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FROM ORAL LAW TO WRITTEN LAWS: DRACO'S LAW AND ITS HOMERIC ROOTS

According to tradition, Draco wrote a homicide law for Athens in 621 BCE. My question is, Why did Draco write this law when, as far as we know, no law had ever before been written in Athens (*Ath. Pol.* 41.2)? We may think that writing down laws is a natural step to take, but for people who knew nothing of written public documents, it was far from obvious. So, why did Draco decide to write this law? What could a written law do that oral customs and rules could not? One answer was offered in the fifth century by Theseus in Euripides' *Suppliants* (433-34): "When the laws are written down, the weak and the rich have equal justice."¹ Many scholars today dismiss this explanation as misguided democratic ideology. They note that most early laws were written in communities that were not democratic and argue that the poor and the weak could not read. Instead, they argue, inscribed laws were intended to make a visual impression on ordinary people, thereby strengthening the control of the ruling elite.²

Evidence in the inscriptions themselves, however, indicates that, on the contrary, they were intended to be read and used by members of the community beyond the small ruling elite.³ On the question of literacy, our evidence is limited and inconclusive, but it is becoming clearer all the time that even in the seventh

¹ γεγραμμένων δὲ τῶν νόμων ὅ τ' ἀσθενῆς.
ὁ πλούσιός τε τὴν δίκην ἴσην ἔχει.

² "Une écriture destinée à être vue plutôt que lue," as Camassa (1988: 151) says of early written texts, slightly misquoting Detienne 1981: 69. Stratton argues that the state could not control the earliest writing in Greece, and this made necessary "the development of a state system based on repressive written laws created and amended by the government" (1980:118). Eder sees the codification of law as "a reaction of the few aiming at preserving their political influence as completely as possible"; it thus served the political interests of the ruling class and preserved the control of the few over the many (1986: 264). "Wichtiger als die Lesbarkeit war offenbar die Sichtbarkeit der Satzung im konkreten Sinne, nämlich als Symbol und Garantie ihrer unabänderlichen und dauerhaften Geltung" ("Evidently the readability of a statute was less important than its visibility in the concrete sense, as a symbol and guarantee of its unchanging and lasting validity"), Hölkeskamp 2000: 88.

³ I discuss this issue and the whole subject of writing and law at greater length in *Writing Greek Law* (forthcoming).

century, especially in Athens, a fairly broad range of people knew how to write and presumably how to read, at least in a rudimentary fashion. Striking evidence for this has been collected by an American archaeologist, Merle Langdon, who has found dozens of inscriptions, most from the sixth century but a few perhaps earlier, that were carved on flat stones in the countryside of Attica, and the authors of some of these identify themselves as shepherds!⁴ And even if the number of readers was relatively small, say 5-10% of the population, this would still mean that many who were not part of the ruling elite would have been able to read. This is not to deny the visual or monumental aspect of some of these texts, but as a monument like the Vietnam War Memorial in Washington DC makes clear, an inscription can make a visual impact and at the same time be important as a text.

Now if Draco wrote his law so that people could read it, we must still ask, why was it important that it be written? The most common answer is that Draco was responding to a crisis that had arisen out of the attempted coup of Cylon fifteen years earlier.⁵ We have slightly different versions of the story in Herodotus, Thucydides and Plutarch, but they agree that after Cylon's coup failed, he and his followers were trapped, either on the Acropolis or in a sanctuary, and many of them were sacrilegiously killed there. The family of the Alcmeonids, led perhaps by Megacles, appear to have played a leading role, and they were later considered polluted because of the sacrilege.⁶

No ancient source mentions a continuing crisis or connects Draco with Cylon, but many scholars make the connection anyway. The most detailed case for this was presented by Sally Humphreys at the 1990 Symposium (Humphreys 1991: 21-22):

It seems likely enough that many of the questions with which Drakon was concerned would be raised with particular insistence at some interval after the defeat and massacre, when sons of the slain had grown to manhood, when those who had sympathized with Kylon or were related to his supporters gathered confidence to voice their claims in public, perhaps when some of the killers who had initially left Attika began to explore the possibility of return.

Drakon, then, is preoccupied in the first place with killers who claim to have acted defensibly. His phrase μὲν ἑκ προνοίας, non-intentionally, is well chosen to cover the variety of claims that will have been made: that the killer acted in self-defense, that he had no personal animosity against his victim, that he was acting under orders.

Besides the difficulty of seeing why issues arising out of Cylon's attempted coup would be more urgent fifteen years later than at the time of the coup, there are

⁴ Personal communication; these texts are not yet published, but see the notice in *SEG* 49.2

⁵ 636 is the generally accepted date for Cylon, though this is not certain; for details see Rhodes 1981: 79-84, and for a full account of the ancient sources, see Stroud 1968: 70-74.

⁶ More details in Thür 2002: 633-34.

significant problems with this thesis. First, in Athenian law μὴ ἐκ προνοίας (“unintentionally”) is never used of killing in self-defense, or killing without personal animosity, or killing under orders. And even if it could apply to any of these types of killing, there is no evidence for such killings in the massacre of the Cylonians, which appears to have been carried out quite intentionally in a period of civil strife. Humphreys might have a somewhat easier time positing a link to the Cylonian episode if she accepted, as I do but she does not, that Draco’s law as we have it applies to intentional as well as unintentional homicide. But even then, the connection remains purely hypothetical.

In addition, the killing of the Cylonians must have raised political and religious concerns. Cylon had been attempting to gain control of Athens by force, which amounted to establishing a tyranny, and Athens later had legislation protecting anyone who killed a would-be tyrant. But Draco’s law as we have it says nothing about killing a tyrant. Nor does it address the religious crime of killing someone who was either in a sanctuary or, as a suppliant, was somehow protected by the gods. This religious concern was probably the reason why for years after this event the Alcmeonids were said by some to be under a curse. Surely a law responding to this particular crisis would address these two factors.

Forsdyke (2005: 83-84) argues that the tyranny law cited in *Ath. Pol.* 16.10 was aimed specifically at the Cylonians, but there are problems with this view. The passage reads,

They [the Athenians during the time of Pisistratus] had the following law (*nomos*): “These are ancestral ordinances (*thesmia*): If any people set up to be tyrants in a tyranny, or if anyone joins in establishing a tyranny, both he and his family (*genos*) will be outlawed (*atimos*).”⁷

This report cites an Athenian *nomos*, usually dated to the fifth or late sixth century,⁸ which officially establishes as law a long-established (*thesmia*) ancestral rule, that anyone establishing or helping to establish a tyranny will be outlawed. If this information is accurate, the *nomos* cannot be as old as Draco because he was the first to write laws in Athens (*Ath. Pol.* 41.2).⁹ But the *thesmia* cited in this *nomos* may be the kind of *thesmia* that are reported in *Ath. Pol.* 3.4 to have been written

⁷ νόμος γὰρ αὐτοῖς ἦν ὄδε. “θέσμια τάδε Ἀθηναίων καὶ πάτρια· ἐάν τινες τυραννεῖν ἐπανιστῶνται ἐπὶ τυραννίδι, ἢ συγκαθιστῆ τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος.” The pleonasm and abrupt shift from plural to singular have stimulated most scholars to emend, and editors have usually deleted the expression ἐπὶ τυραννίδι as redundant with τυραννεῖν (see Rhodes 1981: 223); but it is defended by Ostwald 1955: 121 n. 97, who sees similar pleonasm in Draco’s law. See also Gagarin 1981b.

⁸ Rhodes 1981: 222-23.

⁹ The law would not, of course, have been called a *nomos* in the seventh century, but the *Ath. Pol.* is probably responsible for this term.

down by the Thesmothetai. In that case, we can imagine that the Cylonians went into exile after their failed coup and the Thesmothetai, either at that time or in some later trial, wrote the rule down as a note to themselves for future reference, that anyone who attempts a tyranny is to be outlawed (which would have forced him into exile).

If this hypothetical scenario is accurate, and the Cylonians later were agitating to return to Attica, then Draco may have needed to reaffirm this traditional rule. But this rule would not be part of his homicide law. And if, as Forsdyke further suggests (2005: 84-88), the Cylonians and their supporters returned to Attica despite this rule, seeking revenge and thus continuing the intra-elite conflict that Forsdyke sees as characteristic of this period, then, again, it is not clear why Draco needed to write down a law rather than just reaffirm (orally) the customary rules for the treatment of homicide, including the rule that only family members can prosecute for homicide, which Forsdyke sees as a significant factor in her reconstruction of events (2005: 87, following Humphreys).

Besides Humphreys and Forsdyke, many other scholars link Draco to the Cylonian conspiracy because the two events are close in time.¹⁰ We do have evidence that a generation later Solon responded to a crisis in Athens in part by writing laws, and my suspicion is that this later event has led scholars to conclude by analogy that Draco must also have been responding to a crisis.¹¹ But the main steps Solon took to resolve the crisis he faced were the *seisachtheia* and the prohibition of debt-bondage, and he may have had other reasons for writing laws, many of which were on matters not related to this crisis. Moreover, by Solon's time the Athenians had already had enough experience with written law that he could more easily understand the significance and effect of writing. But whatever Solon's reasons, there is no reason why Draco must have had the same motive.

In fact, we have no evidence for any crisis in Athens at the time of Draco. The explanation that Draco was responding to some sort of crisis may seem plausible at first glance, but we need to ask exactly how writing a law would resolve a crisis. How, in other words, would the act of writing down a law resolve a conflict that could not be resolved by traditional methods of dispute settlement that did not use writing?

To understand why Draco's law needed to be written, we must ask first, how homicide was treated in Athens before Draco, and then what changed after Draco wrote his law. We have no direct evidence for Athenian law before Draco, but it is likely that procedures similar to the traditional methods of dispute settlement that are illustrated in the poems of Homer and Hesiod were also used in early Athens (and in Greece in general). In particular, in the famous trial scene on the shield of Achilles (*Iliad* 18.497-508) Homer presents a dispute arising out of a homicide, which

¹⁰ E.g., Stroud 1968: 70-74 with references; Thür 2002.

¹¹ Hölkeskamp 1999 argues that almost all early laws were written as responses to crises.

evidently would be settled before a group of elders.¹² The poems also present many general rules and customs for the treatment of homicide and other matters which were preserved and transmitted orally. These rules are sometimes stated explicitly by one of the characters in the poem, but they are also illustrated by many examples of homicide and other wrongs.

Among the rules voiced explicitly by a character, two in particular apply to homicide. First, as Odysseus advises Telemachus after they have killed the suitors (*Odyssey* 23.118-20), “even when one has killed one man in a community, a man with few helpers following him, he flees into exile, leaving behind his kinsmen and country.”¹³ Examples in both epics confirm that this is the usual response to a killing, and also indicate that once a killer has fled into exile, the victim’s relatives do not normally pursue him any further. On the other hand, in a different context Homer presents a very different rule about the treatment of homicide, namely that the killer should be reconciled with the victim’s relatives. This rule is proclaimed by Ajax in an angry speech to Achilles (*Iliad* 9.632-36): “A person accepts from the killer the blood-price for his dead brother or son, and when he has paid a large compensation, the killer remains in his land, and the person’s heart and manly anger are curbed, when he has received the blood-price.”¹⁴ Finally, one other relevant rule concerning homicide may be implicit in the story of Agamemnon’s murder, various accounts of which are given in the *Odyssey* (see 1.35-43, 3.254-312, 11.405-34, etc.). The fact that Clytemnestra is killed by Orestes along with Aegisthus, even though (unlike in Aeschylus’ *Agamemnon*) she is only an accomplice, and that everyone seems to approve of her murder, suggests that it was generally accepted that an indirect participant in a homicide should be punished together with the actual killer.

All Greeks knew Homer well and it is likely that in early Greece Athens and other communities continued to follow the same general rules and customs for responding to a homicide, either by exile or by compensation and reconciliation, or by both. The Cylonian episode shows that exile was one possible response to homicide because at least some of those who killed the Cylonians were exiled, though the sacrilegious nature of the crime may have played a role in the

¹² I have discussed this scene in Gagarin 1986: 26-33 and elsewhere. The most recent treatment is by Cantarella (2002), who reaches very different conclusions on some points.

¹³ καὶ γὰρ τίς θ’ ἕνα φῶτα κατακτείνας ἐνὶ δήμῳ,
 ᾧ μὴ πολλοὶ ἔωσιν ἀοσητηρὲς ὀπίσσω,
 φεύγει πηούς τε προλιπὼν καὶ πατρίδα γαίαν·

¹⁴ καὶ μὲν τίς τε κασιγνήτοιο φονῆος
 ποινήν ἢ οὐ παιδὸς ἐδέξατο τεθνηῶτος·
 καὶ ῥ’ ὁ μὲν ἐν δήμῳ μένει αὐτοῦ πόλλ’ ἀποτίσας,
 τοῦ δέ τ’ ἐρητύεται κραδίη καὶ θυμὸς ἀγήνωρ
 ποινήν δεξαμένῳ.

punishment. We have no such evidence for compensation and reconciliation, but it is certainly possible that some killers were reconciled with their victims' families, perhaps after a period of exile. And still others, presumably the more powerful members of the community, probably resisted any punishment and refused to submit to traditional procedures for dispute settlement, perhaps claiming that the traditional rules did not apply to them, or perhaps that they were not directly involved in the killing.¹⁵

But if such people were still present in Athens fifteen years later, or if some of those who had been exiled were anxious to return and willing to pay compensation but were not being allowed to do so by their victims' relatives, and if either situation (or both) were causing serious conflict in the community, how would writing a law resolve this situation? Why would those who were unwilling to accept a peaceful settlement reached through traditional procedures agree to abide by a rule just because it had been put in writing for the first time? And if the written law contained innovations that somehow made it more attractive to those who had previously refused to abide by the rules, why could Draco not simply modify the existing procedures to make them more effective? Why would changes have to be put in writing?

Consider, for example, the scenario Thür (2002) reconstructs, that Megacles or some other leader claimed that although he had encouraged others, he did not participate in the killings (and perhaps even argued against them) and therefore was not liable to a charge of homicide, and (fifteen years later) relatives of some victims were still demanding that he be punished. In such a situation, why could Draco not simply declare that those who lead others but do not themselves kill either are or are not liable? Why did he need to put this rule in writing? Surely if Megacles had been refusing to go to court for fifteen years and if he continued to refuse even after Draco declared (orally) that those who lead are liable, he would react no differently when Draco wrote this rule down. And if Draco ruled the other way and declared (orally) that leaders are not liable, and the relatives refused to accept this, what difference would writing down the rule make? And if the main rules in Draco's law closely resembled traditional Homeric rules and practices (as I think they do), it is especially hard to see any reason why he would need to put them in writing. Many reasons have been proposed why Draco created the specific rules we find in his law, but no reason has been given for writing them down rather than declaring them orally. Nor has anyone explained why writing down these rules would have been more effective at resolving a crisis, whether or not it was related to the killing of the Cylonians.

To understand the reasons, we must turn to the one piece of solid evidence we have, the text of the law. The original inscription is lost, but a copy survives, made

¹⁵ So Thür 2002: 634-35.

in Athens in 409, which many scholars think accurately reproduces the original text of the law, though there is considerable disagreement whether these provisions originally stood at the beginning of the law.¹⁶ Even if significant parts of the original law are missing from this later inscription, as long as the text we have reflects Draco's actual words, my argument about Draco's motives in writing the law should still be still valid. For reference purposes I have divided my translation into numbered clauses.¹⁷

ΠΡΟΤΟΣ ΑΧΣΟΝ

1. καὶ ἐὰμ μὲ ἴκ προνοίας κτένει τίς τινα, φεύγεν.
2. δικάζεν δὲ τὸς βασιλέας αἴτιον φόνο ἔ[να]ι τὸν ἐργασάμενον] ἔ βολεύσαντα· τὸς δὲ ἐφέτας διαγνῶναι.
3. αἰδέσασθαι δ' ἐὰμ μὲν πατέρ ἔι ἔ ἀδελφὸς ἔ ἠυῆς χάπαντας, ἔ τὸν κολύοντα κρατῆν.
4. ἐὰμ δὲ μὲ ἠούτοι ὄσι, μέγρ' ἀνεφσιότετος καὶ ἀνεφσιῶ, ἐὰν χάπαντες αἰδέσασθαι ἐθέλοσι, τὸν κολύοντα κρατῆν.
5. ἐὰν δὲ τούτον μεδὲ ἠῆς ἔι, κτένει δὲ ἄκον, γνῶσι δὲ ἠοι πεντέκοντα καὶ ἠῆς ἠοι ἐφέται ἄκοντα κτέναι, ἐσέσθον δὲ ἠοι φράτορες ἐὰν ἐθέλοσι δέκα· τούτος δὲ ἠοι πεντέκοντα καὶ ἠῆς ἀριστίνδεν ἠαιρέσθον.
6. καὶ ἠοι δὲ πρότερον κτέναντες ἐν τῶιδε τῶι θεσμῶι ἐνεχέσθον.
7. προειπῆν δὲ τῶι κτέναντι ἐν ἀγορῶι μέγρ' ἀνεφσιότετος καὶ ἀνεφσιῶ.
8. συνδιόκεν δὲ κἀνεφσιὸς καὶ ἀνεφσιῶν παῖδας καὶ γαμβρὸς καὶ πενθερὸς καὶ φράτορας.
9. (passage into exile?)
10. ἐὰν δὲ τίς τὸν ἀνδροφόνον κτένει ἔ αἴτιος ἔι φόνο, ἀπεχόμενον ἀγορῶς ἐφορίας καὶ ἄθλον καὶ ἠιερῶν Ἄμφικτυονικῶν, ἠὸςπερ τὸν Ἄθηναῖον κτέναντα ἐν τῶις αὐτοῖς ἐνέχεσθαι· διαγιγνόςκεν δὲ τὸς ἐφέτας.
11. [ἐξ]ἔ[να]ι δὲ τὸς ἀνδροφόνος ἀποκτένει ἔ ἀπάγεν ἐὰν ἐν] τῶι ἐμεδ[απῆι ...]
12. ἄρχον]τα χερῶν ἀ[δίκον ... χερ]ῶν ἀδίκον κτέ[νει ... διαγιγνόςκ]εν δὲ τὸς ἐ[φέτ]ας.
13. ...]εις ἔ ἐλεύθερος ἔι· καὶ ἐὰν φέροντα ἔ ἄγοντα βίαι ἀδίκος εὐθύς ἀμνόμενος κτένει, νεποινὲ τεθνάναι.

¹⁶ Indications that the original text was not revised before being reinscribed include the fact that the fifty-one are to choose ten members from the phratry by (aristocratic) rank (*aristindên*) and that the text refers to itself as a *thesmos*. In the first case, a more democratic process would surely have been implemented in the fifth-century if the law had been revised, and in the second, the law would have been called a *nomos*, as it is in the prescript from 409 ("let the Anagrapheis inscribe the *nomos* of Draco concerning homicide"). In addition, the provision for retroactivity would have been without force by the time a generation or so had passed, yet it is still preserved in the reinscribed text (provision 6), as is a reference to frontier markets (provision 10), which no longer existed by 409. See further Stroud 1968: 60-64.

¹⁷ *IG I³* 104. I give Stroud's text, preserving the spelling of the inscription but removing most of the epigraphical details. In provision 2 (line 12) and provision 11 (lines 30-31) I include *exempli gratia* supplements that illustrate the generally agreed sense of the missing words. I omit the prescript from 409 (lines 1-9).

[Seventeen lines]
 ΔΕΥΤΕΡΟΣ ΑΧΣΟΝ

The law begins after the heading FIRST AXON in line 10. Provision 1 is concise and simple and clearly reflects the traditional practice of exile for homicide.

(1) Even if someone does not kill someone intentionally, he goes into exile.

Provision 2 is also expressed concisely and it too reflects a rule implicit in Homer, that an accomplice would be treated just like an actual killer.

(2) The kings judge guilty of homicide the killer or the planner, and the *ephetai* decide.¹⁸

By referring to *hoi basileis* and *hoi ephetai* (“the kings and the *ephetai*”), Draco implies that both groups already existed in Athens. The kings would almost certainly have had judicial duties before Draco, as they do in Homer and Hesiod, and perhaps the *ephetai* too, though the particular division of duties between the kings and the *ephetai* specified here may be a change from their earlier division of duties, about which we know nothing.

After the first two clauses come three provisions concerning reconciliation between the killer and the victim’s relatives, the practice referred to by Ajax (see above):

(3) Reconciliation, if there is a father or brother or sons, all of them; or the objector prevails.

(4) But if these are not (alive), up to the degree of first cousin once removed and first cousin, if all are willing to reconcile, the objector prevails.

(5) But if not one of these is (alive), and he killed unintentionally, and the fifty-one, the *ephetai* decide he killed unintentionally, let ten phratry members admit him if they wish; and let the fifty-one choose these by rank.

Here too, in allowing reconciliation, presumably accompanied by compensation, Draco is following traditional practices, though his rules provide considerably more detail than we find in Ajax’s brief summary, which only mentions accepting

¹⁸ Because Thür thinks that the function of the *basileis* was to determine the oaths to be sworn by the two sides, he translates this provision, “Die Könige sollen anordnen (dass der Kläger schwört, der Verklagte) sei schuldig der Tötung, entweder ‘mit der Hand, die er geregt hat’ oder ‘durch Ratschlag’” (2002: 634). Even if we accept that *dikazein* here means “anordnen” (“order, direct”) – and I and others would disagree – nothing justifies the words in parentheses except Thür’s preconception about the function of the *basileis* in a homicide case. If Draco had wished to prescribe that the *basileis* should order a litigant to swear a decisive oath, surely he would have stated this explicitly. No reader could be expected to supply for himself the words Thür adds in parentheses.

compensation from the killer of a brother or son. Moreover, Ajax says nothing about disagreements among relatives, which in practice may have been a source of conflict.¹⁹ Draco's requirement for unanimity may have been an important innovation intended to reduce the potential for confusion and conflict in such situations. And Draco goes further in 4 and 5, addressing contingencies for which there were probably no earlier rules, and he sets forth these rules in detail. In giving detailed rules for the procedure to be followed in such cases, Draco is almost certainly innovating.

Provisions 3-5 are also interesting for style. 3, which reaffirms a traditional practice, continues the same concise style as 1 and 2, but 4 has a little more detail; and in 5, which addresses a remote contingency for which almost certainly no earlier rule existed, Draco spells out the procedure in greater detail. Thus, his method seems to be to combine traditional, general rules, which are stated concisely, with new rules containing extensive details.

After these, Provision 6 provides that the law is retroactive.

(6) And let those who killed earlier be bound by this ordinance (*thesmos*).

Here Draco returns to the concise style of provisions 1 and 2. He evidently sees no reason to clarify whether this means that all the provisions thus far are retroactive, as I think is more likely, or only that the provisions on reconciliation are retroactive. But in fact, since the latter contain the most significant innovation in the law thus far, retroactivity would be most important for these provisions, and so in the end it matters little which alternative we choose.

These first six provisions contain the essence of the homicide law. They state the basic penalty for homicide, specify who judges homicide cases and include accomplices in the process, allow for reconciliation no matter which relatives (if any) remain, and designate these rules as retroactive. In a modern legal code, this would be Section One of the law. The next five provisions (7-11) can be designated Section Two; they give rules about procedures that both accuser and accused must follow in homicide cases. First we are told quite precisely who makes the initial proclamation (7) and who shares in the prosecution (8).

(7) There is to be a proclamation against the killer in the agora [by relatives] up to the first cousin once removed and first cousin.

(8) Sharing the prosecution are cousins and cousins' sons and sons-in-law and fathers-in-law and phratry members.

¹⁹ For the suggestion that the dispute on the shield of Achilles might be caused by disagreement among relatives, see Gagarin 1981: 13-16.

In the next four lines only a few letters can be read: “is responsible for a homicide,” “the fifty-one” (in the accusative case), and “they convict of homicide.” If these last words were part of a conditional clause, the missing provision (9) may have regulated the convicted killer’s journey into exile after the trial, perhaps specifying that he not be harmed on the way and setting a time limit. Such a provision might have occupied all four lines, or there may have been another provision before it.

After these lines comes a rule protecting a killer in exile (10), followed by a provision that makes clear that a killer who returns to the territory will not be not protected (11).

(10) But if someone kills the killer (in exile) or is responsible for his killing while he is avoiding a frontier market and athletic contests and Amphictyonic sacrifices, he is liable to the same treatment as someone who kills an Athenian; and the *ephetai* are to decide.

(11) It is permissible to kill or summarily arrest (a killer) in our territory.

All these rules reflect the traditional practices we observe in Homer, a victim’s relatives take the lead in prosecuting a killer, but after the killer goes into exile, they no longer pursue him. But Draco has added precision and has specified a number of details that almost certainly were not traditionally specified: for example, where outside of Attica the killer would or would not be protected. These details are especially important, since one of the main reasons why a killer had to go into exile was to prevent future contact between him and the victim’s family and friends. Frontier markets, athletic contests and Amphictyonic sacrifices were relatively new international events on the border of Attica or outside the territory. Both sides would need to know whether the killer in exile would be protected if he attended these events, and Draco specifies that he would not. Thus the victim’s family and friends would know that they could attend these events with little likelihood of encountering the killer, who would lose his protection if he attended them, just as he would if he returned to Attica.

After this section of procedural details, no clear sense can be made of the next three lines. Then provision 12 says something about beginning a fight – most likely the person who strikes the first blow will be held responsible for any death resulting from the fight. And 13 allows a person to kill someone who is attacking him and not owe compensation for the death.

(12) ... beginning a fight ... he kills beginning a fight ... and the *ephetai* are to decide.

(13) ... or is free; and if someone kills defending himself immediately against someone who is forcibly and unjustly plundering or seizing him, the death shall be without recompense.

After 13, no sense can be made of the next seventeen lines, but then there is another heading, SECOND AXON, corresponding to FIRST AXON at the beginning of the law.²⁰ This shows that additional provisions continued as far as that point and certainly farther, though only a few traces of letters can be seen after this. Thus, the reconstructable provisions of Draco's law constitute less than half of the forty-five lines of text on the first axon, and assuming that the law continued farther down the second axon, we can calculate that Draco's original law was at least three or four times as long as the text we now have, and maybe longer.

Now, what does this text reveal about Draco's reasons for writing his law? First, we do not know whether the original seventh-century inscription had some of the same physical features as other early inscriptions, such as dividing marks between words or phrases, which would make the text easier to read, but the clear organization of provisions in the law is evident even in this later copy. Section One contains the most essential elements: the crime and its punishment, procedures for judging and reconciliation, and a statement of retroactivity. Section Two then gives precise and detailed rules for litigation procedures, in the order in which a homicide case would normally proceed, beginning with the initial public proclamation accusing the killer of homicide and ending with rules protecting the convicted killer who has gone into exile, but not if he returns to Attica. After this come additional rules covering special situations that would probably arise more rarely. Not enough of this third section survives for us to know whether these rules were arranged in a particular order, but the overall organization of the law is clear enough. It is also clear that Draco must have consciously arranged the provisions in such a way that it would be easy for a reader to follow, or to find a specific provision he was looking for. Thus, one of Draco's primary goals was to make his law accessible to readers who might need to use it.

Also of help to a reader would be certain stylistic features. First, several provisions have a chiasmic arrangement of subjects and verbs.²¹ This marks the beginning and end either of a provision (2, 3) or of a period within a provision (5, 10). Second, Draco begins several provisions (2, 3, 7, 8, and perhaps 11) with an infinitive followed by *de*. In these provisions the infinitive acts like a heading stating the subject of that provision – *dikazein*, *proeipein*. Third, 4, 5, and 10 begin with *ean de*, indicating that these provisions add a qualification to the preceding clause. Like the numbered sections and subsections of modern legislation, these features would

²⁰ Although only traces of this second heading survive, the greater size of the letters, the larger spacing between this line and the line that precedes, and the un-inscribed space at the end of the preceding line all are paralleled for the first heading (line 10) and nowhere else. We can thus accept the reconstruction of this second heading as certain.

²¹ See, for example, provision 2, which begins *δικάζειν δὲ τοὺς βασιλέας* and ends with *τοὺς δὲ ἐρέτας διαγνῶναι* (Verb, Subject, Subject, Verb).

help readers more easily understand the organization of the law and find specific provisions they might wish to read.

It is clear, then, that Draco tried to write a law that was reader-friendly, but we must still ask, why write this law down in the first place? The historical context is important. Evidence from archaeology reveals a steady pattern all over Greece, including Attica, of population growth and economic prosperity as well as greater diversity. By the late seventh century, the unification (*synoecism*) of Attica had been completed,²² bringing together towns and villages that may previously have had their own local traditions. Athens was now head of a large territorial unit that included all of Attica (whether or not it was called by this name at the time), and its population had been growing because of immigration as well as territorial expansion.²³

The growing prosperity suggests that the community was generally law abiding, and that before Draco wrote his law, traditional procedures for dispute-settlement must therefore have been functioning effectively, even for major offenses such as homicide. On the other hand, the growth and greater diversity of the population would have increased the likelihood that certain areas of Attica or segments of the population had different customs and practices, and such differences would have increased the chance for uncertainty and conflict about traditional rules. The resulting increase in the number and complexity of disputes would have strained the traditional procedures for dispute settlement, which had developed to serve smaller, more coherent communities. The situation did not necessarily call for entirely new rules – it would be reasonable to keep well-known and effective rules, such as the rule that a killer should go into exile – but some traditional rules might need to be changed or supplemented. And for many aspects of the treatment of homicide existing rules (such as the rules for reconciliation) would need greater precision and specificity. And in other areas new rules would be needed to govern less common situations or to spell out new details of procedure. Finally, the relatively recent development of new institutions, such as international festivals, would also have led to the need for new rules.

In order to clarify traditional rules or to legislate for new situations, it would be especially important to give full details about these rules, to make these details as clear as possible so as to prevent misunderstanding or disagreement, and to ensure

²² See Rhodes 1988: 200 (on Thucydides 2.15.2): “If there was in fact a unification of Attica in the bronze age, it will almost certainly have been undone in the breakdown of the Mycenaean civilization, and the unity of the classical period will have been created toward the end of the dark age.” The last village to be joined to Athens was Eleusis, probably in the eighth or seventh century.

²³ Osborne (1996: 70-81) speaks of “slow and steady growth” (80). See Whitley 2001: 98-99 on population growth in the eighth century (“that there was a general increase in population ... seems undeniable”). Manville 1990: 55-78 has a good summary of the social organization of Attica and its development up to Draco’s time.

the stability of the details so that they would not change over space or time. It is this need for precise, clear, and stable details, especially details about points of procedure, that explains why Draco did not just formulate new rules orally, as had been done in the past. Traditional pronouncements that could be preserved and transmitted orally were adequate for expressing general, easily-remembered rules, but they were not adequate for expressing rules with many details, or for ensuring that the details did not vary from case to case.

Recall Ajax's statement about compensation and reconciliation which we cited earlier: "A person accepts from the killer the blood-price for his dead brother or son, and when he has paid a large compensation, the killer remains in his land, and the person's heart and manly anger are curbed, when he has received the blood-price" (*Iliad* 9.632-36). This traditional rule (or statement of custom) says only that a brother or father accepts compensation, stops being angry, and allows the killer to remain in the land. It says nothing about whether a relative must accept compensation, which relative (if there is more than one present) can or must agree to accept the compensation, what happens if no father or brother is alive, or countless other details. As a general oral pronouncement, it has the virtue of being easily remembered and communicated to large audiences. But it will not be effective in regulating conduct in a community growing ever larger, more diverse, and more complex, where the absence of such details would increasingly result in uncertainty and disagreement.

A more detailed rule, however, would be difficult, if not impossible, to compose in a version that could be easily remembered and transmitted orally. Just imagine trying to put the text of Draco's law into hexameters! And even if one could express Draco's law in verse, it would be nearly impossible to communicate the text orally to a wide audience with all the details intact, especially over time. As many studies of oral cultures have shown, details in oral texts are unstable and often change with successive retellings. Only in exceptional circumstances could orally transmitted details perhaps remain constant over time, and the examples given are usually small religious communities transmitting a sacred text.²⁴ Thus, when Draco wanted to communicate precise details of homicide procedure – which family members should participate, or where a killer in exile could and could not go – he had to put this information in writing. This is the main reason why he wrote his law.

Draco may have had other reasons, but nothing suggests that in writing this law he aimed to further his own interests or those of a small ruling class by imposing his authority on the common people. On the contrary, his law would have served in several ways to strengthen the nascent sense that all inhabitants of Attica belonged

²⁴ The *Vedas* are often cited as the extreme case of exact memorization of a large body of material, but scholars have recently expressed doubts whether these were in fact transmitted without writing; see Goody 1987: 110-22, Finnegan 1992: 139-53

to a single political community, a polis, that was Athens.²⁵ First, the mere fact of writing and displaying rules that applied, by implication at least, to all Athenians (or to all inhabitants of Attica) and only to them would have conveyed a sense of political unity. In fact, this sense of inclusion was not only implicit in the opening *tis*, “someone” – that is, some Athenian – but is especially evident in provision 10, where Draco provides that anyone who kills a killer in exile “is liable to the same treatment as someone who kills an Athenian.” By making the killer of an Athenian subject to different treatment from the killer of anyone else, this law would convey to the reader that, as an Athenian he was a privileged person and was protected by this law, as others were not.

The law would also convey a sense of political unity by implying, perhaps for the first time, that Athens, or Attica, was a territory with clear, demarcated boundaries.²⁶ Provision 10 suggests this concept of a territory with known boundaries when it speaks of a frontier market, and provision 11 conveys the same idea when it allows a killer to be killed or arrested “in our territory.” Thus, by writing a law for all the inhabitants of Attica, by making an Athenian a privileged person, and by implying that Athens (or Attica) is a single territorial unit, Draco would have fostered a growing sense of Athenian political unity. This may not have been his conscious aim, since these details are inserted almost by the way in later provisions of the law, but it may have been one of the effects of writing this law. And the desire to clarify rules for an increasingly diverse population would suggest a general awareness on Draco’s part of the need to create a more closely unified community out of these diverse elements.

Finally, Draco did not write rules addressing only one issue or one specific crisis. He wrote a comprehensive and detailed homicide law concerning a wide range of issues and situations, including some rather remote contingencies.²⁷ He organized it, moreover, into a logical and coherent whole, not simply a collection of individual provisions that might have been enacted as ad-hoc responses to crises. Past conflicts or recent crises may have made Draco aware of the need for new, detailed rules concerning homicide, but his aim in writing this law was not to resolve these past conflicts or to address them directly, but to provide a comprehensive and detailed set of rules that could easily and effectively be used in homicide cases that would arise in the future.

²⁵ On this point see Manville 1990: 79-82, Forsdyke 2005: 88-89.

²⁶ Manville (1990: 80) notes that “probably such boundaries were not carefully surveyed demarcations but primarily natural limits and marginal lands.”

²⁷ By this I do not mean to imply that Draco wrote a “code” in the modern sense of a “complete and systematic set of rules” about homicide (see Hölkeskamp 1999, and most recently Thür 2002: 632); this issue of “codification” in the modern sense is, in my view, a red herring.

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