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

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

Erika BIANCHI
University of Florence. Correo-e: erikabianchi3@lliberto.it

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

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

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

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

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

TEXT

Ἐπί Φρυνίχου ἄρχοντος ἐπὶ τῆς Λεωνίδος ἔν-
άτης πραιτείας ἡ Χαρέστρατος Ἀμεινίου

Ἀχαρνέως ἐγραμμάτευεν τῶν προέδρων ἐπεσή-

φξεν Μενέστρατος Αἰξωνεύος· Εὐκράτης Ἀρισ-

5 τοῦμοι Πειραιαῖκος ἑπταμεν ὅγαθὴς τόχυ τοῦ δ-

ήμοι τοῦ Ἀθηναίων δεδόχθηκα τοῖς νομοθετα-

εῖν τις ἐπαναστάτη τῶν δήμων ἐπὶ τυραννίδα

6 ἡ τὴν τυραννίδα συνκαταστήσα τῶν δήμων τ-

ὸν Ἀθηναίων ἡ τὴν δημοκρατίαν τὴν Ἀθηναίου

10 καταλάβης, δε ἀν τῶν τοῦτων τι ποιήσαντα ἀπο-

κτείνῃ δαίος ἐστοι μὴ ἐξείναι δὲ τῶν βουλευ-

τῶν τῶν τῆς βουλῆς τῆς ἐχ’ Αρείου Πάγου κατα-

λελεμένου τὸ δήμου ἡ τῆς δημοκρατίας τῆς Ἀθ-

ηνίου δυνάντα εἰς Ἀρείου Πάγου μηδὲ συνκα-

15 θείεν ἐν τῶι συνεδρίῳ μηδὲ βουλεύειν μη-

δὲ πρὶν ἐνός ἐαν δὲ τῶν δήμων ἡ τῆς δημοκρ-

ατίας καταλελεμένων τῶν Ἀθηναίων ἀνή τῶ-

υ βουλευτῶν τῶν ἐχ’ Αρείου Πάγου εἰς Ἀρείου Π-

άγου ἡ συνκαθίζη ἐν τῶι συνεδρίῳ ἡ βουλεύη-

20 ἐν πρὶν τινος ὁτίμω ἐστοι καὶ αὐτὸς καὶ γένος

τὸ εἰς ἐκεῖνον καὶ ἡ οὐσία δημοσία ἐστὶν αὐτοῦ καὶ τῆς θεοῦ τὸ ἐπεδέκατον αὐνάργαμα δὲ τῶ-

δὲ τῶν νόμων ἐν στήλαις ἀλήταις δύον τῶν γ-

ραμματῆτα τῆς βουλῆς καὶ στήσαι τίνι μὲν ἐπὶ τ-


25 ἧς εἰσόδου τῆς εἰς "Ἀρειών Πάγου τῆς εἰς τὸ βο-
υλευτήριον εἰσίναι, τὴν δὲ ἐν τῷ ἐκκλησία-
ι ἐκ δὲ τῷ ἀναγραφήν τῶν στηρῶν τῶν ταμίᾳ-
ν δώναι τῷ δήμῳ ἙΔ δραχμὰς ἐκ τῶν κατὰ ψη-
φίσματα ἀναλυκομένων τῶν δήμων, ναυαίοι. 3.

The law clearly deals with a political matter and can be included, at first sight, in the long tradition of the Athenian legislation against tyranny and subversion. The text is apparently divided into two distinct sections:

1) Anti-tyranny provision against anyone attempting to overthrow the democracy;

2) Behaviour imposed upon the members of the Areopagos Council in case of tyranny.

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

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

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

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

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

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

The secretary of the Council shall inscribe this law on two steleai of stone and set one of them by the entrance into the Areopagos, that entrance, namely, near when one goes into the Bouleuterion, and the other in the Ekklesia. For the inscribing of the stele the treasurer of the Demos shall give 20 drachmai from the moneys expendable by the Demos according to decrees."
How important, in conceiving the terms of Eukrates' proposal, was the role played by the ideology of democracy? Was there a real need for an anti-dictatorship law in 337/6, or should we look instead for a different motive behind this legislation?

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

1. THE POLITICAL SITUATION

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

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


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


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


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

The 340s came closer than any previous time to a party division, between those who wanted to resist Philip of Macedon at any cost and those who trusted, instead, that Philip would bring back Athens’ lost prosperity. The orators’ vocabulary best attests to this conflict: they make frequent use of such terms as δημοτικός, μισοφιλικός and μισαλέξανδρος, and verbs like φιλιππίζειν and μακβδονιζειν. I believe that the importance of the issue—concerning whether Macedon was the enemy to fight or the ally to welcome—as well as the intensity of the political conflict which opposed the group of Demosthenes and Hyperides to that of Eubulos, Aischines and then Demades, allow us to use the often dismissed labels of 'anti-Macedonian' and 'pro-Macedonian'. Nevertheless, such labels
should not mislead us into thinking that one of the two groups was «more democratic» or «patriotic» than the other. In emphasizing his attachment to democracy and in accusing his opponents of disloyalty to the ideals of freedom and independence, Demosthenes made a precise political choice, thus picturing Philip's fight against Greece as a fight against democracy. Consequently, the pro-Macedonians' mild attitude towards Philip became, in the orators' speeches, the hallmark of anti-patriotism, unconditional support for tyranny, and a dangerous internal menace to democracy. Indeed, we are aware that 'demotikoï' and 'anti-democrats' were just propagandist labels, rhetorical means to achieve a political end. The development of a consistent political propaganda indicates that the orators were well aware that persuasion of the Athenians was still the key factor in keeping political control of the city. Despite their decreasing interest in public business and lack of self-confidence about active political life, private citizens were much more than just a listening public for the rhetores; they were their judges, their referees, their constant interlocutors.

2. THE AREOPAGUS IN THE 340S AND 330S

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

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

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


Some years later Demosthenes promoted the first concrete increase in the Areopagos' political power\(^{19}\), introducing a decree (whose precise terms and date of enactment are unknown) that, in Deinarchos' words, gave 'the Areopagos absolute authority over all Athenians to punish anyone who offends against the law.'\(^{20}\) Such a statement certainly looks suspiciously hyperbolic and must be considered with due caution; yet, because Deinarchos' first oration is our only source for Demosthenes' decree, the whole passage is worthy of the greatest attention. The speech was written and delivered in 323 against Demosthenes in the trial that followed the Harpalos affair.\(^{21}\)

What was the content of Demosthenes' Areopagos decree? In this regard, the most convincing hypothesis seems to me that of Robert Wallace, who after a careful analysis of Dein. I, 62-3 has come to identify Demosthenes' proposal with the motion that introduced the special procedure of *apophasis*.\(^{22}\) This procedure, in use in the second half of the fourth century, consisted in «the investigation (zetësis) and reporting (apophasis)» by the Areopagos especially of crimes against the state. The most famous use of this procedure was in the Harpalos affair of 324/3. Investigations were most often initiated by the demos; they could also be initiated by the Areopagos itself, certainly against its own members and probably against others.
These investigations and reports were not legally binding. They were followed by trials in a dikasterion, and the Areopagos’ preliminary judgments could be overturned.\textsuperscript{23}

In my opinion, the same passage of Deinarchos seems to suggest the beginning of the year 345/4 as the most plausible date for the introduction of the \textit{apophasis} procedure\textsuperscript{24}.

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

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


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

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

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

3. THE AFTERMATH OF CHAIRONEIA AND THE IDEOLOGY OF DEMOCRACY

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

27. Lyc. I, 53: 'Ο δήμος, δεινών ἀρρήταιος εἶναι το γνωρίζων, ἐνήθισατο ἐνώπιος εἶναι τῇ προ- δοσίᾳ τοίς φιεύοντας πλήρως ὑπὲρ τῆς πατρίδος κάθεμαν, αἵρεσιν εἶναι νομίζων τῇ ἐσοχῇ τῆς τιμωρίας'.
31. It is probably worth mentioning that in 335 the Areopagos refused to enquire with an apophasis into Demosthenes' alleged acceptance of money from the Persian king; see Aeschin. III, 239-240; Dein. I, 10-1, 18-21 (on which see Worthington, 1992, pp. 139-143 and 164-68); Hyper. V, col. 17; Diod. XVII, 4, 8-9; Plut. Dem., 20.4-5.
32. It is worth noting that the Areopagos' reputation remained unaltered for all the fourth century. In the speeches of the period, even those by the pro-Macedonians, the Council is always mentioned as an example of justice and patriotism: see Aeschin. I, 81, 84, 92; III, 20; Dein. I, 104; Lyc. I, 13, 52.

panic proposals\textsuperscript{33}, including the Areopagos’ executions of those who tried to leave Athens. In the climate of general upheaval, the Council’s support for the election as \textit{strategos} of the moderate Phokion instead of the hotheaded Charidemos must be read as a far-sighted act of prudence\textsuperscript{34}.

Philip’s treatment of Athens after the battle was notably mild. He never crossed the borders of Attica, he restored the Athenian captives without ransom, and he returned the corpses of the fallen Athenians accompanied by Antipater and Alexander\textsuperscript{35}. Then, he took Oropos from the Thebans and assigned it to Athens\textsuperscript{36}. Philip’s intentionally mild behaviour had the effect of relaxing the tension in Athens. Demosthenes was still appointed to deliver the speech in honour of those who had fallen in the battle\textsuperscript{37}, but Philip and his son were given honorary citizenship and their statues were erected in the \textit{agora}\textsuperscript{38}.

In the following spring, eight or nine months after the battle of Chaironeia, terror was certainly over. Nonetheless, epigraphical and literary sources attest a considerable number of provisions showing an anti-Macedonian spirit\textsuperscript{39}.

In the archonship of Phrynikos (337/6) Philip reached the culmination of his influence in Greece calling upon the Synedrion of the Corinthian League basically to settle the war against Persia\textsuperscript{40}. Philip was the hegemon of the League, which was first and foremost a Common Peace\textsuperscript{41}. Each member of the Synedrion had to take an oath beginning with the clause \textit{έλευθέρως είναι και αύτονόμου τούς Ἑλλήνας}, and continuing with provisions aimed at preserving the common peace, such as the prohibition against changing the constitutions of the Greek states that were
in force when the treaty was sworn. Perhaps this contributed to weakening, at least momentarily, the success and popularity of the anti-Macedonian faction in Athens, and to increasing the influence of Demosthenes’ opponents, Demades in particular. We have evidence of several honorary decrees enacted in favour of Macedonians during the spring of 336 B.C.

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

The first question that should occur to us at this point is whether an anti-tyranny law in 336 was justified. In order to answer this question it will be necessary to sketch out the earlier Athenian legislation against tyranny and subversion upon which Eukrates' law undoubtedly depends. The first anti-dictatorship law we know of is the one quoted by Athens Pol. XVI, 10, which –according to most scholars– was enacted by Drakon; the second is the Solonian law on eisangelia.


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


45. Ἁθήνης τάδε Αθηναίων ἐστι καὶ πάτρια ἐάν τινες τυραννεῖν ἐπαντοτήτως ἢ ἐπὶ τυραννίδι τῆς συγκάθησις τῆς τυραννίδας, ἀτιμον εἶναι καὶ αὐτῶν καὶ γένους.


later, Cleisthenes' introduction of ostracism was also meant as an answer to «the suspicion felt against men in positions of power»\(^{48}\). The law of Eukrates seems, however, to be most strikingly modelled upon Demophantos' decree\(^{49}\), which was passed soon after the fall of the Four Hundred in 410/9 B.C. Its text is preserved by Andokides I, 96-8 and consists of two parts: the first contains measures to be taken in case of a subversion of democracy\(^{50}\), the second gives the formula of an oath to be sworn by all Athenians, intending to prevent any further overthrow of the constitution\(^{51}\). After discussing the relations and similarities between Demophantos' decree and the old Drakonian law on tyranny\(^{52}\), Ostwald concludes that Demophantos' provision was superseded in 403\(^{53}\) by the *nomos eisangeltikos*\(^{54}\).


\(^{49}\) OSTWALD, 1955, pp. 120-122.

\(^{50}\) Έάν τις δημοκρατίαν καταλύη τὴν Ἀθήνην, ἢ ἀρχήν τινα ἀρχή καταλελυμένης τῆς δημοκρατίας, πολέμου ἐστώ Ἀθηναίων καὶ νηπίους τεθανατω, καὶ τὰ χρήματα αὐτοῦ δημόσια ἔστω, καὶ τῆς θεοῦ τὸ έπιδέκατον δὲ ἀποκείμενον τοῦ ταύτα ποιήσαντα καὶ ὁ συμβουλευόμενος δόσει ἔστω καὶ εὐδής.

\(^{51}\) Ὅμοσαι δὲ Ἀθηναίοις ἀπαντα τε ἰερῶν τελείων κατὰ φυλὰ καὶ κατὰ δήμους, ἀποκείμενοι τοῦ ταύτα ποιήσαντα. Ο δὲ δροκος ἐστώ ὅδε. Κτεῖνο καὶ λόγῳ καὶ ἐργῷ καὶ ψήφῳ καὶ τῇ ἐμαυτῷ χερι, ἐν δυνάτῳ ὅ, ὃ δὲν καταλύη τὴν δημοκρατίαν τὴν Ἀθηνήν, καὶ ἐάν τις ἀρχή τῗς ἀρχήν καταλελυμένης τῆς δημοκρατίας τοῦ λοιποῦ, καὶ ἐὰν τις περιαμβατὰ ἐπαναστήθῃ τῷ τῶν πύρανοις συγκατάστηθή. Καὶ ἐὰν τὶς ἄλλος ἀποκείμενοι δόσει αὐτὸν νομίμον εἶναι καὶ πρὸς θεοῖς καὶ δαιμόνιοις, ὃς πολέμους κτείναται τῶν Αθηναίων, καὶ τὰ κτήματα τοῦ ἀποκτείναντος πάντα ἀπόδοσοι ἀπὸ τὰς ἡμῖν τὸ ἀποκτείναι καὶ λόγῳ καὶ ἐργῷ καὶ ψήφῳ, καὶ οὐκ ἀποστέρησον οὐδὲν. Εάν δὲ τὶς κτείναται τῶν ταύτων ἀπόθανεν ἢ ἐπιχειρῆσαν, εὐ ποιήσω αὐτὸν τῇ ἐκείνου, καθά περ Ἀρμόδιον τε καὶ Άριστογείτονα καὶ τῶν ἀπὸγυν ρυμίαν. Ὅποσοι δὲ ὁρκοὶ ἀμώμονται Αθηναίοις ἢ ἐν τῷ στρατοπέδῳ ἢ άλλῳ που ἐναντίον τῷ δῆμῳ τῶν Αθηναίων, λίῳ καὶ ἀφήσω.

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

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

\(^{54}\) Hyper. III, 7-8: "Εάν τις τῶν δήμων τῶν Ἀθηναίων καταλύη, ἢ συνή ποι ἐπὶ καταλύσει τοῦ δῆμου ἢ ἐταιρικῷ συναγάγῃ, ἢ ἐάν τις πολίν τινα προδότω ἢ μασκείς ή πεζίζης ή ναυτικῆς στρατεύων, ἢ ἰτέας ὄν μή λέγῃ τὰ δραστά τῷ δήμῳ τῶν Ἀθηναίων χρήματα λαμβάνων; Cp. Theophr. *ap.*
This measure was used—and often abused—throughout the fourth century, and prescribed a denunciation to the Assembly in cases of an attempt to overthrow the constitution, treason, and political corruption. When Eukrates' law was enacted, the *nomos eisangelitikos*, albeit very weakened, was still in force.

4. THE LAW OF EUKRATES

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

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

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

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

Third, the formula δεδόχθαι ΤΟΛC νομοθέται (line 6) shows that Eukrates' provision is a law (not a decree); as such, it had to go through the procedure of *nomothesia*.

This was a complex procedure for which we have only very fragmentary parts.

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


The sources inform us about the existence of the so-called «Review Law»
60, requiring an annual revision of the code (Dem. XXIV, 20-3); the
«Repeal Law»
61, used to make a new law to replace an existing one considered
unsatisfactory or inadequate (Dem. XXIV, 33), and the «Inspection Law»
62, regulating the repealing of a law in force in case of inconsistencies in the law code (Aes-
chin. III, 38-9). No explicit mention is made of the possibility of simply making a
new law without necessarily having an old one repealed
63; nevertheless, this pos-
sibility must have existed. We can subscribe to Hansen’s statement that the diffe-
rence between the various procedures lay only in the opening phase, and that,
once begun, the procedure was essentially the same in all forms of legislation
64.

Therefore, in light of the sources on the other procedures of nomothesia (especially
the «Review» and the «Repeal Law»), we can put forward a general hypothesis about
the procedure for adding a new law to the law code without repealing an existing
one, as seems to be occurring in Eukrates’ case. First, ho boulomenos among the
Athenians could make his proposal and convene the nomothetai —who numbered
501, or 1001, or 1501 or even more, according to the importance of the legislation
proposed
65. At «the last of the three meetings of the Ekklesia» (Dem. XXIV, 21), presumably
25-30 days later, the prytaneis and the proedroi arranged a session of the
nomothetai and probably fixed a date for their next meeting. In the meantime,
anyone could propose an alternative law and exhibit it in front of the statues of the
eponymous heroes (Dem. XXIV, 23). After no less than a month, early in the mor-
ing, the required number of nomothetai was appointed by lot from the panel of
6,000 jurors; then, eventually, they met and performed their task of voting on the
nomos (or choosing between more than one motion, in case of counter-proposals)
by show of hands (Dem. XXIV, 33).

This reconstruction explains the procedure that Eukrates’ proposal went
through. It took several weeks, probably almost two months, for Eukrates’ motion
to be enforced; hundreds, maybe thousands of people were involved. Nomothesia
was a cumbersome procedure. This explains why we have evidence for hundreds
of decrees but only seven laws
66.
If there had been a real danger of tyranny, and Eukrates had really intended to prevent the overthrow of democracy, would he have chosen to propose a law? I don't think so. He would have introduced a quick provision, an emergency measure, in a word a decree. I don't mean that, in such a time, the enforcement of an anti-dictatorship provision would not be theoretically justifiable. On the contrary, I agree with those scholars who think that if Athens was afraid of a tyranny in 336, the most obvious object of that fear was Macedon; indeed, no other hypothesis about the matter is convincing. Yet, I am not even persuaded that the main purpose of this law was to prevent a subversion of the constitution. Two years had passed since the battle of Chaironeia; Philip's political strategy toward Athens had been marked by πραότης, καλοκαγαθία and μεγαλοψυχία; in the treaty of the Corinthian League he had promoted a clause against any attempt to change the existing constitutions. Athens was not under the actual threat of a tyranny in 336, since Philip was too skilful a diplomat to really consider overthrowing the Athenian constitution; at the time, such an act would have represented Philip's political suicide in diplomatic relationships with Greece. The politeuomenoi of any side were certainly aware of it, even the anti-Macedonians, in spite of their ever-present propaganda focused on the menace of κατάλυσις τού δήμου; and the circumstances of Eukrates' death allow us to consider him -at least at the end of his life- a politeuomenos. I think we can reasonably assume that the political consciousness which lay behind Eukrates' law was that of a politician, not that of some private citizen sympathizing with Demosthenes' policy and persuaded by his propaganda. In view of all this, the chief motive behind Eukrates' provision could not have been the fear of tyranny.


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

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

71. Furthermore, the constitution was already safeguarded by the decree of Demophon (if it is true that it was still in force) and by the nomos eisangeltikos; one further measure against the subversion of democracy would have been unnecessary.
To understand the sense of the law, our attention should therefore focus on the second clause. Scholarly consensus explains the Areopagos’ involvement in the law with the fear, or the suspicion, that the Council could promote or support the establishment of a Macedonian (or a pro-Macedonian) tyrant. The only support for this assumption is given by the Areopagos’ intervention, in 338, to entrust the city to Phokion instead of the radical-democrat Charidemos, and by the summary executions that occurred after Chaironeia; very weak support indeed, compared with all the evidence of the Areopagos’ anti-Macedonian policy and ‘patriotic’ cooperation with Demosthenes’ group. Moreover, it is hard to see what interests Eukrates, as a member of the anti-Macedonian group, would have had in promoting an attack against such a powerful ally in the pursuit of his own political ends.

Also, it would have been a rather peculiar attack, considering the content of the clause: Eukrates did not narrow the Council’s actual authority or competence, he just prohibited the Areopagites from ‘going up into the Areopagos or sitting in the Council or deliberating about anything’ after the democracy in Athens had been overthrown. This was a useless prohibition, totally ineffective, powerless and, in addition, impossible to enforce; as a matter of fact, the laws enacted under the democratic régime would no more be of use after a κατάλυσις τοῦ δήμου. To put it simply, the law of Eukrates could not effectively prevent the Areopagites from supporting a tyranny, if they had wanted to.

In sum, all the interpretations advanced so far do not seem to stand up to close examination. The first clause of Eukrates’ law appears to be superfluous, the second clause useless, powerless and ineffective.

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

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

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

76. A few more interpretations are still to be mentioned: Conomis, 1958 and Alessandri, S.: ‘Il problema topografico del decreto di Eucrate’, Annali dell’Università di Lecce, 6, 1974, pp. 175-182, consider the law of Eukrates not ‘a new law, but a modification or even better an elucidation... of the clause _η αρχή τινα αρχή καταλημνήσει της δημοκρατίας_ of Demophantos’ decree (Conomis, 1958, pp. 313-330
second ineffective and inexplicable. In order to understand and explain the sense of this provision we apparently need to look in a different direction.

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

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

Let’s suppose that Eukrates’ proposal did not arise out of the will to act for a certain purpose, but rather to react against something: for example, against the increasing popularity of Demades’ group and their pro-Macedonian policy, particularly forceful when Eukrates’ law was proposed and then enacted. Let’s suppose that the anti-Macedonians were afraid that their opponents could do something more than advancing some proxeny or honorary decree, something that could seriously damage Demosthenes’ policy. The Areopagos was probably the best target for an attack at the time, being the most precious ally of the anti-Macedonians and having lately enjoyed a remarkable increase in authority. It is plausible to assume that the Areopagos’ new powers and responsibilities could have made someone suspicious and worried about the Council’s loyalty to democracy, especially after the summary executions in the aftermath of Chaironeia; the latter may have been judged offensive because they violated the spirit of the law and the constitution; they were antidemocratic.\(^77\) A provision aimed at reducing the Areopagos’ field of influence (for example the repeal of Demosthenes’ decree) would not have been out of place at the time, and would have also had a very good chance of being approved. The anti-Macedonians could not take such a risk; in order to prevent a potential, harmful attack on the Areopagos, they conceived Eukrates’ law, a provision apparently hostile to the Council but actually inoffensive.\(^78\)

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\(^{11-12}\); the need for such an elucidation would have derived from Eukrates’ fear of future changes. Oikonomides, N.: «Κριτικά και ερμηνευτικά αν τον νόμο του Ευκράτου», Polemon, 6, 1957, pp. 28-36, assumes that the law was the modification of two previous provisions (whose existence is totally hypothetical). Finally Sordi 1986 states that the law was intended to affirm la legittimità sacrale del tirannicidio».

\(^{77}\) Wallace, 1989, p. 183.

\(^{78}\) In this view the obscurity of the proponent can also find an explanation. Such a proposal could never have come from one of the popular politicians, like Demosthenes or Hypereides, without...
It is important not to lose sight of the fact that the law had to pass through the process of nomotbesia, that is to say, it had to be publicly exposed and read, before being judged by hundreds of people. In a word, its text had to be persuasive. And what issue could serve the purpose better than an anti-tyranny clause, reaffirming the highest democratic spirit and, by means of language, echoing previous anti-dictatorship legislation? Nobody in Athens would ever have opposed the enactment of a law introduced to avert the danger of tyranny; Philip’s assurances about safeguarding the existing constitutions might not have been reassuring enough for the Athenians; there could well have been people who still feared for the future of democracy. I am persuaded that the intention and the meaning of the first clause were purely propagandistic; its content itself basically guaranteed the approval of the whole provision, overshadowing at the same time the powerlessness of the second clause. Furthermore, the formal and conceptual link between the Areopagos and a potential κατάλυσις τοῦ δήμου was probably enough to satisfy and reassure those who were seriously worried about the Council’s great authority; and, what is most important, the enactment of a law (not just a decree) regulating with apparent severity the Areopagos’ conduct in case of subversion of democracy would have definitely averted the risk of a seriously damaging provision on a similar issue from the pro-Macedonian side. And if we are dealing with a provision aimed at giving only the illusion of regulating an issue while actually leaving it unaltered, then we can also explain the inner ambiguity of the law, its peculiar character as consistent with the purpose of its formulation.

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

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

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