similar clause in a fragment of a fifth-century law or decree from Argos: "If anyone annuls the provision written on the stele, the proposer and the presiding magistrate will suffer the same penalty as the one who brings in enemies" (*Nomima* I #110, lines 5–9). In a law dated around 525–500 the Locrians appear to divide a plain among citizens and grant rights to owners. To ensure that this division remains unchanged, the law threatens those who propose any change with severe punishment: "Unless the Assembly, under pressure of war, so decides, whoever proposes a division or puts the matter to a vote in the council of elders or in

³¹ For frequent changes in laws as a sign of chaos, see, for example, Dem. 20.90–2. Aristotle (*Pol.* 2.5.12–14.1269a) presents a different rationale for not changing the laws. He recognizes that the laws must sometimes change to adapt to new circumstances, but if it becomes too easy to change the laws, men will acquire the habit of disobeying the government. Since he believes the role of the *polis* is to make men virtuous, he explains the need to preserve established laws in terms of their effect on the character of the citizens rather than as a means of restraining those in power.

the city or in the chosen men, let him and his family be accursed forever and his property be confiscated and his house destroyed as in the law about homicide" (Meiggs and Lewis [1969] #13, lines 7–14).

There are several examples of entrenchment clauses in decrees from fifth-century Athens.³² A decree passed by Callias probably in 434/33 appears to order officials to spend money for construction on the Acropolis and for no other purpose without the Assembly's approval (Meiggs and Lewis [1969] #58B, lines 15–17). If anyone proposes spending money for any other purpose or puts such a motion to the vote without obtaining immunity from the Assembly, he is subject to the same penalties as those who propose an *eisphora* (property tax) (lines 17–19). The Standards Decree contains a similar provision that inflicts a penalty on the person who proposes a motion violating its provisions or the person who puts such a motion to the vote (Meiggs and Lewis [1969] #45, clause 8). These two Athenian decrees share one important feature with those from Argos and Locris: each one threatens not only the proposer but also the official who puts the illegal motion to a vote. At the beginning of the Peloponnesian War, the Athenians voted to set aside 1,000 talents as a reserve fund to be used only in the event of a naval invasion. To ensure that the fund remained untouched, they laid down the death penalty for anyone who proposed to use the money or spend it for some other purpose (Th. 2.24).³³ When the Athenians were debating how to change their constitution in 411, they could not proceed without first removing the restrictions about making proposals to alter the laws (Th. 8.67.2; [Arist.] *Ath. Pol.* 29.4).³⁴ The practice of appending entrenchment clauses to laws and decrees was so widespread that they "are found from Tauromenium and Issa in the west to places as far to

³² On entrenchment clauses in Athenian statutes, see Lewis (1997) 136–49. In an essay on resistance to change in the law at Athens, Boegehold (1996) does not discuss entrenchment clauses either in Athens or in other Greek *poleis*.

³³ Before voting to use the reserve fund in 412, the Assembly first removed the penalties against such a measure (Th. 8.15.1).

³⁴ For other examples of entrenchment clauses, see *IG* I² 58, lines 1–5; 71, lines 52–4. For later examples of entrenchment clauses, see, for instance, Rhodes and Osborne (2003) #37, lines 95–7 (decree of *genos* of the Salaminioi 363/62), #49, lines 18–25 (decree of Amphipolis, 357/56), #54, lines 28–31 (decree of Mylasa 367/66–355/54), #78, lines 26–35 (decree of Xanthians 337) #83 ii, lines 20–6 (decree of Eresus). For further examples see those cited in Rhodes with Lewis (1997) 524–5. The addition of entrenchment clauses was no longer necessary in Athens after the creation of the *nomothesia* procedure in 403 (see Hansen [1991] 165–75) and the introduction of the *graphe paranomon* in the late fifth century (see Hansen [1974]).

the east in Asia Minor as Acmonia and Termessus, and they are used also by an Antigoniid king and by the Romans."³⁵ What is striking is that the concern with the stability of the laws was not confined to oligarchic or democratic *poleis*; it was a goal that transcended political organization.

III. CONCLUSION

The Greek *poleis* of the Archaic and Classical periods were a diverse group of communities, differing in size, in political structure, and in many other ways. But they were to a large extent united by a common faith in the rule of law and their distrust of tyranny. *Eunomia* was an ideal that both Spartans (Hdt. 1.65; Th. 1.18.1) and Athenians (Aeschin. 1.5; 3.6) pursued. It was also an ideal that set them apart in their eyes from their non-Greek neighbors and helped them to construct their cultural identity in the years leading up to the Persian Wars and afterwards. Solon's poems contain perhaps the earliest and most articulate expression of this "spirit of the laws" in early Greece. But the ideal of the rule of law was not an empty slogan, a cultural ideal that had no impact on social reality. On the contrary, the Greek *poleis* devised many strategies for putting this ideal into practice, strategies that we can study in the inscriptions that preserve their statutes and decrees.

APPENDIX. BOARDS OF MAGISTRATES ATTESTED IN THE GREEK *POLEIS* BEFORE 400 BCE

Amorgos

Archontes – *Nomima* I #90

Atrax (?) (Thessaly)

Tagoi – *Nomima* I #102, line 8

Axos (Crete)

Kosmoi – *Nomima* II #18, line 8

Arcadia

Kosmoi – *Nomima* I #22, lines B9–10

Argos

Artynai – Thuc. 5.47.9; *Nomima* I #107 (= Koerner [1993] #27), line 2 with Piérart [2000] 305

³⁵ Rhodes with Lewis (1997) 524–5.