

The Inauthenticity of Solon’s Law Against Neutrality

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INTRODUCTION

Several ancient authors refer to a law crafted by Solon that criminalized neutrality in times of stasis.¹ The later fourth century *Athenaion Politeia* (*Ath. Pol.*) contains the most authoritative and informative reference:

ὄρων δὲ τὴν μὲν πόλιν πολλάκις στασιάζουσιν, τῶν δὲ πολιτῶν ἐνίοις διὰ τὴν ῥαθυμίαν ἀγαπῶντας τὸ αὐτόματον, νόμον ἔθηκε πρὸς αὐτοὺς ἴδιον, ὅς ἂν στασιάζουσης τῆς πόλεως μὴ θῆται τὰ ὄπλα μηδὲ μεθ’ ἐτέρων, ἄτιμον εἶναι καὶ τῆς πόλεως μὴ μετέχειν.

Seeing that the polis was often in stasis and that some of the citizens through sluggishness were content to just let things happen, he [i.e., Solon] made a special law to deal with them: whoever, when the polis is in stasis, does not fight with either [faction] shall be without rights (atimos) and shall not to be a member of the polis.²

This paper has two complementary objectives. In the first section, I demonstrate that the existing arguments against the authenticity of Solon’s law against neutrality either have been or can be countered. In the second section, I present a new argument against the authenticity of the law. The brief conclusion articulates the logical consequence

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1. For a list of the ancient authors that mention this law, see EBERHARD RUSCHENBUSCH, ΣΟΛΩΝΟΣ ΝΟΜΟΙ, 82-83 (1966) (Ger.) (citing, among others, Aristotle (*Ath. Pol.* 8.5) and Plutarch (Plut. [*Sol.*] 20.1)). All three letter dates in this paper are BCE. The Greek word stasis originally meant “standing,” but came to refer to factional conflict or civil war.

2. ARISTOTLE, *Athenian Constitution*, in ARISTOTLE: THE ATHENIAN CONSTITUTION, THE EUDEMIAN ETHICS, AND ON VIRTUES AND VICIES ch. 8 § 5 (T.E. Page et al. eds., H. Rackham trans., 1952) (*Ath. Pol.* 8.5) [hereinafter ARISTOTLE, *Athenian Constitution*]. The translation is the author’s own.

of the paper's two parts: my new argument against the law's authenticity should be considered decisive.

I. PREVIOUS ARGUMENTS AGAINST AUTHENTICITY

The most well-known argument against the law's authenticity is the fact that Lysias did not mention it in his speech titled *Against Philon*.³ The purpose of this speech was to convince the outgoing members of the Athenian council (boule) that Philon was unworthy to serve as a councilmember for the upcoming year. The speaker justified his position, in part, on the fact that Philon did not fight during the recently concluded civil war of 403; instead, he moved to the nearby community of Oropos. Using peculiar language that is found in the law against neutrality, the speaker states that "he fought (ἔθετο τὰ ὄπλα) neither in the Piraeus (i.e., with the democrats) nor in the city (i.e., with the oligarchs)."⁴ The speaker—and this is key—then explicitly acknowledges that there is, in fact, no law against such behavior.⁵ But he asserts that that oversight is due to the fact that their ancestors could not even have imagined that someone would be neutral in times of civic upheaval.⁶

Scholars have effectively neutralized this argument. Goldstein, in fact, argues that the speech actually provides strong evidence for the existence of the law.⁷ He first suggests that the law against neutrality might not have been applicable in Philon's case, since he was not close to

3. C. HIGNETT, A HISTORY OF THE ATHENIAN CONSTITUTION 26-27 (1952) is particularly associated with this argument. Hignett notes, however, that the basis of his argument had been made decades earlier by Charles Gilliard. *Id.* at 27 n.3; see CHARLES GILLIARD, QUELQUES RÉFORMES DE SOLON 292 (1907) (Fr.). Note that an outgoing member of the boule—not Lysias—delivered the speech. This speech is number 31 in Lysianic corpus. LYSIAS, *Against Philon*, in LYSIAS, at Speech 31 (G.P. Goold ed., W.R.M. Lamb trans., reprint 1988) (1930) (Lys. 31).

4. LYSIAS, *supra* note 3, at Speech 31 § 14 (Lys. 31.14).

5. *Id.* at ch. 31 § 27 (Lys. 31.27).

6. *Id.* (Lys. 31.27)

7. Jonathan A. Goldstein, *Solon's Law for an Activist Citizenry*, 21 HISTORIA 538, 538-45 (1972) (Ger.).

where the actual fighting took place.⁸ And he also notes that in the wake of the recent amnesty provision (403), it would have been inappropriate to accuse Philon of having broken a law prior to the end of the civil war.⁹ Goldstein thus suggests that Lysias conspicuously alluded to the law—which he argues was well-known to all Athenians—in order to insinuate that Philon had committed a crime even worse than that covered by Solon's (well-known) law against neutrality: he did not join the democrats in their struggle against the oligarchs.

Victor Bers, on the other hand, has argued that Lysias' *Against Philon* has no bearing on the question of the authenticity of the law against neutrality.¹⁰ His central point is that it would have been foolish for the prosecutor to refer to the law—assuming it existed—while presenting his case against Philon.¹¹ First, doing so likely would have angered any outgoing councilmember who had not actively participated in the recently concluded civil war.¹² Second, other councilmembers would be concerned that the prosecution, if effective, might open the door to other prosecutions in other contexts and thus provoke retaliation by non-hardcore democrats: Athens would thus be at risk of reverting back to stasis.¹³ And finally, citing the anti-neutrality law would imply that individuals who fought against the demos in the recent civil war were law-abiding citizens.¹⁴ Lysias thus followed a less potentially treacherous strategy by simply demonstrating that Philon does not support the democracy and should therefore be disqualified from serving on the powerful council.¹⁵

8. *Id.* at 540-41. Robert Develin also makes this argument. See Robert Develin, *Solon's Law on Stasis*, 26 *HISTORIA* 507, 507-08 (1977) (Ger.).

9. Goldstein, *supra* note 7, at 542.

10. Victor Bers, *Solon's Law Forbidding Neutrality and Lysias* 31, 24 *HISTORIA* 493, 493-98 (1975) (Ger.). Bers accepts the law's authenticity. See *id.*

11. See *id.* at 494-95.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

Another well-known argument against the law's authenticity is that it is contrary to Solon's deeply held political beliefs or principles. First, Solon's poems bemoan the destruction of society brought about by stasis.¹⁶ These lines of a poem quoted by Demosthenes are particularly powerful and explicit.

Now faction reigns; now wakes the sword of strife,
 And comely youth shall pay its toll of life;
 We waste our strength in conflict with our kin [στάσιον ἔμφυλον],
 And soon our gates shall let the foeman in.
 Such woes the factious nation shall endure;
 A fate more hard awaits the hapless poor;
 For them, enslaved, bound with insulting chains,
 Captivity in alien lands remains.¹⁷

In the following lines of this poem, Solon personifies the public scourge (δημόσιον κακόν) of stasis: it leaps over walls and finds people cowering in their inner bedchamber.¹⁸ An individual with such strongly held views, the reasoning goes, would not craft a law that demands that everybody participate in stasis.

In addition to abhorring stasis, several of Solon's poems celebrate his own neutrality during times of stasis.¹⁹ In one poem, Solon wrote:

16. RUSCHENBUSCH, *supra* note 1, at 83. In order to find some basis for the law's authenticity, he suggests that στασιάζειν ("to engage in stasis") originally meant to fight an external—not an internal—enemy. To support his suggestion, he notes that the poem quoted immediately below in the text (quoted in Dem. 19.255, line 21) refers to στάσιον ἔμφυλον ("domestic stasis"); use of that adjective might suggest that, at the time, stasis did not normally refer to conflict within the state. *Id.*; see also Jochen Bleicken, *Zum Sogenannten Stasis-Gesetz Solons*, in SYMPOSIUM FÜR ALFRED HEUSS 12 (Jochen Bleicken ed., 1986) (Ger.).

17. DEMOSTHENES, DEMOSTHENES II DE CORONA AND DE FALSA LEGATIONE bk. 19 § 255 (C.A. Vince & J.H. Vince trans, reprint 1992) (rev. & reprint 1939) (Dem. 19.255).

18. *Id.*

19. See Kurt von Fritz, *Nochmals das Solonische Gesetz gegen Neutralität im Bürgerzwist*, 26 HISTORIA 245, 245-47 (1977) (Ger.). The third century AD biographer Diogenes Laertius would appear to have concluded that the law is not consistent with Solon's celebrated neutrality. DIOGENES LAERTIUS, *Solon*, in I LIVES OF EMINENT PHILOSOPHERS bk. 1 § 58 (T.E. Page, et al. eds., R.D. Hicks trans., rev. & reprint 1959) (D. L. 1.58).

For to the people [demos] gave I grace enough,
 Nor from their honor took, nor proffered more;
 While those possessing power and graced with wealth,
 These too I made to suffer nought unseemly;
 I stood protecting both with a strong shield,
 And suffered neither to prevail unjustly.²⁰

In another well-known poem, Solon praises his political achievements and emphasizes the risks he took to maintain his own neutrality:

Had I willed
 Now that pleased one of the opposing parties,
 And then whatever the other party bade them,
 The city had been bereft of many men.
 Wherefore I stood at guard on every side,
 A wolf at bay among a pack of hounds!²¹

Again, given the apparent strength of his conviction, it is difficult to believe that Solon would have crafted a law that forced everybody to pick a side in stasis.

This “contrary to Solon’s thinking” argument has been successfully countered. First, it is reasonable to conclude that the law would deter a coup attempt and thus actually prevent stasis. George Grote already noted this in the mid-19th century, and the logic is simple: (i) it is quite possible that no single political leader enjoyed majority support; (ii) were any political leader to stage a coup, all individuals who opposed him would—lest they “break the law”—unite in order to defeat him; (iii) the coup attempt would thus fail. Staging a coup would be irrational.²²

Second, it is fairly clear that Solon wanted all citizens of Athens to be actively involved in the life of their polis. One of Solon’s legal reforms, for example, empowered any

20. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 12 § 1 (*Ath. Pol.* 12.1).

21. *Id.* at ch. 12 § 4 (*Ath. Pol.* 12.4).

22. “Indeed, he [an insurgent leader] could then never hope to succeed, except on the double supposition of extraordinary popularity in his own person and widespread detestation of the existing government. He would thus be placed under the influence of powerful deterring motives.” 3 GEORGE GROTE, *HISTORY OF GREECE* 195 (4th ed. 1854); *see also* SARA FORSDYKE, *EXILE, OSTRACISM, AND DEMOCRACY* 98-99 (2005) (noting the deterrence quality of the law).

uninjured third party to indict another individual for a crime; previously, only the victim of a crime could indict the perpetrator.²³ In addition, Solon gave every citizen the right to appeal the judgment of a magistrate to a jury court.²⁴ These reforms—which encourage a pro-active citizenry—are consistent with a law against neutrality.²⁵

Another possible argument against the law's authenticity is that it is impractical.²⁶ The Athenian state in the archaic period was very weak, and there certainly was nothing like a police force. How, then, could the law against neutrality be enforced? And why pass a law that probably could not be enforced? George Grote, in fact, suggested that the law functioned more like a curse, likely not intended to be applied.²⁷

This objection is easily countered: difficulties of enforcement need have no bearing whatsoever on the question of authenticity. Goldstein, in fact, notes that many of Solon's laws failed.²⁸ And Bers rightfully argues that "Solon would only need a reasonable expectation that the law would encourage the timid to ally themselves with him. If it actually came to prosecutions, just a few would make the point."²⁹

P. E. Van 'T Wout has recently suggested that the law's language might undermine its authenticity.³⁰ In particular, he notes that the phrase τῆς πόλεως μετέχειν ("to be a member of the polis") is not found in any extant text that

23. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 9 § 1 (*Ath. Pol.* 9.1).

24. *Id.*

25. Both Bers, *supra* note 10, at 496 and Goldstein, *supra* note 7, at 538, *inter alios*, make this basic argument.

26. Although accepting the authenticity of the law, Bruno Lavagnini notes this issue. Bruno Lavagnini, *Solone e il Voto Obbligatorio*, 75 RIVISTA DI FILOLOGIA CLASSICA 81, 81-83 (1947) (It.).

27. GROTE, *supra* note 22, at 193.

28. Goldstein, *supra* note 7, at 538.

29. Bers, *supra* note 10, at 497 n.24.

30. P.E. Van 'T Wout, *Solon's Law on Stasis: Promoting Active Neutrality*, 60 CLASSICAL Q. 289, 299 (2010).

antedates the fourth century.³¹ (Solon's reforms date to the early sixth century.)³²

This objection can be countered. First, it is not necessary to conclude that the *Ath. Pol.* provides an exact quote of the law. Second, the author of the *Ath. Pol.* used the phrase μή μετέχειν τῆς πόλεως in describing Pericles' marriage law.³³ As P.J. Rhodes suggests, it is reasonable to suspect that the author used language actually found in that law because it was so famous.³⁴ If so, the phrase antedates the fourth century, and thus might very well have been used in Solon's day.³⁵

31. *Id.* at 299-300.

32. *Id.* at 289.

33. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 26 § 3 (*Ath. Pol.* 26.3).

34. See P.J. RHODES, A COMMENTARY ON THE ARISTOTELIAN *ATHENAION POLITEIA* 335 (1st ed. 1981). Forsdyke concludes that the author of the *Ath. Pol.* inserted the phrase καὶ τῆς πόλεως μή μετέχειν ("and not to be a member of the polis") in order to explain to his later fourth-century audience what *atimia* meant when Solon promulgated the law. FORSDYKE, *supra* note 22, at 98 n.76. Manville argues that the apparent redundancy of the full phrase ἄτιμον εἶναι καὶ τῆς πόλεως μή μετέχειν ("shall be without rights and shall not to be a member of the polis") is explained by the fact that the penalty of *atimia* was being more carefully defined as the notion of citizenship became more complex: now an *atimos* individual had "no claim to the citizenship which implied rights in the assembly and protection of suit and appeal." Brook Manville, *Solon's Law of Stasis and Atimia in Archaic Athens*, 110 *TRANSACTIONS OF THE AM. PHILOLOGICAL ASS'N* 213, 213-21 (1980). A later forger likely would not have thought to include what would have seemed to be a peculiar redundancy.

35. To mention one more point about the language used by the author of the *Ath. Pol.* in referring to the law: Robert Develin notes that Plutarch, writing in the second century CE, had to explain what the phrase τὰ ὄπλα θέσθαι (literally "to ground weapons," but translated as "to fight") means. See Develin, *supra* note 8 (citing Plutarch's *Sol.* 20.1, which can be found in PLUTARCH, *Solon*, in PLUTARCH'S LIVES ch. 20 § 1 (Bernadotte Pernin trans., Harvard Univ. Press 1914) (Plut. [*Sol.*] 20.1) [hereinafter PLUTARCH, *Solon*]). Since Plutarch apparently often reproduces the language found in the *Ath. Pol.*, that suggests to Develin that the language of the law found in the *Ath. Pol.* goes back to Solon. *Id.* That does not necessarily follow, of course: it just means that the expression might have been unintelligible in Plutarch's day. Note that Georges Mathieu and Bernard Haussoullier, in their Budé Greek text (and accompanying French translation) of the *Ath. Pol.*, suggest—by using quotation marks—that the author directly quoted Solon's law. ARISTOTE: CONSTITUTION D'ATHÈNES 9 (Georges Mathieu and Bernard Haussoullier eds. & trans., reprint 1972) (1922).

Ephraim David has made several significant arguments against the law's authenticity. First, he suggests that the law's requirement that each man must bear τὰ ὄπλα ("arms") in times of stasis lest he be ἄτιμος ("without rights") would undermine Solon's attempt to bring the thetes (the poorest Athenians) into polis life.³⁶ The logic is as follows: (i) Solon clearly sought to ensure that the thetes had certain political rights in the new regime;³⁷ (ii) τὰ ὄπλα ("arms") may refer specifically to hoplite arms—that is heavy weaponry;³⁸ (iii) thetes, by definition, were too poor to afford hoplite arms.³⁹ Thus by promulgating this law, Solon rendered the thetes de facto "without rights."⁴⁰

This argument can be countered. First, the authoritative English-language dictionary for ancient Greek indicates that the expression θέσθαι τὰ ὄπλα can simply mean "bear arms, fight."⁴¹ It cites this law as evidence.⁴² To counter any concern about circularity, however, note that Plato uses the expression θέσθαι τὰ ὄπλα to mean "fight": ἐν τῇ τῆς ψυχῆς στάσει τίθεσθαι τὰ ὄπλα πρὸς τὸ λογιστικόν ("in the stasis of the soul, it [i.e., the spirited element] fights on the side of reason").⁴³ Second, Bers notes that it is not possible to determine conclusively whether or not τὰ ὄπλα would have referred specifically to hoplite weaponry in the

36. Ephraim David, *Solon, Neutrality and Partisan Literature of Late Fifth-century Athens*, 41 MUSEUM HELVETICUM 129, 134-35 (1984).

37. *Id.*

38. To justify the conclusion that the expression θέσθαι τὰ ὄπλα "sometimes refers explicitly to hoplites," David cites Thucydides: οἱ δ' ὀπλίται θέμενοι τὰ ὄπλα ἠσύχαζον ("The hoplites halted, having rested their heavy weaponry [τὰ ὄπλα]."). *Id.* at 134 & n.35 (citing THUCYDIDES, *The Peloponnesian War*, in 2 THUCYDIDES IN FOUR VOLUMES bk. 4 ch. 90 § 4 (1942)) (Thuc. 4.90.4).

39. *Id.* at 134-35.

40. *Id.*

41. HENRY GEORGE LIDDELL, ROBERT SCOTT & SIR HENRY STUART JONES, A GREEK-ENGLISH LEXICON, at 1790 (Sir Henry Stuart Jones et al. eds., 9th ed. 1940) (defining τίθημι A.II.10.b).

42. *Id.*

43. PLATO, *Republic*, in 1 PLATO IN TWELVE VOLUMES bk. 4 § 440e (John Burnet ed., 1903) (Plat. Rep. 4.440e).

early sixth century—it might have referred to any type of weaponry.⁴⁴

David also suggests that there is no reason to suppose that Athenians would have been apathetic about Athenian politics, and thus no need for Solon to pass a law against neutrality in times of stasis. In referring to conditions in Athens before Solon's legislation, for example, the author of the *Ath. Pol.* wrote that the people (demos) actually rebelled against the ruling aristocrats.⁴⁵ And he continues: "The party struggle being violent and the parties remaining arrayed in opposition to one another for a long time, they jointly chose Solon as arbitrator and Archon . . ." ⁴⁶ And one of Solon's poems quoted earlier⁴⁷—in which Solon compares himself to a wolf, attacked from all sides by packs of dogs—appears to corroborate the *Ath. Pol.*⁴⁸ Under such tense circumstances, it would perhaps be more logical to punish individuals that engage in stasis.⁴⁹

This argument can be countered. First, in the same poem just quoted, Solon notes that the poor people whom he freed had previously cowered before their masters (despotai): "And others suffering base slavery even here [i.e., in Athens], trembling before their masters' humors, I did set free."⁵⁰ And Herodotus paints a very similar picture

44. Bers, *supra* note 10, at 493 n.1. Develin suggests that the phrase θέσθαι τὰ ὄπλα is a metaphor; the law, that is, does not call on people to actually fight, but simply to take a side. See Develin, *supra* note 8. Walter Eder takes the military expression literally. See Walter Eder, *The Political Significance of the Codification of Law in Archaic Societies: An Unconventional Hypothesis*, in *SOCIAL STRUGGLES IN ARCHAIC ROME* 262, 293 (Kurt Raaflaub ed., 1986).

45. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 5 § 1 (*Ath. Pol.* 5.1).

46. *Id.* at ch. 5 § 2 (*Ath. Pol.* 5.2).

47. See *supra* text accompanying note 21.

48. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 12 § 4 (*Ath. Pol.* 12.4).

49. Note that Van 'T Wout, *supra* note 30, at 289-301, argues that previous scholars have completely misunderstood the law's language. He translates the law's μή θῆται τὰ ὄπλα μηδὲ μεθ' ἐτέρων as "does not ground his arms without allegiance to either party:" that is, this so-called law against neutrality actually punishes those who are not conspicuously neutral in times of stasis. *Id.* at 295.

50. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 12 § 4 (*Ath. Pol.* 12.4).

about the condition of the demos seventy years later, just before the democratic revolution of 508/7. He notes, first, that before Cleisthenes appealed to the demos for support, the “demos had been spurned” (i.e., not a part of politics).⁵¹ And in his famous explanation for the Athenian democracy’s subsequent success, Herodotus notes that, before the foundation of that regime (508/7) “the masses slacked before their masters (despotai).”⁵² Thus the available evidence also paints a picture of a submissive demos with no developed sense of civic self-consciousness—perhaps only acting if ordered by the elite aristocrats. In those circumstances, the promulgation of a law against neutrality would make sense.

David’s third argument is that reference to the law against neutrality in the *Ath. Pol.* appears to be an interpolation.⁵³ The *Ath. Pol.*’s eighth chapter is about magistrates (archai), and clearly marked as such: (i) the author begins the chapter by stating that Solon instituted elections for magistrates (archai) by lot from candidates already selected by the four tribes;⁵⁴ (ii) the first sentence of the following chapter (i.e., chapter nine) is: “[t]hose, then, were the nature of his reforms in regard to the magistrates (archai).”⁵⁵ In between those clear signposts, the author identifies and briefly discusses several magistracies (archai). Right before the summation sentence of Chapter 9, Section 1, however, the author somewhat unexpectedly refers to the law against neutrality.⁵⁶

This argument is easily neutralized. First, the reference to Solon’s law against neutrality could be an interpolation and the law could still be authentic. Second, as P.J. Rhodes has noted, the reference to the law (which he rightfully calls a digression) is directly tied to the discussion of the

51. HERODOTUS, *HERODOTI HISTORIAE* bk. 5 ch. 69 § 2 (Carolus Hude ed., 3rd ed. 1927) (Hdt. 5.69.2). The translation is the author’s own.

52. *Id.* at bk. 5 ch. 78 § 1 (Hdt. 5.78.1).

53. David, *supra* note 36, at 132-33.

54. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 8 (*Ath. Pol.* 8).

55. *Id.* at ch. 9 (*Ath. Pol.* 9).

56. *Id.* at ch. 9 § 1 (*Ath. Pol.* 9.1). It must be noted that the chapter and section markings are a modern addition to the text.

Areopagos council (a body of former magistrates) that immediately precedes it.⁵⁷ That discussion noted that Solon charged the Areopagos council with adjudicating trials of individuals who sought to overthrow the ruling regime.⁵⁸ It thus makes sense to continue the thought about stasis by mentioning a peculiar law about stasis attributed to Solon.

Thus the previously existing arguments against the authenticity of Solon's law against neutrality have been countered. Barring the introduction of a valid new argument, it would be methodologically justifiable for historians and legal scholars to consider the law to be authentic. The law would thus provide insight into Solon's thinking and the rule of law in archaic Athens.⁵⁹

II. NEW ARGUMENT AGAINST AUTHENTICITY

There is a simple yet powerful argument against the authenticity of Solon's law against neutrality: accepting its authenticity very implausibly implies that Solon would have sanctioned—indeed, even facilitated—the overthrow of the constitution (*politeia*) that he established. I will first demonstrate that the law's logic does, in fact, imply that it would be legitimate to overthrow Solon's constitution. I then will argue that Solon would not have deemed the overthrow of his constitution to be legitimate.

Several scholars have argued that the purpose of the law against neutrality is to defend Solon's constitution. Bers, for example, suggests that Solon promulgated the law in order to compel his supporters to actively defend his reforms—the implication being that Athens was in a state of stasis when Solon began crafting his legislation.⁶⁰ Lavagnini concluded that the law's purpose was to prevent

57. RHODES, *supra* note 34, at 157.

58. *Id.*

59. Robert A. Bauslaugh suggests that “[o]n balance, the case against authenticity is indecisive.” ROBERT A. BAUSLAUGH, *THE CONCEPT OF NEUTRALITY IN CLASSICAL GREECE* 6 n.4 (1991). Bauslaugh is more inclined to accept the authenticity of the law. *Id.* at 5-6.

60. Bers, *supra* note 10, at 497. This position is shared by von Fritz, *supra* note 19, at 247.

the rise of another tyrant.⁶¹ And James McGlew provocatively argued that Solon crafted the law in order to “upset the Athenians’ conviction that mediation was a solution of political crisis.”⁶² That is, the law sought to prevent another political leader from positioning himself—like Solon did—as a neutral third party between the rich and poor and thereby assuming extraordinary, potentially tyrannical, power; by preventing that from happening, the law against neutrality ensured that Solon’s laws would remain authoritative.⁶³

There is an obvious problem with all of these interpretations: why does the law not require people to defend Solon’s regime in times of stasis? Simply put, if the law sought to compel people to defend Solon’s regime, it would say so.⁶⁴ We thus must find a rationale for the law

61. Lavagnini, *supra* note 26, at 88.

62. JAMES F. MCGLEW, *TYRANNY AND POLITICAL CULTURE IN ANCIENT GREECE* 119 (1993).

63. *Id.* at 118-19. McGlew is thus forced to interpret the law’s μηδὲ μεθ’ ἑτέρων (“with neither faction”) as referring to either the rich or the poor—as though they were monolithic factions opposed to each other. *Id.* at 118. It is true that the author of the *Ath. Pol.* often asserts that the primary conflict in Solonic and pre-Solonic Athens was between the rich and the poor. *See, e.g.*, ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 2 § 1, ch. 5 § 1 (*Ath. Pol.* 2.1, 5.1). But the Eupatridae (lit. “those of distinguished lineage”)—the aristocratic group that contained the most influential political actors—were deeply fractured along various lines. Plutarch, for example, writes that, after Cylon’s failed coup attempt (perhaps 632 BCE), the Athenians were defined by a faction of Cylonians and a faction led by the Alcmaeonidae family; the people were divided between them. PLUTARCH, *Solon*, *supra* note 35, at ch. 12 § 2 (Plut. [*Sol.*] 12.2). And the author of the *Ath. Pol.* writes that, after Solon implemented his reforms, the aristocrats were plagued by “mutual rivalry.” ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 13 § 3 (*Ath. Pol.* 13.3). If the law against neutrality is accepted as authentic, it might be more reasonable to conclude that it refers to “either [faction]” because two dominant forces likely would eventually emerge in a typical stasis situation: one force seeking to overthrow the ruling regime, one force trying to defend it. The law would thus require everybody to join one of those two sides. The force orchestrating the coup could consist of several factions: Megacles and Lycurgus, for example, allied their forces to overthrow Peisistratos in 556. HERODOTUS, *supra* note 51, at ch. 1 § 60 (Hdt. 1.60).

64. Although promulgated much later, one thinks of the provision in the Eretrian tyrant-killing law of 341 (lines 30-32 of the new fragment): ἄν δέ τις Ἐρετριῶν μὴ βοηθήσει τοῖς δῆ[μοι, εἰσανγέλλειν τεῖς πρυ]τανεῖσι καθάπερ γέγραπται καὶ

that both encourages widespread involvement in times of stasis and is agnostic with respect to regime type.

If authentic, the law's clear intent would be to ensure that the regime that governs Athens—whatever it is—has broad support. It certainly can be dangerous to identify legislative intent without, for example, a document from the legislator or legislators. But the logic of this law is so straightforward and overwhelming as to allow for virtually no other explanation: if everybody obeyed the law, the winning faction in a stasis situation likely would have had majority support; thus the regime that it subsequently established or successfully defended would be stable. The law thus could certainly deter powerful elites from staging a coup, since they would have to factor into their decision calculus the probability that they would be opposed by everybody who either opposes them or supports Solon's reforms.⁶⁵ But, again, the law does not outlaw a coup. We thus must conclude that the intent behind the law is to ensure that any stasis will be settled definitively and that its ultimate purpose, therefore, is to ensure political stability, whatever the regime.⁶⁶

The law against neutrality is elegant and compelling—one gets the impression that it actually could work. And many Athenians—including, of course, Solon—desired political stability. Yet the following three points

μάχη[ν συνάπτειν αὐτοῖ.] (“if someone does not help the demos of Eretria [sc., in a stasis situation], denounce him to the prytaneia and join in battle against him”). For this law, see Denis Knoepfler, *Loi d'Érétrie Contre la Tyrannie et l'Oligarchie (Première Partie)*, 125 *BULLETIN DE CORRESPONDANCE HELLÉNIQUE [BCH]* 195, 195-38 (2001) (Greece); Denis Knoepfler, *Loi d'Érétrie Contre la Tyrannie et l'Oligarchie (Seconde Partie)*, 126 *BULLETIN DE CORRESPONDANCE HELLÉNIQUE [BCH]* 149, 149-204 (2002) (Greece); DAVID A. TEEGARDEN, *DEATH TO TYRANTS!: ANCIENT GREEK DEMOCRACY AND THE STRUGGLE AGAINST TYRANNY* 57-84 (2014).

65. FORSDYKE, *supra* note 22 (emphasizing the deterrence and thus stabilizing function of this law).

66. GROTE, *supra* note 22, at 196 (“It will be observed that, in this enactment of Solon, the existing government is ranked merely as one of the contending parties. The virtuous citizen is enjoined, not to come forward in its support, but to come forward at all events, either for it or against it.”). Grote appears to be expanding on the interpretation of the law offered by Plutarch. See PLUTARCH, *Solon*, *supra* note 35 (Plut. [Sol.] 20.1).

demonstrate that Solon would not have written a law that sanctioned (yet alone potentially facilitated) the overthrow of his constitution.

First, Solon strongly opposed Peisistratos, the tyrant who overthrew his regime,⁶⁷ despite the fact that he enjoyed widespread popular support.⁶⁸ According to Plutarch, Solon stood in the agora and publicly urged his fellow Athenians not to abandon their liberty; he argued that they should have prevented Peisistratos from assuming power in the first place, but insisted that it would now be even more glorious to successfully overthrow him.⁶⁹ Nobody heeded Solon's call.⁷⁰ Ignoring his friends' recommendation that he flee, he subsequently devoted his time and energy to writing poetry that scolded the Athenians for bringing about their own political slavery.⁷¹ Thus, Solon's actions contradict the obvious rationale of the law that he supposedly wrote.

One potential objection to this point is clear: according to Plutarch, Solon eventually acquiesced and actually gave Peisistratos political advice.⁷² Thus Solon eventually supported the popular winner of stasis, behavior consistent with the intent behind the law against neutrality.

The significance of this objection for my argument is easily neutralized. First and foremost, the story is extremely dubious: (i) the author of the *Ath. Pol.*, who

67. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 14 § 2 (*Ath. Pol.* 14.2); PLUTARCH, *Solon*, *supra* note 35, at ch. 30 (Plut. [Sol.] 35).

68. Peisistratos certainly enjoyed widespread support. According to the *Ath. Pol.*, Aristophon successfully proposed that the demos give Peisistratos a bodyguard of club-bearers. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 14 § 1 (*Ath. Pol.* 14.1); *cf.* PLUTARCH, *Solon*, *supra* note 35, at ch. 30 §§ 1-2 (Plut. [Sol.] 30. 1-2) (where the decree is proposed by Ariston). The author of the *Ath. Pol.* asserts that Peisistratos was the most democratic political figure of his day—he had a lot of support. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 13 § 4 (*Ath. Pol.* 13.4). We know from Solon's poetry that the poor wanted a tyrant to assume control of the state and advance their interests. *E.g.*, PLUTARCH, *Solon*, *supra* note 35, at ch. 14 §§ 5-6 (Plut. [Sol.] 14.5-6).

69. PLUTARCH, *Solon*, *supra* note 35, at ch. 30 §§ 1-5 (Plut. [Sol.] 30.1-5).

70. *Id.* at ch. 30 § 5 (Plut. [Sol.] 30.5).

71. *Id.* at ch. 30 § 6 (Plut. [Sol.] 30.6).

72. *Id.* at ch. 31 § 1 (Plut. [Sol.] 31.1).

appears to follow the same literary tradition as the much later Plutarch, does not mention Solon's about-face change;⁷³ (ii) an entirely alternate version of the story (followed by Diogenes Laertius) is that Solon, after publicly opposing Peisistratos, left Athens;⁷⁴ (iii) the story sounds suspiciously like the various "wise advisor" stories, wherein an intellectual seeks to moderate the views of an autocrat;⁷⁵ (iv) whatever chronology one accepts for Solon's death and Peisistratos' first expulsion from power (circa 560), there would have been very little, if any, time for Solon to warm to Peisistratos;⁷⁶ (v) based on his poetry,⁷⁷ Solon would not countenance tyranny.⁷⁸ A second objection is that, even if Plutarch's highly dubious story is accepted, Solon

73. The most natural place for the *Ath. Pol.* to mention it would be in chapter 13. But it is not mentioned.

74. DIOGENES LAERTIUS, *supra* note 19, at bk. 1 §§ 49-54 (D.L. 1.49-54).

75. Importantly, Herodotus' tale about Solon and the Lydian autocrat Croesus is the most well-known example. HERODOTUS, *supra* note 51, at bk. 1 ch. 29-33 (Hdt. 1.29-1.33). Herodotus' account of Artabanos' advice to Xerxes on whether or not the Persians should invade Greece is another well-known example. *Id.* at bk. 7 ch. 10 (Hdt. 7.10). Plato famously traveled to Syracuse to try to moderate the behavior of the tyrant Dionysus II. *See, e.g.*, PLUTARCH, *Dion*, in PLUTARCH'S LIVES bk. 22 ch. 13 (Bernadotte Pernin trans., Harvard Univ. Press 1914) (Plut. Dio. 13.1). And Xenophon wrote a whole work depicting the poet-philosopher Simonides' persuasive conversation with the tyrant Hiero. *See generally* XENOPHON, *HIERO: OR THE CONDITION OF A TYRANT* (2d ed. 1713). Note that Plutarch—who tells the dubious story of Solon eventually advising Peisistratos—also includes the (almost certainly fictional) story of Solon advising Croesus. PLUTARCH, *supra* note 35, at ch. 27-28 (Plut. [*Sol.*] 27-28).

76. P.J. Rhodes provides an excellent discussion on the chronology of Peisistratos' attempts at tyranny in his *A Commentary on the Aristotelian Athenaiion Politeia*. RHODES, *supra* note 34, at 191-99. Rhodes also notes that "[i]t is possible that Solon lived to 560/59 and witnessed [Peisistratos'] first coup." *Id.* at 202. We do not know the exact date of Solon's death; it is possible that he died before Peisistratos effectively seized the tyranny the first time.

77. *See, e.g.*, ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 12 § 3 (*Ath. Pol.* 12.3); PLUTARCH, *Solon*, *supra* note 35, at ch. 14 §§ 5-6 (Plut. [*Sol.*] 14.5-6).

78. For a succinct analysis of the various accounts of Solon's response to Peisistratos, see RHODES, *supra* note 34, at 201-02. For discussion of the chronology of Peisistratos' coups, see *id.* at 189-99. Note that the author of the *Ath. Pol.* dismisses as chronologically impossible the story that Solon and Peisistratos were lovers. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 17 § 2 (*Ath. Pol.* 17.2).

cooperated with Peisistratos because it was the only way to mitigate the disaster.

Another objection to my first point is that Solon could both have promulgated the law against neutrality and conspicuously opposed Peisistratos. This objection is logically possible, but the fact remains that Solon conspicuously countered popular will. If his goal was to achieve political stability by assuring that popular will prevailed, he would not have become an agitator after the winner (or potential winner) was made clear: that would only provoke more stasis. Also, Solon knew that tyranny—a form of rule that he abhorred—was the only real alternative to his regime: the poor wanted it and there were many powerful men who wanted to be tyrant.⁷⁹ Why would he pass a law that actually facilitates a tyrannical coup?

The second point in support of my argument that Solon would not have promulgated the law against neutrality is that Solon actually crafted a law against the overthrow of his regime. Describing the powers of the council of the Areopagos, the author of the *Ath. Pol.* wrote:

τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν,
Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν.

It [i.e., the Areopagos council] tried those banding together to overthrow the demos, since Solon established a law of eisangelia (denunciation) concerning those things.⁸⁰

Such a law is obviously incompatible with the law against neutrality: it simply makes no sense to have one law that mandates that people must join a side—any side—in stasis while there is, at the same time, a law on the books that punishes those who overthrow the ruling regime.

One possible objection to my second point is obvious: perhaps Solon's law on eisangelia is inauthentic. There is, admittedly, debate about the historicity of this law. First of all, the expression ἐπὶ καταλύσει τοῦ δήμου ("to overthrow the

79. See, e.g., PLUTARCH, *Solon*, *supra* note 35, at ch. 14 §§ 5-6 (Plut. [Sol.] 14.5-6).

80. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 8 § 4 (*Ath. Pol.* 8.4). The English translation is the author's own.

demos”) is suspicious: (i) Solon perhaps would not have equated his constitution with the rule of the demos; (ii) that expression only became prominent in the ideologically charged late fifth century. The other attack focuses on the word εἰσαγγελίας (lit., “announcement”): (i) the earliest reliably attested eisangelia trial was against Themistocles (perhaps circa 471/0), and the Areopagos council was not involved; (ii) it is difficult to imagine that Solon wrote the original *nomos eisangeltikos* (law on eisangelia) because, in the classical period, the enforcement of that law utilized a sophisticated procedure that involved both the jury courts and the assembly.

These technical arguments notwithstanding, it is widely accepted by scholars that Solon did charge the council of the Areopagos with trying individuals who sought to overthrow his regime. And that is, again, completely incompatible with the law against neutrality.⁸¹

There is a second possible objection: perhaps Solon’s law on eisangelia (if that was what it was called) targeted only those individuals who conspired to overthrow the Solonian constitution. That is technically possible: the participle συσισταμένους (contained in the above quotation of the law) literally means “[standing] together” and, at least by the later fifth century, can mean “conspiring.”⁸² Thus the law would read: “it [i.e., the Areopagos] tried those conspiring to overthrow the demos. . . .”

This objection is surely unpersuasive. First, we do not know whether or not the author of the *Ath. Pol.* actually

81. An influential case against the historicity of a Solonian law on eisangelia is found in MOGENS HERMAN HANSEN, *EISANGELIA: THE SOVEREIGNTY OF THE PEOPLE’S COURT IN ATHENS IN THE FOURTH CENTURY B.C. AND THE IMPEACHMENT OF GENERALS AND POLITICIANS* 12-19 (1975). Yet Hansen’s objection is very formal: Solon did not pass the original *nomos eisangeltikos*, which was subsequently changed. *Id.* But he admits that Solon might have done so—that is, the information in *Ath. Pol.* 8.4 might be accurate. *Id.* And he also admits that the Areopagos council might have tried political crimes in “archaic times.” *Id.* at 19. For a thorough defense of a Solonian law on eisangelia, see ROBERT W. WALLACE, *THE AREOPAGOS COUNCIL, TO 307 B.C.*, 64-66 (1989). For a catalogue of all known instances of eisangelia trials, see HANSEN, *supra*, at 66-120. Hansen presents the evidence for the trial of Themistocles on page 70. *Id.* at 70.

82. LIDDELL, SCOTT & JONES, *supra* note 41, at 1718 (definition B.III.1).

quoted the law. Second, it simply exceeds the limits of credulity to conclude that Solon would outlaw conspiracy to overthrow the regime but not the participation in the attempt to overthrow the regime.

The third and final point in support of my argument is that Solon likely required all Athenians to swear an oath to abide by his laws for a given period of time. The matter is a bit confused: Herodotus wrote that “the Athenians” swore to abide by whatever Solon legislates for 10 years;⁸³ the author of the *Ath. Pol.* wrote that “all” (pantes) swore to uphold his law and that Solon fixed his laws to stay unaltered for a hundred years;⁸⁴ Plutarch wrote that Solon gave his laws authority for a hundred years and that members of the council swore an oath to ratify his laws and, separately, the thesmothetai (six legal magistrates) swore to abide by them.⁸⁵ In any event, Solon certainly required the Athenians to commit to uphold his constitution. And that is incompatible with the neutrality law.

CONCLUSION

The first part of this paper demonstrated that the previously existing arguments against the authenticity of Solon’s law against neutrality either have been or can be countered. Those arguments were sophisticated, each challenging the law from a different perspective: linguistically, contextually, sociologically, etc. But each argument ultimately failed to convince. It thus appeared that it would be methodologically legitimate to accept the authenticity of the law.

In the paper’s second section, however, I presented a new argument against the authenticity of the law. I first demonstrated that promulgation of the law necessarily implies that Solon would have sanctioned (and indeed potentially facilitated) the overthrow of his constitution. I then presented three points that indicate that Solon would

83. HERODOTUS, *supra* note 51, at bk. 1 ch. 29 (Hdt. 1.29).

84. ARISTOTLE, *Athenian Constitution*, *supra* note 2, at ch. 7 §§ 1-2 (*Ath. Pol.* 7.1-2).

85. PLUTARCH, *Solon*, *supra* note 35, at ch. 25 §§1-2 (Plut. [*Sol.*] 25.1-2).

not have sanctioned, let alone facilitated, the overthrow of his constitution: he fought against Peisistratos despite the fact that he enjoyed popular support; he promulgated a law against overthrowing his constitution; and he had the Athenians swear an oath to uphold his constitution.

I thus suggest that, until my argument is adequately countered, we must conclude that Solon's law against neutrality is not authentic. Countering my argument can be done in one of two ways. First, demonstrate that I incorrectly identified the law's purpose or intent. That is, demonstrate that the purpose of the law was *not* to ensure that the regime that governed Athens—whatever it was—enjoyed majority support. Second, demonstrate that Solon would sanction (indeed, even facilitate) the overthrow of the regime that he spent so much effort to establish. (I should note that, in order to demonstrate this second point, one would have to successfully counter each of the three points I mentioned in its defense.) Should either of those two arguments be countered, it would be legitimate to study the law against neutrality for insight into both Solon's thinking and the rule of law in archaic Athens. But for now, the law is only significant for the light it sheds on what a fabricator thought, or wanted other people to think, about Solon and the rule of law in archaic Athens.