

A NEW LOOK AT THE WALL OF NIKOMAKHOS

THE Athenian Law Code compiled by Nikomakhos and his colleagues¹ from 410 to 400 B.C. has come down to us in the form of eleven fragments of an inscribed wall.² These fragments have provided classical historians with a fascinating problem of reconstruction. I would like to look afresh at the developments in the form and content of the wall of Nikomakhos.

In Dow's latest discussion of the fragments in 1961,³ he described the remains of three walls of varying thicknesses. These segments, he believes, were connected to form one long, continuous wall. The thickest part of the wall, 0.144 m., is represented by fragment E only. Fragments A-D are part of a segment of the wall 0.120 m. thick, while six fragments (G-K) represent a portion of the wall 0.092 m. in thickness. All the stones, except fragment E, are inscribed on both sides. One side of each fragment is inscribed with Attic lettering of the type used shortly before the Ionic alphabet was adopted for use in official documents *ca.* 403. Dow terms this side the "Earlier" side. The other side of the fragments, the "Later" side, is

¹ I wish to thank Professor T. Leslie Shear for allowing me to have some of his notes on the Royal Stoa in advance of their publication in *Hesperia*.

I also wish to express my deep appreciation to Professor Ronald Stroud for his unfailing help and encouragement.

We know about Nikomakhos only from Lysias' speech XXX, *Against Nikomakhos*. When the democracy had been reinstalled in Athens in 410 B.C., Nikomakhos and other anagrapheis were "ordered to transcribe and set up publicly the laws of Solon within four months. . . ." (XXX, 1-2). However, as Lysias so vehemently points out, it took Nikomakhos and his fellow anagrapheis six years to complete the task. Nikomakhos then served a second term as anagrapheus for approximately four years after the Thirty were overthrown.

² The fragments are fully described by S. Dow in "The Walls Inscribed with Nikomakhos' Law Code," *Hesperia*, XXX, 1961, pp. 60-68. Fragment A was originally published in *Hesperia*, IV, 1935, p. 31. Fragments B and C were published in the same volume, pp. 24 and 20 respectively. Fragments D and E were published in *Hesperia*, X, 1941, pp. 34 and 35. Fragment F is lost and known only from copies. Fragment G was published in *Hesperia*, III, 1934, p. 46, while Fragments H, I, J, and K were published in *Hesperia*, X, 1941, pp. 32-36. Some of the fragments were originally given other letter designations before all eleven pieces were found.

³ Dow, "The Walls," pp. 48-73. Dow wrote two previous articles on the subject: "The Athenian Calendar of Sacrifices," *Historia*, IX, 1960, pp. 270-293, and "The Law Codes of Athens," Separate from the *Proceedings, Massachusetts Historical Society*, LXXI, 1953-57, pp. 1-36. I am assuming in the course of my discussion that I can rely completely upon Dow's physical description and analysis of the fragments, since I have not yet had the good fortune to examine the pieces in person. See also on the subject of the wall generally: J. H. Oliver, "Greek Inscriptions," *Hesperia*, IV, 1935, pp. 5-32; E. Ruschenbusch, "Der Sogennante Gesetzescodex vom Jahre 410 v. Chr.," *Historia*, V, pp. 123-128; W. S. Ferguson, "The Athenian Law Code and the Old Attic Trittyes," in *Classical Studies Presented to Edward Capps*, Princeton, 1936, pp. 144-158. For a complete bibliography on the subject, see Dow's excellent compilation in "The Athenian Calendar of Sacrifices," pp. 292-293.

inscribed with Ionic letters, an indication that it was done after 403 B.C.⁴ Although, as I shall shortly illustrate, I do not believe the Earlier side was, in fact, inscribed before the first inscribing of the Later side, I shall use the terms for the sake of convenience.

The Later side has evidence of an ornamental fascia which the Earlier side lacks, and the joints of the Later side were neatly executed; such careful workmanship, in contrast to the more sloppily executed Earlier side, would indicate that this side of the wall was intended as the principal side from the beginning. According to Dow,⁵ the careful workmanship and the fine quality of inscription indicate that the Later side “. . . was regarded doubtless from the beginning as the more ornate side.” Because of the fine workmanship and the ornateness of the Later side of the wall, it seems only logical that the Later side was intended as the principal side from its inception.

On the Earlier side of the wall, Oliver⁶ and Dow⁷ have read parts of both secular and religious law. One fragment preserves part of a law dealing with the responsibility for maintenance of triremes, patently a section of the Athenian secular code. The Earlier side also has a few passages of sacred law, which list individual festivals, sacrificial items and the like.⁸ We have only fragments of religious law remaining from the Later side. The religious law was organized in the form of a calendar; the inscriptions reveal a highly organized and complex document.⁹

As Ferguson has convincingly shown,¹⁰ the calendar on the Later side superseded the religious laws recorded on the Earlier side. Ferguson demonstrated that, because lists of festivals in the month of Hekatombaion were inscribed on both sides of the wall, there would be far too many sacrifices for that month, if one assumed that the calendar was continuous. Furthermore, the reference on the Earlier side to Hekatombaion does not fit in properly with the organization and spacing of the calendar on the Later side. Ferguson concluded that the calendar on the Later side does not continue the calendar on the Earlier side but *repeats* it.

One fact about the wall makes it most unusual in the history of Athenian epigraphy. On the Later side there is evidence for a major erasure. After close examination of the fragments, Dow observed that “the whole area laid out to bear the systematic Sacred Calendar (the calendar on the Later side) was inscribed at some time earlier than the time when the surviving inscription was inscribed, with a text

⁴ C. Hignett, *A History of the Athenian Constitution*, Oxford, 1952, pp. 17-18.

⁵ Dow, “The Walls,” p. 71.

⁶ Oliver, *op. cit.*, pp. 16 ff.

⁷ Dow, “Law Codes of Athens,” pp. 7-8; “Athenian Calendar of Sacrifices,” p. 278.

⁸ *Ibid.*

⁹ For an excellent discussion and explanation of the Later Calendar, see Dow, “Law Codes of Athens,” pp. 12-21.

¹⁰ Ferguson, *op. cit.*, pp. 147-151.

sufficiently different so that erasure of the whole and a new inscription were made necessary. . . . One may doubt whether there ever stood in Athens a larger erased area. . . .”¹¹ No one has yet attempted to explain the erasure, although Dow suggested briefly that the original inscription must have been another calendar, a predecessor to both calendars we have already mentioned.¹² I believe the erasure is fundamental to understanding the history of the wall.

It has been commonly held that both sides of the inscribed wall were meant to be seen simultaneously by the citizens of Athens. Dow, MacDowell,¹³ and Oliver, among others, have assumed that the Earlier side consisted of the secular laws of Athens as revised by Nikomakhos in 410-404 B.C. as well as a first attempt at a sacrificial calendar. After the Thirty were deposed and the Decree of Teisamenos issued, the secular laws were revised¹⁴ and supplemented in compliance with the Decree. The calendar was completely redone and inscribed on the Later side; thus both sides would have been visible to the citizenry after 400. Ruschenbusch presents a minority view, suggesting that what we see on the Earlier side is not the code of 410-404 B.C., written by Nikomakhos and his colleagues, but is that of the Thirty.¹⁵ He believes that, after the tyranny fell, the Earlier side was turned away, since it was inscribed with the laws of the Thirty, so that only the Later side, inscribed in 404-400 B.C. with Nikomakhos' calendar, could be seen.

Ruschenbusch has compiled references from Xenophon, Aristotle, and Dio Chrysostom with which he attempts to prove, and I think successfully, that the Thirty were in the process of writing new laws while in office, laws distinct from Nikomakhos' code. In reference to the rule of the Thirty, Xenophon makes two important comments:

- 1) In *Hellenica*, II, iii, 51 he states that: “Kritias (One of the Thirty) said: ἔστι δὲ ἐν τοῖς καινοῖς νόμοις τῶν μὲν ἐν τοῖς τρισχιλίοις ὄντων μηδένα ἀποθνήσκειν ἄνευ τῆς ὑμετέρας ψήφου, τῶν δ' ἔξω τοῦ καταλόγου κυρίου εἶναι τοὺς τριάκοντα θανατοῦν.
- 2) In *Memorabilia*, I, ii, 31, Xenophon states: ἐξ ὧν δὴ καὶ ἐμίσει τὸν Σωκράτην ὁ Κριτίας, ὥστε καὶ ὅτε τῶν τριάκοντα ὧν νομοθέτης μετὰ Χαρικλέους ἐγένετο . . .

In addition, Xenophon in *Hellenica*, II, iii, 2 states that the purpose of the Thirty's appointment was the following: ἔδοξε τῷ δήμῳ τριάκοντα ἀνδρας ἐλέσθαι, οἱ τοὺς

¹¹ Dow, “The Walls,” p. 71.

¹² *Loc. cit.*

¹³ D. M. MacDowell, *On the Mysteries*, Oxford, 1962, pp. 194-199.

¹⁴ The extent of the revision of the laws has been a problem; it certainly took longer than the month decreed by Teisamenos. MacDowell believes the revisions on the secular law were done by 402 B.C. (*op. cit.*, p. 198). It seems highly probable that papyrus copies were kept of the laws, so that all the laws would not have been completely rewritten. Andokides and the Decree of Patrokleides (Andokides, I, 78), which was passed shortly before the Thirty came to power, emphasize that copies of decrees were kept. It seems very likely that the newly written laws of 410-404 also would have been copied and kept on papyrus. The copies would make the second republication of the laws by the Nomothetai fairly easy.

¹⁵ Ruschenbusch, *op. cit.*

πατρίους νόμους συγγράψουσι, καθ' οὓς πολιτεύσουσι. These remarks illustrate clearly that laws were being drafted by at least two members of the Thirty, while that group was in power. In Dio Chrysostom, XXI, 3, we have this bit of information: οὐκοῦν δικαίως Ἀθηναῖοι νομοθέτην αὐτὸν εἶλοντο ἐπὶ γε τῷ μεταγράψαι τοὺς παλαιοὺς νόμους, ὃς οὐδένα αὐτῶν ἔλιπεν. Allowing for exaggeration on the scope of Kritias' work, we have once again an explicit statement that he was working on the laws of Athens. The "old" laws may refer to Nikomakhos' code but more likely they refer to the same body of law from which Nikomakhos was working. Kritias is never, so far as I can determine, associated with Nikomakhos. In addition, Aristotle (*Ath. Pol.*, 35, 2) remarks that the Thirty καὶ τοὺς τ' Ἐφιάλτου καὶ Ἀρχεστράτου νόμους τοὺς περὶ τῶν Ἀρεοπαγιτῶν καθεῖλον ἐξ Ἀρείου πάγου.

I must disagree with Ruschenbusch, however, that what we now have on the Earlier side of the wall is the code of the Thirty. The period the Thirty were in power was not long enough both to write the laws and to do a great amount of inscribing. Xenophon's description of the Thirty while in office presents the picture of a government which promised much but accomplished little. He states in *Hellenica*, II, iii, 11: αἰρεθέντες δὲ ἐφ' ᾧτε συγγράψαι νόμους, καθ' οὓστινας πολιτεύσονται, τούτους μὲν αἰεὶ ἔμελλον συγγράφειν τε καὶ ἀποδεικνύναι . . . I believe that the Thirty *erased* the Later side of the wall, the principal side, to prepare a place for their forthcoming laws, but I believe that they never actually inscribed them.

I would reconstruct events in the following way: the code prepared by Nikomakhos and his fellow anagrapheis, who were appointed after the restoration of the democracy in 410, had been begun on the principal side of the wall (the Later side) early in Nikomakhos' term. Because new walls were added during the 410-404 period to the original wall,¹⁶ and because the walls were inscribed on both sides, we can assume that the inscribers quickly ran out of room on the principal side of the wall in the course of their work and had to inscribe the other side also. Indeed, we know that, even as of 405 B.C., the inscribing of the laws on the wall was not complete.¹⁷ The Thirty came to power in 404 B.C. and planned to set up another code of laws, prepared by Kritias and Charikles and possibly others. In preparation for these laws, the principal side of the Law Code, the Later side, was erased. The reign of the Thirty was shortlived, however, and the opportunity to inscribe the laws on the wall was lost. After the restoration of the democracy in 403, since the laws had been partially destroyed by erasure, and since the demos had been affected by the influx of returning exiles, the Nomothetai appointed by the Decree of Teisamenos were

¹⁶ Dow, "Law Codes of Athens," p. 6; "Athenian Calendar of Sacrifices," pp. 278-279.

¹⁷ Lysias tells us of the trial of Kleophon (XXX, 10) when Nikomakhos was able to produce a law especially for the occasion, so to speak. Obviously the law had not yet been inscribed on the permanent record. The trial dates from *ca.* 405, as witnessed by Lysias, XIII, 12-13 and Xenophon, *Hell.*, I, 7, 35.

ordered to revise and supplement the laws. They then were given the following order: *τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοίχον, ἵνα περ πρότερον ἀνεγράφησαν, σκοπεῖν τῷ βουλομένῳ.* This last critical phrase of the Decree, so often questioned and commented upon, now becomes clear: the laws were to be re-inscribed on the wall where *they had previously been but no longer were*, since they had been erased by the Thirty.

It is true that the remnants we have of the fragments from the Later side are not passages of secular law but of religious law. I would like to point out, however, that from the Earlier side, which every previous writer has assumed was the principal listing place of the secular code, we have only *one* piece of secular law. The rest of the inscriptions from that side are religious and, equally important, were supplanted by the calendar on the Later side. I suggest that, since we have only 350 lines of text¹⁸ out of what Dow claims were many thousands, there may well have been, in fact *must* have been, secular laws on the Later side of the wall. Both the supplements to the law required by the Decree of Teisamenos and the re-inscription of the laws which had been erased but were not revised must have been inscribed in Ionic letter forms on the Later side, contemporary with the revised calendar.

Andokides emphasizes the fact that all the laws of Athens after the archonship of Eukleides (403 B.C.) had to be inscribed in order to be valid (I, 85), and the Decree of Diokles (*Demosthenes*, XXIV, 42) bears this out. We may be sure, then, that after 404 all new secular laws were inscribed, yet we have the misfortune to have retained none of them.

We know in the later period (404-399 B.C.) that fragment E¹⁹ of the continuous wall, inscribed only with Ionic lettering, was never meant to be seen from both sides. In describing fragment E, Dow states that "the back was never intended to be seen . . . (it) appears not to have been finished with an inscribable surface."²⁰ "Because of the lack of an anathyrosis joint at the back, it is quite clear there was never any intention of the back being trimmed down and inscribed. . . ." ²¹ I take fragment E as proof that, after 404, only one side of the wall was meant to be seen. It is evident that there would be little point in exhibiting the Earlier side, which would have contained an outdated calendar and an incomplete and possibly inaccurate listing of secular law. The wall must have stood in an open area from 410 to 404, visible from both sides. After the revisions in 404-400, the wall would have been moved to a location where only one side (the Later side) was visible to the Athen-

¹⁸ Dow, "Law Codes of Athens," p. 7.

¹⁹ Fragment E, *Hesperia*, XXX, 1961, pp. 65-67, pl. 9, c-d. The fragment has Ionic lettering on one side, and the other side is rough and unfinished in appearance.

²⁰ Dow, "The Walls," p. 67.

²¹ *Ibid.*, p. 70.

ians.²² The need for the extension of the wall, as testified to by fragment E, indicates that, with the complete revision of the calendar and the supplementation and re-inscription of the laws, even more room was needed than was necessary before 404. It is probably the case, as Dow feels, that religious law heavily outweighed secular law in Athens,²³ and it must be that fact plus fate's hand that has left us only one misleading fragment of secular law, a fragment which, until now, may have confused matters more than clarified them.

ANN FINGARETTE

UNIVERSITY OF CALIFORNIA, BERKELEY

²² It now appears that my hypothesis is supported by archaeological evidence. Professor T. Leslie Shear's report of the 1970 summer excavation in the Agora describes the exciting find of the Royal Stoa (above, pp. 243-255). The Stoa, according to Shear, had two open porches; the north porch was constructed in the last quarter of the fifth century, and it was meant to display large marble stelai which were set edge to edge on a single base. The north porch would have been the original site of the law code wall during the 410-404 period, when both sides were meant to be seen. The back wall of the Stoa, unlike the rest of the building, was protected from fire by some "installation," in front of, or attached to, the back wall. It seems obvious that Nikomakhos' wall, with the revised calendar and republished law code, was placed against the Stoa's back wall *ca.* 403, so that only the Later side of the wall was visible.

²³ Dow, "Law Codes of Athens," p. 9.