

HYPERBOREUS

STUDIA CLASSICA

ναυσὶ δ' οὔτε πεζὸς ἰὼν κεν εὐροίς
ἔς Ὑπερβορέων ἀγῶνα θαυμαστὰν ὁδὸν

(Pind. *Pyth.* 10. 29–30)

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DRACO'S CONSTITUTION
IN THE *ATHENAION POLITEIA* 4:
IS IT AN INTERPOLATION OR AN AUTHOR'S
LATER ADDITION?*

The debate on two main questions regarding Draco's constitution (DC in what follows) started almost immediately after publication of the London papyrus in 1891: (1) is it historically reliable or a politically biased forgery; and (2) is it the integral part of the text or was it added to the text by the author at some later date or by an interpolator?¹ At that time the overwhelming majority of scholars treated the *AP* as Aristotle's work, although there were exceptions.² Most of the scholars who denied the historicity of DC supposed at the same time that it was a forgery: they pointed out the similarity between DC and the moderate oligarchic constitution of 411 BC in *AP* 30 and inferred that DC was forged by some oligarchic writer to give a pseudo-historical justification to this plan. They

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¹ The debate was surveyed by Busolt 1895, 36–41, and later Busolt–Swoboda I, 1920, 52–58 (Busolt's work was completed before 1914; for some addenda see 630 c–d, and Swoboda's further addenda, Busolt–Swoboda II, 1926, 1577); for later updates see Fuks 1953, 98 nn. 1–2 (both Busolt and Fuks classify the literature according to the view of DC's historicity; Fuks incorrectly assigns von Fritz – Kapp 1950 to the proponents of historicity); Rhodes 1981/1993, 84–88; Chambers 1990, 154. The literature on the subject is immense, especially during the hot discussion in the 1890s. The outstanding survey of the earlier literature on the *AP* by Valerian von Schoeffer 1894 and 1896, a Moscow classicist [1864–1900], is still of value, also for DC.

² For instance Cauer 1891, who pointed to the Isocratean features of style, lack of hiatuses and the 'round' style of the *AP* which are in contrast to Aristotle's manner in his previously known works (pp. 3 f.) as well as to the differences in judgement as compared to Aristotle's *Politics* (p. 4, see further) and the treatment of material unworthy of Aristotle. Although it was soon shown that the unusual features are in large part explained by the 'exoteric' character of the *AP*, the published work, in contrast with the 'school' treatises which were known before (see most notably, Kaibel 1893), these and similar considerations still play a role in the widespread treatment of the *AP* as 'pseudo-Aristotelian'; but see contra Chambers 1990, 75–82.

also argued that ch. 4 of DC was interpolated in the text of the *AP*.³ The proponents of the historicity of DC, for their part, denied that it was an interpolation.⁴ Soon, however, two intermediate positions emerged, one of the partisans of the 'forgery' party, which supposed that Aristotle himself had added ch. 4 to his narrative, which followed a historical work, an Atthis, having been deceived by some oligarchic treatise;⁵ and on the other hand, certain proponents of historicity conceded to their scholarly adversaries that DC was later added by the author of the treatise himself, most notable among them Wilamowitz with his theory that DC stemmed from the real document which was found by oligarchs and used in their treatise to justify reform of constitution in 411 BC; Aristotle found this treatise after the bulk of his work had been completed, and he added DC from it into the text.⁶

The debate was apparently felt to have been concluded by Busolt in his survey from about 1914:⁷ non-historicity of DC, because of its anachronistic provisions, is indisputable; it follows that it is "eine politische Erfindung" (p. 57); the similarity of DC to the constitution of 411 BC (p. 55) together with its non-historicity further points to its origin as being from the circle of Theramenes in 411 or 404 BC (pp. 59–60);⁸ it is also

³ The proposal that combined all these statements was made simultaneously, very soon after publication of the *AP* by Weil 1891, 208 f.; Headlam 1891, 168, and also by Cauer 1891, 70 f. (but Cauer, since he denied that Aristotle was the author of the *AP*, did not treat DC as an interpolation). Reinach 1891 and Macan 1891 supposed that DC reflects the ideas of Theramenes and the moderates in 404/3 BC; this view won support of many scholars, especially after the appearance of Wilcken's paper (Wilken 1903).

⁴ Busolt 1891 (he changed his view in favour of non-historicity in Busolt 1895, 39–41); P. Meyer 1891, 31–44; Kenyon 1892, 11 f.; Fränkel 1892, 477; Keil 1892, 96 f., 115 f.; 202; Thalheim 1894.

⁵ Ed. Meyer 1892, 236–239 (the pages on DC were appended to Meyer's earlier published work on Lycourgos); Meyer argued that DC was a forgery which like Lycourgos' law stems from some 'apocryphal' treatise; see also Mathieu 1915, 103–113 (not historical, but rather an integral part of the *AP*).

⁶ Wilamowitz 1893, I, 57–59; 76 f. For a similar position see Schoeffer 1894, 41 f. (historical, Aristotle's own later addition); 1895, 220 f. (against Buzeskul's treatment of chs. 4 and 25 as interpolations); 228–232 (against Oppenraaij, in favour of historicity); Seeck 1904 (pp. 271–279: historical, but an interpolation as proved by Wilcken; goes back to marginal notes of Aristotle which were incorporated in the text by his student who edited *AP* after Aristotle's death).

⁷ Busolt–Swoboda I, 1920, 52–58 (see n. 1).

⁸ The similarity between DC and the constitution of 411 BC appeared indisputable even to those who believed in historicity of DC: they argued that the project of 411 imitated the real constitution which was in force before Solon: Busolt 1891, 395 f.; Wilamowitz 1893, I, 82 and II, 124 (he notes both the similarities and differences of

certainly a later addition to the main text: Busolt refers to Wilcken 1903, who proved this definitely and notes that even the defenders of DC's historicity admit this, like Seeck 1904 (p. 58); it is only unclear whether it was added by Aristotle himself or 'soon after the publication of the *AP* by some other' – but not later than during the reign of Demetrius of Phalerum (p. 58 with n. 3).⁹

Further discussions of DC were for a very long time marked by the conviction, as formulated by Busolt, that DC is non-historical, comes from an oligarchic pamphlet and is an interpolation or at least later addition to the text. The sole debate concerned when and in what circles this forgery was perpetrated.¹⁰ The main effect of this phase of scholarship was a succinct and impressive analysis by A. Fuks.¹¹ Like his predecessors he considered it as proven that DC was either interpolated or added later to the text by Aristotle himself (Fuks referred mainly to Wilcken's argument, pp. 96 f.) and shared the view that DC was a forgery by moderate oligarchs. At the same time he dated it not to the epoch of two oligarchic revolutions of the late fifth century, as was the unanimous opinion before, but to a date later in the fourth century because the moderate oligarchs of 412/11 and 404/3 BC claimed that they were trying to return the state to the constitutions of Solon and Clisthenes and not to that of Draco (p. 92) and because the anachronistic provisions of DC are similar to institutions

two constitutions, and he argues that if DC were a forgery of the oligarchs of 411 then they would have made it an exact copy of their project; see contra Ledl 1914, 47–48; also Seeck 1904, 304–318 (Seeck noted on p. 303 that the constitution under the name of Draco could only be frightening; see contra Busolt–Swoboda I, 1920, 58 n. 1, on Draco's authority as legislator).

⁹ The mention of Demetrius is explained by Busolt's (1920, 58 n. 3) reference to Wilcken 1903, 97: according to Wilcken, Cic. *Rep.* 2. 1. 2 (the mention of Draco's constitution, along with that of Demetrius; Cicero's alleged source is thus Demetrius!) shows that ch. 4 was inserted before the end of Demetrius' reign.

¹⁰ After more diffuse comparisons of DC with the projects of 411/10 came the more detailed analysis: Ledl compared DC with the oligarchic constitutional project 'for the future' (*AP* 30) and argued that DC could not be forged as its pseudo-historical antecedent because DC is more moderate than that project; he supposed that it was forged at a later date than this draft, after overthrow of the 400 and during rule of the 5000, as described in the *AP* 33 (Ledl 1914, 52–66); Mathieu 1915, 99–113, argued in favour of 409–408 BC in connection with the republication of Draco's laws on homicide; Cloché 1940, 64–73, contrary to Ledl, found that the differences between the constitution of the *AP* 30 and DC are not considerable enough to deny their common provenance: both emerged from the moderate circle of Theramenes (p. 73, on the moderate oligarchic project of Phormisius after the restoration of democracy in 403 BC; Dion. Hal. *Lys.* 32).

¹¹ Fuks 1953, 84–101.

which are attested only from the fourth century (pp. 92–95).¹² He also noted that although DC is certainly an ‘invention’, it originated in fourth-century attempts to reinterpret the earlier constitutional history in favour of moderate oligarchy, like Isocrates’ picture of Areopagus’ influence in the Areopagiticus, rather than being simply the project of implementing a desirable constitution, which was ascribed to the past legislator in order to strengthen its appeal (pp. 95 f.).

Fuks’ results were widely accepted but did not have much impact on treatment of DC as part of the *AP*. As earlier, it continued to be viewed as an insertion (either made by the author himself or by some interpolator) but now issuing from an oligarchic treatise of the 4th century. Some scholars, such as an historian of the Athenian constitution, have ascribed the forgery to Demetrius of Phalerum.¹³ Quite recently, H. van Wees argued that DC was interpolated into the text of the *AP* during the rule of Demetrius in order to justify his constitution as an ‘ancestral’ one.¹⁴

In fact Fuks’ analysis shows that the case to be made for an ‘oligarchic forgery’ is not certain. Fuks effectively dismantled the earlier consensus that DC emerged as a fictive justification for the constitution of 412/11 BC. But his own view that it appeared for a similar purpose later in the fourth century remains unsupported in the same respect as the earlier orthodoxy: although Draco is mentioned by Athenian orators of the time as a good legislator, along with Solon, and although there is some later evidence for the belief that he was author of a constitution (this evidence can be independent from the *AP*, in my view) nothing suggests that his constitution was used as a standard for moderate oligarchs of the fourth century in view of the fact that it is not attested for the later fifth. In the *AP* it is certainly not presented as a standard one; no matter, it must have

¹² Fuks also rejected earlier attempts by Ledl and Cloché to show that DC is more moderate-oligarchic or even more radical than the constitution of the 5000 in the *AP*: his own view was that both are moderate in their own way. I hope to return to this question in the sequel to this paper. In my view DC has features which make it inappropriate as a model for any actual project of the fifth and fourth centuries BC.

¹³ Jacoby 1949, 94; 385 n. 51, while supporting the prevailing view that DC was a forgery of oligarchs at end of fifth century BC, which was either “interpolated or faithfully worked by Aristotle into his original manuscript”, and he presumed that it made its way into the *AP* from Demetrius’ treatise *On the Athenian Constitutions*; see further, Ruschenbusch 1958, 421 f., who endorses this proposal, but in following Fuks’ fourth-century date for DC he then ascribes it to Demetrius himself. Contrary to such suppositions, it is useful to keep in mind that the date of Demetrius’ treatise is unknown and that there are no attested traces of his impact on the *AP*.

¹⁴ Van Wees, 2011; his view was anticipated by Stecchini 1950 (non vidi); contra see von Fritz 1954, 92 f. n. 16.

either been part of the original text or was added later: it was a short-lived constitution which failed to settle any of the conflicts, political or economic, which tore Athenian society apart; for this reason it was entirely abandoned by Solon (7. 1), who constructed his constitution not by modifying that of Draco but the one before Draco. More generally, and contrary to Fuks' proposal, there is no evidence to suggest that oligarchs of the fourth century regarded Solon's constitution as so democratic as to fabricate Draco's as a correct alternative.

And the final point: Isocrates' depiction of the domination of the Areopagus in the past, which serves Fuks as a relevant analogy for DC, in fact differs considerably from DC in its form:¹⁵ *Areopagiticus* is scarce in constitutional details; it mentions only the mode of appointment of the archons (selection by lot from the pre-elected) which corresponds to the standard view and is correct but also lavish in depiction of the purely moral authority of the Areopagus and its salubrious effects. On the contrary, in depiction of DC one misses any features which might make this order appealing to the audience. Even if we admit that DC was presented in the original source in a more positive light, we can be certain that the person who rearranged it for the *AP* did not put it in the text for the purposes of propaganda (van Wees' proposal that it was concocted by Demetrius of Phalerum, who wanted to thereby justify his constitutional changes, is implausible inter alia for this very reason). More definitely, regarding the source or sources of DC, one can assert that its form of presentation was certainly inappropriate for a text of political propaganda. In contrast to Isocrates, it is very detailed and exact in its description of the set of offices, qualifications for them and the ways of appointment, even going into minutiae. If DC was not conceived as a real project for the present but simply dressed up for the purposes of mimicry in the clothes of the past (and this option is rightly rejected by Fuks), then the detailed provisions it reports become meaningless: moreover, since these provisions, as I will try to show in the sequel to this paper, could not be implemented in this precise form in the fifth or fourth century, their exactness would be counterproductive to propagandizing an oligarchic ideal.

This view that DC is non-historical, that it comes from a political pamphlet and that it was added by either Aristotle or somebody else now became indisputable. This consensus also demonstrates the import of the two most recent and significant commentaries on the *AP*, namely by

¹⁵ This difference was noticed by Fuks himself: 'such a pamphlet is to be regarded as an invention (going perhaps into more "historical" detail than the *Areopagitikos*) but hardly as the rather sinister "forgery" concocted for immediate political use which "'Drakon's constitution' is commonly supposed to be" (p. 96).

P. J. Rhodes¹⁶ and M. Chambers,¹⁷ albeit with considerable difference in argument and certainty. A few dissidents from this view (which we shall later discuss) apparently had no influence on the general view of matters.

The conviction on the part of many scholars that DC was an interpolation did stem from the belief that it was unhistorical and an oligarchic forgery. This is a psychologically understandable but logically invalid inference: DC might well be unhistorical, forged by some oligarch, but at the same time be an integral part of the text because the author of the *AP* did not himself think that it was unhistorical (this was in fact the view of certain scholars, for instance Ed. Meyer). On the contrary, it is important to consider on internal grounds, independent of assumptions of historicity and oligarchic forgery, whether DC is an interpolation by an alien hand,

¹⁶ Rhodes 1981/1993, 84–88, apparently does not think that non-historicity of DC suggests that it is an interpolation: he notes (p. 86) that chs. 3 (the “ancient constitution”) and 4 both “represent theoretical reconstruction rather than well-documented history” and that “a reconstruction which does not deceive us might have deceived A. or his pupil”. Nevertheless, he defends ch. 3 (pp. 86 f.) but is certain that DC is “in some sense an insertion in the text of *A.P.*” (pp. 85–86), because of “patch work” in 3.1 and 41. 2: he has in view the beginning of the ancient constitution (3. 1 ἤν δ’ ἡ τάξις τῆς ἀρχαίας πολιτείας τῆς πρὸ Δράκοντος τοιαύδε) where the proponents of an interpolation deleted the words τῆς πρὸ Δράκοντος (cf. p. 85); the deletion is based however on *petitio principii* – and lack of number with Draco’s in the list of constitutional changes (41. 2), i.e. Wilcken’s argument which will be discussed in detail. Rhodes supposes that the insertion runs from 4. 1 to 4. 4 (incl.) and that it substituted the description of Draco’s laws in the earlier text (pp. 86 f.): the latter proposal seems to be unfounded, since Draco’s laws on homicide were beyond the subject of the treatise (and were regarded moreover by Aristotle as unremarkable apart from their cruelty in *Pol.* 2. 12. 1274 b 15–18). Rhodes is non-committal on the question as to whether the insertion was made by the author or by someone else (p. 87) which is more relevant for those who accept Aristotelian authorship of the *AP* (Rhodes believes that this is a work of a pupil). He supposes that DC was absent from the version of the text “which circulated most widely in antiquity” (p. 87, cf. 53–56), but at the same time he believes that the modifications made in other parts of the text imply that DC is not the interpolation of a private reader but rather a deliberate revision made in Aristotle’s school.

¹⁷ Chambers 1990, 154 treats DC as an oligarchic utopia and as an insertion which may be made by Aristotle himself but is certainly derived from the tradition which he or a member of his school found at a later stage of work on the text, inter alia because according to *Pol.* 2. 1274 b 15 f., Draco was the author of laws made for an already existing constitution; ch. 4 has no features of Aristotle’s thought, being purely schematic, contrary to ch. 3, but whoever made this insertion found it reliable because it corresponded to Aristotle’s statement that “die früheste politische Ordnung bei den Griechen nach der Königsherrschaft sich auf die Krieger stützte” (*Pol.* 4. 13. 1297 b 16–17). I will return to this latter note in the sequel to this paper. According to Chambers, ch. 3 (the “ancient constitution”) reflects a later change in Aristotle’s thought, but he disagrees with Jacoby and other scholars who proposed to athetize it together with ch. 4.

a later addition of the author himself, or an integral part of the text. The purpose of this paper is to give a definite answer to these questions as far as possible. This question would seem to be of a purely formal character, but apart from its relevance to the particular issue of the origin of DC, it is also of some importance for understanding the work method of the *AP* author.

The prevailing though hardly unanimous view is that the *AP* was written not by Aristotle but by some of his students within the framework of his project to describe the constitutions of the various Greek states. The author's identity is of secondary importance for this paper (though I personally find the arguments against it being Aristotle not convincing) and it is only of some interest that there is indeed sufficient evidence to maintain that the *AP* was published (once or twice) *before* Aristotle's death.

Most of the arguments pro and contra DC as an addition to the main text are naturally undifferentiated with respect to taking this addition as an interpolation by an alien hand or a later addition by the author himself. It is in fact difficult or even impossible to distinguish this on purely formal grounds with regard to the remaining incongruencies in the text. Nevertheless, with respect to the *AP*, we are in a happy position because it is possible to eliminate as plausible any substantial interpolations, like that of DC, dated much later than composition of the bulk of the treatise. The most important *terminus a. q.* for publication of the *AP* is provided by the lack of any mention regarding abandonment of the democratic constitution by Antipater in 321/0 BC: in the list of constitutional changes in ch. 41 the last one is the restoration of democracy in 403 BC; moreover, the democratic constitution is depicted in the second part of the *AP* as being in full force.¹⁸ There are further indications which point to publication taking place at an earlier date than 321/0 BC: 62. 2 (the Athenian officials are still sent to Samos, which Athens lost in 322, as a result of the Lamian War¹⁹). Further, at 46. 1 there are triremes and quadriremes mentioned as part of the Athenian navy, but not quinqueremes, which are attested for the first time in 325/4 BC. This implies a publication before 325/4.²⁰

¹⁸ Rhodes 1981/1993, 52.

¹⁹ This *terminus a. q.* remains valid in spite of Rhodes' having noted that Samos was returned to Athens by Polyperchon in 319 BC (Rhodes 1981/1993, 694 f.) because the publication (or re-publication) date after 321/0 is improbable on more serious grounds (see further).

²⁰ This indication is accepted as the *terminus a. q.* by Chambers 1990, 82–83. Keaney 1970, 326 finds this “based on inconclusive evidence”. Following Tovar 1948, 153–159 (non vidi) and Keaney, Rhodes 1981/1993, 546 f. supposes that mention of the quadriremes is the later addition (see further); even if it were the case, though, the absence of any mention of quinqueremes implies that the alleged revised version was published earlier than 325/4 BC.

The *terminus p. q.* for publication of the *AP* is a more complicated issue. Most scholars rightly admit that the *AP* was composed, whether by Aristotle or his pupil, after Aristotle's return to Athens because the treatise demonstrates a rich knowledge of Athenian literary and documentary sources. More definite indications for the *termini p. q.* of its publication are *AP* 42. 2–5, the description of ephebeia as an obligatory program of two years' service which was instituted in this form about 335/4 BC,²¹ and possibly 61. 1, the mention of two *strategoï* for Piraeus, one for Munichia and another for Acte: the earliest mention of two *strategoï* for Piraeus is 325/4 [the date uncertain]; in 333/2 there was still one *strategos* for Piraeus.²² These passages imply a publication date no earlier than 333/2 BC.

There are also indicators that point to a later *terminus p. q.*: mention of quadriremes at 46. 1, which are first attested in the Athenian navy list in 330/29; the addition of the Hephaistia to the penteteric festivals under the archon Ctesiphon, i.e. in 329/8 BC (54. 7). Rhodes, however, treats these latter passages as the later additions²³ and opts for the first edition of the work in the late 330s and for the second revised one after 325/4 and before 321/0 BC. The arguments that both these passages – on quadriremes²⁴

²¹ Rhodes 1981/1993, 52; 493–495, and a detailed discussion: Friend, 2009, 4–56.

²² Rhodes 1981/1993, 51 f. and 679.

²³ Rhodes 1981/1993, 52–53 and 55–56, and his commentary ad locc.

²⁴ Following the earlier proposal of Tovar and Keaney 1970, 327 f. (who was more cautious), Rhodes 1981/1993, 546 f. believes that quadriremes at 46. 1 are the later addition because in the beginning of the sentence the boule is said to take care of the triremes already built, while in the continuation it is about building not only triremes but quadriremes (Ἐπιμελεῖται δὲ καὶ τῶν πεπονημένων τριήρων καὶ τῶν σκευῶν καὶ τῶν νεωσοίκων, καὶ ποιεῖται καινὰς δὲ τριήρεις ἢ τετρήρεις, ὁποτέρας ἂν ὁ δῆμος χειροτονήσῃ, καὶ σκεύη ταύταις καὶ νεωσοίκους). It has been supposed that the continuation was modified at the later date (the quadriremes are for the first time attested in 330/29 BC; the first edition is thus assigned to an earlier date than this). However, the inconsistency thus ascribed to the author of the revision within one sentence is unlikely; and it is for the same reason that Chambers' argument (1990, 359) against the later addition should be rejected (“die meisten athenischen Kriegsschiffe waren Trieren, und ich glaube, dass Aristoteles keine Notwendigkeit sah, bei jeder Erwähnung der Trieren die Tetreren hinzuzufügen”). Rather one may suppose that the author purposely avoided mention of the boule's taking care of the quadriremes because they had been recently built and still had no need of extensive repairs; he wanted instead to emphasise the role of the boule in building the new quadriremes and in taking care of old triremes. In fact in 330/29 there were 392 triremes as opposed to just eighteen quadriremes; in 326/5 there were 360 triremes as compared to fifty quadriremes and two quinquiremes (see Rhodes 1981/1993, 546). This shows the rate of additional quadriremes as eight per year along with an equal diminution in the number of triremes. Thus the considerable number of triremes was old and in need

and on the Hephaistia²⁵ – were added in the second editions are in my view unconvincing.²⁶ Chambers, who supposes the single edition between 328/7 and 325/4, seems to be closer to the mark.²⁷ Even if it were a second revised edition of the *AP*, as Keaney and Rhodes believe, it certainly should be dated before Antipater's change of the Athenian constitution in 322/1, as we have seen. Moreover, we can move the *terminus a. q.* for publication to an even earlier date, before Aristotle's dramatic departure from Athens in 323/2: even if the *AP* was written not by Aristotle but only under his aegis, its publication under his name would be unthinkable after Aristotle's having fled Athens.

of repairs; many even had to be entirely scrapped, partially because they were being replaced by the quadriremes (the scrapping rates of these older ships were clearly more than eight per year because the new triremes continued to be built).

²⁵ The addition of the quadrennial festival (πεντετηρίς) of the *Hephaistia* in 329/8 BC under the archon Cephisophon (54. 7) was treated by Keaney 1970, 332 f., albeit cautiously, as a later addition and as evidence for two editions of the *AP* because of Pollux 8. 107, who cites four festivals mentioned in the *AP* but omits the *Hephaistia*. However, the introduction of the quadrennial celebration in honour of Hephaestus is neither attested nor probable at this date and may be a mistake in place of Ἀμφιάραια, i.e. the festival in honour of Amphiaraios at his sanctuary of Oropus (see the discussion in Rhodes 1981/1993, 610 and further, in favour of *Amphiaraiia*, Knoepfler 1993, 279–302). If this be the case then omission of the festival either by Pollux, or rather by his source, may be explained by a recognition that *Hephaistia* is a mistake. Again, if the right *Amphiaraiia* was in their text, it might have been omitted because they were aware of the short life of this provision. Oropus was granted to Athens, either by Philip II in 338 BC, or more likely by Alexander in 335, and the quadrennial celebration for Amphiaraios was established in 332/1 (*IG* II³ 348) and first celebrated in 329/8 (*IG* II³ 355); Athens lost Oropus after her defeat in the Lamian War in 322 BC (Habicht 1997, 40 f., but cf. Tracy 1995, 92 n. 19, who argues that Athens lost Oropus only in 312); then took it again from Demetrius Poliorcetes in 305/4 (Habicht, p. 77) and conclusively lost it in 287 (Habicht, p. 129), or even earlier in 295 (see Knoepfler 2014, 70). It is thus possible that the *Amphiaraiia* were celebrated only in a short period between 329/8 and 322 BC.

²⁶ Both in his *t. p.* and *t. a. q.* Rhodes largely follows Keaney 1970; Keaney, who believed that Aristotle was the author of the *AP*, asserted that the additions were made by his pupil (p. 335: “On the basis of internal and external evidence, it has been argued that Aristotle finished the *AP* ca. 334/3, soon after his return to Athens, that this text was in circulation in or soon after that date, and that this edition was brought up to date in the 320s, when certain changes had taken place which contradicted [!] the earlier text”); according to Rhodes, the author was not Aristotle but his pupil; he is non-committal on the authorship of additions. Keaney's date of ca. 334/3 for the first edition is based on the argument that the indications of a later date than this are “additions” made in the second edition. See two previous notes against this.

²⁷ Chambers 1990, 82 f., cf. Day–Chambers 1962, 196 f.; see the proposals by Weil and Torr as early as 1891.

Antipater's drastic changes to the Athenian constitution which were not mentioned in the *AP* make any edition or re-edition by its main author(s) after that date highly implausible. Even more improbable is the recent proposal by H. Van Wees that DC was added in the re-edition of the *AP* under Demetrius of Phaleron as a pseudo-historical precedent for Demetrius' constitution.²⁸ This proposal would mean that the new edition omitted all changes of the constitution after Antipater, including that under Demetrius, for which it tried to invent this antecedent. A revised version of the *AP* before Antipater cannot be so safely excluded, but, as I argued the case for the second edition of the text, is far from being conclusive.

It is now necessary to reconsider the arguments from the text of the *AP* itself and which were used to prove that the chapter on DC somehow contradicts or is incongruent with the text of the *AP* and thus should be treated as an addition to the text by its main author (Aristotle or his pupil) or by some alien hand.

At the earlier stage of the debate on DC the suggestion that it was an interpolation was simply the sequence of its non-historicity; the additional arguments were that Aristotle in the *Politics* says explicitly that Draco did not create the constitutional order on his own but imposed his laws on the preexisting one, that DC goes unmentioned by other sources, and that Plutarch, who used either the *AP* or material similar to the *AP* in his *Life of Solon*, shows no awareness of DC. Most of these arguments were successfully refuted by defenders of DC's historicity.²⁹

In the *Politics* 2. 1274 b 12 f. Aristotle refers to Draco as a legislator who was not the creator of a new constitutional order but wrote his laws within the framework of a preexisting one. This difference between the *Politics* and the *AP* struck many scholars immediately after discovery of the *AP* and resulted in different reactions to it: (1) a few scholars deleted the relevant sentence in the *Politics*; (2) the other (then a minority) also relied on other differences between the *Politics* and the *AP* and denied Aristotle's authorship of the *AP*; (3) the third (again a minority) attempted to prove that Draco also fails to appear as author of a constitution in the *AP*;³⁰ (4) most scholars proposed deleting the chapter on DC as non-Aristotelian. Of all these strategies: (1) died as having been totally unfounded; (2) still finds some supporters today but is wrong, as I will argue; (3) became the present orthodoxy on many grounds, and it is usually combined with

²⁸ Van Wees 2011. I will discuss in the next paper the alleged similarity of Demetrius' constitution to DC as proposed by Van Wees.

²⁹ See Schoeffler 1896, 220 f.

³⁰ See P. Meyer 1891, 36–44; Blass, 1898, XXI–XXIV; Blass, 1903, 118–120 (see further).

(4) in that it is an addition to the text made either by the author of the *AP* (not Aristotle) or some later interpolator. The problem of authorship of the *AP* can here be put aside, but it is clear that the passage of the *Politics* does not prove that DC is an addition to the text in any possible sense: if DC had been written not by Aristotle but by his pupil, he could dissent through the *Politics* under impact of the sources he used; but Aristotle himself, if he had been the author of the *AP*, could also have changed his mind during work on the *AP* under the influence of evidence which had been unavailable to him at the time of his writing the corresponding passage of the *Politics*.³¹ Aristotle certainly worked on the relevant section of the *Politics* earlier than he wrote the *AP*,³² and one may suppose that he did not live long enough to work into the text of the *Politics* this and similar alterations because, contrary to the *AP* which was published close to Aristotle's death, the *Politics* at this time remained unfinished and was still awaiting revision. So far, the contradiction of DC with the *Politics* cannot prove that DC is a later addition. Moreover, the tacit assumption of this particular argument in favour of a later addition is that Aristotle's pupil should have been bound by his authority and that the genuine text of the *AP* should have conformed to the *Politics*. This assumption is unfounded – in Aristotle's school there was no *in verba magistri iurare*; moreover, as we have seen, the edition (or re-edition) of the *AP* with DC could not

³¹ Ste. Croix, 2004, 273; 275 (edited posthumously) supports the view that DC was later inserted into the text because Aristotle changed his mind under influence of the discovered forgery (Ste. Croix rejects the once standard view that the *Politeiai* were written earlier than the *Politics*, but he admits that the statement in the *AP* on Draco is later than in the *Politics*); this might indeed be the case, but it is unclear why he could not have already changed his mind when working on the main version of the *AP*. Rhodes 1981/1993, 62 also points to the possibility of him having changed his mind, although he disbelieves both Aristotle's authorship of the *AP* and rejects DC as an integral part of its text. For other incongruities between the *AP* and the *Politics*, see Rhodes 1981/1993, 60 f., who argues against Hignett 1952, that these incongruities do not show the inferior judgement of the *AP* in comparison with the *Politics* (this latter is also the view of Ste. Croix 2004, 273–277).

³² The last datable event mentioned in the *Politics* (5. 1311 b 1–3) is the murder of Philip II in 336 BC (Rhodes 1981/1993, 58); according to Schütrumpf, Gehrke 1996, 178, the books 4–6, which show a thematic similarity to the *Politeiai*, are part of the latest stratum of the *Politics*; the question of the use to which the *Politeiai* was put in these books is more complicated, but the general consensus is that the *AP* was not used in the relevant part of the *Politics* (Rhodes 1981/1993, 59). This might imply that the empirical interests of the later books of the *Politics* (written before or at start of his second stay in Athens) impelled Aristotle to begin collecting material for the *Politeiai* in his second Athenian period (see also the plan of such a collection in the *EN* 10. 10: this *Ethics* is in all probability belongs to the Athenian period) and that he did not work extensively on the *Politics* during this time (nor did he revise it thoroughly).

have occurred after Aristotle's death (i.e. later than Antipater enacting the change of constitution): it is thus clear that the person who edited the *AP* in its present form, with DC, was untroubled by any discrepancy with the *Politics*. The discrepancy thus in no way proves an addition by the writer of the *AP* or an interpolation made by an alien hand.

Far more impressive were the arguments in favour of addition or interpolation brought forward by Wilamowitz and Wilcken, which noticeably changed the balance of scholarly opinion in their own time and remain (especially those of Wilcken) the main basis for such a view in our present day. These arguments should be treated separately.

Wilamowitz, from whom stems the most elaborate argument based on the composition of ch. 4 and its neighboring chapters, was a partisan of DC's historicity.³³ He argued that ch. 4 was later added by Aristotle to his text, from that source which was still unknown to him while working on his main narrative. Wilamowitz's arguments (pp. 57–59) were as follows: (1) DC narrative has a documentary character, as opposed to the main narrative which followed a historical source, namely Atthis by Androtion;³⁴ (2) DC breaks the chronological narrative sequence: in ch. 2 the civil strife under Cylon's coup is depicted; ch. 3 with its account of the "ancient" constitution ensues felicitously because it provides causes for this strife, but instead of expected appearance of the saviour Solon, it then follows DC and only afterward does the narrative return to the condition of the poor segment of Athenians and the reforms of Solon are described; moreover, the account of DC in ch. 4 begins with an unclear chronological reference: it was "not long after that" that Draco enacted his

³³ Wilamowitz 1893, I, 76–88. Wilamowitz agreed with previous scholars that DC is similar to the constitution of 5000, but he did not believe that this disproved the historicity of DC. He supposed that the moderate oligarchs of 411 BC had a vested interest in the pre-Solonian state; they discovered and published the previously unknown document on DC and compiled their own project on its very model; Aristotle found both the description of DC and the constitution of the 5000 (*AP* ch. 30) in the same moderate oligarchic source (Theramenes). The details of this elaborate hypothesis of sources will not worry us here.

³⁴ On the use of Atthis for the whole earlier history, including now lost chapters, see Wilamowitz 1893, I, 57; according to Wilamowitz, Androtion's *Atthis* began his description of the Athenian constitution only starting with Solon; from this material (i.e. references to the earlier institutions in the story of Solon's reforms) Aristotle composed the 'ancient constitution' of ch. 3 which was missing in Androtion and in Aristotle's original text – this led to the appearance of doublets in chs. 3, 7 and 8 (pp. 49 f.). This supposition is unwarranted: some references in chs. 7 and 8 to the state of affairs before Solon are not "doublets" because the relative facts were not described earlier; ch. 3 contains the antiquarian notices which Aristotle uses for his suppositions about the development of archonship and which cannot be borrowed from the sources on Solon.

constitution.³⁵ Since “after that” cannot refer to the civil strife (it continued after DC) it can refer either to Cylon’s affair or to the later “purification” of Athens by Epimenides (1. 1) which happened at least a generation later than the murder of Cylon’s supporters; the author has certainly the former event in mind, but the statement can also be understood as a reference to the latter, and this signals an “addition”; (3) the state of affairs after enactment of DC (debt slavery and the concentration of land in the hands of a few, 4. 4) is described in the same words as in the earlier narrative on civil strife (2. 2) which was interrupted by the excursus on the “ancient” constitution and then by the story of DC; (4) DC goes unmentioned by Plutarch in his biography of Solon despite its many similarities with relevant parts of the *AP*; this means, according to Wilamowitz, that DC was not mentioned in the common source of the *AP* and Solon, namely Androtion’s *Atthis* (which Plutarch used indirectly, via Hermippus, according to that view which was popular at that time).

Wilamowitz’s arguments convinced certain DC historicity proponents, like Schoeffer,³⁶ and in general they played a noticeable role in laying siege to the view that DC is not an integral part of the text, even among the scholars who were not prepared to regard it as interpolation by an alien hand.³⁷ Moderate as Wilamowitz’s position in fact was in this respect, it provided a support for a far more decisive attempt of Wilcken to prove that DC was added by somebody other than the author of the main text (Aristotle) of the *AP*. In general, the considerations about “awkwardness” of the position of DC in the text still play a role in its treatment as a later addition.³⁸ It is thus to check how convincing is the proposal of a great scholar.

First of all, some assumptions of Wilamowitz’s reasoning are dubious: he was certain that Aristotle’s main source for the earlier period of Athenian history and even for the style of his narrative was Androtion and that the “documentary” character of DC does not fit the chronographic style of Androtion. In fact there is no conclusive evidence for it; instead we should reckon with a plurality of sources and with the possibility that Aristotle reworked and rearranged their material as well as giving it his

³⁵ Ἡ μὲν οὖν πρώτη πολιτεία ταύτην εἶχε τὴν ὑπογραφὴν. μετὰ δὲ ταῦτα χρόνου τινὸς οὐ πολλοῦ διελθόντος, ἐπ’ Ἀρισταίχμου ἄρχοντος, Δράκιδων τοὺς θεσμοὺς ἔθηκεν· ἡ δὲ τάξις αὐτοῦ τόνδε τὸν τρόπον εἶχε.

³⁶ Schoeffer 1896, 220.

³⁷ See Busolt 1895, 37 n. 1: the peculiarities in style of ch. 4 point to a source other than *Atthis* (cf. pp. 33 f. on *Atthis*, especially by Androtion, as the main source of the *AP*).

³⁸ See Rhodes 1981/1992, 86f., on various attempts to ‘correct’ the logic of narrative; he himself is rather cautious about them.

own stylistic colouring.³⁹ DC could have been compiled by Aristotle from various sources, and in ch. 3 his account of the development of archonship draws on several authors and is based on many probabilist inferences from antiquarian facts which at least partially belong to Aristotle himself.

Next is the alleged decline from a natural logical order: after depiction of grounds for the civil strife – economic in ch. 2 and political in ch. 3 (“ancient constitution” with its oligarchic order) – one gets DC instead of the expected appearance of Solon. Here Wilamowitz commits a *petitio principii*: he wants to prove that DC was an addition as based on the unproven premise that Aristotle was unfamiliar with it when he wrote about the causes of Solon’s reforms. If DC was known to him, however, then it occupies a natural place between the “ancient constitution” and Solon’s reform because chronologically it follows the former and precedes the latter. Moreover, DC nicely fits the logical aspect of the narrative because it complements the account of political causes of the conflict: although it is not explicitly enunciated, it is clear that DC with its enfranchisement of hoplites was apparently an attempt to broaden the state’s social base, and presumably it attained this purpose, at least in part, since Solon (who was elected the archon) afterwards belonged not to the wealthiest elite but to the middle stratum (5. 2) and since later, after Solon’s reform, we have not two parties, as earlier, but three – the proponents of oligarchy, of more radical democracy, and of the “middle constitution” (13. 4). Nevertheless, as it is stated, after the account of Dracon’s reform (4. 5; 5. 1), the main causes of conflict, debt slavery and concentration of land in the hands of many was not abandoned; the civil strife continued (5. 1) on up to the election of Solon as a reformer.

A minor difficulty, stressed by Wilamowitz, is lack of any definite reference at the beginning of ch. 4 for μετὰ ταῦτα. In fact this awkwardness proves the integrity of the text rather than that ch. 4 was added: for μετὰ ταῦτα clearly has the same reference, as the earlier μετὰ ταῦτα in the beginning of ch. 3, which can only refer to Cylon’s affair. If ch. 4 were added to the main narrative, by Aristotle or some other person, nothing would be easier than providing an explicit reference to Cylon who was mentioned two Teubner pages earlier. But for the author who remembered that the reform of Draco is the single dated event after Cylon and who wrote the whole of two chapters, namely 3 and 4, as an expanded excursus

³⁹ On the question of the use of Androtion in the *AP* see Rhodes 1981/1993, 15–30, and for the tentative table of sources, pp. 28 f.: there is no certainty that a single source, Androtion or other, was used for the earliest part of Athenian history, including Solon’s reforms; see also Harding 1994, 51 f.: one only safely attested instance of drawing on Androtion directly is *AP* 22. 3–4 (origin of ostracism).

on the causes of civil strife, it would have been natural to refer in such a form to this initial event of the struggle because he had kept in mind his earlier reference to it.

Lastly there is Plutarch's silence on DC: to argue in favour of the later addition, Wilamowitz (also Ed. Meyer) pointed out that Plutarch never mentioned DC. This consideration is not decisive. It is indisputable that Plutarch in his *Life of Solon* uses in part the same material as the *AP*, but it is unclear what it actually means: the prevailing view was that Plutarch used not the *AP*, but Hermippus, and Hermippus drew from the same source as the *AP*; the most popular candidate was long Androtion. But now serious doubts have arisen regarding the view that Androtion was Plutarch's principal source for Solon's biography,⁴⁰ and this makes one wonder whether the common material does not derive from Hermippus himself who used the *AP* together with other sources. In any event, Plutarch's (and Hermippus') use of this common material was selective because he wrote a biography of Solon and not a history of the Athenian constitution, and his silence on DC means not more than his silence on the "ancient constitution" in ch. 3 which would immediately precede Solon's reform granted that DC was absent in the source Plutarch used. But more important is another consideration: even if it were correct that Plutarch's source was also source of the *AP* and that it did not have DC as part of it, then it would still not prove that DC was a later addition to the *AP* because Aristotle drew on several sources and their material might have been organized by him as a single whole in the initial redaction of his text.

It is superfluous to discuss the other numerous attempts to "extract" ch. 4 or both chs. 3 and 4 from the text and to re-arrange these chapters in order to restore the "logic" of narrative. As far as scholars presume that these parts are additions or interpolations, they suffer from the same *petitio principii* as Wilamowitz: that Aristotle did not know DC when he wrote on the causes of strife and of Solon's reform. If he had then our text needs no improvements.⁴¹ But as an autonomous argument in favour of an interpolation, the alleged inaccuracies are simply inadequate – as admitted

⁴⁰ See Rhodes 1981/1993, 118.

⁴¹ It was for formal reasons that some scholars (not Wilamowitz) attempted to extract ch. 3 together with ch. 4 because the text returns at 4. 5 to that debt-slavery which had already been mentioned in 2. 2 (for instance, Jacoby *FGrH* Teil 3 b Suppl. 1 [1954] 50). This ignores the causal link between the civil strife and the oligarchic character of the constitution and should be definitely rejected. It is irrelevant here that Wilamowitz regarded ch. 3 also as the later edition (see above n.34) because he did it for reasons different from those which made him regard ch. 4 as an addition, and he apparently did not believe that both chapters emanated from the same source and were added simultaneously.

even by Wilcken, one of the decisive proponents of an interpolation: he agreed that without the proof of it which he detected in ch. 41, his and others proposals about chs. 3 and 4 proved nothing.⁴²

Now let us turn to the most impressive argument to the effect that DC is an addition which was brought forward by Wilcken.⁴³ Contrary to Wilamowitz, he endorsed the view that DC was anachronistic, stemmed from an oligarchic pamphlet and was interpolated by an alien hand. He maintained, first of all, that the correct reading in 4. 1 is ἡ δὲ τάξις αὐτ^ο (i.e. superscript) = αὐτο(ῶ) [sc. Δράκοντος] τόνδε τὸν τρόπον εἶχε, not αὐτ' (i.e. compendium) = αὐτῆς, as according to Kenyon, viz. that Draco is designated explicitly as the founder of a new constitution.⁴⁴ He then pointed out that the reading μετάστασις in ch. 41 which he firmly maintained, instead of κατάστασις of the earlier editors,⁴⁵ for the first time gives a satisfactory understanding of this text and proves simultaneously that mention of DC in this list is an interpolation. The text is as follows:

ἦν δὲ τῶν μεταβολῶν ἑνδεκάτη τὸν ἀριθμὸν αὕτη (sc. ἐπὶ Πυθοδῶρου). πρώτη μὲν γὰρ ἐγένετο <ἡ> μετάστασις τῶν ἐξ ἀρχῆς Ἰωνοῦ καὶ τῶν μετ' αὐτοῦ συνοικησάντων· τότε γὰρ πρῶτον εἰς τὰς τέτταρας συνενεμήθησαν φυλάς, καὶ τοὺς φυλοβασιλέας κατέστησαν. δευτέρα δὲ καὶ πρώτη μετὰ ταύτην ἔχουσα πολιτείας τάξιν ἡ

⁴² Keaney 1969, 415–417, 415 n. 20, found an additional argument for treating DC as an interpolation in that it does not fit the “ring composition” he discovered in chs. 2–5 (cf. Keaney 1992, 155 n. 4), but the argument seems to be highly artificial. Rhodes 1981/1993, 46 and 87 rightly casts doubt on it.

⁴³ Wilcken 1903, 92.

⁴⁴ Wilcken thus dismantled the attempts of some scholars (G. Schulz and F. Blass) to remove the contradiction between the appearance of Draco's (in ch. 4) and Aristotle's claim in the *Politics* that Draco did not establish a new constitution but imposed his laws on the existing one: these scholars emended Kenyon's αὐτῆς (ch. 4. 1) into αὐτή and rendered it variously but with the general sense that the constitution described in ch. 4 was not new with Draco but had predated him (see on further revivals of these attempts). Even using this reading of it and accepting the supposed emendation, this is hardly plausible, as Wilcken rightly noted; in fact the prima facie meaning of the sentence with αὐτή would be that *this* constitutional order was established by Draco's θεσμοί; Blass later attempted to retain Kenyon's ἡ δὲ τάξις αὐτῆς (Blass 1898) in order to attain the same effect, but the reference here to the constitution of the previous chapter is strained; he further yielded to Wilcken that the correct reading is αὐτο(ῶ), but then proposed to athetize it (Blass 1903=1908, appendix 118–120, a desperate attempt to defend the earlier view). Kenyon continued insisting on αὐτῆς (Kenyon, 1913 ad loc.), but Chambers 1965, 33, re-affirmed that Wilcken was right and that the papyrus has αὐτ^ο.

⁴⁵ The correct reading μετάστασις had already been maintained by Wilcken in his earlier paper from 1895 and later, in response to Blass, again by Kaibel–Wilamowitz in their third edition of the *AP* (1898); Blass accepted this reading in his third edition (1898) and the other editors followed him.

ἐπὶ Θησέως γενομένη, μικρὸν παρεγκλίνουσα τῆς βασιλικῆς. μετὰ δὲ ταύτην ἢ ἐπὶ Δράκοντος, ἐν ἧ καὶ νόμους ἀνέγραψαν πρώτον. τρίτη δ' ἢ μετὰ τὴν στάσιν ἢ ἐπὶ Σόλωνος, ἀφ' ἧς ἀρχὴ δημοκρατίας ἐγένετο. τετάρτη δ' ἢ ἐπὶ Πεισιστράτου τυραννίς. πέμπτη δ' ἢ μετὰ <τὴν> τῶν τυράννων κατάλυσιν ἢ Κλεισθένους, δημοτικωτέρα τῆς Σόλωνος. ἕκτη δ' ἢ μετὰ τὰ Μηδικά, τῆς ἐξ Ἀρείου πάγου βουλῆς ἐπιστατούσης. ἑβδόμη δὲ ἢ μετὰ ταύτην, ἦν Ἀριστείδης μὲν ὑπέδειξεν, Ἐφιάλτης δ' ἐπετέλεσεν, καταλύσας τὴν Ἀρεοπαγίτιν βουλήν· ἐν ἧ πλεῖστα συνέβη τὴν πόλιν διὰ τοὺς δημαγωγοὺς ἀμαρτάνειν διὰ τὴν τῆς θαλάττης ἀρχήν. ὀγδόη δ' ἢ τῶν τετρακοσίων κατάστασις, καὶ μετὰ ταύτην, ἐνάτη δέ, ἡ δημοκρατία πάλιν. δεκάτη δ' ἢ τῶν τριάκοντα καὶ ἢ τῶν δέκα τυραννίς. ἑνδεκάτη δ' ἢ μετὰ τὴν ἀπὸ Φυλῆς καὶ ἐκ Πειραιέως κάθοδον, ἀφ' ἧς διαγεγένηται μέχρι τῆς νῦν, αἱ προσηπιλαμβάνουσα τῷ πλήθει τὴν ἐξουσίαν.

According to the first sentence of the chapter, there were eleven changes to the Athenian constitution, the last being the restoration of democracy in 403 BC. On the earlier reading *κατάστασις* the order established in the time of Ion was the first constitutional order, not the first change; the order established under Theseus could thus be taken as the first change of constitution, and together with the following ten changes it made for a total number of eleven changes.⁴⁶ However, on the reading *πρώτη μετάστασις*, Ion now appears as the first changer of the initial constitution and the text becomes awkward since it now lists twelve changes, not eleven. The change under Draco, which was bad for this change, is cited without number and is thus the most natural candidate for deletion.⁴⁷ Wilcken further argued that the addition of DC in 41. 2 could not have been made by Aristotle himself at some later stage of his work because he would in that case have changed the numeration of other items and, accordingly, their total number. Consequently, ch. 4 was interpolated by an alien hand (Wilcken assumed that DC was non-historical and stemmed from an oligarchic pamphlet); he then proceeded to argue that the other explicit and implicit references to DC were added by the same interpolator.

⁴⁶ See Kenyon in his third edition (1893, 128).

⁴⁷ It was before Wilcken that De Sanctis 1898, 164 used lack of any number indicators with DC as an argument that its mention was inserted in ch. 41 by Aristotle himself when he added ch. 4; he supposed that Theseus' constitution was originally numbered as the second one (viz. the second order) and that *πρώτη μετὰ ταύτην ἔχουσα πολιτείας τάξιν* was added to it when DC appeared in the text so as to harmonise the interpolation with the total of eleven changes. However, he overlooked the fact that on the reading *κατάστασις* which was then accepted, the order of Ion is not a change but instead the initial constitution, and the number of eleven changes can only be gotten with DC.

Wilcken certainly made an impressive case and with his proposal won far greater approval than any of his earlier attempts to argue that DC was interpolated.⁴⁸ His argument impressed even those scholars who still believed that DC could have been written by the author of the *AP*: they now yielded to the notion that Wilcken had provided decisive proof for the view (in line with Wilamowitz) that it was awkwardly added at some later stage of the work.⁴⁹

Nevertheless, even after Wilcken, some scholars sought to prove that DC is an integral part of the text (not an interpolation or an author's later addition). They argued that the number with DC in the list of changes is missing because Aristotle did not regard the order enacted by Draco as a constitution in its own right.⁵⁰ Thus von Fritz and Kapp and later von Fritz alone⁵¹ argued that DC and the "ancient" constitution described in ch. 3 are in fact one and the same constitution but simply seen from different points of view – "one from a more static [ch. 4], another from a more evolutionary [ch. 3]".⁵² They were aware that both the mention

⁴⁸ The silencing of the defenders of DC as an integral part of the text after Wilcken is visible from the survey of Busolt–Swoboda [see above n. 1]. For the further date see the Teubner edition of the *AP* by Thalheim 1909, based on Blass, and its successor Oppermann 1928, who bracketed all mentions of DC as interpolations; the cogency of Wilcken's argument is assumed in further discussions of DC by Ledl, Cloché, Fuks and Rhodes.

⁴⁹ Seeck (see above n. 6); Day–Chambers 1962, 198; Chambers 1990, 154 (two latter works are noncommittal as to whether the addition is made by Aristotle or a later redactor).

⁵⁰ These scholars thus revived the earlier arguments to the same effect as adduced by Blass and other scholars who tried to harmonise the *AP* with the *Politics*: see above.

⁵¹ Von Fritz – Kapp 1950, 10 f.; von Fritz 1954. As von Fritz (pp. 73–75) explained in response to the criticism of their opponents, they did not intend to revise the question of DC's historicity, which according to them was definitely solved by Ed. Meyer in a negative way. Remarkably, in their book von Fritz and Kapp 1950, show no awareness of Wilcken's 1903 paper. They correctly render (p. 8) Wilcken's reading *μετάστασις* at 41. 2 (p. 37. 1 Chambers) presumably following Oppermann's edition, and they interpret the text of ch. 41 accordingly; but they still vacillate (p. 9; 152 n. 9) between reading *αὐτοῦ* or *αὐτῆ* at 4. 1 (p. 3. 1 Chambers), also after Oppermann, thus ignorant of the fact that the correct *αὐτοῦ* was maintained by Wilcken. Von Fritz in his later paper of 1954 attacked De Sanctis 1912, 162 f. (who now read *μετάστασις* after Wilcken) but again does not mention Wilcken himself.

⁵² More clearly, cf. von Fritz 1954, 73: "Aristotle in that chapter did not mean to say that Draco created a new constitution (in contradiction to a well-known passage of Aristotle's *Politics* where the statement is made in the clearest possible terms that Draco gave his laws for an already existing constitution) but that he instead intended to give a more detailed description of a political order that had been in the process of developing ever since the abolition of the monarchy and had culminated in the specific form it had reached at the time of Draco".

of Draco in the list of changes in ch. 41 and the initial sentences of both the third chapters (the “ancient constitution” is one that was in force before *the constitution of Draco*) and 4 (*his* [Draco’s] constitution was as follows) are at odds with this interpretation.⁵³ But they claimed that ch. 4 “contains absolutely nothing that represents a definite innovation in comparison with the latest stage of the development described in the preceding chapter”,⁵⁴ and on this they founded their view that Aristotle’s sources were unaware of a separate constitution enacted by Draco. Ch. 41. 2 mentions Draco not as creator of the constitution but only as “the most representative figure” of the oligarchic regime which developed from the abolition of monarchy up to the constitution of Solon (Aristotle in the *AP* thus did not abandon his earlier view in the *Politics* that Draco instituted the laws for the preexisting constitution).⁵⁵ They explained the appearance of the “ancient constitution” and DC as two different constitutions by citing the poor condition of the *AP*’s text: it had either not been published or even revised before publication. In favour of this unrevised state of the text, they pointed out that both chs. 3 and 4 disrupt the narrative, which would plainly proceed without them from those conditions which made Solon’s reforms necessary (ch. 2) to the description of reforms themselves (ch. 5) and thus reviving the argument of Wilamowitz and other scholars who believed that both chs. 3 and 4 were later added by Aristotle to the text (see contra above).

This attempt was sharply criticized and universally rejected.⁵⁶ There are pertinent remarks in both works against the plausibility of an interpolation,⁵⁷

⁵³ The criticism by Rizzo 1963, 273 f. is unjustified in this respect.

⁵⁴ Von Fritz – Kapp 1950, 10 f.; von Fritz 1954, 83 f.

⁵⁵ This is reflected in their translation of 41. 2 as “after this came *the constitution which prevailed under Draco* [my italics], in which, for the first time, they drew up a code of laws” (cf. already Blass, 1898, XXII f.). This is wrong because, as the previous sentence shows, the omitted word is not ‘constitution’ but ‘change’.

⁵⁶ Rhodes 1981/1993, 86.

⁵⁷ But not von Fritz’s argument (1954, 77) that if one removes any mention of Draco in ch. 41 then the constitution of Solon would immediately follow the introduction of “democratic monarchy” under Theseus; but “he [Aristotle] cannot have considered the oligarchic republic following upon the abolition of the democratic monarchy a continuation of the latter, and he can hardly have considered it as no political order at all”. The argument is fallacious because even if Draco was depicted as representative of “the oligarchic republic” in ch. 41, as von Fritz wishes, and not as the maker of a new constitutional order, as in fact he was, ch. 3 shows that the abolition of monarchy was mentioned only as one of the changes within the “first constitution” and not as the origin of the oligarchic republic (this was rightly noted by Jacoby *FGrH* Teil 3 b Suppl. 2 [1954] 50). The “first constitution” is thus the order which existed both under monarchy and after it, before DC was enacted (or before Solon, if one removes DC).

but its main defect is the inaccurate statement that two accounts in chs. 3 and 4 could have derived from a description of the same constitution: in fact, although the account in ch. 3 is very selective, there are clear indications that both constitutional orders are substantially different. With this falls the whole supposition that the author awkwardly depicted the same order from different angles because all *explicit* mentions of DC in the text refer to it as to the separate constitution (against their view that 41. 2 depicts Draco as only a “representative” of the preexisting order, see above n. 55).⁵⁸ The deletion of both ch. 4 and 41. 2 together with other mentions of DC from the text might seem a much more attractive panacea than taking refuge in so many gratuitous assumptions so as to prove that DC must remain in the text but not as a constitution in its own right.

Further attempts to defend DC as an integral part of the text were critical of von Fritz and Kapp: they rightly started from the premise that it was an order different from the “first constitution”, and they tried to explain why, in spite of this, DC is not enumerated in ch. 41 as one of the constitutional changes. Thus Rizzo, whose main target was to prove DC’s historicity, argued against De Sanctis that it was depicted not as a radical change but rather as the result of gradual development and for this reason was not enumerated in the list.⁵⁹ His proposal, however, merits little discussion because he is surprisingly unaware of Wilcken’s correct reading *μετάστασις* (although it is cited by both his opponents: De Sanctis in his second edition and von Fritz) and admits the earlier reading *κατάστασις* and thus returning to the same difficulty as before Wilcken: in this reading the reform under Ion can be taken not as the first change but as creation of the initial order; the further numbers in this list would also be related to orders and not to changes. It would give the total number of twelve orders and eleven changes (including DC in both cases) and the problem therewith goes unsolved because DC appears to have been counted in the total of eleven changes, so the missing number remains unexplained.

⁵⁸ In support of their proposal of two versions of the same constitution, von Fritz – Kapp 1950, 10 f., pointed out that ch. 41 has only one constitution between the “restricted” monarchy as established by Theseus and Solon, namely of Draco, while chs. 3 and 4 split this period between the order before and the one during Draco. This will not do because the description of the constitution in ch. 3, “the first constitution” (4. 1), includes the development of institutions which started earlier than Theseus, like the appearance of the archon polemarch under Ion. The “first constitution” of ch. 3 is thus the constitutional order which existed from the very beginning up until DC, the order that was substantially changed but not abandoned by Theseus (see further).

⁵⁹ Rizzo 1963, 275–277.

Two last attempts to disable Wilcken's argument are those of R. Develin and R. Wallace.⁶⁰ These scholars have different objectives – the first tries to prove that DC is historical, the second that it is not – but both endeavour to show through somewhat similar arguments that it is not enumerated in ch. 41 because the author of the *AP* did not regard it as a constitutional change in every sense. Develin's specific point is that Draco is mentioned in ch. 41 only as an author of the legal code but not of a constitution: the first *metabole* of the constitution is the introduction of four tribes under Ion; the second is under Theseus, which was the first *ἔχουσα πολιτείας τάξιν* and which means that he instituted the *πολιτεία*, i.e. a constitutional order which involves the self-rule of citizens; Solon then further developed the democratic institutions. The changes between Theseus and Solon do not amount to *metabolai*, and Draco is mentioned in this list only because his laws had some impact on the already existing constitutional order (Develin supposes that it was mentioned in the lost part of the *AP*). This proposal, apart from its contradiction to the real sense of ch. 4 (see what follows) apparently contradicts the statement on Draco in ch. 41. Here it is said that the *metastasis*, the change, under Draco followed that under Theseus (i.e. the change under Theseus) and that in Draco's change the laws were *also* for the first time published, i.e. along with the change of constitution. The text thus clearly ascribes to Draco a change which is similar to Theseus and, since the change under Theseus was a constitutional one, implies that Draco not only made a constitutional change but also edited the laws.

The second point common to Develin and Wallace is that ch. 4 does not show him as inventor of the associated constitutional elements but rather as one who left untouched the constitution which was in force before him (there thus being no contradiction between Aristotle's statement in the *Politics* 1274 b 15, that Draco did not create a new *politeia* but imposed his laws upon an existing one).⁶¹ Both scholars (Develin, p. 300; Wallace, pp. 277 f.) used the old argument for this: that the first provision of DC, mentioned in the text, the enfranchisement of those who possessed hoplite armour, is expressed in the pluperfect *ἀπεδέδοτο* 4. 1), in contrast to the imperfect of the further provisions: according to Develin and Wallace, this

⁶⁰ Develin 1984, 300–302; Wallace 1992, 274–279.

⁶¹ 4. 1: Ἡ μὲν οὖν πρώτη πολιτεία ταύτην εἶχε τὴν ὑπογραφὴν. μετὰ δὲ ταῦτα χρόνου τινὸς οὐ πολλοῦ διελθόντος, ἐπ' Ἀρισταίχμου ἄρχοντος, Δράκιδων τοὺς θεσμοὺς ἔθηκεν· ἡ δὲ τάξις αὐτοῦ τόνδε τὸν τρόπον εἶχε. ἀπεδέδοτο μὲν ἡ πολιτεία τοῖς ὄπλα παρεχομένοις· ἤρουντο δὲ τοὺς μὲν ἑννέα ἄρχοντας καὶ τοὺς ταμίαις οὐσίαν κεκτημένους οὐκ ἐλάττω δέκα μνῶν ἐλευθέρων, τὰς δ' ἄλλας ἀρχὰς <τὰς> ἐλάττους ἐκ τῶν ὄπλα παρεχομένων, κτλ.

should mean that this provision preceded Draco.⁶² Even if such a reading were correct, which is by no means certain (Chambers in his edition printed impf. ἀπεδίδοτο)⁶³ this understanding is untenable: the pluperfect, as was rightly noted long ago, cannot have the meaning that Develin and Wallace assign to it without some qualifying expressions like “as it was earlier”.⁶⁴ The pluperfect alone can merely denote a completed action in the past with the result of that action persisting in the past and, important here, when the pluperfect verb is used along with the imperfect verbs then the action of the first need not be all that much prior to the action of the latter.⁶⁵ Provided that this reading is sound, it means simply that enfranchisement of hoplites was the initial measure undertaken by Draco in enacting his constitution (it was of course also the most important one and upon which the other constitutional measures were predicated). The following use of imperfects means only a stylistic variation: instead of the tedious repetition of “it was enacted that...” in pppf., the author preferred more

⁶² For the similar proposal cf. P. Meyer 1891, 31–44 (see also Blass 1908, 120), who attempted in this way to harmonise the *AP* with the *Politics*, according to which Draco did not enact a new constitution; against this attempt, see Kenyon 1892, 11 f.

⁶³ The papyrus' reading is ἀπεδοτο with the first -ο- corrected to -ε- or -ι- and with -δο- superscribed, all three letters having being written above the line. The restored verb is thus either pppf. ἀπεδέδοτο or the impf. ἀπεδίδοτο; see Herwerden – van Leeuwen 1891. Other editors (Kenyon, Blass, Kaibel–Wilamowitz) printed ἀπεδέδοτο. The reading of the imperfect by Herwerden – van Leeuwen was entirely forgotten until Chambers in his edition (1986; corr. 21994) printed ἀπεδίδοτο, presumably relying on autopsy, but surprisingly without noting the emended letter and the initially omitted and two letters which were later superscribed. (I am in no position to judge such matters, but the corrected letter on the photo looks like *iota* rather than *epsilon*; see http://www.bl.uk/manuscripts/FullDisplay.aspx?ref=Papyrus_131).

⁶⁴ Kenyon in his third edition (Kenyon 1892, 13) suspected that the pppf. may have meant that the enfranchisement of hoplites was enacted before Draco and for this reason emended the pluperfect into imperfect ἀπεδίδοτο, noting that if this were intended then the hoplite census would have been mentioned earlier in ch. 3 and also that the manner of expression suggests that this provision was part of the order constituted by Draco, both considerations certainly being correct; Kenyon's note was apparently incited by P. Meyer 1891, 34, who in his attempt to prove that DC was identical to the ‘ancient’ constitution of ch. 3, made note inter alia of the pluperfect form. But in fact, as immediately pointed out by Richards 1891, 467 b, Kenyon's emendation was superfluous: the pluperfect without additional words like “before D.”, “earlier than D.” etc. cannot have this meaning. Richards' explanation was apparently accepted by Kenyon, who in his 1903 edition printed ἀπεδέδοτο without emendation; he also made a more exact note on the text ‘ἀπεδοτο L, corr. L¹’. Sandys, who accepted Kenyon's emendation in his first edition, also printed ἀπεδέδοτο in the second, citing approvingly Richards (Sandys 1912, 15) as well as the following editors: Thalheim (1914); Mathieu – Hassoullier (1930); see also Rhodes 1981/1993, 112.

⁶⁵ See Kühner–Gerth I, 151 f., with the examples: see Hdt. 1. 84 (bis).

economic modes of expression – “they elected...” and “these offices were to be held...” etc. – viz. he depicted further elements of the same order as existing practice at the time.

Wallace attempted to explain the lack of number with DC in ch. 41 by means of a more sophisticated manoeuvre (p. 278): he proposed that ἡ δὲ τάξις αὐτοῦ enacted by Draco according to 4. 1 was not a new constitution, πολιτεία, but only a new sub-order within the old one. This proposal fails to convince because at 3. 1 the constitutional order which existed before Draco is called ἡ τάξις τῆς ἀρχαίας πολιτείας τῆς πρὸ Δράκοντος, “the order of that constitution which was in force before Draco”.⁶⁶ This shows unambiguously that in the *AP* author’s view Draco was creator of a new πολιτεία and that the expression ἡ δὲ τάξις αὐτοῦ (sc. of Draco) is only a concise form of the expression ἡ τάξις τῆς πολιτείας τοῦ Δράκοντος at 4. 1.⁶⁷

Thus, despite the acumen of their champions, these arguments designed to refute Wilcken’s position by showing that DC in ch. 4 is *not* presented as the separate constitution are quite unsatisfactory. Instead of such a strained treatment of ch. 4, it is more promising to consider whether the awkward counting of constitutions in ch. 41 and the omission of number with DC are in fact sufficient evidence that DC was interpolated. Here, first of all, we can challenge Wilcken’s important presupposition that if addition of DC was made by the author of the *AP* himself then he should have necessarily had to change the enumeration of changes: that it was *not* done thus proves that the addition was made by an interpolator. The real state of affairs seems to be precisely the opposite: the lack of number with DC is so striking that it elicits the question as to how the alleged interpolator who was cautious

⁶⁶ Wallace’s rendering of these words (p. 278) – an earlier τάξις in a πολιτεία that later developed under Draco – would demand the article in nominative, not in genitive, something like this: ἡ τάξις τῆς ἀρχαίας πολιτείας ἡ πρὸ Δράκοντος.

⁶⁷ By the same token, the *AP* 5. 1, τοιαύτης δὲ τῆς τάξεως οὔσης ἐν τῇ πολιτεία, does not mean of course that Draco’s order was not a πολιτεία but a sub-order of an ancient πολιτεία, as Wallace argues; it is only a stylistic variation, instead of τῆς τάξεως οὔσης τῆς πολιτείας (viz. ἡ τάξις τῆς πολιτείας). In fact I see no clear instance for τάξις in the meaning, which Wallace proposes, a sub-order in the constitution, which can be transformed into another sub-order of it; the normal relation of τάξις to πολιτεία is not of a species to a genus but that of essence to substance. Of course it is possible to say that ἡ τάξις τῆς πολιτείας has been changed in the sense of ‘constitutional’ change, but in that case πολιτεία means the constitutional order as such, not a particular constitution. Wallace claimed that τάξις alone is not used in the meaning of πολιτεία anywhere in the *AP*, but see 11. 2 (ὁ μὲν γὰρ δῆμος ᾤετο πάντ’ ἀνάδαστα ποιήσιν αὐτόν, οἱ δὲ γνώριμοι πάλιν εἰς τὴν αὐτὴν τάξιν ἀποδώσειν, ἢ μ[ικρ]ο[ὶ]ν παραλλάξῃεν) where it is used very similarly to 4. 1, as a concise expression instead of ἡ τάξις τῆς πολιτείας.

enough to skillfully supply references to DC in this chapter and other places then failed to change the enumeration of constitutional changes and their total number.⁶⁸ Much more plausible is that the author of the treatise was so incautious as to feel no need for mimicry. This might lend weight to the view that DC was inserted in the list by the author after he had added, at some later point in his work, DC in ch. 4 and made the corresponding additions in other places. However, the omission of number with DC may be explained as the result of a more simple-minded negligence entailing no addition to the text and even precluding the possibility of any such addition.

It is said in the beginning that there were on the whole eleven μεταβολαί in the history of Athens; this word normally means the change of a constitutional order, gradual or immediate, formal or informal. It is further asserted that the first was a μετάστασις, the change of earlier institutions, after the advent of Ion and his comrades; it was the establishment of four tribes and the assignment of the *phylobasileis* to them. Next comes the difficult and certainly corrupted sentence:

δευτέρα δὲ καὶ πρώτη μετὰ ταύτην ἔχουσα πολιτείας (Wyse; πολιτείαν pap.) τάξιν ἢ ἐπὶ Θησέως γενομένη, μικρὸν παρεγκλίνουσα τῆς βασιλικῆς. μετὰ δὲ ταύτην ἢ ἐπὶ Δράκοντος, ἐν ἧ καὶ νόμους ἀνέγραψαν πρῶτον.

The ἔχουσα πολιτείαν τάξιν of papyrus is certainly corrupt and was variously emended;⁶⁹ ἔχουσα πολιτείας τάξιν is the minimal and most obvious emendation and seems to be along the right lines.⁷⁰ The literal

⁶⁸ This discrepancy between the alleged inaccuracy of an interpolator in 41. 2 and his accuracy in other passages was rightly noticed by von Fritz and other opponents of Wilcken; however, they drew the wrong inference that an omission of number was intended and due to Aristotle's treatment of DC as not being a constitutional change in the proper sense.

⁶⁹ There are further corruptions in this sentence emended by a corrector of the papyrus; see Chambers, app. ad loc.

⁷⁰ The emendation was proposed by Wyse (Varii 1891, 115) in the form παρέχουσα πολιτείας τάξιν (Kenyon in his first edition read [εξ]έχουσα πολιτείας τάξις; various attempts to emend the preposition followed, see Varii 1891, 115); but Kenyon in his third edition (1892, 128) stated that "the lacuna will not admit any of them" and printed ἔχουσα πολιτείας τάξιν; Kaibel–Wilamowitz 1891 did the same earlier, but with two dots before ἔχουσα (see also Kaibel 1893, 202). Wilamowitz later (1893, I, 186 n. 1) proposed ἔχουσά τι πολιτείας τάξις, i.e. "the second political order and the first one which has some properties of constitution" (also in Kaibel–Wilamowitz 1898); it was far more attractive when in the previous sentence it was read as κατάστασις (πρώτη μὲν γὰρ ἐγένετο κατάστασις τῶν ἐξ ἀρχῆς Ἰῶνος) and even more importantly it entails the idea that Theseus was a creator of the Athenian "ancient", i.e. pre-Dracon's constitution, which is not the case.

meaning of the emended sentence should be that this change was the first one “having the rank of constitution” (not “having some semblance of a constitution”, as Kenyon and others).⁷¹ There are two possible interpretations of this.⁷² It can mean that the change under Theseus was the first *constitutional* change (πρώτη ἔχουσα πολιτείας τάξιν is a brachylogical equivalent of πρώτη ἔχουσα τῆς μεταστάσεως τῆς πολιτείας τάξιν), i.e. the change under Ion was *not* the constitutional one – though the introduction of tribes was indeed an important institutional innovation. Alternatively, this can mean that Theseus was the first to introduce the constitutional order in an explicit form – in contrast to the previous state of affairs which was traditional and not ordered formally (the change of Ion would be the first institutional one in the way of establishing this explicit order – though not quite amounting to such in every sense). Both these interpretations are possible because μεταβολή is used in this chapter not only in the narrow sense of “constitutional change” but in the expanded sense as a reference both to the change itself and to the new constitutional order which was an effect of the change.⁷³

The first option seems to be correct: there was a constitution, namely πολιτεία, before Theseus, and the change under him was the first *constitutional* change in Athenian history. This is in accord with the literal meaning of 41. 2: Theseus slightly changed the *monarchical* constitution, μικρὸν παρεγκλίνουσα τῆς βασιλικῆς (sc. πολιτείας). Moreover, the account of the “ancient constitution” in ch. 3 which was in force before

⁷¹ For τάξις in the meaning ‘position’, ‘rank’, ‘status’, see *AP* 3. 6, and further *LSJ*, s.v. III. 1; Bonitz, *IA* 747 a 42–44, e.g. *Pol.* 1252 b 6 (Rhodes 1981/1993, 484 f., makes the error of rendering it here as “a form of constitution”, comparing it with 3. 1, 4. 1 and 5. 1, where the word does in fact have this meaning).

⁷² Wilcken 1903, 88, supposed mistakenly that Theseus enacted something similar to πολιτεία in Aristotle’s specific significance of a middle-class constitution; Develin 1984, 301 was equally wrong with his proposal that Theseus introduced the first πολιτεία in the sense that it was the first order which involved the citizenry in self-rule because there is no instance of this restrictive usage of *politeia* in Aristotle.

⁷³ This expanded meaning is evident beginning with the fourth change under Peisistratus: τετάρτη δ’ ἡ ἐπὶ Πεισιστράτου τυραννίς (lit. “the fourth change was the tyranny under P.”); see further ἕκτη δ’ ἡ μετὰ τὰ Μηδικά, τῆς ἐξ Ἀρείου πάγου βουλῆς ἐπιστατούσης. ... δεκάτη δ’ ἡ τῶν τριάκοντα καὶ ἡ τῶν δέκα τυραννίς (ὀγδόη δ’ ἡ τῶν τετρακοσίων κατάστασις is ambiguous because κατάστασις can mean both the implementing of an order and a political order itself). Under the “changes” are listed even the resulting constitutions as existing without interruption through time and undergoing a gradual inner development: ἐβδόμη δὲ ἡ μετὰ ταύτην, ἣν Ἀριστείδης μὲν ὑπέδειξεν, Ἐφιάλτης δ’ ἐπετέλεσεν, καταλύσας τὴν Ἀρεοπαγίτιν βουλήν ἐν ᾗ πλεῖστα συνέβη τὴν πόλιν διὰ τοὺς δημαγωγοὺς ἀμαρτάνειν διὰ τὴν τῆς θαλάττης ἀρχὴν ... ἐνδεκάτη δ’ ἡ μετὰ τὴν ἀπὸ Φυλῆς καὶ ἐκ Πειραιέως κάθοδον, ἀφ’ ἧς διαγεγένηται μέχρι τῆς νῦν, αἶψα προσεπιλαμβάνουσα τῷ πλήθει τὴν ἐξουσίαν.

Draco and which is labelled as the “first” (4. 1) gives no hint that Theseus was its creator, not even that this constitution acquired its true form under Theseus: it does not mention Theseus at all, while depicting some of those institutions which arose earlier than Theseus and some of those which arose much later.⁷⁴ In the list of changes, Theseus of course features as one who transformed monarchy, i.e. as the author of a *constitutional* change. But at the same time he is not represented as author of a new constitution: the declination from monarchy under him was “minor” (μικρὸν παρεγκλίνουσα τῆς βασιλικῆς), and brought with it no abolition of the monarchic order.⁷⁵

⁷⁴ The constitutional order depicted in the ch. 3 actually only consists of the archons and Areopagus; the changes in the order of holding the archon offices are followed – from governing for life to annual magistracies; these embrace the establishment of the office of the archon-polemarch for Ion, i.e. under Erechtheus, in the first half of the fourteenth century BC, according to traditional chronology, and earlier than Theseus' reign (the last decades of the thirteenth century BC) and the transition from the hereditary holding of the kingship to appointment of the eponymous archons who governed for life under Medon or Adrastus in the eleventh century BC, i.e. much later than Theseus, as well as the still more later establishment of the annual archonship (683 BC). The origin of Areopagus is not discussed.

⁷⁵ Unfortunately, since the beginning of the *AP* is lost, it is unclear how this change was presented in detail (41. 2 only summarises the earlier account). Heraclides' Epitome mentions Theseus' invitation that foreigners come and settle there on equal terms with the citizenry, and this suggests a more substantial treatment of political matters (cf. Jacoby, *FGrH* III, Suppl. 2. Notes [1954] 61). Plutarch (*Thes.* 25.3 = *AP* fr. 3 Chambers) cites Aristotle's statement that Theseus was the first who ἀπέκλινε πρὸς τὸν ὄχλον, which seems also to be a reference to the lost and more detailed treatment in the earlier part of the *AP* rather than simply the echo of *AP* 41. 2, where the exact character of Theseus' declination from the earlier monarchic order goes unstated. The preceding piece of Plutarch (25. 1) mentions Theseus' proclamation – the invitation (κήρυγμα) to foreigners that they come and settle on equal terms with the citizenry, and this is very close to the note in the Epitome (see Wade-Gery 1931, 4–6, who assigns this piece to the lost part of the *AP*; Jacoby 1947, 247 f. n.49, is unduly skeptical when assigning the invitation in the Epitome to the synoicism and not to the invitation of foreigners – against this ἐκήρυξε of the Epitome; Rhodes 1981/1993, 74, cf. 67, is also skeptical). It is tempting, following Wade-Gery, to ascribe to the lost part of the *AP* also the piece of Plutarch (25. 2) sandwiched between these two reminiscences of the *AP* – Theseus divided the citizens into three orders, εὐπατρίδες, γεώμοροι and δημιουργοί – especially since the *AP* (fr. 2) mentioned the earlier division into γεώργου and δημιουργοί, and all three orders were mentioned in 13. 2. Plutarch also reports that Theseus granted to the Eupatrids the exclusive right of being priests and officials but maintained an “equality” of two other groups, as being most useful and most numerous respectively. In this “expanded” version Theseus appears to be an important reformer of the Athenian constitution, but my interpretation does not depend on it: even on the minimal evidence of 41. 2, his change was a constitutional one – he transformed the previous monarchic order by granting some rights to the people and thus initiated the gradual abandonment of monarchy.

The optimal solution, in view of all this, seems to be that according to the *AP* the whole state order from the very beginning of the Athenian state till enactment of DC was the “first [or ancient] constitution” which underwent some important changes but only one which touched on constitutional principles – though it did not abandon the “first constitution” on the whole, i.e. that change implemented under Theseus. The change under Ion – introduction of the tribal order – was on the list of changes as an important institutional novelty, but it did not change the relative power of social classes in the state and the branches of power representing them, which is typical for other changes in the list. The development within the “ancient constitution” from hereditary monarchy to an annual archonship as well as other changes (the adding of further archons, redistribution of their prerogatives) surveyed in ch. 3 were not listed as the μεταβολαί in ch. 41, apparently because none of these reforms amounted to a real constitutional change.⁷⁶

Although my sympathies are with this option – that the change under Theseus was the first constitutional change in Athenian history and not that he was creator of the first constitution – in both interpretations the change under Ion, the introduction of four tribes with their “kings”, is *not* a constitutional change: this reform is too insubstantial to change the principles of the constitutional order, even less so does it amount to the creation of the first constitutional order. On the contrary, the change under Theseus with its minor declination from monarchy to democracy is a real constitutional change. The following nine changes enumerated after Draco do not necessarily amount to the introduction of a new constitution but are certainly changes to the character of πολιτεία, i.e. constitutional changes, formal ones (like the constitutions of Solon, Clisthenes and Ephialtes, all

⁷⁶ Rhodes 1981/1993, 108 f., objects to a literal understanding of the constitution before Draco as the “first” (4. 1) in a chronological sense: he points out that the constitution was changed under Ion and Theseus according to ch. 41 and finds it surprising that ‘the constitution in force after the abolition of the monarchy and the creation of nine archons’ could be called “the first”; he thus understands the “first *politeia*” as the first in order of description, i.e. the first point at which the outline of the *politeia* is given “in opposition to events which only impinged on the *politeia*”. However, the first two changes under Ion and Theseus, ample enough to be mentioned in the list of ch. 41, were not regarded as an abandonment of the initial order because the ages of both Ion and Theseus are assigned in ch. 3 to the epoch of the ‘first’ constitution. The institution of the life-long archonship instead of hereditary kingship certainly was not considered by the author of the *AP* to be a new constitutional order, not even as the considerable change of an existing constitution, because it went unmentioned in ch. 41, presumably since the de facto difference in position of the later hereditary kings and the earlier appointed life-long archons was insignificant in terms of the system of government.

progressing toward democracy, or the oligarchies of 411 and 404 BC, and the restorations of democracy which followed each of these oligarchies) or informal (the tyranny of Pisistratus and his sons and the “domination” of the Areopagus after the Persian Wars).⁷⁷ Hence the total number of eleven μεταβολαί can be explained without any surmise that DC was added later: the counting of constitutional changes starts with Theseus and not with Ion.⁷⁸ The other oddity – lack of number with the change under Draco – is the result of negligence, but an understandable one: the author had to enumerate it either in a manner similar to the preceding item – the third change absolutely but the second constitutional one – a tedious pedantry – or designate it simply as the second constitutional change and thus having one “second” follow the other.⁷⁹ Perhaps for this reason, in an effort to avoid repetitions, Draco's change was instead simply designated as the “next one after that [of Theseus]”, which can be understood as the next constitutional change after that under Theseus. Solon's change was next enumerated as the third, viz. the third in the constitutional sense, because the author was now counting from Theseus, not from Ion. The total of eleven changes thus means eleven in the constitutional sense: the change under Ion was too important not to be mentioned but was not a constitutional one and thus was not counted.⁸⁰

⁷⁷ Pace Wallace 1992, 274.

⁷⁸ The similar proposal – that the total number of eleven and not twelve should be explained by the double enumeration of the change under Theseus – had already been made by Kaibel 1893, 202, but seems to be entirely forgotten.

⁷⁹ Some scholars, beginning with De Sanctis 1912, 163, and including Chambers 1990, 324 f., argued that in the sentence δευτέρα δὲ καὶ πρώτη μετὰ ταύτην ἔχουσα πολιτείας τάξιν ἢ ἐπὶ Θησέως γενομένη, μικρὸν παρεγκλίνουσα τῆς βασιλικῆς the words μετὰ ταύτην are superfluous and were added by someone who interpolated the next sentence in DC so as to give the impression that the numbering starts with Theseus and not with Ion (he did this, as they believe, instead of adjusting all numbers in accordance with the added new item). μετὰ ταύτην is in fact difficult but precisely for this reason it can hardly be an interpolation: the numbering of *constitutional* changes would start from Theseus more clearly without these words. It is perhaps for this reason that Seeck 1904, 52 and Rhodes 1981/1993, 484 f., suppose even more radically that the words καὶ πρώτη μετὰ ταύτην and probably also ἔχουσα πολιτείας τάξιν were interpolated with the same purpose – but this begs the question as to why the alleged interpolator who skillfully gave a double enumeration to the change under Theseus did not do the same with the change under Draco. In fact μετὰ ταύτην, which modifies γενομένη, as Wilamowitz noted, is only a bold hyperbaton, which seems to be tolerable.

⁸⁰ At first sight it is contradicted by the fact that immediately after saying there were eleven μεταβολαί, Aristotle proceeds to assert that the first of them was the μετάστασις under Ion, thus counting this change as one of eleven μεταβολαί (ἦν δὲ τῶν μεταβολῶν ἑνδεκάτη τὸν ἀριθμὸν αὕτη (sc. ἐπὶ Πυθοδώρου). πρώτη μὲν γὰρ ἐγένετο <ἦ> μετάστασις τῶν ἐξ ἀρχῆς Ἰωνος καὶ τῶν μετ' αὐτοῦ συνοικησάντων).

To summarise, there are no sufficient grounds for treatment of DC as an interpolation in the text or as a later addition to it made by the author himself. The character of DC, its provenance and historicity, deserve further investigation.

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Even if it were the case, this would be only an unhappy mode of expression, and insufficient reason for treatment of DC as an insertion, because in the next sentence on Theseus we have Aristotle stating more clearly that the change under Ion was not the full-fledged μεταβολή. However, the Greek of the sentence on Ion is ambiguous and it is quite possible that Aristotle does not say that the change under Ion was the first of μεταβολαί. His words can have the meaning: “for the first in order was the μετάστασις under Ion” (i.e. he calls the change under Ion the first μετάστασις, not the first μεταβολή). Contrary to μεταβολή and μεταβάλλεσθαι which are the standard words for constitutional changes (apart from the *AP*, there are numerous examples in the *Politics*), μετάστασις and μεθίστασθαι have a more general meaning of change, and are rare in a political context (for a few examples see Rhodes 1981/1993, 483; there are three instances in the *Politics* where μεθίστασθαι is used as synonymous with μεταβάλλεσθαι, and no instance of μετάστασις at all). It is thus possible that μετάστασις is used in *AP* 41, 2 as a non-technical word in order to distinguish the change under Ion from the μεταβολαί in a full sense; γὰρ in this case is not explicative (it does not introduce the first of eleven μεταβολαί) but rather parenthetical and anticipatory (see Denniston, *GP*, 68 f.): the sentence gives a reason as to why the author begins with Ion – it was too important an institutional innovation not to be mentioned but not one to be counted as a real μεταβολή. The change under Theseus is next called the second, i.e. the second μετάστασις, but the first one of a constitutional character, viz. the first μεταβολή. All the following changes can be understood as μεταβολαί, i.e. the constitutional changes which in sum then issue in the number eleven.

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The paper reconsiders Draco's constitution (DC) in ch. 4 of Aristotle's *Athenaion Politeia*, which is widely held to be an interpolation in the text (or, minimally, an author's later addition). The present paper is an attempt to prove that neither argument – neither that from the structure of the text of the first chapters of the *AP* nor the argument from the omission of number with DC in the list of constitutional changes (ch. 41) and the discrepancy in the total number of changes (eleven instead of twelve) does *not* prove that DC was later inserted into the text in any way. At the same time the attempts to explain the awkwardness in ch. 41 through the supposition that DC is *not* depicted in ch. 4 as a constitution in its own right and thus proving it to be an integral part of the text are misleading. The confusion in ch. 41 is related to the double status of the change under Theseus which preceded the one under Draco: it is called the second change (i.e. second institutional change), but the first constitutional one. The first change absolutely, that which took place under Ion, was thus not constitutional, and this change, and *not* that which took place under Draco, was not counted.

В статье рассматривается один из вопросов, связанных с так наз. "конституцией Драконта" (ДК) в гл. 4 *Афинской политики* Аристотеля. Описание этого государственного устройства, согласно преобладающему в науке мнению, является позднейшей интерполяцией или, по крайней мере, позднейшей вставкой, сделанной самим автором сочинения. В статье доказывается, что аргументы, на которых основывается это мнение (формальные особенности композиции первых глав, пропуск номера при ДК в перечне изменений афинского государственного устройства в гл. 41, общее число 11 изменений в той же главе, вместо ожидаемого 12), не доказывают наличие позднейшей вставки в текст. Вместе с тем, ошибочны и попытки объяснить странности гл. 41 тем, что ДК в гл. 4 не изображается как самостоятельная конституция. Их более вероятное объяснение состоит в том, что изменение при Тесее обозначено двояким образом – как второе по порядку, но первое, имевшее конституционный характер. Первое по времени изменение, при Ионе, не имело, следовательно, конституционного характера: именно оно, а не изменение при Драконте, было не учтено в общей сумме изменений.