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**DIOCLES' LAW (DEM. 24.42)
AND THE PROBLEM OF THE VALIDITY OF LAWS
IN ATHENS IN THE LATE FIFTH CENTURY BCE***

1. INTRODUCTION

THE LATE FIFTH CENTURY witnessed several major legal and constitutional transformations in Athens triggered by two oligarchic *coups d'état* and the ongoing Peloponnesian War, which eventually ended in the city's defeat in 404. In the years 410–399, the Athenians experienced what I call 'evolving law reform' (Miśkiewicz 2025).¹ By this term, I refer to a series of legal developments that reformed the legislative and normative order by flexibly responding to the shifting political, constitutional, judicial, or external circumstances of the late fifth century. This reform, among others, comprised the so-called 'scrutiny of the laws', initiated in 410,

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¹ For details on the scrutiny of the laws and *nomothesia* in the context of oligarchic coups, see below, section 2.1.

with the vital involvement of the ἀναγραφῆς τῶν νόμων commission, and, after 403, the introduction of the fundamental laws on law-making (*nomothesia*) made by newly established *nomothetai*. The so-called Diocles' Law (Dem. 24.42) formed a significant component of the reform: it was enacted by these *nomothetai* to clarify the (in)validity status of laws (*nomoi*). The broader historical and legal background of this law is the primary focus of this paper.

Diocles' Law is known from the fourth century forensic speech (*Or.* 24: κατὰ Τιμοκράτους), composed by Demosthenes for his client Diodorus.² In 353/2, Diodorus initiated a *graphe nomon me epitedeion theinai* against a certain Timocrates, accusing him of having proposed an 'inexpedient law'. The contested law of Timocrates exempted public debtors from imprisonment if they provided a guarantor and later paid the debt (Dem. 24.39). Diodorus argued that Timocrates' proposal contradicted a provision of Diocles' Law banning retroactivity of the enacted laws (Dem. 24.42–44). The accuser focused on the factual and legal background of the mid-fourth century, but also referred to several Athenian laws of great importance for reconstructing the late fifth century legislative reforms, including Diocles' Law (24.42). Recent scholarship, following Mirko Canevaro and Edward M. Harris, has regarded many similar documents incorporated into the manuscript of *Against Timocrates* (and others in *Corpus Demosthenicum*) as inauthentic.³ Dio-

² For an introduction to the speech, see the edition of HARRIS 2018. The broader political and judicial context of this case is also known from Demosthenes' *Against Androtion*; for more on *Against Timocrates*, see SERES 2021.

³ Especially the documents on the fourth century *nomothesia*. The differences in the reconstruction of law-making procedures derive from opposing views on the (in)authenticity of many laws from the manuscripts of Demosthenes. Mogens H. Hansen has argued for the authenticity of Dem. 24.20–23, but Canevaro is against (see the literature, below, in n. 39). Canevaro mainly applies the stichometric method, see CANEVARO 2013a: 10–27; see also SCAFURO 2016 (review of this work). A similar methodological debate on the (in)authenticity of documents incorporated into the manuscripts (albeit one which is non-stichometric in nature) concerns laws preserved in Andocides' *On the Mysteries*, which I further discuss in this paper; the most important of which is Teisamenus' decree: Andoc. 1.83–84, against its authenticity, see CANEVARO & HARRIS 2012 (on the non-stichometric method, *ibid.*, pp. 98–100; see also SCAFURO 2016: 73) and CANEVARO & HARRIS 2016/17; for authenticity, see HANSEN 2016b (supported by CARAWAN 2017, *contra* HARRIS 2021). It

cles' Law, however, appears genuine and was really enacted in the late fifth century.⁴

The main content of Diocles' Law concerns the validity of laws in temporal terms. In this paper, I will try to answer the question of its origins and significance at the time of its enactment.⁵ In more recent times, Mogens H. Hansen, though providing crucial observations on Dem. 24.42, highlighted the limited relevance of the scrutiny of the laws for the law consolidation and its impact on the fourth century legal realities.⁶ Canevaro has also discussed this law, but mainly from the standpoint of its authenticity.⁷ Martin Dreher, in his helpful study on repealing laws in the Greek *poleis* seen from a broader historical perspective, does not seem to regard Diocles' Law as central to the Athenian legal order.⁸ So, there is still no *communis opinio* on the understanding of the detailed clauses of Diocles' Law and its overall meaning, especially when it comes to explaining the discrepancies between the sources (especially between Dem. 24.42 and Andocides' *On the Mysteries*).⁹

is not my aim to settle these arguments, but expressing a standpoint is inevitable. I think that, ultimately, it is methodologically safer to refrain from relying on documents in Andocides' *On the Mysteries* when analysing the late fifth century 'evolving law reform'.

⁴ CANEVARO 2013a: 121 (proved by stichometry). On the precise date, see below, section 2.1.5.

⁵ For its application and significance in the fourth century context, see HARRIS 2018: 108–109, which emphasises the reasonableness of this regulation for the Athenian fiscus (the debtor, instead of being in prison, could take up gainful employment to collect the owed amount). Notably, Demosthenes naturally omits the more complicated part of Diocles' Law, which refers to times *before* and *during* the archonship of Eucleides, see CARAWAN 2002: 20.

⁶ See HANSEN 1990: 64–65 and, on the significance of the project, 70–71; he also considers Teisamenus' decree an authentic document (Hansen's paper was published before the debate over its authenticity; see above, n. 3), so new studies must be taken into account.

⁷ CANEVARO 2013: 121–127 (see also p. 125 n. 141); however, see CANEVARO 2015: 42–43.

⁸ On the relevance of Diocles' Law, he only briefly mentions it twice: DREHER 2022: 42 and 63, with n. 165; on the paraphrase of the Law in Dem. 24.43, see *ibid.*, p. 27 n. 62 and p. 69.

⁹ MACDOWELL 1962: 197; MACDOWELL 1978: 47 (*contra* CLINTON 1982: 28–30); RHODES 1991: 90; SICKINGER 1999: 101–102; OSTWALD 1986: 522–523; CARAWAN 2002: 19–23. I elaborate on the inconsistencies below.

This study reconstructs the factual and legal background to which specific clauses of Diocles' Law referred (sections 2.1–2.4). More broadly, it outlines the challenges the Athenians faced, and the measures they took to address them, arising not only from the oligarchic coups but also from growing problems in their legal, constitutional, and judicial order. The analysis of Greek legal language confirms that issues of the *validity* of laws (κυρίους εἶναι) must be distinguished from those concerning their *application* (χρησθαι). Even if the latter also played a role at that time (due to the *caesura* marked by the archonship of Eucleides), my argument is that Diocles' Law was enacted to impose order specifically on the *validity* of laws at a very particular historical moment. This Law was relevant retrospectively to the scrutiny of the laws, with the vital involvement of the *anagrapheis* from the beginning of their work in 410, and, more broadly, to future law-making. In addition (section 3), the article eventually identifies the principle of 'legal certainty', which underpinned the introduction of Diocles' Law, and formed a key part of Athenian legal culture at the end of the fifth century.

2. DIOCLES' LAW CLAUSES VIS-À-VIS LEGISLATIVE CHAOS, LEGAL UNCERTAINTY, AND 'EVOLVING LAW REFORM' IN LATE FIFTH CENTURY ATHENS

Among the *nomoi* introduced by the *nomothetai* after the Thirty, there was the law proposed by a certain Diocles, about whom we alas know nothing more.¹⁰ In Diocles' Law, we read:

Dem. 24.42 (ed. Dilts 2009): Διοκλῆς εἶπεν: τοὺς νόμους τοὺς πρὸ Εὐκλείδου τεθέντας ἐν δημοκρατίᾳ καὶ ὅσοι ἐπ' Εὐκλείδου ἐτέθησαν καὶ εἰσὶν ἀναγεγραμμένοι, κυρίους εἶναι. τοὺς δὲ μετ' Εὐκλείδην τεθέντας καὶ τὸ λοιπὸν τιθεμένους κυρίους εἶναι ἀπὸ τῆς ἡμέρας ἧς ἕκαστος ἐτέθη, πλὴν εἴ τῳ προσγέγραπται χρόνος ὅντινα δεῖ ἄρχειν. ἐπιγράψαι δὲ τοῖς μὲν νῦν κειμένοις τὸν γραμματέα τῆς βουλῆς τριάκοντα ἡμερῶν: τὸ δὲ λοιπόν, ὃς ἂν τυγχάνῃ γραμματεῦων, προσγραφέτω παραχρῆμα τὸν νόμον κύριον εἶναι ἀπὸ τῆς ἡμέρας ἧς ἐτέθη.

¹⁰ See CANEVARO 2015: 42–43.

Diocles proposed: The laws enacted before the archonship of Eucleides during the democracy, and as many as were enacted in the archonship of Eucleides, and are recorded, are to be valid. Those enacted after the archonship of Eucleides, and enacted in the future shall be valid from the day each is enacted except if a date has also been specified on which the law is to take effect. The secretary of the Council is to add this clause to the established laws within thirty days. In the future, let whoever happens to be serving as secretary forthwith add that the law is valid from the date on which it has been enacted. (transl. from Harris 2018, slightly modified)

A precise understanding of several elements of this Law remains debatable, particularly through the prism of three chronological periods marked by the archonship of Eucleides (403/2). In this section, I examine the key clauses and expressions of Diocles' Law in the light of the other sources (mainly Andocides' *On the Mysteries*). They are primarily analysed from legal and historical perspectives, and situated against the backdrop of legal uncertainty, legislative chaos, and 'evolving law reform' in late fifth century Athens. I first discuss the democratic and oligarchic initiatives through the phrase *ἐν δημοκρατία* (2.1), and then turn to the Athenian legal terminology for the *validity* of laws (*κυρίους εἶναι*) as distinct from their *application* (*χρηθῆσθαι*), stressing the complexities surrounding the role of the archonship of Eucleides (2.2). Next, I consider the meaning of *εἰσὶν ἀναγεγραμμένοι* vis-à-vis the work of the *anagrapheis* (2.3), before offering a holistic reconstruction of Diocles' Law (2.4).

2.1. *ἐν δημοκρατία*: democratic legal developments, and clean-up after the oligarchs

We begin with the expression *ἐν δημοκρατία*. Diocles' Law makes valid only those laws enacted before the archonship of Eucleides 'in the democracy'.¹¹

¹¹ The word *demokratia* is attested in the decree of Theozotides that introduces support for orphans of men killed under the oligarchy (AIO 1049; dated now, thanks to Angelos Matthaiou, likely to 410, after the *first coup*; ll. 3–6: Θεο[ζοτίδης] εἶπεν· ὅπόσοι Ἀθηναῖοι[ν] ἀ[πέθαν]ον [β]ιαίωι θανάτῳ ἐν τῇ ὀλιγ[αρχί]αι β[ο]ρ[ηθ]οῦντ ἐς τῇ δημοκρατίαι, 'Theozotides proposed: as many Athenians as died a violent death in the oligarchy while supporting

This should not be taken to imply that there was no democracy *during* or *after* the archonship of Eucleides. Instead, the phrase ἐν δημοκρατία should be understood to distinguish between democratic and oligarchic periods – namely, the regimes of 411/10 and 404/3, during which democracy was overthrown, and the legislative and constitutional landscape of Athens was profoundly disrupted (see also Sealey 1987: 102–106). The immediate response to the *first coup* was the project of legal scrutiny initiated in 410. The clause εἰςὸν ἀναγεγραμμένοι, considered together with the reference to the periods *before* and *during* the archonship of Eucleides (see below, section 2.3), suggests that validity depended on two related conditions; laws were valid if they were enacted during the period of democracy, and they were to be confirmed via the project of the scrutiny of laws. Therefore, the emphasis on ἐν δημοκρατία points to the period following the *first coup*, from 410 onwards, but excludes the time of the Thirty Tyrants (404/3), extending up to the archonship of Eucleides (403/2). The expression, therefore, refers to a particular stage in the late fifth century legal developments, rather than all the years preceding the archonship of Eucleides; it cannot encompass the years before 411, when the *first coup* began.

2.1.1. *First oligarchic coup*

In 411, while pursuing an oligarchic *politeia* (*Ath. Pol.* 29, 31), the Four Hundred repealed many democratic laws, such as *eisangelia* or *graphe paranomon* (*Ath. Pol.* 29.4).¹² This regime further evolved into the so-called Five Thousand, which Thucydides describes as the good governance of the Athenians (Thuc. 8.97.2: εὖ πολιτεύσαντες).¹³ Yet, in 410, the democracy

the democracy' [transl. by S. Lambert and R. Osborne, taken from *AIO*]; see CANEVARO 2013a: 122, with n. 129.

¹² See more in the commentary by RHODES 1985b, *ad loc.* passages from *Ath. Pol.* On the *first coup*'s brutal actions, see also Thuc. 8.70. On the Athenians' endeavours to respond to it, see SHEAR 2011: 19–166.

¹³ On the Five Thousand, see HARRIS 1990 (argues that description of the so-called 'constitution for the future' in *Ath. Pol.* 30 should be regarded as real implementation of the Five Thousand); see also GUÍA 2023.

was restored, and the Athenians established (or likely: re-established) the law against tyranny with the famous oath of Demophantus (Dem. 20.159; Lyc. 1.124).¹⁴ There is no direct attestation on the invalidation of the activities for the Four Hundred or the Five Thousand. However, the whole context confirms that this oligarchic work was annulled.¹⁵

2.1.2. *'Anagrapheis ton nomon' and 'the scrutiny of the laws'*¹⁶

The oligarchic actions catalysed the launch of the new legal project of 'the scrutiny of the laws' in 410, which aimed at strengthening democracy and the rule of law.¹⁷ The Athenians appointed, via election (not sortition; Lys. 30.28), the special board of *anagrapheis*, who must have held some expertise in the Athenian legal and archival landscape; the construction of a new central archive, the Metroon, also accompanied their activity.¹⁸ The work of the *anagrapheis* is evidenced epigraphically: primarily by Draco's homi-

¹⁴ The so-called Demophantus' decree, quoted in the Andocides (1.96–98), is regarded as inauthentic by CANEVARO & HARRIS 2012: 119–125 and HARRIS 2015 (*contra* SOMMERSTEIN 2014); see also ROMINKIEWICZ 2023 and above, n. 3. However, the decree is also mentioned in the speeches of Demosthenes and Lycurgus. We have a tradition of a few Athenian laws against tyranny (from the archaic period: *Ath. Pol.* 16.10, or from fourth century: *IG II³* 1 320; see RHODES 1985b: 220–222).

¹⁵ For example, *graphe paranomon*, which oligarchs had abolished, was used in 406 during the 'Arginusae Trial' (Xen. *Hell.* 1.7.12).

¹⁶ I abbreviate *anagrapheis* as such further in this paper. There are various terms to describe this project; I share the terminology used by the scholars (such as CARAWAN 2002; JOYCE 2022; HARRIS & CANEVARO 2023) who prefer the notion of 'the scrutiny of the laws', because of the verb *dokimazein* used by Andocides (1.82 – the passage is quoted below, in section 2.1.4).

¹⁷ On the rule of law, see HARRIS 2013a; especially in the law reform context, see JOYCE 2022: 90–125.

¹⁸ In MIŚKIEWICZ 2025 (discussing immense previous scholarship), I argue that the *anagrapheis* were not mere (trans)scribers (*pace* RHODES 1991 or ROBERTSON 1990), but had a vital role at the preliminary step of the scrutiny of the laws (their broader relevance postulated also by TODD 1996 or VOLONAKI 2001). On the significance of the Metroon in the light of the *anagrapheis*, see ROBERTSON 1990; SICKINGER 1999: 105–139; BOFFO & FARAGUNA 2021: 207–209.

cide law (*IG I³ 104*; dated 408/7), and, as argued by the majority of scholars, by other inscriptions (*IG I³ 105*; *IG I³ 236a*; *AIO 1185*; *AIO 1189*).¹⁹ Moreover, Lysias' *Against Nicomachus* (dated to c. 399) provides some details about the work of one of the *anagrapheis*. Nicomachus had to deal with laws related to the sacred calendar and sacrifices (Lys. 30.17–25). He was accused of abusing his office within the official audit (*euthynai*). I argued that the *anagrapheis* were neither mere scribes nor magistrates vested with extensive legislative authorities (Miśkiewicz 2025). The most demanding part of their task consisted of locating, identifying, and compiling all general laws (*nomoi*), even before the formal distinction between *nomoi* and *psephismata* that was introduced in 403/2.²⁰ Final authorisation and voting on laws took place at the Assembly (see *IG I³ 104*, ll. 1–9; Andoc. 1.82). However, because of the *second coup* in 405/4, the *anagrapheis*' work was interrupted until the abolition of the Thirty Tyrants in 404/3, and then continued until 400/399 (Lys. 30.2, 4).

2.1.3. *The Thirty Tyrants and the democratic response to them*

A scholion *ad* Aeschin. 1.39 to which Julia L. Shear draws attention, evidences, from 403 onwards, the Athenian approach to the laws dismantled under the Thirty (Shear 2011: 230 n. 11). It reports on the activities of the newly appointed officials – the Twenty (also mentioned in Poll. *Onom.* 8.112). They were to take the first steps toward restoring democracy and address the consequences of the *second coup*. The scholion reads:

Scholion *ad* Aesch. 1.39 (ed. Dilts 1992): ἀπολαβὼν οὖν ὁ δῆμος τὴν ἐλευθερίαν εἴλετο πολίτας εἴκοσι τοὺς ζητήσοντας καὶ ἀναγράφοντας τοὺς διεφθαρ-

¹⁹ On Draco's homicide law, see recently HARRIS & CANEVARO 2023 (also OSBORNE & RHODES, *GHI* 183A). On the sacred calendar (*AIO 1185*, *AIO 1189*, also *Greek Ritual Norms* 45A and 45B), esp. LAMBERT 2002; on *IG I³ 105* (also OSBORNE & RHODES, *GHI* 183B), see BOFFO & FARAGUNA 2021: 108–113. All epigraphic evidence is discussed in SHEAR 2011: 79–97.

²⁰ Only after 403 did the Athenians formally distinguish between *nomoi* (general, abstract laws binding all citizens) and *psephismata* (*ad hoc* decisions for particular cases). This distinction became a cornerstone of the post-403 reorganisation of the legal order. For the classic treatment, see HANSEN 1978.

μένους τῶν νόμων. καὶ ἐψηφίσαντο καινοὺς νόμους εἰσφέρειν ἀντί των ἀπολωλότων ἐπ' ἀρχοντος Εὐκλείδου, δς πρῶτος ἦρξε μετὰ τοὺς τριάκοντα, πολλὰ μέντοι καὶ δεινὰ ἐπραξαν οἱ τριάκοντα.

When the people had recovered their freedom, twenty citizens were elected to search out and write up those laws that had been destroyed, and they decreed to introduce new laws in the place of the demolished ones in the archonship of Euclides, who was the first archon after the Thirty. (transl. from Shear 2011: 230, slightly modified)

In this passage, we learn that it was a separate decision to write up laws destroyed by the Thirty; *καινοὶ νόμοι* seem to refer to renewed laws which were 'demolished' by the Tyrants (as laws on inheritance and testament: *Ath. Pol.* 35.2).²¹ The scholion says nothing about the activities of the *anagrapheis*. It informs about the remits of the so-called Twenty in this respect;²² still, one cannot exclude the *anagrapheis*' involvement in this process, as many of their previous works were likely disrupted by the Thirty.²³

Undoubtedly, the decrees that had been destroyed by the Thirty were 're-published' with additional clauses of their validity – as the epigraphic evidence demonstrates. An inscription with interrelated decrees with honours for Samians (*IG* II² 1, *IG* I³ 127 = *AIO* 796 = Osborne & Rhodes, *GHI* 191, Rhodes & Osborne, *GHI* 2) is a good example thereof.²⁴ In the *psephisma* 2a, it is reported that the Athenians decreed as follows (ll. 43–44): καὶ ἅπ[αντα κύρια ἔναι ἃ πρότερον ὁ δῆμος] ἐψηφίσατο ὁ Ἀθηναίων τῶι δήμῳ τῶι Σα[μίῳ], 'and everything shall be valid which previously the People of Athens

²¹ On *Ath. Pol.* 35.2, see RHODES 1985b, *ad loc.* On the activities of the Thirty, see also SHEAR 2011: 166–187. On destroying inscriptions in Athens, see further LOW 2020: esp. 249–258 with regard to the activities of the Thirty and the restoration of democracy in the late fifth century, see also CULASSO GASTALDI 2014: 4–7, RHODES 2019: 147–148; DREHER 2022: 37–38.

²² However, the scholion uses the verb *anagraphein*, see below, n. 38.

²³ Some scholars have interpreted the destruction of inscriptions containing the sacred calendar (see above, n. 19) – that Nicomachus was likely working on – as the annulment of activities of the Thirty; see more in RHODES 1991: 93–95 (offering a brief overview of scholarly positions on interpreting damage marks); see also CLINTON 1982: 32, 35; ROBERTSON 1991: 44–45; JOYCE 2022: 106–110; SHEAR 2011: 238–243.

²⁴ It contains three decrees: first dated to 405/4 (1a), the second (2a and 2b), and the third (3) dated to 403/2 (both texts preserve the dating of the archonship of Euclides).

voted for the People of Samos'.²⁵ This shows that the Athenians not only 'annulled' everything the Thirty had done, but also restored legitimacy to decrees the oligarchs had destroyed, thereby dispelling any legal doubts about their validity.²⁶ The Samians were also likely interested in clarifying their rights and privileges. Such re-publications also performed a symbolic and ideological function (see Shear 2011: 286–322; Low 2020).

2.1.4. *New rules on law-making (nomothesia) and the amnesty policy*

In 403, in addition to the reappointment of the *anagrapheis*, the Athenians decided to introduce key principles regarding law-making (*nomothesia*) and to adapt them to the amnesty policy. Andocides' *On the Mysteries* provides some insight into these actions.²⁷ This speech was delivered as a defence in a trial dated c. 400, in which Andocides was accused of impiety (*asebeia*), likely through the procedure of *endeixis*.²⁸ The defendant tried to convince the judges that, after the democracy was restored and the amnesty was declared, all laws (and decrees [*psophismata*]), including those established before the archonship of Euclides (403/2), were no longer valid (Andoc. 1.89). Consequently, he argued that Isotimides' decree, dated to 415, which imposed penalties on Andocides (including a ban on entering the temples, eventually leading to Andocides' exile),²⁹ was no

²⁵ Transl. by S. Lambert and P. J. Rhodes, taken from *AIO*). The amendment to this decree is also preserved in ll. 51–55 (decree 2b) and in l. 66 (decree 3).

²⁶ See THOMAS 1995: 66 that interprets *agraphoi nomoi* 'as a measure against the oligarchs' unscrupulous use of unwritten law, and the final binding declaration that the democracy was run on written law only'; on *agraphoi nomoi*, see more in section 2.3.

²⁷ On the commentary to this speech, see MACDOWELL 1962; HAGEN 2021.

²⁸ However, Rebecca Van Hove has recently argued that Andocides' trial took place under the *endeixis atimias*, see VAN HOVE 2025 (see also HANSEN 1976: 128–132). For the context of trials of *asebeia*, see FILONIK 2013: 42–43.

²⁹ Andoc. 1.71: ὁ μὲν γὰρ εἶπεν εἶργεσθαι τῶν ἱερῶν τοὺς ἀσεβήσαντας καὶ ὁμολογήσαντας, '(Isotimides) proposed that those who had committed impiety and had confessed it should be excluded from the holy places'. Throughout the article, I follow the edition of Andocides by DILTS & MURPHY 2018 and the translation of D. M. MacDowell in GAGARIN & MACDOWELL 1998, with slightly modifications.

longer valid.³⁰ Therefore, his prosecutors were precluded from charging him before a court in 400 for the profanation of the Eleusinian Mysteries and the 'Hermocopidae affair'.³¹ Eventually, the orator won his case and was acquitted.

From Andocides' account, one can infer that the scrutiny of the laws was made only in 403, and that laws prior to that year were not valid. Nevertheless, we have another vital source for the 'law reform', namely, the above-mentioned *Against Nicomachus* (dated to c. 399). Lysias' speech challenges the view that the restoration of democracy after the Thirty Tyrants entailed the annulment of the previous activities of the *anagrapheis*, which had begun in 410 and were initiated anew in 403, as Andocides suggests. On the contrary, the *anagrapheis* worked on the scrutiny of the laws until 400/399 (Lys. 30.2, 4). Indeed, Andocides presents these events in this way because of his reinterpretation of the amnesty covenant.³² After overthrowing the Thirty, the Athenians decided to grant a political and legal amnesty to prevent further *staseis*. The majority of scholars stress that the amnesty was intended to preclude accusations for actions committed by citizens before 403/2 (i.e. mainly during the activities of the Thirty),³³ thereby

³⁰ Andoc. 1.8: ἡ περὶ τοῦ ψηφίσματος τοῦ Ἰσοτιμίδου, ὡς ἄκυρόν ἐστιν, 'with the decree of Isotimides that it's invalid'; see also Andoc. 1.72: ὡς δὲ καὶ τοῦτο τὸ ψήφισμα λέλυται καὶ ἄκυρόν ἐστιν, ἐγὼ ὑμᾶς διδάξω, 'Besides, that decree has been abolished and is invalid, as I'll explain to you'; [Lys.] 6.9: εἰς τοσοῦτον δὲ τόλμης ἀφίκται, ὥστε καὶ λέγει περὶ τοῦ νόμου, ὡς καθήρηται ὁ περὶ αὐτοῦ κείμενος καὶ ἔξεστιν αὐτῷ ἤδη εἰσιέναι εἰς τὴν ἀγορὰν καὶ εἰς τὰ ἱερά, 'He has reached such a level of audacity that he even makes speeches about the law, arguing that the existing law which refers to him has been overthrown, and that it is already permissible for him to enter the agora and the sacred places [short lacuna]' (transl. from TODD 2000, slightly modified here and elsewhere). This is a rather problematic speech, since Lysias is likely not its author; see further the edition of TODD 2007: 403–408 (and *ad loc.*).

³¹ This case is meticulously discussed by JOYCE 2022: 24–25, 107–126, who describes Andocides' factual and legal manoeuvrings; see also HAGEN 2021: 174; VAN HOVE 2025

³² The sources: *Ath. Pol.* 39.6, 40.2; Xen. *Hell.* 2.4.43; Ar. *Plut.* 1146, scholia *ad loc.*; Andoc. 1.90; Aeschin. 2.176; Just. 5.10.11. On the amnesty, see LÖNING 1987 and, more recently, JOYCE 2008, JOYCE 2022, *contra* CARAWAN 2002; CARAWAN 2013. Scholars have debated how to understand the main clause of the amnesty μὴ μνησικακεῖν and its implications for subsequent trials in Athens at the turn of the fifth and fourth centuries.

³³ MACDOWELL 1962: 128–129, 200–203; CANEVARO 2013a: 124; JOYCE 2022: 99–100, 110–111, 120; see also CARAWAN 2002.

reducing legal opportunities for revenge and preventing potential civil wars. In this context, the following passages deserve particular attention:

Andoc. 1.81–82 (ed. Dilts & Murphy 2018): [81] ἐπειδὴ δ' ἐπανήλθετε ἐκ Πειραιῶς, γενόμενον ἐφ' ὑμῖν τιμωρεῖσθαι ἔγνωτε ἔαν τὰ γεγενημένα, καὶ περὶ πλείονος ἐποιήσασθε σῶζειν τὴν πόλιν ἢ τὰς ἰδίας τιμωρίας, καὶ ἔδοξε μὴ μνησικακεῖν ἀλλήλοις τῶν γεγενημένων. δόξαντα δὲ ὑμῖν ταῦτα εἴλεσθε ἄνδρας εἴκοσι: τούτους δὲ ἐπιμελεῖσθαι τῆς πόλεως, ἕως ἄλλοι³⁴ νόμοι τεθεῖεν. τέως δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς. [82] ἐπειδὴ δὲ βουλὴν τε ἀπεκληρώσατε νομοθέτας τε εἴλεσθε, ἡὔρισκον τῶν νόμων τῶν τε Σόλωνος καὶ τῶν Δράκοντος πολλοὺς ὄντας οἷς πολλοὶ τῶν πολιτῶν ἔνοχοι ἦσαν τῶν πρότερον ἕνεκα γενομένων, ἐκκλησίαν ποιήσαντες ἐβουλεύσασθε περὶ αὐτῶν, καὶ ἐψηφίσασθε, δοκιμάσαντες πάντας τοὺς νόμους, εἴτ' ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἂν δοκιμασθῶσι. καὶ μοι ἀνάγνωθι τὸ ψήφισμα.

[81] After your return to Athens from Piraeus, though it was in your power to take revenge, you decided to let bygones be bygones. You thought saving the *polis* more important than personal vengeance, and you resolved not to revive accusations against one another for what had happened. On this resolution you elected twenty men: they were to take charge of the *polis* until other laws should be enacted. Meanwhile, the *nomoi* of Solon and *thesmoi* of Draco were to be applied. [82] After you had drawn lots for a Council and elected lawmakers, they found that under many of the *nomoi* of Solon and Draco many citizens were liable to penalties for what they had done earlier. You called an Assembly, discussed about it, and decreed that all the laws should be scrutinised, and then those laws which were scrutinised should be published in the Stoa. Please read the decree for me.³⁵

The passage³⁶ gives an impression of a relatively rapid process of δοκιμάζειν πάντας τοὺς νόμους, 'scrutinising all the laws', which was to be com-

³⁴ This sentence is a bit problematic. Manuscript gives: ἕως ἂν οἱ νόμοι τεθεῖεν. Stahl's emendation to retain ἄλλοι (but, the apparatus provides also: ἂν οἱ A [ἂν del. Dobree] : αὖ οἱ Weidner : δὴ οἱ Richards) is widely accepted and gives the sense I have left in the translation (here, I have amended MacDowell's emendation following RHODES 1991: 96): 'they were to take charge of the *polis* until other laws should be enacted'; see also CARAWAN 2002: 16, with n. 64.

³⁵ What follows is the decree of Teisamenus, suspected of inauthenticity; see above, n. 3.

³⁶ Vis-à-vis passage after the quotation from the decree: Andoc. 1.85; see below, n. 100.

pleted already in c. 403; but, from Lysias, we learn that Nicomachus was active as an *anagrapheus* until 399. Andocides' information from the time of his trial (c. 400) that the scrutiny had been completed seems thus not to be true.³⁷ Andocides does not expressively mention the *anagrapheis* as a part of this project. Yet, his employment of the key verb *ἀναγράφειν*, likely refers in this context to the *anagrapheis*.³⁸ It has been stressed that while reading the passage, one should distinguish between those two very issues (as in Canevaro 2015: 39–40). One was to conduct scrutiny of the 'old' (or existing) laws of Athens, continuing after 403, the other was to introduce new laws and to create new vital principles for the constitutional order of Athens, a task assigned to the 'lawgivers' (*nomothetai*).³⁹ Both were designed to 'heal' the Athenian normative situation, thus restoring legal consistency, the rule of law, and democracy; yet, from a formal point of view, these were two separate processes.

2.1.5. *Dating of Diocles' Law*

Diocles' Law was introduced precisely by the *nomothetai* involved in the 'evolving law reform', who, indeed, were somewhat different from their fourth century counterparts.⁴⁰ The grammatical forms of the verb *τιθέναι* utilised in Dem. 24.42 suggest that Diocles' Law was likely enacted one

³⁷ But so, HANSEN 1990: 65 (see also 70); see also below, n. 98.

³⁸ Mentioning the *anagrapheis* is not within Andocides' interest, as it is for the accuser in Lysias' *Against Nicomachus*, where, in most cases, he uses the verb *anagraphein* to denote Nicomachus' activities (as Lys. 30.2, 4, 9, 20, 21, 25, 29; only twice uses *anagrapheis*: Lys. 30.2, 25).

³⁹ CANEVARO 2015: 39–43 discusses them fully. Over the last few years, a debate between Canevaro and Hansen has unfolded on the fourth century Athenian *nomothesia*: HANSEN 1985; HANSEN 2016a; HANSEN 2019 (*contra* CANEVARO 2013b); CANEVARO 2018; CANEVARO 2020; much of this debate is also related to discussion on the (in)authenticity of documents incorporated in manuscripts of Demosthenes, esp. Dem. 24.20–23 (see n. 3 above). On fourth century law-making, see KAHRSTEDT 1938; ATKINSON 1939; MACDOWELL 1975; RHODES 1985a.

⁴⁰ See CANEVARO & HARRIS 2012: 110–111. Yet, some similarities can be observed; in the fourth century *nomothesia*, there was also a proposer of the initiative to use *nomothetai* (like in IG II³ I 320, ll. 4–7); see also ATKINSON 1939: 142–150 (on the date of the introduction of *nomothetai*).

year after the archonship of Eucleides, that is, in 402/1.⁴¹ For the periods *πρὸ Εὐκλείδου* and *ἐπ' Εὐκλείδου*, the aorist forms (*τεθέντας*, *ἐτέθησαν*) indicate that the relevant actions had already been completed. For the time after the archonship of Eucleides, however, Diocles' Law states: *τοὺς δὲ μετ' Εὐκλείδην τεθέντας καὶ τὸ λοιπὸν τιθεμένους κυρίους εἶναι*. The present participle *τιθεμένους*, combined with *τὸ λοιπὸν*, marks the ongoing and future legislation. Diocles' Law thus emerged at a specific moment in the late fifth century, aiming first to bring order to the question of legal validity regarding measures previously undertaken by the *anagrapheis* (see more below, sections 2.2.2 and 2.3). Emphasis was placed on the democratic project of the scrutiny of the laws. It had begun after the *first coup* and was interrupted by the *second coup*: a fact highlighted by the complement *ἐν δημοκρατία* in the very specific context. 'In democracy' in Diocles' Law has got, on the one hand, a negative and retrospective aspect – the confirmation of the annulment of the legal and constitutional acts of the oligarchs. On the other hand, it has got a positive valour too: both retrospective and prospective. It was to establish rules on the validity of laws, both concerning the scrutiny of old laws and future legislation in general (from 403/2 onwards assigned to *nomothetai*).

2.2. The archonship of Eucleides, validity (*κυρίους εἶναι*) and application (*χρησθαι*) of laws: Greek legal language and its manoeuvrings

The archonship of Eucleides was a significant turning point for Athenian democracy.⁴² Yet, Diocles' Law deals specifically with the *validity* of laws, not their *application*, which in Greek legal language formed a separate

⁴¹ The date of Diocles' Law is not certain, but considering its content, it seems that Athenians wanted to sort out the legal doubts from the beginning of the resurrection of democracy in 403/2; see also CARAWAN 2002: 19 ('Diocles' law was probably enacted within a year before or after Andocides'), and SICKINGER 1999: 101.

⁴² This is also the *caesura* in which the official alphabet changed from Attic to Ionian, as mentioned by Theopompus (*FGrHist* 115 F155; see also Douris, *FGrHist* 76 F66); for more discussion, see D'ANGOUR 1999.

‘normative category’. The normative category of validity of laws (expressed by *κυρίους εἶναι*) refers to the situation in which legally enacted laws exist as part of the body of laws in the legal order. The application of law (expressed by *χρησθαι*) implies mainly ‘using laws’ by the magistrates during their official ongoing practice as well as during the trials.⁴³ The application of law against the archonship of Eucleides was equally important, but in a distinct and separate sense. My argument is that the legislative vocabulary of fifth–fourth century Athens (2.2.1) provides a framework for interpreting Diocles’ Law and the significance of the archonship of Eucleides for both the legal sphere of the private (2.2.2) and the public (2.2.3) – the latter elucidating some of Andocides’ manoeuvrings with the legal terminology discussed. But first, general remarks on the Greek legal language on the *validity* and *application* of laws are required.

2.2.1. *Athenian legal language:
validity and application of laws*

Athina Dimopoulou pointed out that, though Greek lacks a fully developed legal vocabulary for (in)validity, some terminological tendencies can be discerned.⁴⁴ Comparisons with other *poleis* show that, from the classical

⁴³ One of the most important theoretical accounts of the distinction between the validity of law and its application was offered by the legal positivist Hans Kelsen in his famous ‘Reine Rechtslehre’ (*Pure Theory of Law*). For Kelsen, validity (*Geltung*) consists in the derivation of a norm from a higher-level authorizing norm within the hierarchical structure of the legal order, whereas application (*Anwendung / Völlziehung*) consists in the concretization of a general norm by the competent organ in an individual case; see Kelsen 1967: 8–17 (on validity) and 193–214 (on the application of law). Such a strict perspective is, of course, anachronistic according to Athens. Still, the question is whether one can find any similar distinction between these two ‘normative situations’ in the ancient evidence.

⁴⁴ DIMOPOULOU 2014: 250, also n. 13. She focused on the broader perspective of the laws of the Greek *poleis*, based primarily on epigraphic evidence; see also DREHER 2022: 63–67 (who, at 63 n. 164, rightly highlights that ‘Vollständigkeit kann aber nicht angestrebt werden’). Recently, there have been attempts to identify characteristics that govern the ‘Greek legal language’ (see the recent PhD dissertation by SHIELDS 2024). On the evolution of the concepts of power and empowerment in classical Athens, see CAMP 2024: esp. 93–96, 112–117.

period onwards, it was typical to use formulas such as *κύριος εἶναι* ('shall be valid') or *ἄκυρος εἶναι* ('shall be invalid') to mark issues of validity.⁴⁵

As far as Athenian decision-making practice is concerned, the only fifth century epigraphic evidence for the usage of this terminology appears in heavily supplemented lines from the so-called Cleonymus Decree (dated to c. 428–425, *IG I³ 68*; see also Osborne & Rhodes, *GHI 152*). It prescribed punishment for whoever 'contrives wickedly that the decree about the tribute shall not be valid' (ll. 43–44: *ἐὰν δέ τις κακοτεχνεῖ [λόπος μὲ κύριον ἔστα] τὸ φσέφισμα τὸ τῷ φόρῳ*).⁴⁶ *De iure*, this was a *psephisma* concerning the tribute of the Delian League, but *de facto*, it formed a general law on integrating foreign policy into Athenian internal administration (especially the judicial order).

Similarly, when analysed through the prism of the hierarchy of law established during the late fifth century law reform – namely, the supremacy of *nomoi* over *psephismata* – the term *kurios* is employed, as in

⁴⁵ LSJ generally defines *ἄκυρος* and *κύριος* as opposites in the sense of 'with authority' versus 'without authority', s.v. *κύριος* and *ἄκυρος*; for legal issues (laws, sentences, etc.), translations of the latter include *invalid*, *unratified*, and *obsolete*. This formulation is primarily based on the word *κύριος*, which also has multiple meanings; its centrepiece is the holding of some power over something or someone (e.g. a legal guardian; see more in CAMPA 2024: 97–103).

⁴⁶ Transl. by S. Lambert and P. J. Rhodes (*AIO*). Moreover, we have some fifth century examples of usages of this wording for the validity of judgments given by the Athenian institution and imposed on the members of the *arche*; see *IG I³ 10*, l. 19: *ἡ καταδίκη ἄκυρος ἔστω* (OSBORNE & RHODES, *GHI 120*; decree on judicial relations Athens–Phaselis). Also in *IG I³ 34*, l. 38 (OSBORNE & RHODES, *GHI 154*; Cleinias' decree), it is mentioned only that the judgments (?) of the *Boule* regarding the violations of the rules for paying *phoros* shall be valid: *ἀντ'οῖ κυρία ἔστο*; yet, the inscription is broken down here, so the exact meaning remains unclear. Probably the judicial context of *κύριοι* can also be found in *IG I³ 21*, l. 75 (Athenian regulation made by *syngrapheis* for Miletus). ΔΙΜΟΠΟΥΛΟΥ 2014: 250 n. 15 pays attention to *Ath. Pol.* 68.3–69.1, which refers to the voting procedure by the *dikastai* in fourth century Athens; every judge had one token for acquittal and one for conviction. One was placed in a bronze amphora (*kurios amphoreus*), hence the name *kyrie psephos*, and the other in a wooden amphora (*akuros amphoreus*), hence the name *akuros psephos*; the validity of judgments of *dikastai* is also discussed in *Ath. Pol.* 45.1, 35.2. I will return to the power of the judgments for the Athenian citizens below, in section 2.2.2. I want to thank an anonymous reviewer for paying attention to *IG I³ 68* and clarifying the above passages from *Ath. Pol.* 68–69.

Dem. 23.87: ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι, 'No decree of the Council or Assembly prevails over a law'.⁴⁷ Aeschines likewise describes the annual scrutiny of the laws, carried out by the *thesmothetai*, whose task was to detect contradictions between laws, specifically by determining whether there was an invalid law among the valid ones (ἢ ἄκυρος ἐν τοῖς κυρίοις).⁴⁸ These examples indicate that the expressions *kurios/lakuros einai* constituted appropriate terminology in the legislative context for distinguishing valid from invalid norms, at least from the late fifth century onwards.

This offers a parallel to the language expressing the validity of norms, which becomes central in Diocles' Law, which consistently employs *κυρίους εἶναι* to define when *nomoi* were to be valid. After this Law was read aloud by the court secretary, the accuser in Dem. 24.43 paraphrases its content using *ποιεῖν κυρίους*, emphasising the act of making laws (in-)valid (see also Dem. 20.139).

It is challenging to discern precise legal language in archaic and early classical Athens that denotes the act of 'repealing' laws from the legal order. By the fifth–fourth centuries, however, one already finds terminology that expresses the effect of such an act.⁴⁹

Aeschines, when describing the fourth century scrutiny of the current laws by *thesmothetai*, uses the verb *ἀναιρεῖν*, which may mean 'to take up; destroy; withdraw; rescind'.⁵⁰ In the fourth century, *λύειν* is also used to

⁴⁷ Transl. from HARRIS 2018. This document is regarded as authentic by CANEVARO 2013a: 75–76. See also Hyp. *Ath.* 5.22; Dem. 23.218; Dem. 24.30; Dem. 23.87; Andoc. 1.89 (I leave aside Andoc. 1.87, which has been recognised as an inauthentic part of the decree; see above, n. 3, and below n. 101).

⁴⁸ See Aeschin. 3.38–39 (partially quoted below, n. 105). For the literature on this procedure, see above, n. 39.

⁴⁹ See especially DREHER 2022: 63–67. On the mounting problem with Athenian legal order before the late fifth century, including the introduction of *graphe paranomon*, I elaborate below (section 3), here focusing on the terminological issues.

⁵⁰ Aesch. 3.39–40 with *Ath. Pol.* 29.4 on the Four Hundred's annulment of some legal devices. See, LSJ, *s.v.* *ἀναιρεῖν*. Regarding the activity of the Thirty, the verb *καθαίρειν* is also used to describe the destruction of inscriptions, such as in *Ath. Pol.* 35.2, in which the oligarchs were supposed to 'take down', and thus plausibly to 'destroy', the laws of Ephialtes and Archestratus on the Areopagus (see above, n. 21). However, see the usage of *καθαίρειν*

describe ‘repealing’ of *nomoi* from the legal order via *nomothesia* (Dem. 3.10; 24.33). This verb is also attested in the fifth century evidence (before ‘law reform’), in which the Athenians repealed the previous decrees (*psephismata*) at the *Ekklesia*. There are two famous examples.⁵¹ In 427, the Athenians repealed the prior decree ordering *andrapodismos* of the revolted Mytilenians.⁵² In 415, during the debates over the launch of the Sicilian Expedition, the Athenians repealed the previous decree authorizing the dispatch of sixty ships and simultaneously increased the number to one hundred.⁵³ Remarkably, the Athenian texts also employ such wording to denote ‘the overthrow of democracy/people’.⁵⁴ It all shows that already in the fifth century, the Athenians had a precise vocabulary to describe the repeal of laws from the legal order, thereby determining their (in-)validity status.

Contrariwise, a very different ‘normative category’ is built within the sphere of the laws’ application by officials in their daily formal duties, as well as their use by regular citizens. Such situations are reflected by the occurrence of *χράσθαι* in the middle voice form (often as an infinitive *χρησθαι*), which most generally denotes ‘make use of for oneself’. This term can refer to the use of laws in some *poleis*, that is to a situation in which citizens are subject to laws and live within a particular legal frame-

in *Ath. Pol.* 47.5 to mean regular tasks of the officials (see also *AIO* 819, RHODES & OSBORNE, *GHI* 25, ll. 55–56; law on *dokimastai* of silver coinage, dated 375/4). However, Martin Dreher has recently reinforced the view that the mere destruction of the ‘carrier’ of the law did not render it ‘invalid’, thereby implying its elimination from the legal order altogether (DREHER 2022: 67–71).

⁵¹ See also *IG* I³ 46 (= OSBORNE & RHODES, *GHI* 142), ll. 24–27 and *IG* I³ 10, l. 15.

⁵² See Thuc. 3.36–50 with HARRIS 2013b: 98.

⁵³ See Thuc. 6.6–6.32 and *IG* I³ 93 = OSBORNE & RHODES, *GHI* 171, fr. *d* and *g*, ll. 7–8: *λῦσαι δὲ [-7-]αι τὸ φσέφι[σ]μα*; vis-à-vis Thuc. 6.8.2 and Thuc. 6.25. For the legal aspect, see HARRIS 2014. He also convincingly argues that Nicias’ proposal to revote (*ἀναψηφίζειν*), and thus *de facto* repeal, the previous decision to engage in this campaign was illegal, since it did not proceed as a *probouleuma* in the *Boule*; for this reason, there was a kind of fear that the decision of the *prytanis* to revote the decree would ‘abolish the laws’ (Thuc. 6.14: *λύειν τοὺς νόμους*).

⁵⁴ Thuc. 6.27.3; Andoc. 1.36; Lys. 13.20; the title of Lys. 25: *δήμου καταλύσεως ἀπολογία*; *ἐν τῇ πόλει τῆς δημοκρατίας καταλυθείσης* in Andoc. 1.95.

work.⁵⁵ When Herodotus introduces Solon and the reasons for his departure (*apodemia*) from Athens, he writes that 'he did so as not to be compelled to repeal any of the laws he had made, since the Athenians themselves could not do that, for they were bound by solemn oaths to abide for ten years by whatever laws Solon should make'.⁵⁶

The problem with the Greek legal language is that the sources do not necessarily focus on legal matters. An inconsistency in terminology arises particularly in Ps.-Aristotle's *Athēnaion Politeia*, which often relies on the vocabulary of its own evidence, as Peter J. Rhodes rightly observes in his edition.⁵⁷

Giving examples of laws in which the pre-Cleisthenic *naukrariai* are mentioned (*Ath. Pol.* 8.3), the author notes that these appeared 'in the laws of Solon which they no longer use' (ἐν τοῖς νόμοις τοῖς Σόλωνος οἷς οὐκέτι χρῶνται). In essence, these would be laws already 'null and void', no

⁵⁵ See Hdt. 1.173.4, 1.216.1, or, more abstractly, Isoc. 12.124; see also Dem. 24.139–142; *IG* II² 1, l. 15: τοῖς δὲ νόμοις χρῆσθαι (more on this inscription, see above, n. 24–25).

⁵⁶ Hdt. 1.29.1–2: ἵνα δὲ μή τινα τῶν νόμων ἀναγκασθῇ, λύσαι τῶν ἔθετο. αὐτοὶ γὰρ οὐκ οἶοί τε ἦσαν αὐτὸ ποιῆσαι Ἀθηναῖοι: ὀρκίοισι γὰρ μεγάλοισι κατεῖχοντο δέκα ἔτεα χρήσθαι νόμοις τοὺς ἄν σφι Σόλων θῆται; transl. from GODLEY 1920. Other sources attest *horkos* to last for 100 years, which is perhaps intended to stress the unchangeability of his laws; see *Ath. Pol.* 7.2; Plut. *Sol.* 25.1. The evidence is, however, inconsistent about the circumstances of the oath. *Horkos* seems more likely to have been promised before the announcement of the laws by Solon, as Herodotus notes. Still, the oath was probably bound for 100 years, not 10, as the historian thought – the discrepancies likely derive from mixing the information that Solon was supposed to spend 10 years outside Athens after his reforms (CANEVARO 2015: 13). Solon abandoned the *polis* because citizens started to ask him to explain the laws, but he did not want to change them (see *Ath. Pol.* 11.1: βουλόμενος μήτε ταῦτα κινεῖν; see also the νόμοι ἀκίνητοι in Thuc. 3.37.3 that Cleon argued for during the Mytilenean Debate). On the oath, see also ROSIVACH 2010 and more recently PODDIGHE 2023. Some later sources also attest that Solon pronounced a curse (ἀρά) on anyone who would abolish his laws (Dio Chrys. *Or.* 80.6; also Gell. *NA* 2.12.1). All of the above evidence fits the ancient Greek approach that generally mistrusted legal innovation (see also *Ar. Thesm.* 352–371). On such 'ideology of legislation' in Athens and beyond, see CANEVARO 2015: 1–33, and on the Athenian approach to legal change, see also BOEGEHOLD 1996; SCHWARTZBERG 2004; WALLACE 2012; RUBINSTEIN 2023; DREHER 2022: 12–14.

⁵⁷ See RHODES 2017: 21–28. All translations of *Ath. Pol.* are taken from the edition of RHODES 2017.

longer constituting a part of the legal order, or, in other words, being *akuroi nomoi*. Similarly, we learn that, due to the introduction of Solon's laws, the Athenians 'ceased using Draco' *thesmoi*, except those on homicide.⁵⁸ There are also inconsistencies in the passages on Pisistratus. On the one hand, the *Athenaion Politeia* follows the tradition that the tyrant observed the laws (*Ath. Pol.* 16.8; see also Hdt. 1.59.6; Plut. *Sol.* 31.1). On the other hand, when describing the reforms of Cleisthenes, it states that 'for it happened that the tyranny had consigned Solon's laws to oblivion by not using them' (*Ath. Pol.* 22.1: καὶ γὰρ συνέβη τοὺς μὲν Σόλωνος νόμους ἀφανίσαι τὴν τυραννίδα διὰ τὸ μὴ χρῆσθαι).⁵⁹ Thucydides emphasises that, in Athens under Pisistratus, laws were applied (ἡ πόλις τοῖς πρὶν κειμένοις νόμοις ἐχρήτο), but the tyrant controlled the offices.⁶⁰ Therefore, the laws remained formally valid because no one repealed them. Still, some lost their true significance due to their lack of application (by both officials and citizens). At that time, no *polis* authorities recognised the need to for-

⁵⁸ *Ath. Pol.* 7.1: πολιτείαν δὲ κατέστησε καὶ νόμους ἔθηκεν ἄλλους, τοῖς δὲ Δράκοντος θεσμοῖς ἐπαύσαντο χρώμενοι πλὴν τῶν φονικῶν, 'He established a constitution and enacted other laws, and they ceased using the statutes of Draco except those on homicide'; see also Plut. *Sol.* 17.1: Πρῶτον μὲν οὖν τοὺς Δράκοντος νόμους ἀνέιλε πλὴν τῶν φονικῶν ἀπαντας (the verb ἀναιρεῖν used by Plutarch seems to be more formal, see above, n. 50). See DREHER 2022: 16–17 (with n. 31) and 64, although in n. 175 he suggests that the verb *chresthai* with a negation, as used by Andocides in the passages discussed below, carries the sense of: 'Gesetze nicht (mehr) anerkennen', das heißt "aufheben". I have a different approach (see below, section 2.2.3).

⁵⁹ The verb ἀφανίζειν used here is peculiar; the *Athenaion Politeia* explains why these laws 'became invisible' and the verb carries a metaphorical meaning. However, one can also contextualise this passage within the background of the so-called *entrenchment clauses* that appear in the inscriptions and play the role of protecting the law and its 'carrier' from destruction; see, for example, *I. Iasos* II 220, ll. 7–8, or the 'Teian *Diraē*': OSBORNE & RHODES, *GHI* 102, ll. 35–41. On this point, see DREHER 2022: 66. On the 'entrenchment clauses' in the Athenian epigraphical data, see further LEWIS 1997.

⁶⁰ Thuc. 6.54.6. On the passages from the *Ath. Pol.* and traces of this tradition, see RHODES 1985b: 218–219 and 261. Pisistratus, despite exercising 'hard power' through the use of some military forces (*Ath. Pol.* 14, Hdt. 1.59.5, Plut. *Sol.* 30.3–5), also likely displayed 'soft power' via the 'patronage system' (I want to thank Marek Węcowski for suggesting such an interpretation). From this perspective, there was no need for the tyrant to formally change the Solonian laws.

mally derogate the laws that were no longer 'in use', a phenomenon that legal theory would describe as *desuetudo*.⁶¹

In the second part of the *Athenaion Politeia* on the institutional aspects of mid-fourth century Athens, *chrēthai* seems to acquire a narrower meaning. It refers to the application of laws by officials in specific formal actions (such as during trials).⁶² This function is clearly illustrated in *Ath. Pol.* 53.3, which describes the trial phase after public arbitration with the work of *diatetai*, once a case has been forwarded to the relevant *dikasterion*.⁶³ Concerning *nomoi*, this does not imply that they were not valid, but rather that, at this particular procedural stage, they were not enforceable.⁶⁴ More generally, such contexts reflect the application of laws by officials in the performance of their formal duties. Similarly, the judges were obliged to apply the laws during trials (e.g. *Dem.* 21.34).

When in 415 the Athenians started the investigation of the 'Hermocopidae affair' and the 'Profanation of the Mysteries', they gave to the *Boule* special powers (*Andoc.* 1.15: *ἦν γὰρ αὐτοκράτωρ*), which probably allowed

⁶¹ In legal thought, one can find the 'institution' of *desuetudo*, which refers to the non-formal derogation of a norm from the legal order (because of its non-usage for a long time: a kind of 'dormant law'). This is also attested in Roman law through the opinion of Salvius Julianus in *D.* 1.3.32.1 (however, this is a delicate passage since scholars debate whether it is original or an interpolation); for more, see THOMAS 1965: 469–483. Other Roman law contexts (e.g. *lex imperfecta*) are also discussed in DIMOPOULOU 2014: 250, 271. For a broader (modern) legal approach, see also DREHER 2022: 52–53.

⁶² On the contrary, *κύριος εἶναι* appears to denote also a competence of the officials to have authority over something, e.g. *Ath. Pol.* 45.1, 54.3 (see also the *Boule*'s competences in *Andoc.* 1.93, quoted below, section 2.2.3).

⁶³ From then on: *οὐκ ἔξεστι δ' οὔτε νόμοις οὔτε προκλήσεσι οὔτε μαρτυρίαις ἄλλ' ἢ ταῖς παρὰ τοῦ διαιτητοῦ χρῆσθαι ταῖς εἰς τοὺς ἐχίνους ἐμβεβλημέναις*, 'it is not permitted to use laws, challenges or testimonies except those inserted in the jars from the *diatetes*'.

⁶⁴ Elsewhere, Ps.-Aristotle (*Ath. Pol.* 45.2) reports that 'it is also permitted to private individuals to make an *eisangelia* against any of the officials whom they wish on a charge of not applying the laws (*ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἦν ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις*): and there is an appeal to the lawcourt for these also if the council convicts'. Perhaps this 'charge' was related to situations in which the use of specific laws was omitted; see FILIAS 2021: 144, who calls it descriptively: *eisangelia me chresthai tois nomois*; see also RHODES 1985b: 540–541.

Peisander, during the session of the *Boule*, to propose to ‘abolish applying the decree of Scamandrius’ that was supposed to ban torturing citizens by the *polis*’ authorities (Andoc. 1.43).⁶⁵ As discussed above, *λύειν* usually refers to ‘repealing’ laws, but in this context, it describes only temporarily suspending this law’s application in a very precise and extraordinary situation.

To sum up: certain tendencies can indeed be identified in the evidence, though one should refrain from treating them with rigid dogmatism. The Athenians appear to distinguish between the *application* of law in specific situations (where the terminology of *χρηθαι* tends to predominate) and the general *validity* of laws (in which the terminology of *κύριος εἶναι* prevails). Inevitably, some inconsistencies arise from the nature of our sources, which are not fully coherent in their terminology – whether because certain works (such as the *Athenaion Politeia*) follow their own conventions, or because forensic speakers may shape particular themes to suit their arguments, as is undoubtedly the case with Andocides (see below, section 2.2.3).⁶⁶

Some of the above-discussed sources show that the *application* of law (*χρηθαι*) can refer to specific judicial contexts, such as when officials brought cases to court, or litigants lodged complaints. The complexity of the legal language discussed so far is especially evident in the late fifth century, amid legislative and judicial chaos. This is also the case with the Athenian key term, *prothesmia*, which renders the ‘statutory limitations’ on a potential litigant’s liability. For example, citizens had one year to use the *graphe paranomon* against an author of the alleged illegal decree⁶⁷. Sim-

⁶⁵ Andoc. 1.43: ἀναστὰς δὲ Πείσανδρος ἔφη χρῆναι λύειν τὸ ἐπὶ Σκαμανδρίου ψήφισμα καὶ ἀναβιβάζειν ἐπὶ τὸν τροχὸν τοὺς ἀπογραφέντας, ὅπως μὴ πρότερον νύξῃ ᾖ πρὶν πυθέσθαι τοὺς ἄνδρας ἅπαντας, ‘Then Peisander stood up and said the decree of the year of Scamandrius should be repealed and those listed should be put on to the wheel, to make sure that all the men were discovered before nightfall’. This passage in the context of *adeia*, see further ESU 2021: 170–171; on the possible dating of this regulation, see MACDOWELL 1962: 92–93 (who dates it to the time of Pisistratus, or between 510–480).

⁶⁶ Generally, on the gaps in Athenian law or partial quotations, see SICKINGER 2008; RUBINSTEIN 2008; RUBINSTEIN 2018 (see also other contributions therein on ‘using’ or ‘abusing’ of laws).

⁶⁷ On the *graphe paranomon* and *prothesmia*, see GIANNADAKI 2015 (arguing against Carawan’s scepticism concerning the one-year limits here; she also provides more con-

ilar limits for liability – so indeed the sphere of application of law – were also introduced for the archonship of Eucleides. This is evident in Aeschinus' speech (likely dated 346/5) against Timarchus. The accuser makes the allegation, within *dokimasia ton rhetoron*, that Timarchus prostituted himself as a young man. In the passage, which has been somewhat overlooked by scholars, he says:

Aeschin. 1.39 (ed. Dilts 1997): σκέψασθε δέ, ὦ ἄνδρες Ἀθηναῖοι, ὡς μετρίως μέλλω προσφέρεισθαι Τιμάρχῳ τουτωί. ἐγὼ γάρ, ὅσα μὲν παῖς ὢν εἰς τὸ σῶμα τὸ ἑαυτοῦ ἡμάρτηκεν, ἀφίημι, καὶ ἔστω ταῦτα ὥσπερ τὰ ἐπὶ τῶν τριάκοντα ἢ τὰ πρὸ Εὐκλείδου, ἢ εἴ τις ἄλλη πώποτε τοιαύτη ἐγένετο *προθεσμία*.

Observe now, men of Athens, how reasonably I am going to deal with Timarchos. All the offences which he committed when a boy against his own body, I shall pass over; let those acts be invalid, like the acts committed in the time of the Thirty or before the archon year of Eukleides, or acts before any other similar date imposing a **statute of limitations**. (transl. from Fisher 2001)

It refers directly to the institution of *prothesmia* ('statute of limitations'), which was also employed and adapted to the late fifth century legal chaos and law reform. After 403/2, the archonship of Eucleides became significant not only for determining the *validity* of laws, as Diocles' Law shows, but also for regulating their *application* – the two dimensions that must be clearly distinguished. It is therefore helpful to examine how these aspects intersect when viewed through concrete examples: first, in the more private sphere (as in the case of the citizenship law and its implications for inheritance and property law, see section 2.2.2), and second, in the public domain (as proved by Andocides' manoeuvrings with legal language, see section 2.2.3).

texts of *prothesmia* within the Athenian legal order; see esp. pp. 27–28). The sources on *prothesmia* in Athenian law are Dem. 36.25, *IG* I³ 41, l. 81; Dem. 38.17; Ps.-Dem. 43.16; e.g. Athenian law recognised five years for bringing prosecutions regarding cases of wrongdoing to wards; see FISHER 2001: 168. The verb ἀφίημι also appears in legal contexts to mean 'remit a charge' or 'drop a lawsuit'; LSJ, s.v. ἀφίημι). On the *graphe paranomon*, see below, section 3.

2.2.2. *The archonship of Eucleides*
and 'legal chaos' within the private sphere of law

The *caesura* of the archonship of Eucleides was significant in two respects. First, it regularised matters related to the project of the scrutiny of the laws, which had begun in 410 and was interrupted by the Thirty in 404, by emphasising the *validity* of laws. Second, it introduced temporary and exceptional provisions concerning the *application* of laws – primarily to ensure that the amnesty covenant would be observed in the courts, but also to allow the ongoing scrutiny of existing laws and the enactment of new ones through *nomothesia*. The archonship of Eucleides thus crystallised several legal and constitutional issues arising from the turbulent conditions of late fifth century Athens, including the judicial order disrupted by the Thirty.⁶⁸ Andocides refers to this as follows:

Andoc. 1.88 (ed. Dilts & Murphy 2018): τὰς μὲν δίκας, ὧ ἄνδρες, καὶ τὰς διαίτας ἐποιήσατε **κυρίας εἶναι**, ὅποσαι ἐν δημοκρατουμένῃ τῇ πόλει ἐγένοντο, ὅπως μήτε χρεῶν ἀποκοπαὶ εἶεν μήτε δίκαι ἀνάδικοι γίγνοιτο, ἀλλὰ τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν: τῶν δὲ δημοσίων ἐφ' ὅποσιν ἢ γραφαὶ εἰσιν ἢ φάσεις ἢ ἐνδείξεις ἢ ἀπαγωγαί, τούτων ἕνεκα τοῖς νόμοις ἐψηφίσασθε **χρησθαι** ἀπ' Εὐκλείδου ἄρχοντος.

So, gentlemen, you **made** all judgments and arbitrations **valid** which were given while the city was democratically governed, so that debts might not be cancelled nor cases retried, but private agreements might be carried out. For state issues dealt with by public prosecution or denunciation or indictment or arrest, you decreed that the laws **should be applied** from the archonship of Eucleides.

Remarkably, Andocides recalls here not laws but judgments (made by tribunals and arbitrators) which, when issued under the democracy (i.e. in the period between the overthrow of the Five Thousand and the Thirty's power seizure), would 'be valid' (*κυρίας εἶναι*).⁶⁹ Why does he refer to

⁶⁸ The complicity of the judicial situation in the late fifth century has also been discussed by WHITEHEAD 2002.

⁶⁹ Two laws are also quoted as documents in Dem. 24.56: τὰς δίκας καὶ τὰς διαίτας, ὅσαι ἐγένοντο ἐπὶ τοῖς νόμοις ἐν δημοκρατουμένῃ τῇ πόλει, *κυρίας εἶναι*, 'All verdicts and deci-

judgments, not laws, under the democracy? It may be that some of these laws – based on which these judgments had previously been enforced – had already passed the scrutiny of the laws, while others had not. In the restored democracy, the Athenians wanted to specify that such judgments would also be valid,⁷⁰ even though *now* (after 403/2), in the course of ongoing scrutiny of the laws, there might be some changes in the respective laws (or the *nomothetai* established some new laws which contradicted those that were previously in force). The Athenians sanctioned the previous state of affairs to promote ‘legal certainty’ for private businesses. The legal chaos and uncertainty could result from the ongoing project of legal scrutiny, which was not completed due to the Thirty and was generally expected to be finished more quickly than it actually was (Lys. 30.2, 4).

Lysias, while evoking the situation of Nicomachus as the *anagrapheus* in his first remit until c. 404, states as follows:

Lys. 30.3 (ed. Carey 2007): εἰς τοῦτο δὲ κατέστημεν ὥστε ἐκ τῆς τούτου χειρὸς ἐταμιευόμεθα τοὺς νόμους καὶ οἱ ἀντίδικοι ἐπὶ τοῖς δικαστηρίοις ἐναντίους παρείχοντο, ἀμφοτέροι παρὰ Νικομάχου φάσκοντες εἰληφέναι. ἐπιβαλλόντων δὲ τῶν ἀρχόντων ἐπιβολὰς καὶ εἰσαγόντων εἰς τὸ δικαστήριον οὐκ ᾔθελῃσε παραδοῦναι τοὺς νόμους.

We were reduced to such straits that we had laws rationed out to us from his hands, and litigants brought forward **contradictory laws** for the law-courts, both sides claiming that they had received them from Nicomachus. When officials were imposing penalties and introducing cases into court, he was still reluctant to hand over the laws. (transl. from Todd 2000, slightly modified)

This passage shows that many issues remained unresolved during the scrutiny of the laws. One of the problems was the persistence of contradictory laws (*enantioi nomoi*) in the legal order. Such circumstances were not the fault of Nicomachus' work, as the accuser tried to persuade the judges.

sions of arbitrators that were made according to the laws during the democracy are to be binding', and ὅποσα δ' ἐπὶ τῶν τριάκοντα ἐπράχθη ἢ δίκη ἐδικάσθη, ἢ ἰδίᾳ ἢ δημοσίᾳ, ἄκυρα εἶναι, 'All measures voted during the Thirty, or legal judgments rendered, either public or private, are invalid'. On these documents, see JOYCE 2022: 118–119; regarding their (rather) inauthenticity, see CANEVARO 2013a: 142–145.

⁷⁰ See, similarly, RHODES 1991: 97 (point 'd' in his list of the 'principles' at p. 96).

They rather illustrate the ‘legislative chaos’ in Athens at that time. This chaos evolved not only because of the oligarchs (see above, sections 2.1.1, 2.1.3) but also because of a lack of clear *rules of change* in the fifth century.⁷¹

2.2.2.1. *Nothoi* – a case study

As an example of this legislative chaos, one may consider the debates over citizenship laws. In 451/50, Pericles introduced a law limiting citizenship to children of both Athenian parents (*Ath. Pol.* 26.3).⁷² For debatable reasons (most scholars point to the heavy losses of young men during the Peloponnesian War), and probably before the last decade of the fifth century,⁷³ the Athenians ceased to apply this law and considered citizens only those sired by a citizen father. In effect, Pericles’ law became informally (or perhaps even formally) ‘suspended’.⁷⁴ This development, in turn, affected the property and inheritance rights of such children (see also Isae. 6.47, 8.43); *ἰδία συμβόλαια* in Andoc. 1.88 may have referred also to this private sphere of law. Notably, the problem of defining and restricting citizenship (and thus shaping the Athenian constitution) had already been part of the debate during the *first coup* (Thuc. 8.65.3; *Ath. Pol.* 29.5).

⁷¹ It is worth stressing the value of CANEVARO 2015 and DREHER 2022, discussing broader contexts of the building Athenian legislative order before law reform (see also below, section 3), as well as in the fourth century; for Lys. 30.3, see briefly CANEVARO 2015: 22–23; I also discuss this passage in MIŚKIEWICZ 2025: section 4.6.

⁷² The literature on Pericles’ law of citizenship is immense; see, e.g., WALTERS 1983; OGDEN 1996; PATTERSON 2005; CARAWAN 2008; BLOK 2009 (the sources are helpfully gathered at pp. 142–143) and BLOK 2017; IRWIN 2016. I omit discussion of what it meant to be a bastard (*nothos*), and in particular if it was also linked to lawful marriage (‘engytic’) in Athens; on this topic, see especially JOYCE 2019.

⁷³ We can presume that it was the end of the previous decade because, based on Ar. *Av.* 1649–1670 (produced in 414) and Eur. *Ion.* 668–675 (dated 415–413), this law seems to still be in force.

⁷⁴ Scholars inevitably have differing views on the *oblivion* of applying Pericles’ law; WALTERS 1983: 327 doubts that there was an official annulment (‘laxly enforced at the end of the Peloponnesian War’); such a possibility is considered in OGDEN 1996: 77 and WALLACE 2012: 117; see also PATTERSON 2005: 283–285.

We are not entirely sure whether the *anagrapheis* worked on the citizenship law(s) during the scrutiny of the laws already in the first stage of their remit (until 404), after restoration of democracy in 410. There are no sources to support or deny this proposal. Yet, it seems that citizenship law would count as an example of such *enantioi nomoi* in the Athenian late fifth century legal order: the rules based on Pericles' law and the other rules (formal or informal) that emerged later due to the *oblivion* of the former. Ultimately, courts and officials still had to proceed (Lys. 30.3), despite the coexistence of contradictory norms. After the Thirty, the Athenians accepted the validity of such judgments in the private sphere (Andoc. 1.88), even though different – and sometimes opposing – laws from *before* and *during* the archonship of Eucleides had governed these matters. Accordingly, after the oligarchic regime, the Athenians sought not only to restore the laws that had been demolished but also to bridge the gaps left by the interrupted scrutiny of the laws by introducing specific 'temporary rules' to clarify the status of such *enantioi nomoi*.

The setting of these contradictory laws should be understood against the backdrop of the distinction between 'validity' and 'application' of Pericles' law, which was *re-enacted* during the archonship of Eucleides. Later evidence illustrates this particularly well in cases concerning bastard offspring (*nothoi*).⁷⁵ According to Athenaeus, Aristophon proposed the law on *nothoi* under the archonship of Eucleides.⁷⁶ By contrast, the scholion to Aesch. 1.39 attributes the authorship of the same law to Nicomenus and notes that it did not affect the status of those born before the archonship of Eucleides.⁷⁷ This may reflect the continuation of the legal

⁷⁵ The sources on *nothoi* are discussed and translated (see below, n. 76 and 77) in BLOK 2017: 48–49.

⁷⁶ Karystios F 11 Müller *apud* Ath. 13.577b: Ἀριστοφῶν δ' ὁ ῥήτωρ, ὁ τὸν νόμον εἰσενεγκὼν ἐπ' Εὐκλείδου ἄρχοντος ὃς ἂν μὴ ἐξ ἀστῆς γένηται νόθον εἶναι, 'The orator Aristophon, the same who proposed in the archonship of Eukleides that he, who was not born from an *aste*, was a *nothos*'.

⁷⁷ Eumelos *FGrHist* 77 F2 *apud* schol. ad Aesch. 1.39: Εὐμηλος ὁ Περιπατητικὸς ἐν τῷ τρίτῳ περὶ τῆς ἀρχαίας κωμωδίας φησὶ Νικομένην τινὰ ψήφισμα θέσθαι μηδένα τῶν μετ' Εὐκλείδην ἄρχοντα μετέχειν τῆς πόλεως, ἂν μὴ ἄμφω τοὺς γονεάς ἀστοὺς ἐπιδείξῃται, τοὺς δὲ πρὸ Εὐκλείδου ἀνεξετάστως ἀφεῖσθαι, 'Eumelos the Peripatetic says in the third book

scrutiny in the second remit of the *anagrapheis* after the Thirty. We know that the original ‘author’ of the citizenship law was Pericles, but this law must have undergone scrutiny; a later tradition may therefore have preserved the names of figures such as Aristophon or Nicomenus as the proposers of a decree ordering the scrutiny of that law.

A similar case of multiple ‘authors’ of laws can be observed in the case of the scrutiny (via the work of the *anagrapheis*) of Draco’s homicide law, in which there was a precise proposer of the *probouleuma* (IG I³ 104, l. 4; alas, the name is illegible). In fact, the tradition ascribing the law to Draco is far stronger than the evidence linking the citizenship law exclusively to Pericles.⁷⁸ It is plausible that the appearance of different names in the tradition reflects discussions and amendments made during the scrutiny at the Assembly, whereby the law was adapted to new legal realities.⁷⁹

on Old Comedy that Nikomenes passed a decree that as of the archonship of Eukleides no one was to participate in the *polis*, who could not prove that both parents were *astoi*, but that those before Eukleides were to be let off without problems’. The exact meaning of this is debatable, see PATTERSON 2005: 285 with n. 30 (who follows Humphreys): ‘*Those after and those before the archonship of Eukleides* are generally thought to be those born after or before this date, but perhaps the demos intended that those introduced to the deme before 403 should remain unexamined, but all new citizens would be so scrutinized’.

⁷⁸ See, similarly, WALTERS 1983: 326. Anna Stevenson, in her PhD thesis (STEVENSON 2020: 182), draws attention to Dem. 57, in which Euxitheus c. 345 argued against his exclusion from the *deme* (this source is also relevant for debates on citizenship laws: Dem. 57). He asks the secretary to read out Solon’s law (Dem. 57.31) prohibiting foreigners from trading in the Agora; he asks the court clerk (Dem. 57.32): λαβέ δὴ καὶ τὸν Ἀριστοφώντος: οὕτω γάρ, ὦ ἄνδρες Ἀθηναῖοι, τοῦτον ἔδοξεν ἐκείνος καλῶς καὶ δημοτικῶς νομοθετῆσαι, ὥστ’ ἐψηφίσασθε πάλιν ἀνανεώσασθαι, ‘Take also the law of Aristophon. You see, men of Athens, you thought Solon enacted such a just and democratic law that you voted to restore it’ (transl. from BERS 2003). The use of ἀνανεόομαι in this passage is curious, as it typically means to renew an oath, alliance, or proxy; see LSJ, s.v. ἀνανεόομαι. Perhaps Demosthenes is referring precisely to legal scrutiny (as also suggested by HANSEN 1979: 36 and STEVENSON 2020: 182, with n. 92). This would mean that certain laws attributed to Solon or another *nomothetes* (such as Pericles, in Lys. 30.28 rhetorically referring to him in this capacity) had a specific proposer formally in the scrutiny of the laws.

⁷⁹ I argue that, even if the inscription with Draco’s law (IG I³ 104) might contain original archaic homicide law without amendment, one cannot exclude the possibility of introducing changes to the scrutinised laws in general (as e.g. likely laws on the *Boule* with the bouleutic oath); see MIŚKIEWICZ 2025: sect. 4.7; also below, n. III, 115.

Therefore, hypothetically, in the 'second stage' of the scrutiny of the laws (from 403 onwards), the Athenians decided that Pericles' citizenship law should once again be valid.⁸⁰ At the same time, however, they had to clarify the legal status of children born before its re-enactment, who, under the renewed version of this law, would technically be classified as *nothoi*. To avoid uncertainty regarding their legal standing, the citizenship of those born before 403/2 was formally recognised. In this respect, earlier democratic judgments (as indicated by Andoc. 1.88) from the first stage of the scrutiny (until 404), when the issue had not yet been resolved, were likewise upheld regarding property and inheritance rights. Ultimately, the citizenship law was approved during the scrutiny and accepted in the form of Pericles' version, thereby becoming in force once more; however, its applicability was restricted from the archonship of Euclides onward to prevent retroactive enforcement.⁸¹ The sources reporting the re-establishment of Pericles' law do not employ the verb *χρησθαι*, although admittedly they do not address the issue from a strictly legal standpoint. One must also recall that citizenship was a crucial matter after the Thirty. The Athenians debated whether the citizen body should be enlarged by granting citizenship to non-citizens who had helped overthrow the oligarchs (*Ath. Pol.* 40.2; Aeschin. 3.195). Importantly, changes to the citizenship law had formal implications for other areas of law and required corresponding adjustments.⁸²

To sum up, the example of the citizenship law illustrates the complexity of the legal status of *nomoi* in the late fifth century. A law could be valid or invalid (*kurios / akuros einai*), meaning that it formally belonged – or did

⁸⁰ This might link the 're-establishment' of Pericles' law with the legal scrutiny and the amnesty policy, as suggested also by WALTERS 1983: 326–327 (and shortly mentioned by CARAWAN 2002: 17 n. 65). I am attempting to provide additional arguments for such an interpretation.

⁸¹ See RHODES 1985b: 332–334; but see also CARAWAN 2008: 394.

⁸² Interestingly, one of the fragments of Lysias' speech (Lysias fr. 64.128–150 [ed. CAREY]) comes from an oration accusing Theozotides (a known politician, the proposer of the decree mentioned above: see n. 11) of introducing an illegal decree (*graphe paranomon*) which limited support for orphans to those who were legitimate sons, to the exclusion of bastard sons and adopted sons (see comments in *AIO* 1049). Moreover, in 403, land ownership became a vital criterion for citizenship (see Lys. 34).

not belong – to the renewed body of *nomoi*, yet specific circumstances could require restrictions on its application (*chresthai*) or on liability (*prothesmia*). These mechanisms could, *de iure*, prevent a law's enforcement even when it generally remained valid. Moreover, this example demonstrates that the legal uncertainty of the period affected not only public procedures (where a *graphe xenias* could be used to challenge a person's status) but, perhaps even more significantly, the private sphere of citizens, especially in matters of ownership and inheritance.

2.2.3. *The archonship of Eucleides and the public sphere of law: manoeuvring legal language*

The archonship of Eucleides marked a *caesura* in the application of laws in the public sphere, a point clearly illustrated by Andocides' manoeuvring with legal language discussed so far. Thus, let us return to the above-quoted Andoc. 1.88, where the speaker refers to the amnesty covenant. Andocides also alludes to the *nomoi* in the public domain (τῶν δὲ δημοσίων), implying that all these laws 'apply' (χρησθαί) only from the archonship of Eucleides onward – thus creating the impression that laws enacted earlier, under the democracy, were no longer valid.⁸³ He goes even further, asserting that decrees enacted before 403/2 were also invalid (Andoc. 1.86, 89), including the decree of Isotimides from 415 (Andoc. 1.71), which had resulted in his own exile (see above, section 2.1).

At the beginning of the legal part of his speech (Andoc. 1.72),⁸⁴ Andocides tries to prove that the decree of Isotimides of 415 is 'repealed' (ἀέλυσται) and, therefore, no longer 'valid' (ἄκυρόν ἐστιν), and his prosecutors cannot invoke it. The key question is how the Athenians could have classified this decree during the scrutiny of the laws.

⁸³ JOYCE 2022: 99, 114–115, *contra* CARAWAN 2013: 188, who reinterprets And. 1.88 to mean: 'All the laws for *graphai*, *phaseis*, *endeixeis*, and *apopogai* ... are to be scrutinized in the assembly. Those confirmed in this process (and only those) are to be written up in the stoa (82). The officers are not to admit any claim that is not based on a law listed from the Scrutiny'.

⁸⁴ On this passage and its translation, see above, n. 30.

Although in the first stage of the *anagrapheis*' remit there was no formal separation between *nomoi* and *psephismata*, the essence of their work was to identify, locate, and submit to scrutiny at the Assembly all universally binding laws – that is, *nomoi*. Canevaro has rightly observed that, although Isotimides' proposal was formally a *psephisma*, it fulfils the criteria of a *nomos* (a general and abstract norm).⁸⁵ Only hypothetically would the *anagrapheis*, while querying regulations of a general nature, have qualified the decree of Isotimides as a *nomos*. Had this decree passed scrutiny in the Assembly, it would have remained valid (κύριος εἶναι). Yet Andocides, speaking c. 400, suggests that this was not the case. In referring to the decree of 415, he limits the validity of 'old laws' only to those approved from 403 onwards. In doing so, he ignores the work of the *anagrapheis* during 410–404, which, as already argued, is incorrect. For Andocides, only laws valid from the archonship of Eucleides counted. For Andocides, the laws were valid only from 403/2, that is during the archonship of Eucleides. Perhaps this is the core of Andocides' strategy. He conflates the question of the application of a law (the archonship of Eucleides being the moment from which certain laws were enforced – as in the amnesty or the citizenship law) with the question of validity (that is what was generally in force, including the results of the *anagrapheis*' work from 410–399 and the *nomoi* enacted from 403 onwards). One can put forward another hypothesis: if the trial of Andocides took place before the completion of the work by the *anagrapheis* (that is before 400/399, the trial of Nicomachus was held after Andocides' case), the decree of Isotimides may simply not yet have been scrutinised and subsequently approved by the Assembly. In any scenario, his intricate legal reasoning proved persuasive to the judges.

As argued above, Andocides' manoeuvring of the status of laws is evident in his terminology, which is also illustrated in the following passages.⁸⁶ In Andoc. 1.92–93, the orator describes the case of Cephisius, who, before 403, purchased tax-collection rights from the treasury. He did not pay the

⁸⁵ See CANEVARO 2013a: 124 n. 137. See also similarly DREHER 2022: 35, *contra* MACDOWELL 1962: 202–203.

⁸⁶ See the analysis of these passages by CARAWAN 2002: 18–19.

price to the *polis* but fled into exile. Later, after his return in 403, he could not be punished. Andocides refers to the law that gave such competencies to the *Boule* and ‘suspension’ of its application towards Cephisius:⁸⁷

Andoc. 1.93 (ed. Dilts & Murphy 2018): ὁ γὰρ νόμος οὕτως εἶχε, κυρίαν εἶναι τὴν τε βουλὴν, ὃς ἂν πριάμενος τέλος μὴ καταβάλλῃ, δεῖν εἰς τὸ ξύλον. οὗτος τοῖνυν, ὅτι τοῖς νόμοις ἐψηφίσασθε ἀπ’ Εὐκλείδου ἄρχοντος χρῆσθαι, ἀξιοὶ ἂ ἔχει ὑμῶν ἐκλέξας μὴ ἀποδοῦναι, καὶ νῦν γεγένηται ἀντὶ μὲν φυγάδος πολίτης, ἀντὶ δὲ ἀτίμου συκοφάντης, ὅτι τοῖς νόμοις τοῖς νῦν κειμένοις χρῆσθε.

The law went like this: ‘The Council shall have authority to imprison in the stocks any purchaser of a tax who does not pay up’. Now, because you decreed that the laws should be applied from the Archonship of Euclides, this man thinks it right not to pay over your money that he’s collected. He’s now been transformed from an exile into a citizen, and from a disfranchised man into a malicious accuser, because you apply the laws now in force.

This does not mean that the law on tax-collection was no longer valid (κύριος εἶναι), but, in Cephisius’ case, it was not applied (χρῆσθαι) at that moment due to the amnesty’s principles.⁸⁸ If someone committed an analogous offence, for instance, in 400, this law would fully apply. In addition, Andocides provides the example of Meletus:

Andoc. 1.94 (ed. Dilts & Murphy 2018): Μέλητος δ’ αὖ οὕτοσι ἀπήγαγεν ἐπὶ τῶν τριάκοντα Λέοντα, ὡς ὑμεῖς ἅπαντες ἴστε, καὶ ἀπέθανεν ἐκεῖνος ἄκριτος. καὶ τοι οὗτος ὁ νόμος καὶ πρότερον ἦν καὶ ὡς καλῶς ἔχων καὶ νῦν ἔστι, καὶ χρῆσθε αὐτῷ, τὸν βουλευσάντα ἐν τῷ αὐτῷ ἐνέχεσθαι καὶ τὸν τῇ

⁸⁷ On the juridical competencies of the *Boule*, see RHODES 1972: 179–207; also, one needs to consider the diachronicity of the oath of the *bouleutai*.

⁸⁸ However, see *Ath. Pol.* 39.5: μὴ ἐξεῖναι δὲ ἄρχειν μηδεμίαν ἀρχὴν τῶν ἐν τῷ ἄστει τὸν Ἐλευσῖνι κατοικοῦντα, πρὶν ἂν ἀπογράφηται πάλιν ἐν τῷ ἄστει κατοικεῖν. τὰς δὲ δίκας τοῦ φόνου εἶναι κατὰ τὰ πάτρια, εἴ τις τινα αὐτοχειρίᾳ ἔκτεινεν ἢ ἔτρωσεν, ‘It should not be permitted to a man living at Eleusis to hold any of the offices in the city until he had registered to live in the city again. Trials for homicide should be in accordance with tradition, if anybody had killed or wounded anybody by his own hand’; on this *loc.*, see the edition of RHODES 2017: 327–328.

χειρὶ ἐργασάμενον. Μέλητον τοίνυν τοῖς παισὶ τοῖς τοῦ Λέοντος οὐκ ἔστι φόνου διώκειν, ὅτι τοῖς νόμοις δεῖ χρῆσθαι ἀπ' Εὐκλείδου ἀρχοντος, ἐπεὶ ὥς γε οὐκ ἀπήγαγεν, οὐδ' αὐτὸς ἀντιλέγει.

Again, Meletus here arrested Leon in the time of the Thirty, as you all know, and Leon was executed without trial. And the following law not only existed previously but also exists now and is also applied, because it is a good one: 'One who has planned an act shall be liable to the same penalty as one who has committed it with his own hand'. So the reason why Leon's sons are not allowed to prosecute Meletus for murder is that the laws have to be applied from the archonship of Eucleides; for not even the man himself denies that he made the arrest.

Andocides uses here striking terminology: the quoted law 'was' previously in the past and 'is' now (he employs simply the verb *einai*), which implies that it is still being *applied* (χρησθε), and later that laws are generally in force only from the archonship of Eucleides. This appears contradictory, but if we distinguish *validity* from *application*, the logic becomes clearer. Andocides was perfectly aware of the distinction but strategically exploited the ambiguity to win his case (see also the summary of his argument in Andoc. I.89).

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Diocles' Law consistently employs the terminology *κύριος εἶναι*, specifying both temporal criteria (the archonship of Eucleides) and broader conditions (the democratic regime and the scrutiny of the laws) that determined the *validity* of laws. Yet the archonship of Eucleides also marked a decisive turning point for the *application* of laws (χρησθαι), a domain that proved considerably more complex in practice – in the private sphere, for instance owing to the retroactive implications of the citizenship law for inheritance and property, and in the public sphere, particularly in the enforcement of the amnesty. Athenian legal vocabulary, when read alongside the broader context of Diocles' Law, thus illuminates the legal and judicial intricacies of the late fifth century 'evolving law reform'. The distinction between *validity* and *application* was not merely terminological but shaped how conflicting, suspended, or reactivated laws operated within both public and private domains in Athens.

2.3. *Agraphoi* and *anagegrammenoi* laws

Now, I turn to another debatable expression in Diocles' Law, which specifies that valid laws, *before* and *during* the archonship of Eucleides, must have been 'recorded' (εἰσὶν ἀναγεγραμμένοι). But before explaining the historical-chronological and legal dimension of this phrase, it is necessary to clarify the philological scope of ἀναγράφειν.

According to LSJ, this verb can mean 'to record', 'to write out', or 'to inscribe'. In the first sense, it involves writing onto something and can carry a more abstract meaning. In the legal background of Diocles' Law, it should be understood in terms of archival and secretarial work, raising questions about where the *nomoi* were written, by whom, and what the significance of this activity was. Notably, ἀναγράφειν could refer both to writing documents on stone,⁸⁹ and on portable materials, such as wooden tablets.⁹⁰ These contexts might be associated with the secretarial duties of guarding (φυλάσσειν) established decrees and laws – responsibilities assigned to the secretary of the Council (*Ath. Pol.* 54.3–4).⁹¹ In cooperation with the stonemason, he ensured coherence in Athenian enactments by publishing (ἀναγράφειν), copying (ἀντιγράφειν), adding (προσγράφειν), changing in writing (μεταγράφειν), or rescinding (ἐπανορθοῦν) texts, following orders from the *Boule* and *Ekklesia*.⁹²

⁸⁹ E.g. Thuc. 5.47.11; Isoc. 4.180; *IG* I³ 104, l. 7.

⁹⁰ E.g. *IG* I³ 78a, l. 26; *IG* I³ 68, l. 17. See also VOLONAKI 2001: 141; BOFFO & FARAGUNA 2021: 754.

⁹¹ On the role of the secretary of the council, see further RHODES 1972: 134–143; also SICKINGER 1999: esp. 140–147, and HENRY 2002. Notably, in the late fifth century the secretary possessed 'the book' (τὸ βιβλίον) with the decrees: see *IG* I² 1, ll. 61–62.

⁹² 'Adding in writing' (προσγράφειν) appears in *IG* I³ 1453 (= OSBORNE & RHODES, *GHI* 155, clause 10, which attests modification in the oath of the *Boule*: προσγράψαι δὲ καὶ πρὸς τὸν ὄρκον [τὸν τῆς βουλῆς τὸν γραμματέα τῆς βουλῆς καὶ τοῦ δήμου? τα]δί, 'and the secretary of the Council [and People?] is to add the following to the oath of the Council' [transl. by S. Lambert and R. Osborne, from *AIO*]); and significantly also in Diocles' Law (see below). On μεταγράφειν and ἐπανορθοῦν, e.g. *IG* I³ 101 (= OSBORNE & RHODES, *GHI* 187), ll. 58–59; see also the above-mentioned verbs in the abridged glossary at the end of BOFFO & FARAGUNA 2021.

However, as discussed above, Diocles' Law should be understood holistically in the context of the scrutiny of the laws, with the *anagrapheis* playing a vital role (Hansen 1990: 64). Andocides notices that the 'scrutinised laws' should be *published* in the *Stoa Basileios* (Andoc. 1.82: ἀναγράψαι ἐν τῇ στοᾷ), in the form of the free-standing *stelai* (IG I³ 104, ll. 7–8). Some scholars do not exclude the possibility that the primary place of publication was the newly built central archive of the Metroon, with inscriptions serving as an additional means of dissemination; the Assembly could determine which laws required public display in this manner.⁹³

This is why one finds the understanding of ἀναγεγραμμένοι in Diocles' Law to mean 'recorded'⁹⁴ as the final result of the *anagrapheis*' work both (!)

⁹³ See ROBERTSON 1991: esp. 46–60; SICKINGER 1999: 103–105; MIŚKIEWICZ 2025: section 4.9. The diverse publication of law is, for example, attested for the case of Amorgos (through an inscription dated to the 2nd century, IG XII 7 515, ll. 130–134: τὸν δὲ νόμον τὸνδ[ε] ἐ[ν] αὐτῷ κύριον] εἰς τὸν πάντα χρόνον, καὶ ὁ γραμματεὺς αὐτὸν ἀναγ[ρα]φῆ[ι]ν εἰς τὰ δημόσια γράμματα πάντα καὶ εἰς τὰς δέλτους, οὗ οἱ [νόμοι] εἰς τὴν ἀναγ[ρα]φῆ[ι]ν εἰσ[ι]νέουσι, ἀναγράφω δὲ καὶ Κριτόλαος εἰστήλην καὶ [στ]ησάτω, [οὗ] δὲ καὶ τὸν ἀνδριάντα ἱστᾷ, 'Let this law be valid for all time, and let the secretary register it in all the public records and on the tablets on which the laws are registered, and let Critolaus also inscribe it on a *stèle* and set it up wherever he places the statue' [my transl.]; for discussion, see HARTER-UIBOPIU 2011: 126–130. In support of the interpretation that the *Stoa Basileios* was the only location for the scrutinised laws, scholars have sought to explain some inconsistencies in the sources. For example, problematic is Demophantus' decree on the law against tyranny (see n. 14 above); Andocides, in his trial c. 400, describes this as a law 'upon the *stèle* in front of the Council-house' (Andoc. 1.95: ὅς ἐν τῇ στήλῃ ἔμπροσθέν ἐστι τοῦ βουλευτηρίου), adding that it is Solon's law. This suggests that it would still be valid law, but not displayed in the *Stoa Basileios*. But Andocides (1.99) states that Demophantus' decree was not valid – repeating his argumentation on applying law only from the archonship of Euclides – which, as is discussed so far, was not true; MACDOWELL 1962: 137: 'Andok. is speaking loosely'. The date of Demophantus' decree is also debatable, since the name of the secretary Cleigenes would indicate the date of 410 (however, problematic are the errors in the manuscript – still SOMMERSTEIN 2014: 53 opts for it; see also HANSEN 1990: 65; SHEAR 2011: 73), but Lyc. 1.124 refers to this law as being dated to the time 'after the Thirty' (see CANEVARO & HARRIS 2012: 121–122). Mind also *stèle* in the Eleusinium, which contains the law on the olive branch referred to by Callias (Andoc. 1.116), which appears to have been the very law in force when Andocides had his trial.

⁹⁴ See also IG I³ 118, ll. 38–41 (OSBORNE & RHODES, *GHI* 185, likely dated 408/7) that attests the order for the secretary of the Council to delete (*exaleiphein*) the names of

before and during the archonship of Eucleides.⁹⁵ Regarding such a chronological dimension, this clause introduces the principle that, as far as the laws made *before* and *during* the archonship of Eucleides are concerned, only those laws which have passed the scrutiny of laws were valid (that is those which have passed the whole procedure beginning from the work of the *anagrapheis*, being then voted on at the Assembly and finally recorded). Many scholars generally agree on this point, but they do not always explain inconsistencies in the sources (or, if they do, I do not find their arguments fully convincing).⁹⁶

Taking the first sentence of Diocles' Law literally⁹⁷ might suggest that *anagegrammenoi* refers only to the period of Eucleides' archonship (403/2), aligning with Andocides' paraphrase (Andoc. 1.81–82). Yet, contrary to

Selymbrian hostages and their guarantors, wherever they 'have been written up' ([ὁ]πο [ἐστὶ ἀν]αγεγ[ρ]αμμένοι). See *IG II²* 42, ll. 8–11 (*AIO* 803; likely dated to 378/7), which specifies an order to write up Methymna to the Second Athenian League as other allies have been written up (ἀναγράφαι αὐτὸς τὸν γραμματέα τῆς βολῆς, ὥσπερ καὶ οἱ ἄλλοι σύμμαχοι ἀναγεγραμμένοι εἰσίν, 'the secretary of the Council shall record them just as the other allies also are recorded' [my transl.]). This evidence shows that *eisin anagegrammenoi* is simply a general reference to the things recorded somewhere. Moreover, ἐξαλείφειν means some act of 'erasing' the contents of documents, as Andocides suggests in the case of both the law on the exiles and Patrocleides' decree, a copy of which also had to be removed (Andoc. 1.76: ταῦτ' οὖν ἐψηφίσασθε ἐξαλεῦναι πάντα τὰ ψηφίσματα, καὶ αὐτὰ καὶ εἴ ποῦ τι ἀντίγραφον ᾗν, 'remove all these decrees, both their original versions as well as copies'); on that, see more SHEAR 2011: 84–85. Notably, Nicomachus is accused (Lys. 30.2, 5) of *engraphēin* and *exaleiphein* laws during his work as an *anagrapheus*; see more MIŚKIEWICZ 2025: section 4.1.

⁹⁵ This is the interpretation proposed by MACDOWELL 1962: 197; also MACDOWELL 1978: 47, supported by RHODES 1990: 90, *contra* CLINTON 1982: 27–28. However, the crucial point is that they assume the authenticity of Teisamenus' decree (see n. 3 above).

⁹⁶ See also HARRISON 1955: 33; OSTWALD 1973: 91–92; SEALEY 1987: 37; HANSEN 1990; RHODES 1991: 97; ROBERTSON 1991: 62; SICKINGER 1999: 100–102 (also 229 n. 37); JOYCE 2022: 111. I am not entirely convinced by the scholars who tried to explain inconsistencies (I will discuss them further): CARAWAN 2002; CLINTON 1982; CANEVARO & HARRIS 2012; CANEVARO 2015. The problem also concerns how one treats Teisamenus' decree (see n. 3 above), the role of *nomothetai* during the archonship of Eucleides, and their relationship with the *anagrapheis*. See also PODDIGHE 2019: 56–59 (discussing the previous scholarship).

⁹⁷ The key is how to understand this sentence (including its punctuation): τοὺς νόμους τοὺς πρὸ Εὐκλείδου τεθέντας ἐν δημοκρατίᾳ καὶ ὅσοι ἐπ' Εὐκλείδου ἐτέθησαν καὶ εἰσὶν ἀναγεγραμμένοι, κυρίους εἶναι.

Andocides' description – as discussed so far – after the Thirty, the earlier work of the *anagrapheis* that had begun in 410 and continued (with interruptions) until 399, was not invalidated. Limiting *anagegrammenoi* to Euclides' archonship would render the prior and subsequent work of the *anagrapheis* irrelevant. This is a crucial point that most scholars have not convincingly explained so far.⁹⁸ Even if the Athenian laws were not always precisely formulated, the logic of the law reform itself supports the interpretation that *nomoi* enacted under the democracy before the archonship of Euclides meant the laws that passed the scrutiny with the *anagrapheis* involvement in the first stage of their work⁹⁹. The Athenians introduced Diocles' Law, among other reasons, to organise the outcome of the project of legal scrutiny retrospectively and prospectively (from the archonship of Euclides onwards). Regarding the latter period, it covered specific

⁹⁸ HANSEN 1990: 65–67, with n. 9, interprets the matter differently, arguing that part of Nicomachus' activity up to 399 – especially his work on sacred laws and the calendar – did not belong to the legal scrutiny project (Hansen follows a limited scope of the laws that the *anagrapheis* were working on, see CLINTON 1982: 33–35). I see no good reason to exclude the sacred calendar from the scope of the scrutiny: Lys. 30 clearly presents Nicomachus, as *anagrapheus*, working until 399 on ancestral sacrifices (30.17). CANEVARO 2015: 43 tries to explain this as follows: 'The laws *anagegrammenoi* passed in the archonship of Euclides must also be simply valid, without a starting point. This must reflect the fact that the *anagrapheis* were simply republishing laws (confirmed by the Assembly) that were already in force before their republication, so even if they were republished at a specific point during the archonship of Euclides, they must be considered in force from beforehand'; see also CANEVARO 2013a: 125. Yet if, as argued above (see above, n. 79, and below, n. 111, 115), the scrutiny involved introducing amendments to laws, then these laws cannot have been already in force in an unchanged form. Even if the amendment hypothesis remains debated, the very logic of the scrutiny was to determine which version of the laws was valid in light of contradictions (Lys. 30.3); see above, n. 71.

⁹⁹ RHODES 1990: 90 notes: 'Athenian laws were not always impeccably drafted, and I doubt if Diocles did mean to imply that laws enacted under the democracy before 403/2 were to be valid whether they had been written up or not. (...) I prefer to believe, with Douglas M. MacDowell, that by *the laws enacted under the democracy before the archonship of Euclides* Diocles meant the laws collected and published by the *anagrapheis* in their first term' (quoting MACDOWELL 1978: 47); see also CLINTON 1982: 28 (who is generally against MacDowell's position, but also states: 'I can agree that Diokles is a bit imprecise here, for this sentence is not the main point in his law (what follows about the effective dates of new laws is much more important).') I would say that both things were very important: old laws and new laws.

circumstances of the amnesty and numerous other laws that were established, likely by the *nomothetai*. These were required to introduce new rules on applying the law due to the amnesty, the ongoing project of legal scrutiny, and many issues regarding the Athenian constitution, including procedures for *nomothesia*. Ultimately, it was a complex ‘evolving law reform’ in unstable and dynamic times.

For understanding the role of the *anagegrammenoi* in Diocles’ Law, it is crucial to evoke the argumentation of Andocides, who, after referring to the alleged Teisamenus’ decree, introduced another law,¹⁰⁰ which he describes as follows (bold is mine):¹⁰¹

Andoc. 1.86 (ed. Dilts & Murphy 2018): ἀρά γε ἔστιν ἐνταυθοῖ τι περιελείπετο περὶ οὗτου οἰόν τε ἢ ἀρχὴν εἰσάγειν ἢ ὑμῶν πρᾶξαί τινι, ἀλλ’ ἢ **κατὰ τοὺς ἀναγεγραμμένους νόμους**; ὅπου οὖν **ἀγράφῳ νόμῳ** οὐκ ἔξεστι χρήσασθαι, ἢ που **ἀγράφῳ γε ψηφίσματι** παντάπασιν οὐ δεῖ γε χρήσασθαι. ἐπειδὴ τοῖνυν ἐωρῶμεν ὅτι πολλοῖς τῶν πολιτῶν εἶεν συμφοραί, τοῖς μὲν κατὰ νόμους, τοῖς δὲ κατὰ ψηφίσματα τὰ πρότερον γενόμενα, τουτουσὶ τοὺς νόμους ἐθέμεθα, αὐτῶν ἔνεκα τῶν νυνὶ ποιουμένων, ἵνα τούτων μηδὲν γίγνηται μηδὲ ἐξῆ σκυοφαντεῖν μηδενί.

Is there thus anything left about which an official could bring a case to court or any of you could take action, except **in accordance with the recorded laws**? Well then, where an **unrecorded law** may not be employed, still more must an **unrecorded decree** not be enforced at all. So, since we saw that a number of citizens were in trouble, some with laws and some with decrees previously passed, we passed these laws with a view to exactly what is now going on, so that none of this might happen and no one might be allowed to prosecute anyone maliciously.

¹⁰⁰ Andoc. 1.85: ἐδοκιμάσθησαν μὲν οὖν οἱ νόμοι, ὧ ἄνδρες, κατὰ τὸ ψηφίσμα τουτί, τοὺς δὲ κυρωθέντας ἀνέγραψαν εἰς τὴν στοάν. ἐπειδὴ δ’ ἀνεγράφησαν, ἐθέμεθα νόμον, ὧ πάντες χρήσθε, καὶ μοι ἀνάγνωθι τὸν νόμον, ‘So the laws were scrutinised in accordance with this decree, and the ones which were validated were written up in the Stoa. When they had been inscribed, we passed a law which is universally enforced. Please read the law’; and this short law that follows is regarded as inauthentic: see below, n. 101.

¹⁰¹ I regard the brief citations of laws in this speech (the last sentence of Andoc. 1.85: *Νόμος ἀγράφῳ δὲ νόμῳ τὰς ἀρχὰς μὴ χρηῖσθαι μηδὲ περὶ ενός*, ‘A law which has not been recorded shall not be employed by officials on any matter whatever’; and the beginning of Andoc. 1.87), following CANEVARO & HARRIS 2012: 116–119, as inauthentic, so I quote only their paraphrases by Andocides (but for authenticity of Andoc. 1.87, see HANSEN 2017); see also above n. 3.

We should keep four main points in mind when analysing this passage through the prism of Diocles' Law, as preserved in Dem. 24.42. Firstly, although this point may be obvious, these two sources are not internally related to each other (their character and aims differ). Secondly, most agree that ἀγράφοι νόμοι used here did not imply that the 'unwritten laws' in general, and customary law (as referred to, for instance, in Thuc. 2.37.3) more broadly or even rules under the Eumolpidae's exegesis, were excluded from referring in the Athenian legal order;¹⁰² they would still matter, but as an additional reference, reinforcing the interpretation of the established and recorded laws. Thirdly, Andocides used here the verb χρῆσθαι, not κύριος εἶναι, highlighting the aspect of 'applying laws' by the officials while conducting their public, and most often procedural, duties (the key-words used by him are πράσσειν and εἰσάγειν).¹⁰³ Fourthly, making the rule on ἀγράφοι νόμοι does not directly limit it to the archonship of Euclidean (it will be introduced as a separate principle).

Therefore, I favour interpreting the key expression in Andoc. 1. 86 (also Andoc. 1.89) as juxtaposing 'recorded laws' (ἀναγεγραμμένοι νόμοι) and 'unrecorded laws' (ἀγράφοι νόμοι) through the lens of the whole project of the law reform, which re-established the valid Athenian body of laws (*nomoi*) and was a pivotal *caesura* for the Athenian law-making. In this 'evolving law reform', valid laws were linked, on the one hand, with the activities of the *anagrapheis* (i.a.), who worked on the scrutiny of the old laws (finally authorised at the Assembly), and, on the other hand, after the Thirty, with new laws also being established by the *nomothetai*. Even if the formal differentiation of *nomoi* from *psephismata* appeared only after the

¹⁰² The topic of *agraphoi nomoi* generally in classical Athens is extremely often discussed by scholars; on the broad cultural, religious and social background, see importantly OSTWALD 1973, TALAMANCA 2008, and more recently PEPE 2017 (for the context of this paper, see p. 129 with n. 96); Poddighe 2019 (on late fifth century legal contexts, see pp. 51–60 with previous scholarship as well); see also THÜR 2000 (from the legal point of view); and FILONIK 2013: 44 n. 129 (also in the light of religious norms).

¹⁰³ I would not agree that this rule was not a juristic principle but an instruction to the archons (as THÜR 2000: 89–100 holds, cited by CARAWAN 2002: 17 n. 66) since I do not see the difference; such instructions were just part of the law if they were voted on by the Athenian *demos* and had a general and abstract character.

Thirty, in the first stage of the *anagrapheis*' work (410–404), they also inquired to find enactments of an abstract and general nature (as the Athenians would later qualify as *nomoi* – similarly like the case with the decree of Isotimides as discussed above).

The relevance of ἀναγεγραμμένοι in Diocles' Law marks the moment when there were no *nomothetai* (*before* archonship of Eucleides), but the Athenians only scrutinised old laws; regarding the period *after* the archonship of Eucleides, this also covers the time when new laws were enacted (simultaneously with the continuation of the *anagrapheis* until 399). Thus, Diocles' Law focuses on the specific moments of validity (κύριος εἶναι) regarding different times and takes the archonship of Eucleides as a vital temporal reference. Andocides' words should be interpreted as a general rule on 'laws application'. However, as has been argued many times, he naturally employs legal language to fit his own case, and, for him, not using *agraphoi nomoi* should, first and foremost, prevent malicious actions (*sukophantein*) toward him.¹⁰⁴

Only 'recorded laws' (ἀναγεγραμμένοι νόμοι), that formed part of the valid body of laws established during the late fifth century law reform, were allowed to be applied by officials. These laws were publicly displayed in writing and thus correctly 'promulgated' for consultation by the citizens if needed. Making such clear records marked the starting point for law-making in the fourth century. This assessment is coherent with the scrutiny of the old laws made by *thesmothetai* – which was a regular procedure in the fourth century – that determined 'whether there is any recorded law that contradicts another law or an invalid law among the valid ones or more than one law recorded to deal with each issue'.¹⁰⁵

However, *anagegrammenoi* and *agraphoi* laws are interpreted slightly differently. For instance, Kevin Clinton has proposed that Andocides was

¹⁰⁴ See JOYCE 2022: 117: 'The rule "not to use an unwritten law" meant, simply, that a statute not in the list could not qualify as a 'law', not that it was necessarily invalid after'; see also RHODES 1991: 97 n. 43 (*agraphoi nomoi* could mean that 'the authorities are not to use any law which purports to be part of the code but has not been written up as part of').

¹⁰⁵ Aesch. 3.38: εἴ τις ἀναγέγραπται νόμος ἐναντίος ἑτέρῳ νόμῳ, ἢ ἄκυρος ἐν τοῖς κυρίοις, ἢ που εἰσὶ νόμοι πλείους ἐνὸς ἀναγεγραμμένοι περὶ ἐκάστης πράξεως; transl. from CAREY 2000, slightly modified.

manipulating this law and that *agraphoi* should be contrasted not with *anagegrammenoi* but with *gegrammenoi* ('written' in the sense that the Athenian state passed them); thus, the law cited by Andocides would mean that the *agraphoi nomoi* should not be used if the *demos* passed a law on this matter.¹⁰⁶ However, Clinton argues that the scrutiny of the laws did not cover all universally applicable laws, but only those of Solon and Draco (including later additions). These who accept this view assume that, at the time of the scrutiny of the laws, all laws under scrutiny were published (*ἀναγράφειν*) only in inscriptional form (such as Draco's law on homicide) and displayed in the Royal Stoa in this form. However, this was not necessarily the case; rather, the critical measure at that time lay in creating the central archive of the Metroon (as discussed above). Moreover, generally using only 'passed laws' would be articulated instead by some form of the verb *τίθημι*; in Diocles' Law, the enacted (*τιθεμένους*) laws principally mark the validity of the law from the archonship of Eucleides onwards.

Nevertheless, what is certain is that both Andocides and Diocles' Law refer to specific circumstances of the Athenian law reform, from very different source contexts.¹⁰⁷ Indeed, *anagegrammenoi* or *agraphoi (nomoi)* in the peculiar moment of the late fifth century were automatically associated by the Athenians with these legal developments. In the fourth century, laws which were *anagegrammenoi* generally refer to 'published' (or 'promulgated') *nomoi* that were 'currently' in force (also Aesch. 3.38–39), and officials were not allowed to apply any laws that were *agraphoi*, that is not part of valid *nomoi* that were passed correctly and then recorded (on 'carriers', such as stone, as well as other 'media' stored in the Metroon).

Not using *agraphoi nomoi* means that the officials did not apply the laws not included in the renewed body of laws, which comprised both old laws (that passed the scrutiny) and new laws (established in the future). The

¹⁰⁶ See CLINTON 1982: 34. This is the position supported by CANEVARO & HARRIS 2012: 116, n. 98 and CANEVARO 2013a: 123.

¹⁰⁷ CARAWAN 2002: 15–19 (see also CARAWAN 2013) re-interprets the passages on *anagegrammenoi* in the context of the amnesty agreement, but with its limited application to laws and procedures related to *atimoi* and public debtors primarily (*contra* JOYCE 2022: 114–115); see also n. 83 above.

use of *anagegrammenoi* in Diocles' Law refers to the moment of validity of laws and had a limited scope, meaning only laws that passed scrutiny *before* and *during* the archonship of Eucleides. The lack of any mention of *anagegrammenoi* for the period *after* the archonship of Eucleides follows from the Athenians' need to adapt the laws to new situations connected to the dynamic political, legal, and constitutional period after the Thirty. The scrutiny of the laws, which would eventually become part of the 'evolving law reform', was still a work in progress. Thus, Diocles' Law established a flexible approach: laws should generally be valid at the moment of enactment, or, if so indicated, at some different precise moment. After the archonship of Eucleides, some laws remained unfinished under scrutiny, and, more significantly, the Athenians established new rules for repealing laws from the legal order and making new ones.

To sum up, Diocles' Law directly confirms that laws established *before* the archonship of Eucleides were indeed valid. Andocides, even when presented in lengthy legal argument, seemed to evoke laws only partly. If one separates the (*in*)*validity* of the laws from their *application*, it becomes clear that the rule not to 'apply' *agraphoi nomoi* does not exclude the possibility of referring to some axiological or religious norms that were pivotal for the Athenian order and *politeia*, not as a contrary element to *anagegrammenoi nomoi* but as a complementary component within the legal strategy.¹⁰⁸ What is crucial from a formal point of view is that *recorded laws* primarily serve to initiate and manage legal procedures and trials.¹⁰⁹ It would not be possible to 'bring a case' (*εἰσάγειν*) into court or take (legal) action (*πράσσειν*) – as pointed out at the beginning of Andoc. 1.86 – without a properly approved and promulgated legal basis that was formally part of the legal order (and was thus valid: *κυρίως εἶναι*). Importantly,

¹⁰⁸ Such an approach is articulated by CLINTON 1982: 36, Talamanca 2008: 62–71; MAFFI 2018; STOLFI 2020: 156; Poddighe 2019: 59–61 (who also discussed the theoretical discussions in Plato and Aristotle on the complementarity of *nomoi* and *politeia* as examined through the lens of legal axiology at pp. 60–65).

¹⁰⁹ See TALAMANCA 2008: 64, with n. 167 (stresses also the 'risk' during the *euthynai* of officials in regards to how they were bringing cases – *eisagein* – into courts); MAFFI 2018: 83 and Poddighe 2019: 59.

litigants were required to present a written indictment (*enklema*) at the preliminary hearing (*anakrisis*) before the official.¹¹⁰ Later, during the trial, it was possible to strengthen the argumentation referring to some *agrophoi nomoi* as a vital part of the Athenian legal axiology.

2.4. What did the clauses of Diocles' Law mean?

A summary

The validity of laws (expressed by *κυρίους εἶναι*) falls into three categories:

1. Laws enacted before the archonship of Eucleides (*πρὸ Εὐκλείδου τεθέντας*), under the democracy (*ἐν δημοκρατίᾳ*), implicit: *ἀναγεγραμμένοι*.

This clause refers to the laws enacted between the overthrow of the Five Thousand in 410 and the seizure of power by the Thirty, that is the first stage of the *anagrapheis'* work within the project of the scrutiny of the laws, which lasted until 404. It implies the invalidation of all activities of the Thirty. Laws were valid if they were democratically scrutinised with the involvement of the *anagrapheis*, voted on by the *Ekklesia*, and eventually published (*ἀναγράφειν*), some on free-standing *stelai*, but primarily by archiving them in the Metroon. For example, Draco's law on homicide and its re-publication in 409/8, as known from *IG I³ 104*, was valid in this previously republished form.¹¹¹ I generally assume that, from the beginning of the project of legal scrutiny, Athenian citizens could introduce amendments to laws on which they were voting at the Assembly (some of which would be approved without changes, others with changes, and still others rejected); therefore, it was also important to stress that only laws that passed the scrutiny of the laws (and only these versions of the laws) were valid. This was introduced to avoid some inconsistencies

¹¹⁰ On the role of written documents in Athenian trials, see recently HARRIS 2022 (discussing also the previous scholarship).

¹¹¹ HARRIS & CANEVARO 2023 argue that this law was not amended (which is indeed convincing), but they also infer that, during this project, all laws under scrutiny were only accepted or rejected (based on the interpretation of Andoc. 1.82 and the verb *dokimazein*). I do not share this approach – see above, n. 79 & 115.

that were signalled in Lys. 30.3 (*enantioi nomoi*). The democratic voting on the scrutinised laws thus empowered them, confirming their validity (κύριος εἶναι) in the refreshed form.¹¹²

2. Laws enacted during the archonship of Eucleides (ἐπ' Εὐκλείδου ἐτέθησαν), explicit: ἀναγεγραμμένοι.

One might call the archonship of Eucleides (403/2) 'year zero', but only for the *application* of the law, not its *validity*. It marked the time when the legal scrutiny project was resumed, the previous activity of the *anagrapheis* was legitimised, and their further remit re-established. We know that, in the archonship of Eucleides, the Athenians decided to republish laws that the Thirty had destroyed or abolished (within the work of the Twenty, and maybe, to some extent, also *anagrapheis*).¹¹³ The work on the legal scrutiny project was expected to have accelerated at that time. From Lys. 30.4, we learn that, again, Nicomachus allegedly illegally prolonged his office from thirty days to four years. Most scholars rightly interpret this as an exaggeration, but there may have been expectations to complete the project more quickly. This would also explain why, in Diocles' Law, when referring to the period *after* the archonship of Eucleides, there is no direct association with laws being *anagegrammenoi*.

However, most importantly, the Athenians decided to introduce many additional laws that aimed imposing order on the new legal, constitutional, and judicial situation. They were required to adjust the legal order, primarily regarding public issues, like the amnesty covenant, but also private matters (as citizenship law and its legal implications for the private sphere were stressed).¹¹⁴ It is perhaps this period that Andocides (1.82) refers to when saying that the Athenians had realised that, by applying

¹¹² For a contrary view, see SEALEY 1982: 293: 'Although the reinscribing of the text was ordered by the *Ekklesia*, there is nothing to suggest that the text itself received confirmation by any vote of the *Ekklesia* in 409/8; the "*nomos* of Drakon", as reinscribed, was acknowledged as valid, but it did not derive its validity from any vote taken in 409/8'.

¹¹³ Against such a view, see CARAWAN 2002: 20, n. 79.

¹¹⁴ The rather limited scope of the meaning of this part of Diocles' Law is presented by CARAWAN 2002: 19-23 (who tries to reconcile this with Teisamenus' decree, which he regards it as an authentic document; this paper was published before the intensive debates regarding this issue, see above, n. 113 as well as n. 3).

the previous laws of Draco and Solon, the amnesty would not work. This would also relate to the 'updating' of the law on the *Boule* (which was already part of the scrutiny of the laws before the Thirty; see *IG I³ 105*), since from *Andoc.* 1.90–91, we learn that the oath of the *bouleutai* was also modified due to the rules of reconciliation.¹¹⁵ This is another example that justifies describing this project as 'evolving law reform'.

Eventually, the Athenians decided to elect *nomothetai* and to pass new laws (*Andoc.* 1.89), including new rules governing law-making in general (*nomothesia*). The period of the archonship of Eucleides was also crucial for the validity of judgments and the application of laws (when laws were enforceable by officials and courts), as was established in new and separate legislation. These seem to be a series of laws made by *nomothetai*; therefore, they constitute an additional element in making a valid body of laws (*nomoi*) for the future.

3. Laws enacted after the archonship of Eucleides and laws to be enacted in the future (μετ' Εὐκλείδην τεθέντας καὶ τὸ λοιπὸν¹¹⁶ τιθεμένους).

This is a fundamental principle regarding the validity of laws into the future (from 402/1 onwards). The Athenians presented an alternative: either a law could be valid from the date of enactment, or, if needed, a transitional period could be fixed with a later date of validity. This is a vital point that underscores the flexibility of the Athenian legal order regarding the validity of laws in the still-unstable situation following the rule of the Thirty. After reorganising the legal order and resurrecting legal scrutiny, the Athenians decided to establish principles for future legislation. For example, from *Dem.* 24.43 (in the speech *Against Timocrates* immediately after the quotation of Diocles' Law in the manuscript), we learn that a law can contain the clause making it valid from the time of the departure of the

¹¹⁵ Although the inscription *IG I³ 105* is very fragmentary, it seems to contain an oath of the member of the *Boule* (ll. 7–28, at 27: οὐκ ἐπιφσ]εφιδῶ), from which we can infer that this was also an important element of *nomoi* on the *Boule*. Generally, on the reconstruction of the oath, see RHODES 1972: 194 (following Wade-Gery). On the legal status of the oath, see doubts in *Dem.* 24.144–148; I would instead view the *horkos* as a vital part of the *nomos*.

¹¹⁶ As Harris clarifies, τὸ λοιπὸν means here that the provisions would not apply before the date the measure was passed and can be translated as 'henceforth'; see HARRIS 2002: 3–4; and also CANEVARO 2013: 126.

incumbent archon.¹¹⁷ After the archonship of Eucleides, the Athenians not only continued the scrutiny of the old laws (such as the sacred calendar: Lys. 30.17–25) but also produced new laws via *nomothesia*. In this way, the Athenians invented a more flexible approach, including situations when *nomos* would be valid from a moment other than its enactment.

The secretary of the Council was responsible for the publication of the laws and for ensuring that the relevant clauses were ‘added in writing’ (*προσγράφειν*) to the binding text of the laws.¹¹⁸ In this way, Diocles’ Law introduced fundamental principles determining the moment of a law’s validity: retrospectively, with respect to the activities of the *anagrapheis*, and prospectively, both for the continuation of their work on the old laws until 400/399 and for all new laws enacted under *nomothesia* in the restored democracy from 402/1 onwards.

Diocles’ Law, however, did not consider the issue of limiting the *application* of specific laws to make the amnesty clause work. This was addressed by new laws passed by specifically appointed *nomothetai* (Andoc. 1.82) shortly after the decision to resume legal scrutiny. This is why one needs to precisely distinguish in Athenian legal language the *validity* of laws from their *application*. One law that also aimed to secure the implementation of the amnesty was probably Archinus’ *nomos* on *paragraphe* (Isoc. 18.2–3), likely enacted in 402/1 or 401/400. This procedure allowed actions to be brought against individuals who violated the reconciliation agreements.¹¹⁹

¹¹⁷ Dem. 24.43: ὅτι πολλοῖς τῶν νόμων προσεγέγραπτο ‘τὸν δὲ νόμον εἶναι κύριον τόνδ’ ἀπὸ τοῦ μετὰ τὸν νῦν ἄρχοντα’, ‘Because in many laws it has also been written that “this law is valid during the archonship that follows the present one”’ (transl. from HARRIS 2018).

¹¹⁸ See SICKINGER 1999: 150: ‘The inscribed copies of some fourth-century laws do include the date on which they were passed, but others do not. We might assume that secretaries ignored the instructions of Diokles’ law, but it seems more likely that the dates required by the law were recorded in archival texts and not copies on stone. It is difficult to know what role, if any, the dating of laws played in their arrangement, but it is possible that precise dating was thought necessary not only to provide the effective date for the laws, but also to ensure that only the most recent law on a particular topic was considered valid’.

¹¹⁹ This law is discussed by WHITEHEAD 2002: 84–88, together with previous scholarship. He opts for either late 403/2 or 402/1 and elaborates on possible laws enacted in this period, such as the law on the levy (*epobelia*).

3. TOWARDS 'LEGAL CERTAINTY'

At the end of the fifth century, the Athenians decided to reform their legal order, initiating a fluctuating process shaped by the complexities of internal and external circumstances. Political factors – above all, the two oligarchic *coups d'état* – appear to have accelerated change, but the need for reform was rooted in earlier systemic inconsistencies: chiefly, the lack of orderly law-making procedures. I focus in this paper mainly on the late fifth century legal developments, although Mirko Canevaro and Martin Dreher have traced the accumulation of legislative problems, mechanisms for repealing laws, and the reasons for contradictory norms in the 'pre-reform' Athenian legal order.¹²⁰ Ultimately, the introduction of so-called 'rules of change' provided legal certainty amid conflicting laws (*enantioi nomoi*, as in Lys. 30.3 discussed above).

By contrast, Roman law relied on fundamental principles governing the rules of change, most notably *lex posterior derogat legi priori*.¹²¹ The Athenians, by contrast, lacked such general rules for much of their history. Their legal order instead relied on the charge of *graphe paranomon*, introduced to block the enactment of *psephismata* that contradicted existing *nomoi*. The emergence of this complaint seems to reflect an acknowledgment of contradictory norms in the Athenian legal order. Yet, scholars note that this mechanism could not provide consistency, as it did not apply retroactively to laws already in force, but only to new decrees.¹²²

Thus, unlike in Rome, older laws in Athens prevailed indefinitely. This reflected the prevailing legislative ideology in fifth century Greek world,

¹²⁰ My aim in this short point is not to present the Athenian approach to legal change before the late fifth century in lengthy detail (on which see CANEVARO 2015, and DREHER 2022) but to accentuate the great importance of the late fifth century Athenian legal developments concerning the validity of laws.

¹²¹ On the Roman approach to derogating norms, see the literature above, n. 61; and also CANEVARO 2015: 5–6.

¹²² See CANEVARO 2015: 29–33 (who also provides a reconstruction and previous scholarship on that charge; and also GIANNADAKI 2015). Another interesting legal institution used to manage the 'validity' of laws was *adeia* ('immunity'); notably, it did not operate retroactively as well, see ESU 2021: 161.

which regarded laws as immutable (Canevaro 2015). This perspective began to shift following debates on *politeia* and *nomoi* at the end of the fifth century, intensifying after the Athenian defeat in Sicily in 413, culminating in the first oligarchic coup in 411, and later in the launch of legal scrutiny in 410. This project marked the beginning of a series of legal and constitutional changes that ultimately formed the so-called ‘evolving law reform.’ Diocles’ Law was a crucial part of this reform, aiming both to regularise the previously complex legal situation and establish clear rules for future legislation on the validity of laws.

The Athenians sought to consolidate the legal order to protect the democratic constitution and to ensure ‘legal certainty,’ a principle central to Athenian legal culture at the end of the fifth century.¹²³ Certainty of law, a core tenet of the modern rule of law, implies that laws should be accessible, predictable, stable, consistent, clear, non-retroactive, and have legitimacy.¹²⁴ In Athens, conflicting laws during internal crises and external war threatened the stability of the *polis*’ legal, constitutional, and judicial order. Thus, Diocles’ Law should be interpreted as a watershed in clarifying the status of law. This Law regulated which laws constituted the valid body of laws (*nomoi*), guiding future law-making, while simultaneously ordering the previous complex normative situation, influenced both by oligarchic interventions and the ongoing scrutiny of the laws. At the same time, measures such as the amnesty covenant, together with the archonship of Eucleides as a ‘year zero’ for the *application* (*χρησθαί*) – though not for the *validity* (*κύριος εἶναι*) – of laws, reflect the social necessity of stabilising the state. These reforms were ideologically reinforced by the pro-

¹²³ For the notion of ‘legal culture’ for the ancient Greek world, see STOLFI 2020, and MIŚKIEWICZ 2025: sections 1 & 6.

¹²⁴ These are the core features emphasised in *Compilation of Venice Commission Opinions and Reports Concerning Legal Certainty* – CDL-PI(2022)004 (available at <<https://www.coe.int/en/web/venice-commission/-/cdl-pi-2022-004-e>> [accessed 24 November 2025]). In legal theory and philosophy, reference may be made to Fuller’s allegorical account of the reign of *Rex*, illustrating the so-called ‘internal morality of law’, that is the eight desiderata that laws should satisfy – most relevant for the idea of ‘legal certainty’ would be: generality, promulgation, non-retroactivity, clarity, and consistency (FULLER 1964). See also HARRIS 2013a: 7–8.

motion of *homonoia* ('concord'; e.g. And. 1.108–109, 140)¹²⁵ and *soteria* ('salvation'),¹²⁶ intended to prevent further escalation of *stasis*.

4. CONCLUSIONS

Diocles' Law formed part of a broader package of law reforms undertaken against a complex legal, constitutional, political, and judicial backdrop of late fifth century Athens. The archonship of Eucleides (403/2) marked a kind of 'year zero' for the legal order, though primarily from the perspective of the *application* of the laws. Diocles' Law, by contrast, focused squarely on their *validity*. The breadth and intensity of legal and constitutional activities in these years show why the developments from c. 410 to 399 are best described as the 'evolving law reform'.

Immediately after the rule of the Thirty, the Athenians faced multiple tasks: (1) approving previous (410–404) and prospective (403 onwards, ultimately until 399) legislative actions within the scrutiny of the laws with the vital role played by the *anagrapheis*; (2) establishing temporary rules regarding the amnesty and the application of laws; (3) re-publishing laws destroyed during the Thirty; (4) laying down fundamental principles for the *politeia* and law-making (*nomothesia*); (5) setting the question of legal validity – the precise aim of Diocles' Law. Much of this activity stemmed from measures introduced by the *nomothetai*. Our sources, however, often report only fragments of this complex situation, shaped by the perspective of individual cases and the speaker's judicial interest, making a coherent reconstruction challenging.

This paper aimed at elucidating specific aspects of the Athenian legal terminology. In Diocles' Law, *κυρίους εἶναι* consistently denotes the *validity* of laws, whereas Andocides employs *χρησθαι* to highlight their *application*

¹²⁵ But also earlier in the work of Thrasymachus (*apud* Dionysius of Halicarnassus' *On the Style of Demosthenes*: 85B1 DK). There was even the cult of *Homonoia* in Greece, see JOYCE 2022: 199–200.

¹²⁶ See, e.g., *Ath. Pol.* 29.2; Thuc. 8.53.3, and Aristophanes' *Assemblywomen* (*passim*); for discussion, see TORDOFF 2017.

by magistrates and courts. Terms such as *agraphoi nomoi* and *anagegrammenoi nomoi* were similarly distinguished, reflecting a nuanced legal vocabulary. Despite linguistic ambiguities and flexible interpretation – not unlike modern legal practice – the Athenians developed a specialized language of law. By the late fifth century, clarifying such terminology became itself a significant objective of law reform,¹²⁷ even if the tactical manoeuvring with legal language in the courts remained a separate phenomenon.

Therefore, Diocles' Law established the rules for the *validity* of laws (*κυρίους εἶναι*), but not their *application* (*χρηθῆναι*). It retroactively made valid those laws enacted *before* and *during* the archonship of Eukleides, which had undergone the scrutiny of the laws during the period of democracy (410–403/2, excluding the rule of the Thirty Tyrants). For the future, the general principle was introduced that laws were valid at the time of their enactment (including their re-enactment following the scrutiny until 400/399) – thus providing flexibility for some laws whose validity would be later.

More broadly, Diocles' Law shows how central the consolidation of law, the pursuit of legal certainty, and the strengthening of the rule of law were for the Athenians after a period of profound instability. They established general rules that structured the legal order as well as the renewed body of laws (regarding both previous and future legislation). The 'evolving law reform', among others, introduced the vital law-making (*nomothesia*) principle that the Athenian *nomoi* could be changed. From that moment, the prevailing ideology, which held that laws were unchangeable after their enactment, shifted towards an attitude of systematic legal scrutiny that continued into the fourth century. For this reason, one cannot expect that laws pub-

¹²⁷ In the procedural contexts, Athenians introduced some pivotal amendments to legal concepts, such as the distinction between *nomoi* and *psēphismata* (see above, n. 20); yet on the other hand, the updating of legal language in some regulations was absent, as we see in Draco's law (which uses quite archaic wording; see HARRIS & CANEVARO 2023). Moreover, in Lysias' *Against Theomnestus I* (dated to the first half of the fourth century), the accuser lists some old Solonian laws (which seem to be still valid), the language of which was quite old (Lys. 10.16–19), and from this perspective was not updated. Thus, in the law reforms, the Athenians decided to improve some clear and obvious inconsistencies, rather than reduce 'the open texture' of the Athenian law, which was generally crucial characteristic of their legal order; on that, see HARRIS 2013a: especially pp. 175–245.

lished on the *Stoa Basileios* were binding sets of rules or even represented a 'code of law'.¹²⁸ We know that in the fourth century no one perceived things this way (in this context, the Metroon plays a critical role because of its provision of public access to laws). But this does not mean, as Hansen has argued, that the legal scrutiny project did not matter holistically for the Athenian legal order (Hansen 1990: 70–71). It did, but it was only part of the bigger picture and one of many additional rules, of which Diocles' Law was but one example. This was the first time that the Athenians consolidated laws and the legal order in coordination with one another. Officials were allowed to apply only *anagegrammenoi nomoi*, that is laws that were correctly passed, published, and recorded (via the scrutiny of the law and then via *nomothesia* for the future), so thus promulgated for the Athenian citizens. Diocles' Law therefore determined the moment at which laws became valid within the dynamic and complex landscape of late fifth century Athens.

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¹²⁸ For sceptical perspectives on the notion of the *code of law*, see THÜR 2000: 89, 94–95; and also JOYCE 2022: 97 (perceiving the Athenian law from the late fifth century as the 'beginning of an ongoing process which was to continue into the next century'). DREHER 2022: 38, RHODES 1991, or ROBERTSON 1990 apply this notion without elaboration.

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Η ΕΝΩΘΗ
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Keywords: oracular inquiry, Roman Egypt, private letters, kinship terminology, documentary papyri, palimpsest, family relationships.

Lajos BERKES & Anton KISTOL

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Keywords: slavery, slave trade, sale contracts, Egypt, Arabic papyri.

Katarzyna DE LELLIS-DANYS, Grzegorz OCHALA,

✉ Aleksandra PAWLIKOWSKA-GWIAZDA

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Keywords: Coptic and Copto-Greek ostraca, Edfu, Faras, Middle Egypt, *etmoulon* ostraca, wine, literary ostraca, Psalms, materiality.

Giulio IOVINE

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cent. CE) and may cover a single occurrence, a petition or records of court proceedings, referring an individual pretending to be a priest to escape his liturgies.

Keywords: archive of Ammon, late antique Egypt, Egyptian priesthood, petition, court proceedings.

Adam ŁUKASZEWICZ

An inscription from Hermopolis 145

Abstract: Hermopolis was an important cultic and administrative centre of Graeco-Roman Egypt. During three seasons (1987–1990) a Polish-Egyptian archaeological expedition directed by Marek Barański carried out excavations in the city's Great Basilica. The inscription under discussion is one of the results of these excavations.

Keywords: Hermopolis, archaeological works, Greek inscription, Hermes.

Gabriella MESSERI

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Abstract: First edition of a wine account extending over six columns. Columns i–iv (iv is lost) record the sale of vintage wine and columns v–vi payments to the parties involved (intermediaries, administrators, camel drivers, and donkey drivers) made with the profits from the sale of wine. The vineyards are located in the area of Karanis. The account was most likely written in 194 CE using the back of the land administration register SB XII 10892 edited by Anna Świderek in *JJP* 16/17 (1971) and republished by the author *JJP* LIV (2024).

Keywords: wine account, wine production, wine prices, land transport, Karanis (Arsinoites).

Radosław MIŚKIEWICZ

Diocles' Law (Dem. 24.42) and the problem of the validity of laws in Athens in the late fifth century BCE 179

Abstract: The article examines the significance of Diocles' Law (Dem. 24.42) for the growing problem of (in)validity of laws in the Athenian legal order in the late fifth century BCE. Diocles' Law should be understood as part of the broader set of vital principles that constituted an 'evolving law reform' aimed at consolidating laws and strengthening the rule of law and democracy after deep constitutional crises. This study reconstructs the factual and legal background to which specific clauses of Diocles' Law refer (sections 2.1–2.4; ἐν δημοκρατία, κυρίου εἶναι, the archonship of Eucleides, ἀναγεγραμμένοι).

More broadly, it outlines the challenges the Athenians faced at that time, and the measures they took to address them, arising not only from the two oligarchic coups d'état, but also from mounting problems in their legal, constitutional, and judicial order. The article also argues that an analysis of Greek legal language – and its manoeuvrings as seen in Andocides' *On the Mysteries* – confirms that issues of the validity (κυρίως εἶναι) of laws must be distinguished from those concerning their application (χρησθαι). Even though the latter also played a role at the time, especially due to the *caesura* marked by the archonship of Eucleides (403/2), the central argument is that Diocles' Law was enacted to impose order specifically on the validity of laws at a very particular historical moment. This law was relevant retrospectively to 'the scrutiny of the laws', with the vital involvement of ἀναγραφεῖς τῶν νόμων from the beginning of their work in 410, and, more broadly, to future law-making. In addition (section 3), the article eventually identifies the principle of 'legal certainty', which underpinned the introduction of Diocles' Law, and formed a key part of Athenian legal culture at the end of the fifth century BCE.

Keywords: Diocles' Law; validity of law; application of law; classical Athens, law reform, law-making, the scrutiny of the laws, legal certainty, law consolidation.

Anna PLISECKA

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Keywords: ἀπόκριμα, ἰδία, imperial edict, amnesty, petition.

Jakub URBANIK

The purpose of P. Dionysia (P. Oxy. II 237) and its mysterious beginning 251

Abstract: This article presents a new hypothesis regarding the function the so-called *Petition of Dionysia* (*P. Oxy. II 237* = *P. Dionysia*). The study re-examines the papyrus' structure and its procedural context, focusing on its newly deciphered mysterious beginning (col. i) by Constantinos Balamoshev. The findings suggest that *P. Dionysia* be not the original petition but rather a copy, possibly official, produced during its administrative processing. I conjecture that the document represents a late procedural stage, possibly including the governor's final decision and subsequent requests for execution.

Keywords: Dionysia, juristic papyrology, Roman administration of justice, court/judicial procedure, Roman Egypt, local law, Reichsrecht, Volksrecht.

Joanna WEGNER

Clerical authority in late antique Egypt: A papyrological perspective 283

Abstract: Papyrological sources from late antique Egypt attest to a variety of non-religious contexts in which clergy below the episcopal level – mainly presbyters and deacons – exercised authority in rural settlements. These contexts include formal and informal representation of village communities, mediation in conflict, and policing of the morals. While these phenomena have already drawn the attention of scholars, they were often viewed strictly as an outcrop of the religious authority wielded by the clergy. The present contribution is an attempt to nuance this perspective by taking into consideration the diverse socio-economic factors which contributed to the social standing of the clergy. It uses Pierre Bourdieu's field theory, with its subsequent reiterations, as the main theoretical framework and builds on the concepts of capital accumulation and convertibility between social fields in order to arrive at a multifaceted analysis of the clerics' position as fully integrated members of rural societies.

Keywords: late antiquity, Greek and Coptic papyri, clergy, institutional church, authority, field theory, forms of capital.

Marzena WOJTCZAK & Jakub URBANIK

To sell or to have sold? Hypotheke-praxis and dikaia time in P. Budge 311

Abstract: A tiny archive composed of the famous Coptic arbitration protocol *P. Budge* and three associated Greek documents, a settlement of claims, a sale, and a loosely connected marriage document, bring forward a fascinating controversy of the tormented times between the Persian and the Arab conquests of Egypt. Its settlement testifies to the operative force of law, legal awareness of its users, and dispute-resolution strategies in an environment of intrinsic legal plurality. A new text edition, providing an in-depth study of this material, delving into the dispute resolution method, rhetorics, and proper reconstruction of the events, is presently in the works. Before it is published, we would like to present here an aspect of this matter, closely connected to the very origin of the dispute, viz. our hypothesis on the nature of the security provided by the borrower, the widow Thekla, to her creditors, the consorts Philemon and Thekla. This central matter of the *P. Budge* controversy witnesses the profound legal awareness of its parties. Operating within the legal framework provided by Roman law, and without attempts to transgress it, the law-users of seventh-century Edfu managed to bend and form it to serve best their needs, creating a flexible form of security,

fitting the circumstances of Thekla-the-Widow and the creditors couple. It is amazing to see how, even at the dusk of its domination of Egypt, the Roman legal *forma mentis* was so strongly present in this inherently plural society.

Keywords: Edfu, arbitration, late antique Egypt, securities, *hypothèque-praxis*, *dikaia time*, legal practice, *apotage*, *hypothekimaia asphaleia*.

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