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## Solon, Neutrality and Partisan Literature of Late Fifth-Century Athens

By Ephraim David, Haifa

Both the authenticity of the law against neutrality in times of *stasis*, attributed by the sources to Solon<sup>1</sup>, and its purpose have been the subjects of long controversy. The earliest, and by far the most important, reference to this law in the extant sources is found in Aristotle's *Athenaion Politeia*<sup>2</sup>: "Seeing that the state was often plunged into civil strife, while some of the citizens out of indolence were content with whatever the outcome chanced to be, he [viz. Solon] enacted a law aimed specially at them, that whoever in a time of civil strife failed to place his arms at the disposal of either side (ὅς ἂν στασιαζούσης τῆς πόλεως μὴ θῇται τὰ ὄπλα μηδὲ μεθ' ἑτέρων) should be deprived of civil rights and have no share in the state (ἄτιμον εἶναι καὶ τῆς πόλεως μὴ μετέχειν)".

The purpose of this paper is to reexamine briefly the prevailing views on this law and suggest the possibility of a new interpretation.

Much of the debate concerning the authenticity focuses on one of Lysias' orations; this was delivered against a certain Philon, who at the time of the Thirty chose to leave Attica, a civic behaviour severely censured by Lysias and presented as being incompatible with fitness for membership in the *boulē*<sup>3</sup> (the oration was delivered in a case of *dokimasia*).

It has been argued that Lysias would have sought the support of Solon's law for his accusation had he been able to cite it. His explicit admission that there was no law against the behaviour condemned in the speech<sup>4</sup> is therefore taken as evidence that Lysias' generation had no knowledge whatsoever of the law attributed to Solon. Thus, it is argued, the law is spurious – a fourth-centu-

1 Arist. *Ath. Pol.* 8, 5; Cic. *Epp. ad Att.* 10, 1, 2; Plut. *Sol.* 20, 1; *Mor.* 550C; 823F; Gell. *Noct. Att.* 2, 12, 1 (based on Aristotle); cf. E. Ruschenbusch, ΣΟΛΩΝΟΣ ΝΟΜΟΙ, *Historia*, Einzelschriften 9 (Wiesbaden 1966) 82–83; A. Martina, *Solone, Testimonianze sulla vita e l'opera*, *Lycorum Graecorum Quae Extant* 4 (Roma 1968) 174–176, with further evidence.

2 Loc. cit.

3 Lys. 31, *passim*.

4 *Ibid.*, 27–28.

ry invention of the democrats, who at that time considered Solon the founder of Athenian democracy<sup>5</sup>.

Against this view, J. A. Goldstein suggests that although not explicitly mentioned by Lysias, the law was referred to by the orator through a series of allusions which were unlikely to be missed by the audience. The use of this device, Goldstein argues, was designed to avoid infringement of the amnesty proclaimed in 403 B.C.<sup>6</sup>

This viewpoint invites serious objections. The alleged similarities of certain terms used by Lysias to the wording of the law against neutrality (as formulated in Ath. Pol. 8, 5) may well be due to mere coincidence. Further, it is hardly possible to believe that Lysias' audience would have understood cryptic allusions to a law of 594 B.C., which is not known to have ever been put into effect<sup>7</sup>. It would seem reasonable to exclude Lysias' speech from consideration: it cannot be taken as convincing evidence either for or against the authenticity of the law under discussion. Strictly speaking, Philon's absence from Attica may well have made his case inappropriate for an accusation of having violated the law against neutrality, even if this law were to be accepted as genuine<sup>8</sup>. After all, Solon himself decided to leave Attica for ten years at a time of severe internal troubles, and did not return even when Athens was plunged into acute *stasis*<sup>9</sup>.

One of the main arguments usually raised in favour of authenticity is based on the political conditions in Solonian Athens, and the alleged fitness of the law for these conditions. It is asserted, among other things, that a central aim of Solon in the legislation of the neutrality law was to prevent the rise of tyranny in Athens<sup>10</sup>. But whatever the opinion held about the complex factors which engendered the phenomenon of tyranny in archaic Greece – a subject which is highly controversial – the indolence of the citizens can hardly be considered one of them, nor is it mentioned as such in the extant fragments of Solon's poems, although they *do* occasionally refer to the danger of a tyranny<sup>11</sup>.

5 See C. Gilliard, *Quelques réformes de Solon* (Lausanne 1907) 292; C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford 1958) 26–27; A. Masaracchia, *Solone* (Firenze 1958) 174; M. A. Levi, *Commento storico alla Respublica Atheniensium di Aristotele I* (Milano/Varese 1968) 132. On Solon as the founder of Athenian democracy, see below and n. 29.

6 J. A. Goldstein, *Solon's Law for an Activist Citizenry*, *Historia* 21 (1972) 538–545.

7 Cf. P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford 1981) 157–158.

8 See V. Bers, *Solon's Law Forbidding Neutrality and Lysias 31*, *Historia* 24 (1975) 492–495; R. Develin, *Solon's Law on Stasis*, *Historia* 26 (1977) 508.

9 Hdt. 1, 29, 1; Arist. *Ath. Pol.* 11, 1; 13, 1; Plut. *Sol.* 25, 6; cf. Plat. *Tim.* 21c–d, who states that Solon returned from Egypt to find Athens in a state of *stasis*, but does not specify when.

10 See, e.g., G. Grote, *History of Greece* III (repr. 1907) 359–371; B. Lavagnini, *Solone e il voto obbligatorio*, *Riv. fil.* 25 (1947) 88–91: "... Solone si sia soprattutto preoccupato ... di impedire cioè che un tiranno sorgesse nel seno dello Stato ateniese" (p. 88).

11 See Sol. frgg. 9–11; 32–34; 36, 21–25; 37, 6–7. The fragments are numbered according to the

Cypselus, Orthagoras, Theagenes, Pisistratus and their like were populist leaders and demagogues. Such politicians did not owe their power to the apathy of the masses; on the contrary, one of the main factors which brought most of them to power, and helped them maintain their rule, was broad popular support<sup>12</sup>. It should never be forgotten that the tyrannic revolutions of archaic Greece were not directed against democracies, but against aristocracies and oligarchies. The antinomy between tyranny and democracy is a later development in Greek history, mentality and political thought. It is therefore an anachronism to associate it with Solon's age<sup>13</sup>.

As to the reformer himself, he was well aware that he could have taken advantage of the conditions prevalent in early sixth-century Athens in order to found a tyranny. Moreover, he was even encouraged to do precisely that, particularly by those who were hoping to see a redistribution of lands at the expense of the Eupatridai<sup>14</sup>. Tyranny, however, was totally incompatible with Solon's character and political tenets. His own testimony in the verses extant clearly indicates that his hatred of tyranny was closely connected with a vehement abhorrence of civil strife, violence and bloodshed<sup>15</sup>, an attitude which does not seem to be consistent with legislating that citizens should take up arms and join opposing camps in the case of *stasis*<sup>16</sup>. Furthermore, Solon himself argued in defence of his political decisions that he had succeeded in maintaining a neutral position between aristocracy and *dēmos*. The boast of impartiality is hardly consonant with legislation against neutrality<sup>17</sup>.

edition of M. L. West, *Iambi et Elegi Graeci* II (Oxford 1972). In fr. 9 the ignorance (ἄιδρις), not the indolence of the *dēmos* is held responsible for the servile dependence upon a tyrant. The details of the stories concerning Solon's resistance to Pisistratus (Arist. *Ath. Pol.* 14, 2; Diod. 9, 4, 20; Plut. *Sol.* 30, 1–31, 2; *Mor.* 794 F) should not be taken too seriously: cf. M. Linforth, *Solon the Athenian* (Berkeley 1919) 303–304; Rhodes (n. 7) 201–202; A. Andrewes, *CAH* III 3 (1982) 390.

12 Aristotle was aware of this: see, e.g., his remark that most of the early tyrants were originally demagogues (*Pol.* 1305 a 7–9), with W. L. Newman, *The Politics of Aristotle* IV (Oxford 1902) 339–342 (ad loc.).

13 To be sure, it is possible to find this anachronism already in *Ath. Pol.* 14, 1 (cf. 8, 4). The references in these passages to the subversion of democracy (when, in fact, Solon's régime is meant) are probably connected with the author's sympathy for the moderate oligarchs of late fifth-century Athens, who used to present Solon's régime as the ancestral democracy (see below and nn. 48, 52). This viewpoint need not contradict Aristotle's remark mentioned in the preceding note: before the description of Pisistratus' *epanastasis* against the *dēmos* (ibid. 14, 1) he is twice presented as δημοτικώτατος εἶναι δοκῶν (ibid. 13, 4; 14, 1).

14 Sol. frgg. 32–34 West; Arist. *Ath. Pol.* 6, 3; 11, 2; Plut. *Sol.* 14, 3–15, 1; *Comp. Sol.-Publ.* 2, 5.

15 See locc. cit. in the last note and also frgg. 4, 19–23. 32–39; 36, 21–25; 37, 6–7 West; cf. A. Andrewes, *The Greek Tyrants* (London 1956) 89–91; id., *CAH* III 3 (1982) 390–391; Ruschenbusch (n. 1) 83.

16 Particularly if the expression θέσθαι τὰ ὅπλα is interpreted literally and not metaphorically (see below and n. 34), but not only in this case (see Plut. *Mor.* 823 F, who makes no mention of *hopla* and nonetheless wonders how Solon the pacifier could have legislated such a law).

17 Frgg. 5, 5–6; 37, 9–10 West; cf. esp. K. von Fritz, *Nochmals das Solonische Gesetz gegen Neutralität im Bürgerzwist*, *Historia* 26 (1977) 245–247.



Another argument which has been raised in favour of authenticity is that Solon intended "to force frightened citizens to commit themselves to his program"<sup>18</sup>. This suggestion is defended on the grounds that "successful opposition to the new constitution does not appear until the *anarchia* of (?) 590/89"<sup>19</sup>. One is entitled to wonder whether the law helps to explain the relative stability following Solon's departure from Athens or rather the subsequent *anarchia*. In fact it seems to me that there is nothing in the neutrality law which makes it indispensable for the understanding of any of the developments which followed Solon's archonship. Those who benefited from his reforms would naturally have been interested no less than the reformer himself in preserving his legislative work, while Solon could have had no reason to believe that such a law forbidding neutrality would have been more persuasive and effective than the personal interests of the citizens.

Plutarch exhibits an exceptionally "healthy instinct" in regarding the law as "mostly strange and paradoxal", and as a prescription to exacerbate *stasis*, not to pacify it<sup>20</sup>. His remarks have been interpreted as stemming from a lack of ability to understand, in his time, the agonistic spirit of political activism prevalent in the Athenian democracy<sup>21</sup>. I doubt if, *mutatis mutandis*, Solon and his contemporaries were in a better position to understand that very spirit ...

The other arguments which have been advanced in favour of authenticity seem to be even less convincing than those mentioned above: this is true with respect to the strange defence based on the oddity of the law (!)<sup>22</sup>, as well as the defence based on Aristotle's authority<sup>23</sup>, not to mention inadequate analogies with the success of militant modern minorities in seizing power due to the indolence of "decent citizens"<sup>24</sup>.

As to Aristotle's authority, it is well known that the text of the *Ath. Pol.* is not free from anachronisms and various other errors<sup>25</sup>. Those who believe in Aristotle's authorship – I among them – have to hold him responsible for those errors, with a few exceptions which are plausibly explained as interpolations. The most conspicuous example of a probable interpolation – the so-called "Draconian constitution" – is based on a tendentious political pamphlet<sup>26</sup>.

18 Bers (n. 8) 497.

19 Ibid.

20 See locc. citt. in n. 1 above.

21 Lavagnini (n. 10) 83; cf. Goldstein (n. 6) 538.

22 Develin (n. 8) 508: "Indeed, its odd character surely guarantees that it is genuine."

23 Lavagnini (n. 10) 82; Goldstein (n. 6) 539, 545.

24 See esp. Goldstein (n. 6) 538; cf. the anachronistic terminology of Lavagnini (n. 10) 88, when referring to the aims of the law: "frenare un ulteriore spostamento a sinistra ..." (the title of Lavagnini's article is also anachronistic).

25 See esp. Rhodes (n. 7) 27ff. 49ff.; see also above, n. 13.

26 *Ath. Pol.* 4, with Rhodes' commentary.

This appears to have been composed by a fourth-century moderate oligarch in support of his political tenets, which were presented as a return to an ancestral constitution<sup>27</sup>. One of the main ideas advanced by the author of the "Draconian constitution" was the restriction of the franchise to those belonging to hoplite status<sup>28</sup>. The attribution of the *patrios politeia* to Dracon seems to have been connected with a certain development of the fourth century: the adoption of Solon by the democrats as the father of the constitution<sup>29</sup>, notwithstanding his having been considered the father of the constitution by the moderate oligarchs in the late fifth century<sup>30</sup>.

Solon's authorship of the law against neutrality seems to be no more genuine than Dracon's authorship of the "Draconian constitution". Not only is its content hardly explicable (in the light of Solon's character and reforms, as well as the political conditions in Solonian Athens), but also its awkward position within the text of the *Ath. Pol.* is highly suspect. It has no connection with the preceding subject – i.e., the powers and status of the Areopagus – nor is it appropriate for what follows, namely the sentence concluding the description of the main *archai*, which should have come immediately after the discussion concerning the Areopagus<sup>31</sup>. The awkward position of the paragraph containing the law against neutrality is explicable if it is regarded as a later insertion into the original text. Coming across a political pamphlet which cited the law, Aristotle, or one of his students, thought this kind of information worthy of historical record (Aristotle's personal responsibility for the insertion seems to me possible since the attribution of this law to Solon does not presuppose the credulity and totally uncritical approach implied by the acceptance of the "Draconian constitution" as genuine).

The question arises *cui bono*? Who was interested in such a forgery, when and for what purpose? This question deserves more attention than it has yet received: the few scholars who have regarded the law as spurious have treated this problem only *en passant*, if at all<sup>32</sup>.

27 See A. Fuks, *The Ancestral Constitution* (London 1953) 84–101, with summary of older literature; cf. S. A. Cecchin, Πάτριος πολιτεία. *Un tentativo propagandistico durante la guerra del Peloponneso* (Torino 1969) 93–101.

28 *Ath. Pol.* 4, 2.

29 See Fuks (n. 27) 15ff. 29, nn. 44–45 with evidence; cf. E. Ruschenbusch, Πάτριος πολιτεία, *Historia* 7 (1958) 399ff.; C. Mossé, *Comment s'élabore un mythe politique: Solon, "père fondateur" de la démocratie athénienne*, *Annales* 34 (1979) 425ff.

30 See below and n. 48.

31 Cf. von Fritz (n. 17) 245–246, who persuasively argues that Aristotle brought the law as a kind of supplement to ch. 8 and that his knowledge of the law was not derived from an original *axon*. For a different opinion, see Rhodes (n. 7) 157, who suggests that the Areopagus' jurisdiction over political conspirators (*Ath. Pol.* 8, 4) has led the author to the subject of *stasis* and the neutrality law. Such a connection, however, is far from obvious; moreover, it cannot explain the discontinuity between the end of ch. 8 and the beginning of the ch. 9 within the *Ath. Pol.*

32 See locc. cit. above, nn. 5 and 17.

I would suggest that the real intention of the neutrality law lies in the expression  $\theta\acute{\epsilon}\sigma\theta\alpha\iota\ \tau\acute{\alpha}\ \delta\pi\lambda\alpha$ . This is usually interpreted metaphorically (e.g., “to take a stand”<sup>33</sup>), although it may be used both literally and metaphorically<sup>34</sup>. When used literally, the expression sometimes refers explicitly to hoplites<sup>35</sup>. Now, the literal, military, sense of  $\theta\acute{\epsilon}\sigma\theta\alpha\iota\ \tau\acute{\alpha}\ \delta\pi\lambda\alpha$  has serious implications which should not have been overlooked in the literature, particularly by those claiming that Aristotle’s text reproduces Solon’s very words<sup>36</sup>. Not only is the text of the law inconsistent with Solon’s character for the reasons noted above; when interpreted literally it is also incompatible with his political and social reforms as described by Aristotle himself, according to whose account the *thētes* did enjoy civic rights under Solon’s régime<sup>37</sup> (although they were not entitled to a share in the *archai*). Yet the logical implication of the law under discussion if we interpret its text literally is the disfranchisement of the *thētes*: those who could not place their *hopla* at the disposal of either side were to be deprived of civic rights.

It is worth noting that the law as brought in *Ath. Pol.* 8, 5 conveys the impression that it is somehow a quotation<sup>38</sup> (although formally it is not), and this seems to be one of the factors which have led several scholars to believe that we are faced with the original text of a Solonian law. The “quotation”, however, seems to be taken from a wholly different source.

Solon is famous for his prudence, and rightly so. It is hard to imagine that a prudent lawgiver would have used a metaphor whose literal implications contradicted his own reforms. It is much more plausible that a political pamphleteer deliberately chose to take advantage of the ambiguity inherent in the expression  $\theta\acute{\epsilon}\sigma\theta\alpha\iota\ \tau\acute{\alpha}\ \delta\pi\lambda\alpha$  and thereby provide his party with a political weapon – to promote practical use of the law and benefit from the literal interpretation of its text. Such an interpretation could trickily be presented as

33 See J. Adam, *The Republic of Plato I* (Cambridge 1902) 257 (ad *Resp.* 440e); W. W. Goodwin, *Demosthenes against Midias* (Cambridge 1906) 85 (ad 145); Goldstein (n. 6) 543–545; Develin (n. 8) 507–508; cf. the translation of K. von Fritz and E. Kapp in *Aristotle’s Constitution of Athens and Related Texts* (New York 1966) 76: “... whoever, in a time of political strife, did not take an active part on either side ...”

34 See, e.g., *Thuc.* 2, 2, 4; 4, 68, 3; 90, 4; 93, 3; 7, 3, 1; 8, 25, 4; cf. E.-A. Bétant, *Lexicon Thucydeum II* (Hildesheim 1961) s.v.  $\delta\pi\lambda\alpha$ , 240–241; cf. *Lys.* 31, 14; *Dem.* 21, 145; *Aesch.* 1, 29; *Lyc. Leocr.* 37–43. For epigraphic evidence, cf. *Syll.*<sup>3</sup> 346, 38–39; *IG II<sup>2</sup>* 666, 9–12. See Rhodes (n. 7) 158, who cautiously concludes “... the reference is ... to placing one’s arms, whether literally or metaphorically, at the disposal of one side against another.”

35 See, e.g., *Thuc.* 4, 90, 4: οἱ μὲν ψιλοὶ οἱ πλεῖστοι εὐθὺς ἐχώρουν, οἱ δ’ ὀπλῖται θέμενοι τὰ ὄπλα ἡσύχαζον. Here the expression has the meaning of resting arms.

36 See, e.g., Lavagnini (n. 10) 85 and n. 1; Goldstein (n. 6) 543–545; Develin (n. 8) 507: “... the words in *Ath. Pol.* do go back to Solon.”

37 *Ath. Pol.* 7, 3–4.

38 The French translation of the Coll. Budé even brings the law between quotation marks: see G. Mathieu and B. Haussoullier, *Constitution d’Athènes* (Paris 1958) ad loc.



reflecting Solon's very intention. The obvious implication, the disfranchisement of the *thētes*, is reminiscent of the "Draconian constitution". However, the law under discussion seems to have been forged earlier than was the spurious constitution attributed to Dracon.

The law against neutrality appears to have been fabricated by a person closely connected with the so-called moderate oligarchs of late fifth-century Athens (i.e., the Theramenean group). These were interested in restricting the franchise to men of hoplite census. Their intention was proclaimed at the very beginning of the revolution of 411 B.C., when moderate and extreme oligarchs collaborated to abolish the democratic régime: the leaders of the revolution spoke of approximately five thousand citizens *optimo iure*, who were to comprise "the most able to serve the state in person or purse"<sup>39</sup>. This definition is commonly accepted as reflecting one way or another the principle of a hoplite *politeia*<sup>40</sup>. However, as long as the extreme oligarchs formed the dominant group in power, the above definition of citizenship remained no more than a fiction of propaganda. Only after the fall of the Four Hundred, when the Therameneans came to power, was the hoplite constitution fully implemented<sup>41</sup>. Later, during the second oligarchic revolution and the rule of the Thirty, when Theramenes protested against the narrow basis of the government, the extreme oligarchs, led by Critias, tried to appease him by producing a list of three thousand citizens with full civic rights. Although Theramenes was not satisfied with this step, thinking it was still too arbitrary and oligarchic, the extremists went on with it and disarmed by a trick those who did not belong to the above list<sup>42</sup>. Finally, when Theramenes addressed the Council to defend

39 Thuc. 8, 65, 3 with A. Andrewes (A. W. Gomme and K. J. Dover), *A Historical Commentary on Thucydides V* (Oxford 1981) 162 (ad loc.). 218; Arist. *Ath. Pol.* 29, 5, with Rhodes' commentary ad loc. (pp. 382–383). In Thucydides' account the number of five thousand citizens is presented as a maximum, whereas in Aristotle's account this is a minimum. As Fuks ([n. 27] 87–88) rightly points out, the maximum reflects "not the ideal of the extremists but their own version of the moderate principle". On the other hand, the formula "no less than five thousand" was adopted by the Therameneans, despite their dislike of numerical restrictions, only "as a suggestion to the *katalogeis* to interpret rather liberally the census qualifications" (Fuks, *ibid.*). See also below and n. 41.

40 See, e.g., Rhodes, *ibid.*: "... The reference must be to men of hoplite status and above." This is corroborated also by *Ath. Pol.* 31, 2 and by the evidence cited in the next note.

41 Thuc. 8, 97, 1: εἶναι δὲ αὐτῶν ὅποσοι καὶ ὄπλα παρέχονται, with Andrewes (n. 39) 323–329 (ad loc.); Arist. *Ath. Pol.* 33, 1, 2: ἐκ τῶν ὀπλων τῆς πολιτείας οὐσης, with Rhodes (n. 7) 411–414 (ad loc.); cf. Theramenes' speech in Xen. *Hell.* 2, 3, 48. Both Andrewes and Rhodes (loc. cit.) convincingly reject the theory of G. E. M. de Ste. Croix (*The Constitution of the Five Thousand*, *Historia* 5, 1956, 1–23) that the *thētes* were not denied the franchise under this régime. It is worth noting that the number Five Thousand survived at this stage as a notion, but since the citizen-body comprised all the hoplites (Thuc. 8, 97, 1) its size should have been considerably larger; cf. the figure 9000 (in Lys. 20, 13) whose reliability, however, is doubtful: see Andrewes (n. 39) 205–206. 328–329.

42 Xen. *Hell.* 2, 3, 18–20. 41; cf. Arist. *Ath. Pol.* 36–37. Xenophon's chronology is to be pre-



himself against Critias' accusations, he stressed his constant belief in a hoplite *politeia*<sup>43</sup>.

Now, to return to the law under discussion, the conditions of *stasis* mentioned in its text (as reported by Ath. Pol. 8, 5) may well have been meant to fit the situation of late fifth-century Athens. The *atimia* referred to by the law should not be taken to convey the archaic connotations of the term<sup>44</sup> (equivalent to outlawry or "excommunication"). The real sense of ἄτιμον εἶναι seems to be explained in this case by what follows<sup>45</sup>, i.e., τῆς πόλεως μὴ μετέχειν. The expression μετέχειν τῆς πόλεως or μετέχειν τῆς πολιτείας is frequently used in the legal sense of enjoying full civic rights under a certain political régime, whether democratic or oligarchic<sup>46</sup>. The revolution of 411 B.C. was the first instance in Athenian history when citizenship was defined as a function of hoplite status. So revolutionary a measure had to be justified, particularly by revolutionaries who attached high importance to propaganda. Unlike the extreme oligarchs, who do not appear to have been particularly concerned with persuasive methods as long as terrorism satisfied their purposes, the Therameneans took a vivid interest in propagandist activity<sup>47</sup>. Their well-known ideological and propagandist tendency was to depict their programme not as a complete overthrow of democracy but as a return to an ideal form of ancestral democracy. This was to replace what they described as the extreme, degenerate, form of the contemporary régime. It should be stressed that Solon was adopted by them as their spiritual father – the founder of the *patrios politeia* which, according to their claims, they wished to reinstate<sup>48</sup>.

ferred: see, e.g., Hignett (n. 5) 289–290. 384–389, with convincing arguments. The hoplites disarmed by the Thirty were most probably suspected of being loyal to the Therameneans; see last note.

43 Xen. *Hell.* 2, 3, 48, with a pithy description of Theramenes' political credo, stating his determined opposition both to extreme oligarchy and radical democracy.

44 Pace Rhodes (n. 7) 158. On *atimia* see D. M. MacDowell, *The Law in Classical Athens* (Ithaca 1978) 73ff., with bibliography.

45 Cf. the wording in Arist. *Ath. Pol.* 16, 10, where the quotation of an archaic law concerning tyranny – this time most probably a genuine law – contains the term *atimos* without further additions or explanations except that it affects the whole *genos* of the offender (a typically archaic concept of collective guilt and punishment); cf. M. Ostwald, *The Athenian Legislation against Tyranny and Subversion*, Trans. Am. Phil. Ass. 86 (1955) 107, in whose opinion the law against tyranny is pre-Solonian; he regards the neutrality law as authentic and believes that *atimos* was already used by Solon "in a later, narrow sense". I agree that this is the sense of *atimos* in Ath. Pol. 8, 5, but this sense can only strengthen the view that the law forbidding neutrality is not genuine. On the above law against tyranny, see also Rhodes (n. 7) 220ff., with references to further literature.

46 Arist. *Ath. Pol.* 26, 4 (Pericles' citizenship law); Lys. 6, 48; 30, 15; Isocr. 3, 15–16; 18, 16. 42. 48. 49; 21, 2. Cf. Lavagnini (n. 10) 85, n. 1 and Rhodes (n. 7) 158; they suggest that μετέχειν τῆς πόλεως is the older expression, which may well be true, but need not have a bearing on the authenticity problem.

47 Cf. Fuks (n. 27) 11. 21. 107–108 and passim; M. I. Finley, *The Ancestral Constitution* (Cambridge 1971) 9–14.

48 Arist. *Ath. Pol.* 29, 3; 31, 1; cf. 34, 3; 35, 2; Xen. *Hell.* 2, 3, 2; Diod. 14, 3, 2–3. 6–7; see esp.

The attribution of the neutrality law to Solon is perfectly consistent with such propaganda. It suited both the ideology of the ancestral constitution and the tendency to present the anti-democratic régime as close as possible to the activist and agonistic spirit of Athenian democracy<sup>49</sup>. Moreover, when in need such a law might have been expected to provide the Therameneans with the armed assistance of the majority of the hoplites – who formed the bulk of their supporters<sup>50</sup> – both against the democrats and the extreme oligarchs.

All these considerations seem to have led an anonymous political pamphleteer belonging to Theramenes' entourage to fabricate the neutrality law. Aristotle and his disciples were familiar with at least some specimens of the party-political literature which flourished in late fifth-century Athens. Furthermore, this genre has left its imprint on the *Ath. Pol.*: the pro-Theramenean bias prevalent in several chapters<sup>51</sup> is hardly intelligible without assuming the influence of one or more partisan writings produced by members of Theramenes' faction<sup>52</sup>.

As far as we know, the law forbidding neutrality was never used for the purposes discussed above, and this may explain why it was not suspected to be a late fifth-century piece of political propaganda and an instrument devised to serve party interests. However, not all the suggestions of propagandists and political pamphleteers are always adopted by the leading party politicians. Yet even if not adopted, they may nevertheless create a "history" of their own by

Fuks (n. 27) 1ff. 52ff. 107ff.; Cecchin (n. 27) 26ff.; cf. Finley, *ibid.* For a different view of the *patrios politeia*, see K. R. Walters, *The Ancestral Constitution*, *Am. J. Anc. Hist.* 1 (1976) 129ff., who argues, ingeniously yet unconvincingly, that the concept is a fourth-century invention (of Androtion), not the product of late fifth-century anti-democratic propaganda. However, his suggestion that Solon was regarded in fifth-century Athens as a democrat (cf. Aristoph. *Nub.* 1187; Ruschenbusch [n. 29] 422–424) may even help to explain why the moderate oligarchs chose to make use of his authority for their own purposes. Likewise, the claim of the democrats in Samos that the revolutionaries in Athens had abolished the *patrioi nomoi* (Thuc. 8, 76, 6) – which, for them, were the laws of the democratic régime – may well have been a reaction to the use of the same terms by the oligarchs (*Ath. Pol.* 29, 3). Finally, Walter's argumentum ex silentio is not strong enough, inter alia due to the fact that late fifth-century controversies over the *patrios politeia* are attested by the contemporary evidence of the sophist Thrasymachus (Diels-Kranz, *Fragmente der Vorsokratiker*<sup>6</sup> II, fr. 1 [ap. Dion. Hal. *Demosth.* 3]).

49 For this political ideal, see the locus classicus in Pericles' funeral oration (Thuc. 2, 40, 2, with A. W. Gomme's commentary ad loc.); cf. V. Ehrenberg, *Polypragmosyne: A study of Greek Politics*, *J. Hell. St.* 67 (1947) 46ff., who believes that Pericles' view "follows old Athenian tradition, going back to that law of Solon" (viz. the neutrality law).

50 See above, nn. 41–43.

51 See *Ath. Pol.* 28, 5; 32, 2–3; 33, 2; 34, 3; 36–37, 1.

52 See, e.g., Hignett (n. 5) 5–6. 28; Mathieu (n. 37) vff. xiiif.; Rhodes (n. 7) 15ff. 21ff., with further literature. Cf., however, P. E. Harding, *The Theramenes Myth*, *Phoenix* 28 (1974) 101ff., whose view that "the defence of Theramenes the moderate originated with Aristotle" is untenable: see the criticism of Rhodes (n. 7) 15 and n. 1; 19ff. 368. 431.

falling into the hands of the right person (in our case Aristotle or one of his students), who may treat such material as a genuine historical source.

If the interpretation proposed here is correct, we are faced with a significant example of how a political ideal dear to the democrats, that of political activism, could be cynically abused by a political pamphleteer in order to serve purposes diametrically opposed to those of Athenian democracy. We are also presented with a warning example of an historiographical fraud and of an historical trap.