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CONSERVATIVE TRENDS IN ATHENIAN LAW: *IE* 138, A LAW CONCERNING THE MYSTERIES

An inscribed fourth century text known as ‘a law in the City Eleusinion concerning the Mysteries’ is the starting and end point for this discussion of ‘conservative trends in Athenian law.’ The largest part of my discussion is devoted to the topic of codification: can this particular ‘law’ or a comprehensive predecessor a century earlier be viewed as a ‘code of laws’ about the Mysteries and what, if anything, can that tell us about law-making or codification more broadly in Athens and about the reporting of laws in the literary tradition? A smaller component of discussion focuses on possible archaisms of text presentation and legal procedure.

Eighteen fragmentary bits and larger pieces of the opisthographic stele that carried the fourth century law were excavated in the Athenian Agora, in or near the Eleusinion, from 1936 to 1963. Kevin Clinton published the *editio princeps* in *Hesperia* 1980 (*SEG* 30.61) and dated its enactment to some point between 380 and 350 (1980: 272; 2008: 138), with a preference for the period between 367 and 350 (2003: 81). In 2005, Clinton republished the text in his corpus of inscriptions from Eleusis where he now designates it as *IEleusis* no. 138 or, more simply, *IE* 138.¹ Three of the fragments of the stele provide a continuous, mostly stoichedon text of 54 lines for Side A, and a non-stoichedon text of 24 lines for Side B. The remaining fragments, by Clinton’s calculations, add 5 lines to Side A and ca. 90 lines to Side B, thereby giving a total of perhaps 173 lines.² Indeed, the size of the text led

¹ While the text of the *editio princeps* and that in the new edition are the same, in his 2008 commentary he changes his interpretation on a number of points and acknowledges a preference for Stumpf’s restoration in one passage (Side A, l. 28) but rejects a second of his restorations in another (Side A, ll 37); both restorations have to do with legal processes. I think he is right to reject; no palmary restoration has been suggested.

² The first line of Aa is the first line inscribed on the stele and continues to line 42 and gives part of the left margin; frag. Ab is placed to the right of frag. Aa and extends from mid-line 18 to line 54; another fragment of five lines is thought to follow, after a lacuna of unknown length, and it is not known how many lines of text the stele carried. Side B is mostly non-stoichedon and consists of thirteen fragments. The back of frag. Ab is designated frag. Ba; so what appears in Clinton’s text as Side Ba actually begins on Side B at line 18 of Side A; Ba is *not* the beginning of the text on Side B; Ba has 24 lines and ends where Face A has line 47. The surface underneath Ba 24 is smooth and has no lettering; it may be the end of the text on Side B, unless another text, possibly even a different one, began after a lacuna of unknown length. Clinton (1980: 266) suggested that

Clinton to liken the document to the famous Law on the Mysteries of Andania. The likeness did not stop there; ‘both documents,’ Clinton proclaimed, ‘contain the same wide variety of regulations, including details of the public cult and festival and legal procedures for dealing with infractions’ (1980: 258). Both in 1980 and again in his 2008 commentary, Clinton briefly compared *IE* 138 with earlier and later regulations of the Mysteries; *IE* 138 may have been, he concluded, ‘the most comprehensive law on the Mysteries that had been issued since the time of Solon’ (1980: 273).³ The original document, he conjectured, ‘may have covered every aspect of the Mysteries on which it was appropriate at this time for the Athenian state to legislate.’ And finally, he offered an hypothesis for the motivation for the ‘new code’: it was related to ‘the increased popularity of the cult in the early part of the fourth century’ (1980: 274-75 and 2008: 117). Codification served, then, sociological ends: ‘Most of the preserved statutes on this stele,’ Clinton writes, ‘can be seen as reflecting a need for legal remedies to cope with difficulties created by very large numbers of initiates; i.e., they reflect a desire to attract them and they reflect a concern for their well-being after their arrival. If the initiates were treated properly, they would be more likely to encourage others to attend this Panhellenic festival.’⁴ And by ‘this Panhellenic festival’, Clinton does not mean the particular festival celebrated in the year in which the ‘new code’ was enacted, but every year henceforth in which the Mysteries, the greater and the lesser, were to be celebrated.

‘New code’: is *IE* 138 a *code*—that is, to apply Stephen Todd’s formulation in a recent study of Lysias’ speech against Nikomachos, is *IE* 138 ‘a single and coherent text which should supersede all other sources of law’ regarding the Mysteries?⁵ Or to apply Raymond Westbrook’s similar but more extended formulation in a recent survey of early lawcodes, is it ‘an exclusive source of the law, at least in the area

fragment Bb (with 14 lines) preceded Ba because of its stoichedon arrangement; possibly it continued the text of Side A. (Note that Bb is labelled erroneously as ‘Side B fragment c [I 6877 b]’ in Plate 72 [1980]; that photo should be labeled ‘Side B fragment b [I 6877 a]’; cf. ed. pr., *Hesperia* 32 [1963]: 2 and Plate 1.) Clinton also deduced that the remaining eleven fragments of Side B ‘belong above or to the right or left of a.’ This means, so I think, that Side B may not have had more than 38 lines and so the text of our ‘code’ may actually be shorter than Clinton’s estimation—although it is true we do not know whether more text appeared after Ba 24, nor do we know how extensive the gap was between Aa 54 and the small fragment Ac.

³ Clinton’s language differs in 2008 where he calls the text ‘the most extensive set of regulations we possess from antiquity concerning this cult’ (117).

⁴ Clinton 2008: 117 continues: ‘The announcement of the Mysteries, selection of the spondophoroi, extension of the Sacred truce by several weeks over its former length, the report of the spondophoroi on how they were treated during their mission, the regulations concerning false *myesis*, the appointment of additional officials called epimeletai to help the basileus in managing the public part of the festival and in maintaining order, the statute making exegesis available at specific times to Athenians and foreigners, are among the best preserved statutes that support this hypothesis.’

⁵ Todd 1996: 126.

which it purports to regulate...’? Is it ‘deemed to be a comprehensive statement of the relevant law, so that anything omitted from the text is omitted from the law—a sort of legal *horror vacui*’?⁶ In my view, it isn’t quite that; nevertheless, it is a code of some sort and in order to explore what sort, I would like to borrow a heuristic question from John Davies’ study of Gortynian legislation: ‘when is a code a code?’⁷ I would also like to borrow the two ‘propositions’ he used when he described the method by which he ‘deconstructed’ the notion of codification at Gortyn: first, ‘the [Gortynian] Code has to be seen as part of a corpus of documentation’; and second, ‘its format has to be seen within a framework of revision of law which moves both towards and away from codification.’⁸ There are major differences, of course, between law production in Gortyn and in Athens, between the code for a city and that for a cultic festival, but I am not comparing the Gortynian code with a festival code; I am simply using Davies’ method: to contextualize *IE* 138 within a corpus of like documents—a task made all the easier by Clinton’s magisterial work—and to examine the ‘format’ of *IE* 138 (and other members of the ‘corpus’) within a framework of revision, asking, are there signs of success, or signs of unraveling and remaking?

Before I begin, I want to address one doubtful objection to my enterprise and one methodological issue. As for the objection, a skeptic might urge that this project is fundamentally vitiated because *IE* 138 is not a ‘law’, that it cannot be demonstrably proven to be a law—there is, after all, no prescript and no room for one above the first line of Side A and the top of the stone provides no indication that another stone had been set on top of it with the prescript (Clinton 1980: 259); at most, the text offers a series of regulations for a cult enacted by *decree* of the boule and demos. To this doubtful objection, I answer: the Mysteries was the most important public cult at Athens; while indeed the *gene* of the Eumolpidae and Kerykes were in charge of the religious administration of the sanctuary, our earliest document about its finances, *IE* 19 (= *IG* I³ 6 ca. 470-60), shows that the polis exercised final control (Clinton 1974: 8; 2008: 3). The text in question here, *IE* 138, establishes dates for an international Sacred Truce and regulations for the treatment of those announcing the truce in foreign cities; it establishes rules regarding the selection of polis officials; its concern with administrative details is consonant with other fourth century laws such as those on the building of walls, the grain tax, silver coinage, and the funding of sacrifices for the little Panathenaia through the leasing of the Nea (*SEG* 18.13); its rules are not set down to serve the occasion of one celebration, but for all celebrations of the Mysteries to come; that we do not have a prescript to prove it emanated from the nomothetai may be an accident of

⁶ Westbrook 2000: 34.

⁷ Davies 1996: 33. Essentially, Davies has set out a method for studying the formal articulation of law revision; this is quite different from studying the institutional mechanisms of lawmaking.

⁸ Davies 1996: 33.

preservation. So a strong, circumstantial case can be made for the text being a law and Hansen in 1979 indeed argued that it was on the basis of its content.⁹ A similar case can be made for the earlier *IE 19 (IG I³ 6)*, although it belongs to a period when there is no perceptible difference between law-making and decree-making. On the other hand, if there are well-meaning agnostics who will maintain, as is true to the fact of lacunose preservation, that we cannot be one hundred per cent certain that either *IE 19* or *138* is a law, then let them consider what follows to be a discussion of the ‘codification’ of earlier decrees or laws into a more comprehensive decree *or* law.¹⁰

The methodological issue is more troubling: *IE 138* is missing, on a conservative estimate, more than half its original text. *IE 19 (IG I³ 6)*, the earlier comprehensive decree, carries ca. 141 lines of text on three sides, of which a quarter is illegible or too fragmentary to be useful; moreover, it has a fourth side about which nothing can be said for certain, not even whether it belongs to the same document as Faces A-C.¹¹ How can one use such incomplete texts as these as the basis for thinking about codification? Clearly my conclusions can only be tentative; but the detail of what is preserved of the texts, in conjunction with details of earlier and later regulations for the festival, does allow for some concrete comparison and conclusions, even if of limited circumference. I might add, for comparative consideration, that the fact that we have only a fraction of the remains belonging to the revised Athenian lawcode of 410-403 has not stopped scholars from speculating about its entirety, and often with little acknowledgment of the physical constraints imposed by the material remains.¹²

i. Corporate documentation and the format of disiecta membra

Six extant epigraphical documents and four laws or parts of laws mentioned in literary sources can arguably form a series with *IE 138*.

1. *IE 7 (IG I³ 231)*, ca. 510-500.
2. *IE 13 (IG I³ 5)*, ca. 500-470.
3. *IE 19 (IG I³ 6)*, ca. 470-60.
4. *IE 21 (IG I³ 33)*, mid-fifth century.
5. *IE 22 (IG I³ 251)*, mid-fifth century.
6. *IE 250 (SEG 21.494)*, ca. second or first century B.C.

⁹ Hansen 1979: 32-35; he did not have the *editio princeps* of *IE 138* but he did have some of the early fragments.

¹⁰ For discussion of ‘sacred laws,’ see Parker 2004.

¹¹ Meritt 1945: 69-70 regarded the round letters of Face D as having been drawn ‘free-hand’ as opposed to the round letters on Faces A, B, and C, which ‘are perfect circles, made with a tubular drill’—except for the ‘postscript to Face C (lines 47-50), also drawn free-hand.

¹² Dow 1961 and Clinton 1982: 32-33 are examples of scholars who do heed the physical constraints; even so, there is much that remains uncertain.

An additional three epigraphical documents add information that allows us to infer changes in the regulations of the festival.

7. *IE 28a and b* (*IG I³ 78a and b*), the Eleusis copy (a complete stele) and the Athens copy (a fragment) of the ‘first fruits decree,’ dated variously from the 440’s to 422/1.

8. *IE 30* (*IG I³ 32, SEG 10.24*), dated variously from ca. 450 to 432/1, the establishment of the epistatai to oversee the property of the two goddesses.

9. *IE 237* (*IG II² 1013 with addenda p. 670*), ca. 120 B.C., a decree concerning weights and measures, photograph of new fragment and text in *Hesperia* 7, 1938, no. 27.

None of the documents can be precisely dated; the first five epigraphical documents are dated to the mid-fifth century or to earlier dates purely by letter form. Nos. 6 and 9 are dated to the second or first centuries B.C., also by letter form. Nos. 7 and 8 are more variously dated, sometimes by letter form (e.g., the absence of the aspirate in no. 7 and the appearance of three-bar sigmas in no. 8) and sometimes, more compellingly, by inferential arguments. I accept a date in the mid-430’s for no. 7 (the ‘first fruits decree’) and a slightly later date, 432/31, for no. 8 (the establishment of the epistatai to oversee the property of the two goddesses).

To these documents, four literary references to laws or regulations can be added—if they are different from the above documents:

10. And. 1.111: Andokides, speaking in his own persona at his trial by *endeixis*, says: ‘the boule was about to have its meeting there [in the Eleusinion] in accordance with the law of Solon that provides for a sitting of the boule on the day after the Mysteries.’¹³ The ‘Solonian’ law must have a *terminus ante quem* of at least some (considerable?) number of years before autumn 400, which MacDowell has plausibly argued is the date of trial.¹⁴

11. And. 1.115: Andokides reports that Kallias said: ‘There is an ancestral law (*nomos patrios*): if anyone sets a suppliant’s branch in the Eleusinion <during the Mysteries> he is to be put to death.’¹⁵

¹³ And. 1.111: Ἐπειδὴ γὰρ ἤλθομεν Ἐλευσινόθεν καὶ ἡ ἔνδειξις ἐγεγένητο, προσήει ὁ βασιλεὺς περὶ τῶν γεγενημένων Ἐλευσίνι κατὰ τὴν τελετὴν, ὡσπερ ἔθος ἐστίν, <τοῖς πρυτάνεσιν>, οἱ δὲ [πρυτάνεις] προσάζειν ἔφασαν αὐτὸν πρὸς τὴν βουλήν, ἐπαγγεῖλαι τ’ ἐκέλευον ἐμοί τε καὶ Κηφισίῳ παρεῖναι εἰς τὸ Ἐλευσίνιον· ἡ γὰρ βουλή ἐκεῖ καθεδεῖσθαι ἔμελλε κατὰ τὸν Σόλωνος νόμον, ὃς κελεύει τῇ ὑστεραίᾳ τῶν μυστηρίων ἔδραν ποιεῖν ἐν τῷ Ἐλευσινίῳ.

¹⁴ MacDowell 1962: 204-5.

¹⁵ And. 1.115: πάλιν ὁ Καλλίας <ἀνα>στάς ἔλεγεν ὅτι εἷη νόμος πάτριος, εἷ τις ἰκετηρίαν θεῆι <μυστηρίοις> ἐν τῷ Ἐλευσινίῳ, ἄκριτον ἀποθανεῖν, καὶ ὁ πατήρ ποτ’ αὐτοῦ Ἰππόνικος ἐξηγήσατο ταῦτα Ἀθηναίοις, ἀκούσειε δὲ ὅτι ἐγὼ θεῆην τὴν ἰκετηρίαν. The addition of the temporal indication in Kallias’ charge—that the branch was set there during the Mysteries—is essential to the offence; while it does not appear in the mss. at §115, it was present in Andokides’ paraphrase or citation of the putative ancient law in §110. The timing indication is important: for Kallias is not claiming that

12. And. 1.116: Andokides reports that Kephalos responded to Kallias: ‘Oh, Kallias, you most impious man of all, ... you say there is an ancestral law—yet the stele next to which you stand says, “if someone sets a suppliant’s branch in the Eleusinion, he is to incur a fine of 1,000 dr.”’¹⁶

13. Dem. 21.175: Demosthenes, speaking in his own persona in a speech of 347/6, says: ‘The law (*nomos*) about the Mysteries is the same as this one about the Dionysia, and was enacted later than it.’¹⁷

Among the first six inscribed texts listed above, only the preserved content of three (nos. 1, 3, and 6) are manifestly and exclusively regulations for the Mysteries: the fragmentary *IE 7* (*IG I³ 231*) and the more extensively preserved *IE 19* (*IG I³ 6*) and *IE 250* (*SEG 21.494*). Findspot and analysis of *IE 13* (text no. 2) suggest that the regulations recorded there were enacted for the celebration of the Mysteries.¹⁸ Two texts (nos. 4 and 5) found at Eleusis and containing language suggestive of regulations are too scrappy to be useful.

I should like to begin with a brief discussion of *IE 13* (*IG I³ 5*), dated by different scholars between 508 and the 470’s, which is more or less a complete text, with only five lines and bearing mostly obvious restorations.¹⁹ It presents an ‘abbreviated decree’: it begins with a prescript (‘it was resolved by the boule and demos when Paribates [was secretary]’) and is followed by instructions for the ‘hieropoioi Eleusinion’—probably hieropoioi from the deme Eleusis rather than ‘of the festival Eleusinia’; the hieropoioi are to sacrifice specified victims for specific gods and goddesses in the courtyard at Eleusis during the festival.²⁰ Abbreviation is indicated by the absence of regularly inscribed details: the proposer’s name, the source of funds both for the sacrifices and for the publication of the decree, and the place of publication.²¹ Prott had argued in 1899 that the gods and details of sacrifice indicated that the celebration was the Eleusinia;²² Clinton plausibly argued eighty years later that the celebration was the Mysteries on the basis of the findspot of the large central fragment (between the Telesterion and the Lesser Propylaea at Eleusis) and the simple reference to the ‘the festival’ in line 5 (cf. *IG I³ 386. III 157*); the

the branch was put on the altar on that very day, which is the day after the Mysteries; no, it was put there *during* the Mysteries.

¹⁶ And. 1.116: Ἦ Καλλία, πάντων ἀνθρώπων ἀνοσιώτατε, πρῶτον μὲν ἐξηγήη Κηρύκων ὄν, οὐχ ὄσιον <δν> σοι ἐξηγεῖσθαι· ἔπειτα δὲ νόμον πάτριον λέγεις, ἡ δὲ στήλη παρ’ ἧ ἔστηκες χιλίας δραχμᾶς κελεύει ὀφείλειν, ἐάν τις ἰκετηρίαν θῆ ἐν τῷ Ἐλευσινίῳ.

¹⁷ Trans. MacDowell 1990. Dem. 21.175: ἔστι δ’ ὁ αὐτὸς νόμος τῷδε τῷ περὶ τῶν Διονυσίων ὁ περὶ τῶν μυστηρίων, κακείνος ὕστερος τοῦδε ἐτέθη.

¹⁸ Clinton 1979.

¹⁹ Dates are based on lettering: Jeffery 1948: 102: after the reforms of Cleisthenes (adding the form of the ‘preamble’ as suggestive of the early date); Clinton thinks the lettering could be as late as the 470’s.

²⁰ Clinton 1979: 4 n. 11.

²¹ Clinton 2008: 12.

²² Prott 1899: 249-56.

sacrifices envisioned in the decree, however, were not the main ones at the Mysteries, but the [προτέ]λεια or ‘preliminary sacrifices’.²³ The inscribed polis regulations, then, pertain to one segment of the Mysteries. The ‘abbreviated decree’ may be noteworthy for its skilful streamlining, an expert act of excerpting, not a word wasted.

The monument, however, may have been more noteworthy than the document. The text is inscribed on one of the narrow sides of a rectangular slab which has a roughly finished bottom (suggesting it lay on the ground); the top surface, on its left and right sides, has two circular cavities and, at its center, a rectangular cutting. Jeffery thought it was an altar top and that the cuttings were connected with ritual offerings;²⁴ Prott had thought it was the lower slab of a sacrificial table supported by columns that were inserted into the circular cavities;²⁵ Clinton thought the cavities were too large for table supports but suitable for dedicatory columns topped with statues of Demeter and Kore. He also thought that the rectangular cutting in the center of the slab would support a hollow, vertical object, made of metal (because of the thinness of the channel), and probably of bronze.²⁶ Finally, he hypothesized what that bronze object might be: ‘The cutting would be just right for a four-sided bronze stele of the sort published by Stroud, *Hesperia* 34, 1963, pp. 138-43 (ca. 450 B.C.) ... If this is correct, we may suppose that an earlier (perhaps Solonian) sacred law was inscribed on this bronze stele, front and back, with lengthy regulations, and the regulations on the base should therefore represent a new modification or addition.’²⁷ The fact that Stroud had identified the fragmentary bronze stele as a *lex sacra* must certainly have abetted Clinton’s imagination.

Imaginative speculation, yes, but it is based on physical findings and brings to our attention that the laws and decrees of Athens were not always written on marble stelai; the ‘abbreviated decree,’ after all, is inscribed on an object that is definitely not a stele and may have been an altar or—just maybe—an inscribed base carrying a non-extant law. Even if we cannot know more tangibly the object that was wedged into the rectangular channel of its surface, surely the text of the decree that we do possess represents an addition to or modification of already existing regulations: why else was it decreed and then published in the sanctuary? In fact, almost any piece of legislation that provided regulations for the cult must be an ‘addition’ or ‘modification’.

I turn now to our earliest extant document, *IE 7 (IG I³ 231)*, ca. 510-500. It consists of four fragments inscribed in boustrophedon style, with letters that Jeffery thought agreed ‘with those on certain public monuments usually dated in the late

²³ Clinton 1979; 2005: 16; 2008: 32-3.

²⁴ Jeffery 1948: 91 and n. 20.

²⁵ Prott 1899: 242-44.

²⁶ Clinton 2008: 12; Prott 1899: 243 suggested metal or wood.

²⁷ Clinton 2008: 32. *Ibid.*, p. 37: ‘The original law [the one on the bronze stele] and the full form of the decree no doubt mentioned the name of the festival.’

sixth or early fifth century'; the thickness of the fragments suggested that the inscribed object was originally an altar that carried instructions on its vertical face.²⁸ The text contains word-fragments safely suggesting that its contents concerned sacrifices (barley) and activities of the priestess and the *phaidyntes* of the Two Goddesses at the Mysteries.²⁹ Perhaps more noteworthy than the word-fragments themselves is their boustrophedon lettering. Jeffery has pointed out that Attic evidence shows that by ca. 530 the practice of writing consistently from the left margin to the right was prevailing.³⁰ I quote Jeffery's reflective explanation for the use of boustrophedon writing both here and in a similar document dated ca. 500-480, both inscribed long after boustrophedon had gone out of fashion:

'They are religious documents, and so may provide an example of religious conservatism such as would not prevail under the same circumstances for secular matters. They deal with the ritual of one of the oldest sanctuaries of the State, and probably replace earlier documents, dealing with the same matters, which were themselves inscribed boustrophedon. It is even possible that our inscriptions—particularly Block I [*IE* 7], which has the air of a homogenous document—may be literal copies, transcribed from earlier texts on wood or poros.'³¹

Religious conservatism, then, easily explains the format, the boustrophedon style, and the probably compilatory contents. While Jefferey's description of the contents (as opposed to the style and form) of *IE* 7 and the other document (now *IG I³ 232*) depend on far too much restoration or imagination to stand scrutiny ('the air of a homogenous document!'), another Attic example, exemplifies the trends she noted. For this, however, we must skip five decades to the mid-fifth century to an opisthographic stele inscribed by the deme Paiania (*IG I³ 250*).³² Its upper part is broken off; its partially extant (?) first fourteen lines preserve a decree of the deme,³³ what follows is some sort of sacrificial calendar, providing apparently similar regulations about sacrifices, many in the Eleusinion (probably the City Eleusinion,

²⁸ Jeffery 1948: 88 (lettering); 91 with n. 18 (argument for altar rather than stele). Clinton 2005 no. 7 reports three fragments, but see Plate 29, no. 66 in *Hesperia* 1948 (Jeffery).

²⁹ This is the earliest mention of the *phaidyntes* ('Brightener'), the official who maintained the brilliance of cult statues in the Telesterion: see Clinton 2008: 12-13.

³⁰ Jeffery 1948: 103.

³¹ Jeffery 1948: 103. She continues with description of Block II (now *IG I³ 232*) which does not for certain pertain to the Mysteries, or at least not exclusively: 'But the continual repetition of similar detail on most of the fragments of Block II, and the division into paragraphs and clauses, suggest that it may rather have formed a compilation of various shorter boustrophedon inscriptions dealing with the different sacrifices to be performed in the temenos; that it is, in fact, an early attempt to synthesize various sacrificial instructions into a sort of code, written boustrophedon from religious conservatism because the inscriptions from which it was made up were written in this way.'

³² *Editio princeps*: Peek 1941: 171-81, photo, Plate 66; *SEG* 10.38.

³³ *IG I³* editors have reversed Peek's Side A and B (see Peek's discussion: 179) so that the 'decree' portion of the text is now Side A.

and apparently not for the Mysteries).³⁴ The text shows no sign of editing nor any rationale. Peek, the first editor of the text, suggested that at one time each of the individual provisions had stood on its own; a need was subsequently perceived for collecting them together into a ‘code of sacred law’; the redaction was not, however, systematic, and individual regulations were collected together however they were found.³⁵

ii. IE 19: a first codification of regulations for the Mysteries?

The comparandum from the deme Paiania sets us in the mid-fifth century or possibly a bit later but outside the polis center and outside our small dossier of decrees about the Mysteries. I now would like to return to this dossier, to *IE 19 (IG I³ 6)*, a polis decree dated ca. 470-60, and the most comprehensive extant forerunner of *IE 138*. Four sides of the rectangular stele were inscribed; on the ‘fourth side’, Face D, only a few letters can be read; Meritt’s observations about the different method used here for inscribing its round letters might suggest that Face D is a later text, but nothing firm can be said—Clinton reads but fifteen letters securely.³⁶ The rather fragmentary Face A appears to regulate access to the sanctuary—e.g., access seems to be denied to cities that have refused to hand over an inhabitant who owes money to Athens (*A 30-32*).³⁷ Although there is nothing preserved on Face A that explicitly associates these exclusions to the time of the Mysteries, it seems that only the occasion of the Mysteries could anticipate their need. Face B is largely taken up with the sacred truces or spondai; Clinton summarizes: ‘First it is specified *to whom* the spondai are applicable (lines 10-19); second, the *time* of the spondai for the Greater Mysteries; third, *where* the spondai are to be in effect; and finally the time of the spondai for the Lesser Mysteries.’³⁸ Clinton further summarizes the preserved stoichedon section of Face C: it ‘regulates various aspects of access to the sanctuary for the initiates, including the cost of admission; and it states who is to administer the admission fees and the *aparche*.’³⁹ Observed thus, the document is a rational presentation of regulations, beginning with presumptive exclusions, proceeding to the preparations for the Mysteries via the spondai, and finally more localized regulations for the administration of the rites. My characterization of the law’s presentation of provisions as ‘rational’ pertains not merely to what can be perceived as a temporal but overlapping progression (preliminary exclusions anticipating the festival, the duration of spondai before the Mysteries begin in Boedromion and

³⁴ Whether the Eleusinion is local or the city’s is debated: see Parker 2007: 332-3 and Whitehead 1986: 196-7, both with earlier bibliography.

³⁵ Peek 1941: 180.

³⁶ See n. 11 above.

³⁷ For different interpretations and texts of *A 36-43*, see Meritt 1946: 250; Gauthier 1972: 158; Cataldi 1981: 109-10.

³⁸ Clinton 2008: 40.

³⁹ Clinton 2008: 41.

continuing into the following month of Pyanopsion, and the period of the rites during Boedromion), but also a spatial progression, from the international plane of activity to the local grounds of the sacred gene. The law is administrative in character and looks to orderly conduct and accounting; the motivational force driving the law may well be economical—with its exclusion of debtors and attention to the fees of initiates that produces the sacred fund of the Two Goddesses and that will be at the disposal of Athenians.

This is a generalized survey of the law's provisions and a closer look may raise problems for the progression that I have just posited. One area of focus is the claim that localized regulations for the administration of the rites is reserved for Face C. Observe that at the end of Side A, offences of an international nature are under discussion; plausible but uncertain restoration of A 36-40 suggests that seizure of Athenians during the truce is prohibited, unless the individual has been convicted in a local court or has been discovered among the enemy.⁴⁰ There follows, perhaps, as Gauthier thought, a prescription that covered all previously specified international arrangements, 'if any city disagrees, then that city is to have recourse to justice at Athens ἀπὸ χσϣ<μ>βολῶν' (40-43).⁴¹ Face B then begins. Nothing can be made of the first three lines (fragment d) that precede the lacuna; after it, there follows, in ll. 5-7, mention of a simple [penalty?] for an unintentional [offence?] and then a double [penalty?] for an intended one. If indeed penalties and offences are under discussion here, it is possible, as Hicks in 1874 and Böckh in 1828 thought,⁴² that the offence is *blabe*.⁴³ But where are the offences committed? Are they committed at and during the festival and are we suddenly thrust into a list of festival infractions—or are they committed in an international arena before the festival begins, between foreigners or between foreigners and Athenians abroad (?) and are they to be treated in Athens—after the festival? I think we can only conjecture on the basis of the way the text proceeds. In lines B 8ff., the truces are defined for the *mystai* and *epoptai*, for followers, Athenians and foreigners, and this topic continues to the very end of Side B. It seems unlikely that in the gap between the international arrangements at the end of Side A and the arrangements for simple and double penalties in B 5-7, a new section appeared, devoted, e.g., to infractions committed by initiates during the Mysteries. It is simply out of order. I propose that the penalties mentioned in B 5-7 are for offences from last year's festival, possibly arising from damages incurred during the journey to and from Eleusis, e.g., damages due to faulty repairs to bridges and roads and other permanent or temporary construction. For comparison, I call attention to *IG II² 1126*, an Amphiktyonic law of 380/79 in which the hiaro-

⁴⁰ Clinton 2008 ad loc.

⁴¹ Gauthier 1972: 158.

⁴² Hicks 1874: 6, col. 2 and Böckh *CIG* (1828) I no. 71.

⁴³ Cf. Dem. 21.43.

mnamones are ‘to repair the bridges a[nd ensure in the future that] no injuries are caused and oversee the public walkways’ (41-42).⁴⁴

We have moved a great distance away from the deme Paiania and earlier conservative boustrophedon instructions and compendia. Do we have a ‘codification of law’ here in *IE* 19 (*IG* I³ 6)? Certainly we have more or less comprehensive regulations, so far as the extant text allows us to conjecture;⁴⁵ I would also argue that its ‘rationality’ is a seal of its codifying character. But three points demonstrate that the document is not autonomous; if a code must stand on its own, this one does not. First, the provision regarding the aparchy (if properly restored) requires prior information to be fully comprehensible: ‘And of the sacred fund <from> the [apar]che / it is permissible for the Athen[ians to / borrow] whatever they want [just] / as <they do> from [the fund] of Athena / on the Acropolis. (C 32-36). Second, personnel are taken for granted (e.g. the ‘hearth initiate’ in C 25 and the hieropoioi in C 37). Third, the final non-stoichedon last four lines of Face C with its (probably) different hand are an addendum: three more individuals (priests and a herald?) are added who are to collect fees from initiates. It is impossible to tell when the addendum was inscribed: soon after what preceded—was it later the same day, a week later, a year? At some point, earlier or later, the new ‘code’ was thought incomplete and subsequently revised.

We are, of course, missing at least a quarter of the document,⁴⁶ but no additional text could change our characterization of C 47-50 as an ‘addendum’. And nothing on Face A or B suggests that the personnel would have been given an introduction there; the ‘code’ of 460 (*IE* 19) may have relied upon a tradition of shared knowledge; as the rites were celebrated year after year, there was no need to define the ‘hearth initiate’ and to relay the mechanism of the appointment of the hieropoioi (i.e., whether they were drawn from the Eleusinians as they appear to be in the earlier decree, *IE* 13, or were appointed by the polis as seems likely here).

The aparche, the annual tithe from the grain harvest to the sanctuary of Demeter and Kore, in *IE* 19 Face C 32-38 is more problematic:

τὸ δὲ ἱερῶ ἀργυρί[ο τῆς ἀπαρ]-
 χῆς ἐχ[σ]εῖναι Ἀθην[αίοισι χρ]-
 [ε]σθαὶ ἡό[τι] ἄν βόλο[νται καθά]-
 35 περ τὸ τῆς Ἀθηνάια[ς ἀργυρίο]
 τὸ ἐμ πόλει· τὸ δὲ ἀρ[γυρίον τὸ]-
 ς ἱεροποιὸς τ[ὸ] το[ῖν Θεοῖν ἐ]-
 [μ] πόλει ταμיעύεσθ[αι .⁶...]

⁴⁴ Cf. the bridges in *IE* 41 (*IG* I³ 79, 422/1); *IE* 137.47 (*IG* II² 1540), 370-60?); and *IE* 95 (*IG* II² 1191, 322/1).

⁴⁵ Clinton 2008: 21 and 41 surely is right to hypothesize that after the time limits for the spondai are presented in *IE* 19B 8-47, provision was made for their announcement; he conjectures that the matter was taken up at the beginning of Face C.

⁴⁶ See n. 11.

‘And of the sacred fund <from> the apar]che / it is permissible for the Athen]ians to / borrow] whatever they want [just] / as <they do> from the fund of Athena / on the Acropolis. And <as for> the fu[nd / of the] T[wo Goddesses o]n the Acropolis, [th]e hieropoioi / are to be the treasurers.’ (C 32-38, text of Clinton 2005)

The ‘sacred fund’ (*hieron argurion*) of line 32 is surely the same ‘fund’ that is administered by the hieropoioi and that belongs to the Two Goddess in lines 36-38; the sacred fund specifically includes the fees collected from the initiates (minus the 1,600 drachmas reserved for the expenses paid out by the priestess, Face C 14-20). If ‘[apar]ches’ is properly restored in l. 32 (and if the dotted *chi* in the word is secure), then Athenians were here granted permission to borrow sacred money from the aparche (or from its surplus?), but apparently *not* from the rest of the sacred fund belonging to the Two Goddesses. This is odd and irrational.⁴⁷ Syntax is odd; we miss the preposition ἀπό to govern aparche as in the similar expression that occurs three times (once heavily restored) in *IE* 45 (*IG* I³ 391): ἀργύριον ἀπὸ τῷ σίτω τῆς ἀπαρχῆς τοῖν θεοῖν.⁴⁸ And by ‘irrational’, I mean that the provision steps outside the parameters of the preserved text’s otherwise rational explication of regulations for the Mysteries: for while the aparche is connected with the sanctuary, it does not appear to be connected specifically to the Mysteries; on the other hand, the sacred fund of the Two Goddesses *is* explicitly connected with the Mysteries, insofar as the fees collected from initiates are said to belong to the Two Goddesses in Face C 14-20. Aparche is out of place.

For a connection of the aparche with the Mysteries *per se*, we might look to another inscription for assistance, as indeed Clinton did to defend Meritt’s restoration of [apar]ches in line 32.⁴⁹ This is *IE* 28a and b, the two copies of the ‘first fruits decree’, one from Eleusis and the other from the Acropolis; the date is disputable, but I accept (with Clinton) the mid-430’s as the most plausible. By this decree, ‘all Athenians and their allies are to offer first-fruits and all Hellenic cities that wish are urged to join in this offering, in recognition of Demeter’s—and Athens’—beneficence in sharing the gift of grain.’⁵⁰ The first fruits are to be offered to the Two Goddesses according to ancestral custom (κατὰ τὰ πάτρια) and the Delphic oracle (4-5); heralds selected by the boule are to be sent to the cities to make the announcement of the decree, on this occasion as soon as possible but in the future at a time of its choosing (22-24); the hierophantes and daidouchos are [to summon] the Hellenes *during the Mysteries* to sacrifice the first fruits according to ancestral custom and the Delphic oracle (24-26). *IE* 28, l. 21 (apud fin.)-26 are as follows:

⁴⁷ And slightly perilous since this is the first occurrence of aparche in a fifth century document.

⁴⁸ Cf. *IE* 138.A48.

⁴⁹ Meritt 1945: 74 and 77 restored [apar]ches; apparently at this time he saw no comprehensible letter strokes where the letter *chi* stood (cf. Meritt 1946).

⁵⁰ Cavanaugh 1996: 29.

[κ]έρυ-

[κα]ς δὲ ἡελομένηε ἡε βολὲ πεμφσάτο ἐς τὰς πόλεις ἀγγέλλοντας ἴ[γ]
 τ[άδ'] ἡεφεσφισμένα τῶι δέμοι, τὸ μὲν νῦν ἔναι ἡος τάχιστα, τὸ δὲ λ-
 οἰπὸν ἡόταν δοκῆι αὐτῆι. κελευέτο δὲ καὶ ἡο ἡιεροφάντες καὶ [δ]
 25 δαιδῶχος μυστερίοις ἀπάρχεσθαι τὸς ἡέλληνας τὸ καρπὸ κατὰ
 τὰ πάτρια καὶ τὲν μαντεῖαν τὲν ἐγ Δελφῶν...

The offering of the first fruits to the Two Goddesses was an ‘ancestral custom’—at least from the perspective of the year in which the ‘first-fruits decree’ was enacted; it is conceivable that it was also ‘ancestral’ or ‘traditional’ in 460, the presumed date for *IE* 19. But even if that is so, there is still no connection between the Mysteries and the *aparche* that rationally can connect it with the decree in 460⁵¹—for the first-fruits were neither collected nor sacrificed during the Mysteries.⁵² Clinton hypothesizes, however, that the hierophantes and *daidouchos* had traditionally made the announcement, a summons to fellow Athenians, *during the Mysteries*, to offer first-fruits at the coming harvest;⁵³ nevertheless, a link between a ‘traditional announcement’ during the Mysteries for the collection of the *aparche* at a later date and the announcement that the Athenians may now use the sacred fund from the *aparche* is very loose. If ‘*aparche*’ did appear in Face C 32-3 of *IE* 19, then the provision may have *implicitly* articulated a change: whereas *before* this time (i.e., before 460) the Athenians could use the sacred fund accruing from the initiates’ fees, *now* they are to use the sacred fund from the *aparche*. Such implication, however, is exceedingly opaque and the restoration is most likely wrong; the Athenians are being granted the privilege of using the sacred fund of the Two Goddesses, and that fund accrues from the fees of the initiates.

Before I turn to the fourth century law, I would like to discuss one of the literary sources for a law about the Mysteries and its possible fit with *IE* 19. Indeed Jameson, who edited the law under discussion as *IG* I³ 6 (Clinton’s *IE* 19), reported that he and Lewis agreed with Sauppe’s observation that the regulation cited by Andokides at 1.116 belonged to this law.⁵⁴ Kephalos, according to Andokides, had reproached Kallias: ὦ Καλλία, πάντων ἀνθρώπων ἀνοσιώτατε, ... νόμον πάτριον λέγεις, ἡ δὲ στήλη παρ’ ἡῖ ἔστηκες χιλίας δραχμὰς κελεύει ὀφείλειν, ἐάν τις ἱκετηρίαν θῆ ἐν τῷ Ἐλευσινίῳ (‘Oh, Kallias, you most impious man of all, ... you say there is an ancestral law—yet the stele next to which you stand says, “if someone sets a suppliant’s branch in the Eleusinion, he is to incur a fine of 1,000 dr.” ’). The fine is very high and yet, as cited, is not assigned to any overseeing magistrate or judicial procedure; probably this is an ‘abbreviated citation’ by

⁵¹ Note that the sacrifice of first fruits is not bid to be held ‘during the Mysteries’; it is the announcement of the sacrifice by the two officials that is to be executed at that time; see Parker 2005: 331 n. 19.

⁵² Clinton 2008: 6.

⁵³ Clinton 1974: 15, col. ii.

⁵⁴ Sauppe 1861-2, Index Schol. Göttingen; non vidi.

Kephalos/Andokides. In severity, the penalty resembles the 1,000 dr. fine for negligent magistrates or cult personnel (cf. Face C line 29 of *IE* 19, where offending priestly gene are to be penalized [εὐθύνεσθαι] perhaps 1,000 dr.) and may suggest its ‘antiquity’ (= an early fifth century date). There is good reason, then, to think that the regulation could have originated in the early fifth century, and so, in theory, could have appeared in the text of *IE* 19 (*IG* I³ 6), but it is difficult to see where it would have appeared on Faces A-C if the law is as ‘rational’ in its presentation as it seems to be and as I’ve argued. It could not have stood on Face A, as the regulations there seem to have to do with access to the sanctuary at festival time for foreigners; adjudicable matters treated on Face A are international in character or evolve from disputes between Athenians and foreigners before the Mysteries take place—they are not local infractions, committed *during* the Mysteries. Nor is the regulation likely to have stood on Face C, which is somewhat promising at first, since it deals, in part, with the fees paid by initiates, and so might have included a segment regarding their conduct—but there is not enough space for an additional rule. Face B may also seem promising, especially because after the first three lines (*fragment d*), there is a lacuna of unknown length; but the consistently rational presentation of topics suggests, as I have argued, that offences mentioned in this portion of the law are likely to have continued the international character of Face A, and to have been committed before the festival began. If the prohibition against the suppliant branch appeared in this law, then it may have appeared on Face D; this is, however, pure speculation.

We might note other ‘absences’ as well: no sanctions against disorderly conduct during the procession and celebration appear in this law—no penalties, e.g., against the akosmountes (cf. *IG* I³ 82.26-30, the celebration of the Hephaestia, 421/0; *IE* 138 A 32-33) or against those ‘who do not obey orders’ in the procession (cf. *IG* II² 334.31-35, Panathenaia, 335/4?); there are no rules and directions regarding the procession from Eleusis to Athens and back. Such rules may also have been included together on Face D (as they seem to be included together on the heavily restored *IE* 250, a decree of the second or first century B.C., but of course we cannot know for certain).

This ‘exercise’ in speculation regarding the possible fit of Kephalos’ law with *IE* 19 leads to some final speculation about Kephalos’ stele. Even if the law about the suppliant’s branch did appear, *exempli gratia*, on Face D of the stele now designated *IE* 19 (fragments of which were found near the city Eleusinion), it would not necessarily follow that the *stele* pointed out by Kephalos was the same as that on which *IE* 19 was inscribed—perhaps *IE* 19 had been revised and a new ‘codification’ of rules for the Mysteries came into being that is no longer extant; Kephalos’ stele, then, could be the ‘new’ codification at a later point in the fifth century. If, however, *IE* 19 and Kephalos’ stele are one and the same and if Kephalos points out a stele with a law that was operative in 400 before Andokides was put on trial, it means that the law survived the scrutiny of the revision of the

Athenian lawcode at the end of the fifth century. But whether a part of the same law as *IE 19* or part of a new codification after the revision, Kephalos' law was inscribed on a stele and not on a wall in the stoa basileus (unless it had double or triple publication: publication in the Eleusinion in Athens and at Eleusis, and in the stoa basileus).

To conclude this section: the questions posed by the literary source (were offences committed by initiates during the Mysteries covered by this law?) opens up the question of *IE 19*'s comprehensiveness; without regulations for conduct, the extant document is not a full code; possibly such regulations were inscribed on Face D; possibly they were appended later; or published elsewhere; we cannot tell. On the other hand, though we remain uncertain about the comprehensiveness of the document, we can conclude, I think, that *IE 19* is a coherent and rational set of regulations for the festival with both an international and local perspective, relying on a tradition of shared memory regarding well-known religious personnel and officials, and showing but one sign of 'second thoughts' by the appending of the addendum. Whether it is a compendium of earlier regulations or a first-time statement of many of them, it is a sophisticated polis document, showing the hand of expert lawmakers skilful in compiling provisions rationally and driven by a concern for the financing of the festival. In this regard, it resembles fourth century 'administrative laws' mentioned earlier.

iii. A late fifth century codification of regulations for the Mysteries?

It is difficult to believe there was no new codification of regulations for the Mysteries at the end of the fifth century. And. 1.111 mentions a 'Solonian law': there was to be a sitting of the boule on the day after the Mysteries (ἡ γὰρ βουλή ἐκεῖ καθεδεῖσθαι ἔμελλε κατὰ τὸν Σόλωνος νόμον, ὃς κελεύει τῆ ὑστεραία τῶν μυστηρίων ἔδραν ποιεῖν ἐν τῷ Ἐλευσινίῳ). The law, however, is not 'certainly' Solonian. If it were 'Solonian', we would have to treat it as another regulation 'absent' from *IE 19*, in which case the 'Solonian law' as a singleton may have been revised or allowed to stand (by itself?) at the end of the fifth century; if we assigned it to (the now notorious) Face D of *IE 19*, then we would have to speculate how the term 'Solonian' became attached to it. I shall return to the law cited at And. 1.111 in due course. A partially published fragment from the Agora (Ag. I. 7471) mentions (on its Face B) the Epidauria, a festival celebrated on the third day of the Mysteries, starting in the year 420; Clinton suggests, on the basis of its physical disposition, contents, and lettering, that the fragment was part of a sacred calendar that belonged to the laws edited by Nikomachos; it was a part of the Code that 'surely included all the sacrifices at the Mysteries which at that time were regulated by the State.'⁵⁵

⁵⁵ Clinton 1980: 274 and n. 24; the fragment is discussed by Gawlinski 2007: 46, n. 35; part of it is published by Clinton in Hägg 1984: 17-34. An interesting comparandum is *IE 175* (*JG II*² 1363); see Clinton's analysis (2008: 171): he argues it is an "Eleusinian"

Now, if, as seems was the case, the sacrifices from the calendars of various public sanctuaries had been compiled into a polis sacrificial calendar, and if, as is demonstrable from Ag. I. 7471 (if such a thing needed physical demonstration at all), the sacrifices from the Mysteries were included in that calendar, it would be reasonable to think that the time was apt for codifying other regulations about the Mysteries as well. It may have been apt, but there is no evidence and it may have been too great an undertaking at that time.⁵⁶

iv. IE 138: a codification?

At the beginning of this essay, I gave a brief physical description of the stele inscribed with the fourth century law on the Mysteries, and I quoted Clinton's claims for it as possibly 'the most comprehensive law on the Mysteries that had been issued since the time of Solon' (1980: 273); I also quoted his speculation for its motivation, sociological at root. Clinton has made a good case for the law's rational presentation of topics:

'the announcement of the Mysteries and the selection and sending of spondophoroi to the other Greek cities (A.1-13), the limits and nature of the Sacred Truce surrounding the festival (lines 14-17), the behavior of the cities toward the spondophoroi and the report of the latter on their mission (lines 20-26), regulations concerning *myesis* (lines 27-29), the appointment of the epimeletai, their duties and those of the basileus in managing the festival (lines 29-38), the duties of the exegetes before the festival (lines 38-40), an unclear selection by lot (lines 41-42), and (after a long lacuna) regulations pertaining to the initiates (B.d, f) and procession (B.g), legal procedures and penalties for various infractions (B.h, a), and the general responsibilities of the epistatai.'⁵⁷

Indeed, although some of these topics are poorly preserved, the scope of the law is grand; the only topic not represented, so it seems, concerns the festival coinage that was produced at this time—and of course that may have been addressed in the lacunose sections.⁵⁸ If, as I have suggested in my discussion of *IE 19*, a 'rationality' both of presentation and motivating principle are characteristic of legal codification, then Clinton's description here and earlier depicts precisely that kind of presentation and motive.

In this final section, I want to point out, first, some specific details of codification, and then, a problem with the more general portrayal of the 'code'. In

excerpt from a list of expenses for all Polis festivals', that is, an excerpt of 'the general state calendar.'

⁵⁶ There is evidence for change in the financial administration of the sanctuary: *IE 30* (*IG I³ 32*, *SEG 10.24*), dated to 449-47 by Lewis but with greater plausibility to 432/31 by Mattingly 1961 and Cavanaugh 1996: 19-27, is a rider to a proposal of the boule; it creates a board of epistatai to oversee the property of the Two Goddesses; the hieropoioi no longer control the sacred fund.

⁵⁷ Clinton 2008: 117.

⁵⁸ Clinton 2003; Kroll 1993.

looking at the details, I am completing the first of the methodological tasks (*mutatis mutandis*) proposed by Davies, seeing *IE* 138 as part of a (small) corpus of documentation; and by raising an objection to typifying *IE* 138 as a codification, I am taking up the second task: seeing the law ‘within a framework of the revision of law which moves both towards and away from codification.’⁵⁹

Clinton makes the first task easy, since he has pointed out ways in which the law reflects and absorbs earlier legislation on a detailed level (beyond the broad similarity of contents, namely the *spondai* and regulations for initiates):

(a) In *IE* 19 B 9-16, the truces are said to be for the *mystai*, the *epoptai*, their followers, the property of foreigners, and all Athenians; on the basis of letters at the beginning of *IE* 138 A 15, it may be possible to restore some portion of that same list; indeed, the archaic spelling of *epoptai* in *IE* A 15 ‘looks like part of an excerpt from an old law.’⁶⁰

(b) In *IE* 138 B 13-22, it is difficult to identify the context; some of the language (esp. ll. 18-19) recalls the preliminary exclusions of *IE* 19 A, and the mention of a simple [penalty] and a twofold one for intentional [offences] in 138 B 22 recalls *IE* 19 B 6-7.

(c) Some of the penalty language seems to hearken back more broadly to the fifth century: e.g., in 138 A 39, the *basileus* and his assistants are to be penalized if they fail to exact lawful penalties from the *akosmountes*; the securely restored *εὐθύνεσθαι* with a set number of drachmas without naming a magistrate to exact the penalty recalls numerous fifth century inscriptions and may be an archaism.⁶¹

These are vague instances where the two laws seem to brush against each other, where the later law may be repeating the earlier law or revising it in ways that are mostly opaque to us. Novelties, too, appear; for instance, in *IE* 138 A 29-31, new officials for the Mysteries, the *epimeletai*, seem to be authorized for the first time. Officials called the *epistatai* also appear (A 45, restored and Ba 8). In an earlier inscribed text, *IE* 30 (*IG* I³ 32, *SEG* 10.24), probably to be dated to 432/1, the board of *epistatai* had been created to oversee the property of the Two Goddesses and thus perform the tasks formerly carried out by the *hieropoioi* as in *IE* 19; if there were no late fifth century codification of regulations for the Mysteries, then they may appear here for the first time in a ‘code’ for the Mysteries. There may be other novelties as

⁵⁹ See nn. 7 and 8 above.

⁶⁰ Clinton 1980: 277, acknowledging Meritt 1945: 78 and Schweigert *AJA* (50) 1946: 287-88.

⁶¹ Piérart 1971: 558 thought that the use of *εὐθύνεσθαι* had become obsolete in fourth century inscriptions and so would classify its appearance as archaizing; while that is plausible in the case of *IE* 138, it is not so in the law on silver coinage, *SEG* 72.28; on the other hand, the use of *εὐθύνεσθαι* appears much less frequently in the fourth century. Other ‘archaisms’ of procedure: reference to separate jurisdictions of the nine archons in 138 A 38 (? cf. Dem. 23.28 and [Dem.] 43.71); *φαίνειν* in A 28 (cf. *IG* I³ 4 B 24 and 27; *IG* I³ 46 A 5).

well, and I should like to suggest one before I begin to unravel this portrait of a ‘code.’

To return to *IE* 138 Ba 14-22, Clinton thinks that the date mentioned in 138 Ba 21 should be preceded, in painted letters, by the words Βοηδρομιῶνος μετά, so that we have the twenty-fourth day of the month, thereby providing the day after the festival when our literary source, mentioned earlier, says there was a meeting of the boule for presenting offences committed during the Mysteries (And. 1.111).⁶² If this is correct, then the provision for the boule’s sitting, whenever it entered the regulations for the festival (certainly before 400 B.C.) was still in effect in the mid-fourth century. Notice also that in the course of these same few lines (138 Ba 14-22), we are informed that during this period (presumably during the sacred truces), there are to be no dikai (Ba 15); notice, too that there are provisions about private debtors and another about a city—presumably not Athens—and another about a person who may have incurred a debt while abroad (Ba 19-20); unfortunately, the text breaks off, but it does seem that the context is international and the concern is with foreigners and cities who owe money. A speculative reading of this part of *IE* 138 Ba may suggest that we have a reference to the law cited by Demosthenes at 21.175. Demosthenes, speaking in his own persona in a speech of 347/6, says: ‘The law (*nomos*) about the Mysteries is the same as this one about the Dionysia, and was enacted later than it.’⁶³ Demosthenes had cited two laws about the Dionysia in §§8 and 10 of the same speech. He paraphrases the first one in §9: ‘That is the law, men of Athens, authorizing *probolai*. As you heard, it specifies the convening of the Ekklesia in the precinct of Dionysos after the Pandia, and at this meeting the *proedroi*, after dealing with the arrangements made by the archon, are to deal with any offence or illegal act concerning the festival.’⁶⁴ He paraphrases the second law in §11, ‘Notice, men of the jury, that, whereas the previous law specified *probole* against those committing offences concerning the festival, *in this one you created probolai also against those exacting overdue payments or taking anything else from a person or using violence.*’⁶⁵ It is difficult, on the basis of Demosthenes’ speech, to

⁶² Clinton 2008: 123.

⁶³ Trans. MacDowell 1990. Dem. 21.175: ἔστι δ’ ὁ αὐτὸς νόμος τῷδε τῷ περὶ τῶν Διονυσίων ὁ περὶ τῶν μυστηρίων, κάκεινος ὕστερος τοῦδε ἐτέθη.

⁶⁴ Trans. MacDowell 1990. The law cited at Dem. 21.8: Τοὺς πρυτάνεις ποιεῖν ἐκκλησίαν ἐν Διονύσου τῇ ὕστεραῖα τῶν Πανδίων. ἐν δὲ ταύτῃ χρηματίζειν πρῶτον μὲν περὶ ἱερῶν, ἔπειτα τὰς προβολὰς παραδιδότωσαν τὰς γεγενημένας ἕνεκα τῆς πομπῆς ἢ τῶν ἀγῶνων τῶν ἐν τοῖς Διονυσίοις, ὅσαι ἂν μὴ ἐκτετισμέναι ᾦσιν. For discussion of the law’s authenticity, see Scafuro 2005.

⁶⁵ Trans. MacDowell 1990. The relevant portion of the law cited at 21.10 is: μὴ ἐξεῖναι μήτε ἐνεχυράσαι μήτε λαμβάνειν ἕτερον ἑτέρου, μηδὲ τῶν ὑπερημέρων, ἐν ταύταις ταῖς ἡμέραις. ἐὰν δέ τις τούτων τι παραβαίῃ, ὑπόδικος ἔστω τῷ παθόντι, καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ τῇ ἐν Διονύσου ὡς ἀδικούντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται. For discussion of the law’s authenticity, see Scafuro 2005. MacDowell 1990: 393 plausibly suggests that ‘the provisions for *probole*

envison the legal process; was the procedure that followed offences committed at the Dionysia *exactly the same* as that to be followed after the Mysteries—or was it the same, *mutatis mutandis*? Did the proedroi after the Mysteries summon the basileus for a report of offences—and not the archon as happened after the Dionysia? And did the proedroi call a meeting of the boule—and not the ekklesia (see *AP* 44.2-3)? And did the boule then vote on the *proboule*? There is no demonstrable evidence. Demosthenes at 21.175-77 records an apparently recent case where a *proboule* was brought after the Mysteries against Euandros the Thespian for distraining upon Menippos the Karian during the festival days. Since the case was a recent one, the law about *proboule* was still in effect a few years before 347/6; but we do not know when it was instituted. Perhaps the procedure for the offence of distraining upon debtors was mentioned on Face B of *IE* 138. Note, however, that there is no mention in the extant portions of this document that the basileus or the epimeletai are to bring the *akosmountes* who deserve a greater penalty to the boule; they are brought, it seems, straight to the Heliaia (*IE* 138 A32). The only mention of the boule appears in A 29, where, if we accept Stumpf's proposal, an eisangeltic (?) procedure before the boule is prescribed against the derelect basileus; thus:⁶⁶

- 27 ἔὰν δέ τις μνη[ι E]ὐμολ[πιδῶν ἢ Κηρύκων οὐκ ὦν ε]ιδῶς, ἢ ἔὰν
 προσάγηι τις μνησόμε[νον ...²³ ... τοῖ]-
 28 [ν] Θεοῖν, φαίνεν δὲ τὸμ βολόμενο[ν Ἀθηναίων, καὶ ὁ βασι]λεὺς εἰσαγέτω
 εἰς τὴν Ἡλιαίαν κα[τὰ τὸν νόμον. ἔὰν δὲ μὴ εἰσάγηι περὶ αὐ]-
 29 [τ]ὸ βουλευέτω ἢ βολῇ ὡς ἀδικόντος:

Perhaps there had been a modification in the boule's oversight: there may still have been a meeting of the boule after the festival, but perhaps it was reserved for the announcement of probolai and extraordinary procedures such as eisangelia against derelict magistrates; other cases could be brought straight to the Heliaia.⁶⁷

at the Dionysia were made in two stages, some years apart, and then later, because they seemed to work well, similar provisions for *proboule* were made in a single enactment about the Mysteries. It is also possible, however, that the 'single enactment' about *proboule* for offences committed during the Mysteries could have been from the start, or subsequently to have become, part of a series of regulations about the Mysteries.'

⁶⁶ Stumpf 1988.

⁶⁷ A different restoration, by which the basileus is to bring the offender into the Heliaia 'after the boule has first condemned (καταχειροτονῆσαι) him as guilty' would be attractive, but I have not been able to produce one in good Greek. If the original text did suggest something along these lines, the boule's vote would be a preliminary condemnation in a *proboule*. If this were the procedure to be followed for bringing offences after the Mysteries in the mid-fourth century, then perhaps it is taken for granted in the depiction of offences that follow in A 32ff.; in each case, the offense is to be denounced to the basileus and brought to the boule for a preliminary vote before it is brought to court.

I now turn to some final thoughts about *IE* 138. The major piece of speculation that I have just engaged in surely underscores just how lacunose Side B of our inscription is. It also underscores the range of possibilities about its contents, e.g., that it may have concerned matters *preliminary* to the festival just as in *IE* 19 Face A, or alternatively, that the text is so fragmentary that we cannot know its contents. To orient us either closer to or further from despair, we must now consider the physical remains of the stele and, once again, the problem of the missing prescript, for which there is no space on Side A.

Clinton offered several possibilities regarding the missing prescript and promptly dismissed the first two:⁶⁸

Option A: The prescript may have appeared on Side B, the opening lines of which are missing; if so, then Side B is prior. Objection: This seems hardly likely for the reason that the substance of the opening of Side A has a ‘commencing sound’—namely, the announcement of the Sacred Truce.

Option B: The law may have been written on more than one stele, and the prescript appeared on the missing stele. Objection: It seems hardly likely that the law was written on more than one stele as all the fragments seem to belong to only one.

Option C: Sides A and B represent two different laws. Side B’s prescript is not preserved and Side A’s was never prescribed.

Clinton provided no argument against Option C and instead suggested, in the belief in the priority of Side A, that neither side had a prescript and that:

‘Side B, at a slightly later date (the writing is very similar to that of Side A), simply received new regulations, as additions to those already inscribed on Side A (and perhaps, to some already on the upper part of Side B). The original authorization must then be sought in a document that is now lost; this document would have ordained that a new set of laws concerning the Eleusinian festival be inscribed on a stele and set up in the Eleusinion. (The regulations that we have from Side B were included either in this authorization or a later one.)’⁶⁹

If this represents the reality, then it is very difficult to say that we have a coherent code in *IE* 138. While we may have a coherent one in Side A, its inadequacy was noted rather soon after it had been inscribed. Moreover, Side B is baffling, especially if, as I’ve argued, some considerable portion of Ba deals with preliminary arrangements in the way that *IE* 19 Face A did. If Clinton’s explanation is accepted, then Side A was planned as a code but failed rather soon and so Side B was added.

At this point, I return to the questions I posed at the outset: what, if anything, can this study of codifying laws about the Mysteries tell us about law-making or

⁶⁸ Clinton 1980: 259 presents the options.

⁶⁹ Clinton 1980: 259.

codification more broadly in Athens and about the reporting of laws in the literary tradition?

(1) I think it suggests, above all, how skilful the Athenians were, that is, the men who carried out the work of codification for the Mysteries, even early in the fifth century. The skill goes beyond the act of compiling or excerpting regulations, it extends to the capacity to conceive a festival in its entirety with all its economic and sociological implications. Comparisons with deme compendia, though few offered here, suggest that the polis officials were of a different caliber altogether. Excerpting is a skill different from codification but is a prerequisite for it. The skill in excerpting so evident in our polis inscriptions (although I have hardly touched the surface here) is also evident in the speechwriters who paraphrase laws and cite them, even though we rightly question every law passed on to us through manuscript traditions that are often terribly corrupt. The inscribed decree that was first discussed, *IE* 13 (*IG* I³ 5), provides an example of a polis decree that has an abbreviated prescript without proposer's name; it is not corrupt; but if it appeared in a literary document, there would be hordes of skeptics, wagging their fingers, 'forgery!'.

(2) My study has shown, I hope, the importance of taking into consideration the modern reconstructions of artifacts that have laws inscribed on them, and asking: is the reconstruction correct? The same sort of attention needs to be lavished on the physical remains of the revised lawcode and sacrificial calendar at the end of the fifth century; such a re-examination is now underway. An explanation for the appearance of the sacrificial calendar on the 'later side' in an erasure of what has been thought to be an earlier calendar and the prevalence of inscribed sacrifices on the 'older sides' must be sought anew.

(3) I have tried out a method here for examining codification on a micro-level. It may be that applying such a method might find useful results elsewhere, by looking at the principles and motives underlying the codification of regulations that became, e.g., the Athenian decree on standards and measures (*IG* I³ 1453) in the mid-fifth century and the later one from the second or first century B.C. (*IG* II² 1013)—or even the codification of the law of eisangelia: why are such legislative units codified? Often sociological or economic motives seem uppermost: consider, e.g., the relationship between building programs at Eleusis and the codification of regulations in *IE* 138.⁷⁰ Are there legal principles involved in 'micro-codification' in Athens?

I should like, at this final moment, to take up this question in regard to eisangelia in a succinct way. Scholars have generally viewed the fourth century law as a revised version of a consolidated fifth century *nomos eisangelitikos* that was enacted at some point between 411 and 403. The criteria for dating the 'consolidated' fifth century law have been: (1) general considerations of the historical

⁷⁰ Clinton 2003: 81.

circumstances that would encourage the enactment of such a law in this period and (2) late fifth century examples of phrases that appear in Hypereides' quotations of the law. The latter reason is insufficient: citing 'paraphrases of the law' in fifth century authors begs the question by assuming the pre-existence of a 'consolidated' law; the specific treasonable offences mentioned, e.g., by Lysias, may have been cited by custom using the same phraseology over and over again without any statutory basis. And as for the historical circumstances—the so-called revision of the lawcode at the end of the fifth century—well, this is circular reasoning: we speculate what 'revision' is and then we further speculate that *eisangelia* was consolidated at this time. Now is not the occasion to give the problem a full exegesis, but I suggest: consolidation of the law of *eisangelia* may not have occurred until after a decision was made to transfer the hearings of *eisangelitic* offences from the Assembly to the *dikasteria*; that such a decision was indeed made is suggested by the fact that no *eisangelitic* hearings are attested in the Assembly after 362. Whenever this decision was made, it would have been an appropriate time for consolidation of the law. Hansen has related the financial situation in Athens in the mid-350's and two other institutional reforms to a revision of *eisangelia* at this time: the limit upon the number of extraordinary assemblies and the initiation of the procedure of *apophasis*.⁷¹ Revision, then, may have been predominantly motivated by economic factors. It may indeed prove to be a true phenomenon that economic or social or political pressures consistently motivate legal consolidations and codifications; it remains to discover whether legal principles provide the sinews. That, of course, is the subject of a much larger study.

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⁷¹ Hansen 1975: 53-54.

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