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Mirko Canevaro

The documents in the public speeches of Demosthenes: authenticity and tradition

The thesis is concerned with the official documents (laws and decrees) preserved in the public speeches of the Demosthenic *corpus* (18, 21, 23, 24, 59). These documents purport to be Athenian statutes and, if authentic, would provide invaluable information about fourth-century Athenian history and institutions.

The introduction gives an account of the presence of the documents in the *corpora* of the orators and in the manuscript tradition, summarizes previous scholarship and delineates a new methodology for analyzing the documents. A specific section within the introduction analyzes the stichometric marks found in the medieval manuscripts of the Demosthenic *corpus*. Through those marks we can calculate whether a section of text was or was not present in the *Urexemplar* of the *corpus*: the documents in Dem. 23 and some of those in Dem. 24 were, but the others have been inserted later.

The following 4 chapters analyze in detail the documents found in Dem. 18, 19, 23, 24 and 59, also providing the text of each document as it appears in the *paradosis*, with an *apparatus criticus*. This survey reveals that those documents that were part of the stichometric edition are in general more reliable than those inserted later. By contrast, many features of these last documents, such as anachronistic expressions, formulas never attested in Attic inscriptions, inconsistencies between the documents and the orator's summaries, betray forgery.

The conclusion argues that the stichometric documents have been inserted in the speeches in an Athenian environment at the beginning of the 3rd century BCE, presumably by Demochares of Leuconoe, the nephew of Demosthenes and an active politician himself. The non-stichometric documents are instead a very early product of the tradition of historical declamations and *progymnasmata*, witnesses of the development, side-by-side, of rhetorical education and antiquarianism.

The documents in the public speeches of Demosthenes:
authenticity and tradition

Mirko Canevaro

Thesis submitted for the degree of PhD, 2011.

Department of Classics and Ancient History, Durham University

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Declaration and statement of copyright

This work has been submitted to Durham University in accordance with the regulations for the degree of Doctor of Philosophy. It is my own work, and none of it has been previously submitted to Durham University or any other university for a degree.

The copyright of this thesis rests with the author. All information derived from this thesis must be acknowledged appropriately.

Abbreviations

Throughout the thesis, abbreviations of the names of classical authors and works are those used in S. Hornblower and A. Spawforth (eds.), *Oxford Classical Dictionary*. 3rd edition (Oxford 2003). Journal names are abbreviated according to the usage of *L'Année Philologique*.

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1. Introduction

The *corpora* of the Attic orators contain mostly forensic speeches. In these speeches the orators argue their legal cases with the help of laws, decrees, contracts, witness statements, lists of names and a variety of other documents. These documents, according to fourth-century procedure, were not read out directly by the litigant. Copies of them had to be produced at the preliminary hearings (at the *anakrisis* for public charges, at the *diaita* for most private suits) and were sealed into an *echinos*, a vase where they were kept until the actual trial.¹ Those were the only admissible documents at the final stage of the trial in the lawcourt. Theophrastus' 'Man who has lost all sense' (ἀπονενοημένος)² provides a vivid picture of how the documents were presented at the preliminary hearings. His character arrives at the hearings 'with a box-full of evidence in his coat pocket and strings of little documents in his hands' (ἔχων ἐχίνον ἐν τῷ προκολπίῳ καὶ ὀρμαθοὺς γραμματιδίων ἐν ταῖς χερσίν). At the law-court stage of the trial the *echinos* was opened and when the litigants wanted the judges to hear a particular document they would ask the secretary of the court (the *grammateus*) to read it out. The water-clock timing the length of the speech was stopped during the reading.

Requests by the speakers to the *grammateus* to read out specific pieces of evidence occur very often in the preserved speeches of the Attic orators. The speaker would simply say, e.g.: 'Read also the law about arbitrators' (Dem. 21.94: λέγε δὴ καὶ τὸν τῶν διαιτητῶν νόμον) and the *grammateus* would find it in the *echinos* and read it out. Demosthenes gives us a vivid sketch of this procedure in the speech *Against Leptines* at § 84 when he addresses the *grammateus* with the words 'Take now also the

¹ Cf. Sickinger 1999: 167; Thür 2008. It has been long believed, following [Arist.] *Ath. Pol.* 53.2-3, that this practice was used only when a public arbitration failed, but the discovery of the lid of an *echinos* with inscribed διαιμαρτυρία ἐξ ἀνακρίσεως (*SEG* 32.329) has proven that the *echinos* was used also in public cases. See e.g. Boegehold 1995: 79-81 and recently Faraguna 2009: 73-4.

² Cf. Theophr. *Char.* 6.8. Cf. Diggle 2005: 258-62 for an instructive commentary on this passage.

decree passed for Chabrias. Have a look then and search for it. It must indeed be somewhere there!"

In the medieval manuscripts of the preserved speeches of the Attic orators, corresponding to the requests of the speakers to the *grammateus* to read out a particular piece of evidence, we find *lemmata* informing us that the document to be read out is a law (ΝΟΜΟΣ), or a decree (ΨΗΦΙΣΜΑ) or the like, sometimes giving some additional information about the topic of the documents (e.g, Dem. 20.86 Ψηφίσματα τῶν Χαβρίου Τιμῶν; 24.105 Νόμοι Κλοπῆς, Κακώσεως Γονέων, Ἀστρατείας).³ After these *lemmata* we sometimes find a text which purports to be the document requested, but more often the speech resumes with the words of the speaker commenting on a document that is not found in the manuscripts.

There are no documents in the speeches of Hyperides, and the same is true for Isocrates, Antiphon and Deinarchus. Lysias (10.16), Lycurgus (1.81) and Isaeus (11.11) quote one isolated document each. By contrast, important laws and decrees are preserved by Andocides, *On the Mysteries* (but the witness statements are missing) and by Aeschines, *Against Timarchus* (all except the witness statements and the contract of § 100, 104 and 115). Demosthenes has documents in the speech *On the Crown* (18) until § 187 (but two papyri of the II century add some documents for § 217-223),⁴ in the *Against Meidias* (21) until § 169 (except § 130), in the *Against Aristocrates* (23) until § 87, in the *Against Timocrates* (24) until § 151. Moreover all the documents are found in the *Against Lacritus* (35), the *Against Macartatus* (43), the *Against Stephanus* A and B (45, 46), and the *Against Neaera* (59). One law, clearly copied from the adjoining text, is found in the *Against Leptines* (20.27), fragments of an ἔγκλημα in the *Against*

³ For the debate about the origin and the authenticity of the *lemmata* see Schucht 1892: 11-17 and Drerup 1898: 243-7. Schucht argues that the *lemmata* must have been added later on the basis of the orator's words, whereas Drerup advocates a more flexible approach. I tend to agree with Schucht, but this problem is here immaterial.

⁴ *P.Haun.* 1.5 and *P.Oxy.* 42.3009. The document reported by *P.Oxy.* 42.3009 does not match the corresponding document in *P.Haun.* 1.5. See Wankel 1975.

Pantaenetus (37.22-9), and selections from a contract in the *Against Dionysodorus* (56.36, 38).

The documents that we find in the medieval manuscripts of the Attic orators are only a fraction of those that the speakers ask to be read out. This makes clear that normal practice for the Attic orators was rather not to include in their drafts the texts of the documents they were to discuss.⁵ These documents were already sealed in the *echinos* and the *grammateus* was responsible for retrieving them when requested. Whilst we cannot assume that the orators were always consistent in their habits, this certainly poses questions about the nature and origin of the documents included in the manuscripts. Such questions have a long history in scholarship, which started when scholars noted that the information provided by some of these documents is inconsistent with the evidence found in other reliable sources.

⁵ Unless we assume that the documents were eliminated from the texts at a later date, but see below pp. 20-1.

1.1 History of scholarship and the birth of a scholarly issue

The authenticity of the documentary texts found in the speeches of the Attic orators has been an issue since the 17th century. The first attempts to assess the value and take advantage of the information provided by many laws, decrees, witness statements and even official letters extensively quoted in the text of the speech *On the Crown* of Demosthenes were made in 1606 by the Venetian Vincenzo Contarini. In his *Variae Lectiones* he compared the single pieces of information with the general picture of the years of the fall of Greek liberty found in the other extant sources, and noticed significant problems with at least two decrees (Dem. 18.29, 37-38). He therefore expressed doubts about their authenticity.⁶ His example had no followers for more than two centuries.

In 1668 Jacques de Paulmier (Jacobus Palmerius), in the *Exercitationes in optimos fere auctores Graecos*, noted another suspicious feature: the names of the eponymous archons as recorded by the documents do not correspond to the list given by Diodorus, for the years 480-302 BCE, in books XI-XX of his *Bibliotheca*. He did not however consider the documents to be forgeries. Instead, he tried to work out an explanation for the inconsistency: he proposed that the names quoted in the documents might not be the names of the eponymous archons, but rather referred to some other member of the panel (*alium e Thesmothetis*).⁷ The question appeared also in the 18th century English masterpiece on ancient chronology: Henry Dodwell advanced the alternative proposal that the names in the documents might be those of the *epistateis* of the Prytaneis, whose duty would have been to preside over the Athenian assembly in place of the eponymous archon.⁸ The entire controversy has been termed that of the *Archontes Pseudeponymi*. This name is found in Edoardo Corsini's *Fasti Attici*,

⁶ Contarini 1606: 94.

⁷ Palmerius 1668: 135.

⁸ Dodwell 1701: III, p. 192.

published in Florence between 1744 and 1756. He proposed the following solution: the reason for the inconsistency is that the names mentioned by Diodorus are those of the archons nominated at the beginning of the Athenian year, whereas the documents record the eponymous archon at the time of the proposal. They, in the reconstruction of Corsini, may well be different, as the original archon could have been deposed or, even worse, could have died. Therefore every single decree quoted in Demosthenes' *On the Crown* would happen to have been passed, presumably after some accident, by an *archon suffectus*, a substitute archon.⁹

At the beginning of the 19th century, with the rise of German *Altertumswissenschaft*, many other adventurous hypotheses were advanced. The most popular of the previous theories by far was that proposed by Palmerius which, after the approval of Georg Friedrich Schömann,¹⁰ laid the foundations of the last great attempt to justify the inconsistency in the names of the archons, that by August Boeckh. Boeckh, in the *Lektionsprogramm der Berliner Universität Winter 1827/8*, tried to identify the *archontes pseudeponymi* with the γραμματεῖς κατὰ πρυτανείαν.¹¹ According to his interpretation all the documents, laws, decrees and official letters were preserved in Athens' national archive. They were gathered into particular files, one for each year. Thereby the name of the eponymous archon was appended to every file in just one single copy, presumably as a label. Each document was then in turn more specifically dated by the indication of the γραμματεὺς κατὰ πρυτανείαν. After a time, when the alleged editor of the *On the Crown* accessed the archive in order to insert the appropriate documents into the speech, the labels had deteriorated and, eventually, disappeared. The only residual date indication, the name of the γραμματεὺς κατὰ

⁹ Corsini 1744-56: I/7, p. 305.

¹⁰ Schömann 1819: 136 ff.

¹¹ Boeckh 1874: 266-300.

πρυτανείαν, was thereby understood as the eponymous archon and reported in the speech.

All these attempts relied mainly on guesswork. Although some prestigious scholars like Winiewski and Böhnecke in the following years endorsed the interpretation advanced by Boeckh,¹² Lucius Spengel in 1828 finally demonstrated that at least the dates and names are spurious.¹³

The first to propose that some, if not all, of the documents in *On the Crown* might be forgeries was Peter Paul Dobree, who in 1833 wrote: 'suspikor haec duo decreta, et omnia fere in hac oratione citata, spuria esse: certe alterutrum spuriae ἐκδόσει orationis tribuendum'. This short statement came six years before the masterpiece by Johann Gustav Droysen: *Die Urkunden in Demosthenes' Rede vom Kranz*. Droysen, with a thorough historical analysis of the documents, comparing their evidence with the speech itself and with other sources of information about the years of the final fall of Athenian power, was able to demonstrate unequivocally that every single document in *On the Crown* is a forgery.¹⁴ His achievements, though they met with some resistance in the years immediately following, are now universally accepted, and a new survey published in 1939 by Lothar Schläpfer, based on analysis of Athenian institutions and a comparison with epigraphical documents, confirmed the results of Droysen's study.

After the documents of *On the Crown* were finally exposed as forgeries, recognising other forgeries in every preserved speech of the *corpora* of the orators seemed a central concern for all the most important scholars of the time. I will not list every attempt, and I will leave a more systematic survey for the introductory chapters of my discussions of individual speeches. Here it will suffice to say that by the 1870s nearly all the documents in the orators were considered forgeries.

¹² Winiewski 1829: 291-361; Böhnecke 1843.

¹³ Spengel 1828: 367-404.

¹⁴ Droysen 1893: 95-266.

By the end of the century the situation had changed. The discovery in Athens of a substantial piece of the first axon containing the homicide laws attributed to Drakon (the republished version of 409 BCE, originally edited by Koehler, now *IG I² 115 = IG I³ 104*), with fragmentary remains occasionally matching a few laws preserved in Demosthenes' *Against Aristocrates* and *Against Macartatus*, led a new generation of scholars to reconsider most of the results of the previous studies, and to rehabilitate many documents (but not the documents of *On the Crown*). The end of this period and, for a long time, of any work about the authenticity of the documents can be dated to 1898, with the momentous monograph *Über die bei den attischen Rednern eingelegten Urkunden* by Engelbert Drerup. The verdict was that every document had to be individually analysed, checking correspondences and inconsistencies with other historical material. In fact, Drerup attempted to argue that most documents were authentic by providing reconstructions of Athenian laws, institutions and procedures which were consistent with the information in the documents. Apart from the documents of Aeschines' *Against Timarchus* and, of course, those of Demosthenes' *On the Crown*, Drerup defended the authenticity of most documents.¹⁵

The huge amount of work done on the documents during the 19th century was mainly based on comparison between single pieces of factual information and corresponding historical evidence. This could work well with obviously forged decrees and letters like those in *On the Crown*, as they are concerned with key moments of Athenian history, and can easily be checked through the abundant evidence provided by historians and lexicographers. Yet with other texts such an approach is doomed to rely hugely on guesswork, in particular if one is limited to the scanty epigraphic evidence available in the 19th century, when *corpora* were for the most part still works-in-progress.

¹⁵ Drerup 1898.

In the 20th century work on the documents virtually ceased, with a few exceptions. Schläpfer in 1939 grounded the results achieved by Droysen in his study of the documents of *On the Crown* on more solid historical analyses, and with the help of comparison with epigraphical evidence. Piero Treves in 1940 tried to find a context for these forgeries. In the following years many of the documents were used in historical reconstructions, in some (rare) cases with a short discussion of their authenticity¹⁶ but more often with no discussion at all.¹⁷ In 1990 Douglas MacDowell devoted some space to the analysis of the authenticity of the documents of the *Against Meidias* in his commentary on the speech, and treatments of some of the documents have also appeared in the commentaries on the *Against Neaera* by Carey and Kapparis and on Aeschines' *Against Timarchus* by Fisher.¹⁸ In the last few years some individual contributions about specific documents by scholars like Trevett, Harris, Scafuro, Kapparis and myself have appeared,¹⁹ but no one has developed a comprehensive methodology nor attempted a complete analysis of all the documents.²⁰

This thesis is intended as the first chapter of such a comprehensive study. I will give a general account of the situation of the documents in the medieval manuscript tradition, but I will then concentrate on those speeches among the public speeches of the Demosthenic *corpus* that have not yet received a satisfactory analysis.²¹ Among the Demosthenic public speeches Dem. 18, 21, 23, 24 and 59 preserve many documents, in

¹⁶ Cf. e.g. Piérart 2000: 246-50.

¹⁷ Cf. e.g. MacDowell 1962 and 1963 *passim*. Many examples will be found below in my discussions of individual speeches and documents.

¹⁸ MacDowell 1990; Carey 1992; Kapparis 1999; Fisher 2001.

¹⁹ Trevett 1992: 180-92; Harris, Review of MacDowell 1991, *CP* 87 (1992): 76-8 and 2008: 86-87, 89-90, 103-104; Kapparis 1995; Scafuro 2004; 2005; 2006. See below the discussion of individual speeches for more examples.

²⁰ The absence of a methodology was lamented by Carey in his review of Kapparis 1999 in *Phoenix* 55 (2000): 177.

²¹ The only non-Demosthenic public speeches which contain documents are Aeschines' *Against Timarchus*, which has been satisfactorily analyzed in Fisher 2001 *passim*, Andocides' *On the Mysteries*, which E. M. Harris and I have analyzed in a separate study (Canevaro-Harris 2012), and Lycurgus' *Against Leocrates* that contains just one document and has received plenty of attention (see e.g. Rhodes-Osborne 2003: 440-7). The results of these studies will also be taken into account in the final chapters of this thesis.

fact most of the documents in the entire *corpus*.²² I will provide a synthetic account of the analyses of the speeches *On the Crown* (18) and *Against Meidias* (21) conducted by scholars like Schläpfer, MacDowell and Harris, and I will take their results into account in my final chapters, but I do not give here a detailed study of the documents of these speeches, as I deem their results satisfactory. I will concentrate instead on the laws and decrees of the speeches *Against Aristocrates*, *Against Timocrates* and *Against Neaera* (29 documents all in all), leaving other documents (e.g. the witness statements) for a future study.

In order to lay the foundations for a systematic study of the documents, one needs to formulate a methodology and test it with documents for which a wide range of comparative material both in primary (epigraphical) and secondary sources is available. The documents found in these speeches are often key items for the study of Athenian law and institutions and fulfil this condition. In these speeches moreover we find both documents that are obviously forgeries, and documents for which an epigraphic parallel guarantees their trustworthiness. Finally, as I will show, in these speeches we find

²² I consider the speech *Against Neaera* one of the *demosioi logoi* for various reasons: first, the speech is written for a *graphe xenias*, that is a public charge, like the speeches 18-26 of the Demosthenic *corpus*. Second, the medieval tradition preserves it right after the second speech *Against Aristogeiton* (26) in all its main *testimonia* (SFYR), and the only manuscripts that place it at the end of the private speeches are secondary ones: Q and D. Third, Libanius places his *hypothesis* of the *Against Neaera* right after that of Dem. 26, confirming that this was the arrangement common in antiquity. The reason for which modern editions follow a different order is that this was the arrangement of the Aldina. The Aldina derived from apographs of F, which, although it placed the speech after Dem. 26, had also an index, a list of the speeches where the *Against Neaera* appeared at the end of the private speeches. Either the scribe of one of the apographs, or Manutius and Carteromachus themselves decided that the order of the speeches was to agree with the list (see Cataldi Palau 1998: 99-100 and Hernandez Muñoz 2000). In fact it has been argued that the place of the speeches in the *corpus* is an important mark of their mutual relationship, and speeches that consistently appear next to each other in the tradition must have been part of a consistent group that was transmitted together through antiquity (see Christ 1882; Drerup 1899; Foerster 1903-27: vol. 8, p. 575 and recently Canfora 1974-2000: vol. 2.1, pp. 9-15). Kapparis' (1999: 73-74) objections to this reconstruction are inconclusive: Kapparis notes that Q and D have the *Against Neaera* at the end of the private speeches and argues that, for example, from 'F and Q, which almost certainly have the same exemplar, we can see that the scribes of these manuscripts for some reasons have placed the speech in different positions'. The position of a speech was determined only by the 'preferences of individual scribes'. In fact, the reason for which Q has the *Against Neaera* at the end of the private speeches is rather clear: the scribe decided (as happened with the Aldina) that the order of the speeches was to agree with the list preserved in F. That list probably derived from a *pinax* and the speech was there relegated to the end due to its dubious authenticity. Yet the medieval tradition and the ancient tradition clearly have the *Against Neaera* as one of the *demosioi logoi*, and this speech should therefore be studied in that context.

documents that entered the *corpus* at different stages: some of them were present from a very early stage of transmission and some were inserted at a later time.²³ For all these reasons these documents, and these speeches, seemed the right place to start.

²³ See below pp. 22-41.

1.2 The documents in the medieval tradition

The first important clue about the documents in the Demosthenic *corpus* comes from the manuscript tradition. It has long been demonstrated that it is impossible to trace our *testimonia* to a single medieval archetype of the Demosthenic corpus, not even to a single line of development. The manuscripts still available for the modern scholar are medieval descendants of different lines of tradition stemming back to the ancient world. The nature of the ancestors of our Demosthenic *codices* is still a matter for investigation, but it seems safe enough to assume that the ancient *corpora* consisted of different rolls containing entire groups of speeches in the case of the shortest ones, and single speeches for the huge δημόσιοι. Therefore, single parts of the *corpora*, namely single groups or single speeches, could often move within the tradition. Accordingly no medieval manuscript is a perfect representative of an ancient line of transmission, as cross-contamination intervened during both ancient times and the Middle Ages, but many papyri found in the sands of Egypt seem to confirm the existence of diverse collections and the circulation of the rolls both in isolation and among the collections.²⁴ Therefore it is not mere guesswork to consult the *vetustissimi*, that is the most ancient and uncorrupted of the medieval manuscripts, in order to obtain evidence about the presence of the documents in different branches of the ancient tradition.

The most ancient manuscripts of Demosthenes are S (Paris, Bibliothèque Nationale de France, ms. gr. 2934), A (Munich, Bayerische Staatsbibliothek, Cod.

²⁴ This reconstruction of the medieval tradition of Demosthenes' *corpus* as stemming back from ancient editions of single speeches or groups of speeches excludes the existence of a medieval archetype. Drerup 1899 first provided a picture of the tradition of the *corpus* implying that the medieval manuscripts derived from ancient editions, rather than from a medieval archetype. He still placed an archetype in imperial times, followed in this by Butcher-Rennie 1903-31: vol. 1 pp. 6-7. Pasquali 1934: 271-8 showed that the hypothesis of a medieval archetype is implausible, and dating it back to the ancient world means begging the question: the ancient papyri are as inconsistent, divergent and contaminated as the medieval manuscripts. Looking for the common origin of the different ancient editions (and therefore of the medieval families) means going as far back as before the tradition diverged, before it spread around the ancient world, that is in Athens, probably at the time of the composition of the very first Demosthenic collection (see below pp. 293-304). A sensible account of the ancient tradition of the *corpus* is provided in Canfora 1974-2000: vol. 1 pp. 65-98. Dilts 2002-9: vol. 1, pp. XVI-XVII agrees that all the main witnesses of the medieval families present variant readings that come from antiquity.

graec. 485), F (Venezia, Biblioteca Nazionale Marciana, Marc. gr. 416) and Y (Paris, Bibliothèque Nationale de France, ms. gr. 2935). S and F contain the texts of all the speeches with documents, A lacks the two speeches *Against Stephanus* (45-6) and the speech *Against Neaera* (59), Y lacks the speeches 27-58 (among which 35, 37, 43, 45 and 46 contain documents).

Sometimes these manuscripts agree in the documents they present: they give all the extant documents of the *Against Timocrates* (24) and the *Against Aristocrates* (23), and the few fragments of the ἔγκλημα at Dem. 37.22-9 and of the συνθηκῶν at Dem. 56.36, 38 (except for Y that lacks speeches 37 and 56 as a whole). The documents of the *Against Neaera* (59) are present in S, F and Y, but the speech as a whole is absent from A. Sometimes on the other hand the manuscripts consistently lack all the documents for entire speeches, such as in the *Against Leptines* (20, except for the small document at § 27), in spite of the many times the orator calls the secretary to read them out.

More frequently the documents are unevenly preserved by the different branches of the tradition. S lacks all the documents of the speeches *Against Lacritus* (35), *Against Macartatus* (43) and *Against Stephanus A and B* (45-46). In the case of the *Against Stephanus A* a few short witness statements are present at § 24-25, but one can explain the anomaly, as they are densely commented by the orator and so are very likely to have been included in the original draft. F is in all respects the most complete collection, since it provides all the extant documents except those of the *Against Macartatus* (43). A lacks all the documents of the two speeches *Against Stephanus* (45-46) except, again, the witness statements at § 24-25. Furthermore, it lacks all the documents of the *Midiana* (21) and those of the *Crown* (18) from § 77. In this last case it is probably better to understand the presence of the documents down to § 77 of *On the Crown* in A

as an example of cross-contamination, as suggested by Giorgio Pasquali.²⁵ His argument relies on the absence of documents from all the medieval manuscripts according to a precise pattern: when they are present, the number of documents, and the section of a speech covered by their presence, is exactly the same in all the manuscripts; on the other hand, when they are absent, it happens for an entire speech, and they are never missing in only a single manuscript inside a covered section. Therefore the absence of the documents from both the *Midiana* and *On the Crown* from § 77 suggests that originally the branch of the tradition which resulted in A lacked all the documents in both speeches, yet the first part of the *Crown* has been at some point of the tradition filled with material copied from a witness of a different line of transmission. Y, the most contaminated of the *vetustissimi*, contains all the extant documents of the speeches *On the Crown* (18, yet they are added later in the margin), *Against Meidias* (21), *Against Aristocrates* (23) and *Against Timocrates* (24), but all the other speeches bearing documents are missing.

This sketchy overview suggests some considerations. The fact that the documents are not present in part of the tradition can be explained in two ways: the documents could have been present in the orator's original draft, and subsequently might have been removed for various reasons, such as an alleged lack of interest in legal and political matters on the part of rhetoricians or school masters in later times. In this case, the absence of some of them from specific branches of the tradition would mean nothing more than their removal from these particular branches. This was the original opinion of Droysen, who therefore explained the forgeries of *On the Crown* as documents originally removed from the speech and then forged by some later editor in order to restore a more complete version of such a masterpiece of Attic oratory: quite an involved process. The alternative explanation is that the documents were not included in

²⁵ Pasquali 1934: 276-7.

the original draft, and were subsequently added by some later editor. Whether this editor took them from reliable sources or made them up, is a matter for investigation.

In favour of this second hypothesis strong evidence comes both from the manuscript tradition itself and from the historical remarks about the procedure of the Attic lawsuit that I have given above. As far as the transmission is concerned, the stichometry provides the strongest argument against the possibility that most of the documents were included in any original draft. Let us consider more closely how stichometry works and how it can be used for our purpose.

1.3 Stichometry and the presence of the documents in the ancient tradition

In the medieval tradition some manuscripts preserve for many of the surviving Demosthenes speeches Greek numbers both at the end of the text (total stichometry) and next to some of the lines (partial stichometry). The final figure indicates the total of *stichoi*, lines, which never corresponds to the total number of lines of the relevant manuscript, and which is shared by the *codices* in spite of their different size. Something similar happens for the numbers next to the lines: these are supposed to mark intervals of 100 lines, α for 100, β for 200 and so on, but they do not. Instead they recur irregularly and usually more often than every 100 lines. In spite of such an irregularity, and surprisingly, they are generally consistent among different manuscripts, and different families of manuscripts, in marking the same points of the text. This happens because these marks were originally applied to a very old copy of the speeches and measured the text according to standard units of 15-17 syllables, 34-38 letters: that is, the equivalent of a Homeric hexameter.²⁶

We can assume that this edition was very ancient because, as we have seen, there is no medieval archetype of Demosthenes and the medieval families derive from different ancient editions of the *corpus* or of single speeches. Therefore, since different families of medieval manuscripts present the same stichometric marks at the same points in the text and referring to equivalent portions of text in spite of the difference between the manuscripts (for example the presence or not of a document), the

²⁶ Cf. Graux 1878. Ohly 1928 is the standard work and gives abundant evidence of this. Cf. more recently Blum 1991: 157; Lang 1999. MacDowell 1990: 44 and Kapparis 1999: 56-7 argue that the stichometric numbers derived from measurements of the lines of a very ancient copy (perhaps the first edition) of Demosthenes (I endorse this hypothesis myself in Canevaro 2010: 345). Although it is generally agreed that stichometry was originally based on standard epic lines, MacDowell and Kapparis are probably right, since Hellenistic and Roman prose papyri very rarely agree with a hexametric line. Their lines are usually shorter. On the other hand, the Derveni papyrus, the only papyrus (with a prose text) from classical Greece, has hexametric lines. Moreover whatever the standard hexametric measure, stichometric marks applied on the base of independent calculations to different copies of a speech could hardly agree to the extent that our medieval manuscripts do. Cf. below p. 300 for a more complete discussion. Cf. also Kennedy 2010: 4-10. He discusses Plato's stichometry and advances an interesting, if controversial, hypothesis about its use in his dialogues.

stichometry must have been applied on a very early copy, before the tradition diverged. We can conventionally call this copy *Urexemplar*.²⁷ Subsequently the marks were transcribed in every new manuscript, regardless of the size of its lines or of any section of text added or deleted, as a system of measurement of literary texts in ancient times.²⁸

How can these marks help us to find out whether these documents were part of the speeches from the beginning of their transmission or inserted later? In a single speech the 100-line sections marked by stichometry should cover comparable portions of text. If two 100-line sections contain portions of text very different from each other in length, either some text has fallen out of the shorter section or something has been added to the longer one at some stage of the tradition. By analyzing the speeches we will clearly see that in those sections of a speech where no documents are quoted, the 100-line sections always have very similar lengths. By contrast, where the text of a document is included, the sections are often highly inconsistent among themselves and with the sections without documents. On the other hand, often if we measure the length of the sections after removing their documents, we find them perfectly consistent among themselves and with the sections that do not contain any documents. When this is the case, we must admit that the edition on which the stichometry was first applied did not contain the text of these documents.

The absence of a document from a very old edition, the *Urexemplar*, provides solid ground against any claim that the documents can derive from the orator's own draft. If they are absent from the *Urexemplar*, they must have been inserted later. Of course, the absence of a document from a very old stichometric edition does not mean that it could not have been later recovered from reliable sources. However, documents

²⁷ I will later argue that this in fact was the first edition of Demosthenes. MacDowell 1991: 44 makes this point very effectively. *Pace* Trevett 1992: 181-2. *Cf.* below pp. 293-304.

²⁸ *Cf.*, again, Ohly 1928: 101-25; for the case of Demosthenes, Christ 1882; Burger 1887; Burger 1892; Drerup 1898: 235-237; Goodwin 1901: 350-355.

found in the *Urexemplar* and documents later inserted must have entered the speeches at very different times, in very different contexts and must be considered separate groups. Generalizations are acceptable only insofar as they are drawn from, and adopted for, documents of a single group.

The purpose of this chapter is to analyze the stichometry of the public speeches of Demosthenes to find out which documents can be plausibly demonstrated to have been part of the *Urexemplar*, and which ones have been inserted later.

The speeches that fall within the scope of this survey are *On the Crown*, *Against Meidias*, *Against Aristocrates*, *Against Timocrates* and *Against Neaera*. Drerup, relying upon the work of Friedrich Burger, singled out three speeches where all or some of the documents were included in the *Urexemplar*: *Against Aristocrates* (23), *Against Timocrates* (24) and *Against Pantaenetus* (37).²⁹ Although this last speech is not a public speech, I will take it into account in order to show that Burger's calculations are incorrect, and that it is not clear whether any of the documents in this speech were part of the *Urexemplar*. Burger's calculations for the other private speeches are generally correct, and all the documents there must have been later insertions.³⁰ Thus, as will become clear in the following pages, Demosthenes' public speeches contain some documents that were part of the *Urexemplar*, whereas most of them are later insertions. Yet no stichometric document can be safely said to have been included in the private speeches. Therefore the scope of this survey will encompass all the safely stichometric documents and a significant number of later insertions.

In the following pages I will present stichometric calculations done with a modern computer, using the tool "Character Count without Spaces" of Microsoft Word, after

²⁹ Drerup 1898: 236. Burger 1892 analyzed the stichometry of these speeches at pp. 10-12, 14, 17.

³⁰ Burger 1892: 11-3.

having removed from the text edited by Butcher and Rennie for the OCT series all the elements that could not have been part of an ancient book.

It has been recognized that the documents of the speech *On the Crown* were not part of the stichometry since 1843, when Ritschl, on Sauppe's authority,³¹ announced that they cannot have been present in the stichometric edition. These conclusions were confirmed first by Christ, who made calculations based on the final total stichometry of the speech, and used Bekker's edition for Tauchnitz, and later by Goodwin and Burger, who checked the marginal marks of the partial stichometry respectively against the lines of the manuscript S and of Bekker's edition.³² Their calculations were basically right. My computer-aided calculations confirm their results. Manuscripts SFBYQ³³ preserve the total stichometry for this speech: XXϜHHϜΔΓIII, 2768 lines.³⁴ S, F and B and Q also preserve marginal marks. S has Γ Δ Ε Θ Ι Λ Μ Ρ Β Γ. F has all the marks but the second Γ. B has all the marks except Z, I and the second Γ. Q has the same marks as F and the second Γ. The marks in common between different manuscripts mark the same points of the text. In general, the marks indicate that the text measures more than 2700 stichometric lines, with a small section after the last mark. This measure approximately corresponds to the figure of the total stichometry. I will provide my calculations in a table:

	Without documents	With documents
A μνησθήσομαι (§11)	3614	
B ἐὼ γὰρ (§ 21)	3702	
Γ ἐξέλθοιθ' (§32)	3636	4286
Δ προορωμένων (§ 45)	3621	4893
Ε πεποιηκώς (§ 59)	3604	4531
Z ἐπιχειρῶν (§ 71)	3582	
Η ἐπιτειχισμὸν (§ 87)	3464	6425
Θ ἀλλὰ πάλιν (§ 99)	3478	4988
Ι δεδηλώσθαί (§ 110)	3546	4283

³¹ Ritschl 1843: 453 n. 8.

³² Christ 1882: 158, 193; Burger 1892: 6-7; Goodwin 1901: 352-3.

³³ B is *Monacensis* gr. 85 and Q is *Marcianus* gr. 418. For the other manuscripts see above pp. 18-21.

³⁴ F and B's XXϜHHΔΓIII is slightly corrupted.

Κ καὶ βοᾷς (§ 122)	3544	5198
Λ τοῦ ἱεροῦ (§ 134)	3719	
Μ καὶ τότε εὐθὺς (§ 143)	3421	3986
Ν πρόφασιν τῶν (§ 156)	3468	4469
Ξ ἀλλ ὡς ἔοικεν (§ 172)	3471	6370
Ο καὶ ἀπιστίαν (§ 188)	3547	6224
Π ἀπολωλέναι (§ 198)	3479	
Ρ ἔθαψεν (§ 208)	3534	
Σ καὶ ἔγωγ' (§ 217)	3389	
Τ ῥαδίως οὐ (§ 229)	3510	
Υ χρήματα (§ 239)	3463	
Φ διώκουσιν (§ 250)	3551	
Χ λεύκη τοὺς (§ 260)	3498	
Ψ ῥήτορσιν (§ 272)	3513	
Ω εὐθέως ὠμολόγεις (§ 284)	3617	
Α αἰτίαν ἐπὶ (§ 294)	3878	
Β οὐδένες οὔτε (§ 304)	3548	
Γ ἢ πᾶσιν (§ 316)	3634	
From Γ to the end	2607	

The sections without documents have numbers of character ranging from 3389 to 3719,³⁵ and an average of 35.6 characters per line, whereas the figures for the sections with documents range from 3986 to 6425 characters and are clearly unacceptable. The figures for the same sections, after removing the documents, are perfectly consistent with those of the sections that do not present any document. Therefore, the documents were not part of the *Urexemplar* of this speech. The final section from Γ to the end of the speech measures 2607 characters, 73 three lines of 35.6 characters. If we add these lines to the 2700 lines marked by the partial stichometry we find a total, 2773, which is strikingly close to that given by the total stichometry.

In accordance with the medieval tradition, the documents of this speech are unevenly preserved in ancient papyri: *P.Köln* 8.334 from about 200 AD reports the decree at § 29; *PSI* 14.1395 from the 3rd century AD lacks the decree of § 37 and the letter of § 39; *P.Ant.* 1.27 from the 3rd century AD has the decree at § 54; *P.Ryl.* 1.57

³⁵ The unusual length of Ω - Α, 3878, must be due to a scribal error: some copyist misplaced these marks. S lacks this mark, so we cannot compare its position in F and B with a different branch of tradition. Still, this section is substantially shorter than any section with documents.

from the end of the 2nd or the beginning of the 3rd century AD lacks the documents at § 164, 165, 166 and 167; *P.Paramone* 2 from 4th/5th century AD has the documents at § 166 and 167; finally *P.Oxy.* 11.1377 from the 1st century BCE has the letter at § 167. In addition to these papyri, it is worth noting that *P.Haun.* 1.5 and *P.Oxy.* 42.3009, both from the 2nd century AD, show the texts of documents absent from the medieval tradition, and moreover the texts presented by the two papyri are not the same. It is easy to see from this picture that the ancient papyri confirm the impression given by the medieval tradition: the documents were present just in part of the tradition. Furthermore, these papyri confirm the results of the stichometric calculations and show that the documents were not part of the *Urexemplar*, and were inserted at a later time.

The stichometric analysis of the speech *Against Meidias* yields similar results and my calculations will confirm Christ's, Goodwin's and Burger's results.³⁶ For this speech manuscripts SFYB report a total stichometry of XXIII, 2003 lines. S has the following marginal marks: A, Γ, Δ, E, H, K, M, N, O, Π, P, T, Y. F and B have A, Δ, H, Θ, I and K. When the same letter is found in different manuscripts, it marks the same point of the text. After the mark Y we find a further substantial piece of text, which suggests that a further mark Φ must be missing in all the tradition. If this is the case the text must measure over 2100 stichometric lines, and therefore the total stichometry 2003 must be corrupted. A very economic emendation is that suggested by Goodwin: XXIII must be a scribal error, and the original number must have been XXHI, 2101, which is consistent with the partial stichometry.³⁷ I will present the results of my calculations in a table.

	Without documents	With documents
A καὶ κατὰ τῶν (§ 11)	3351	4001
Γ πάλιν (§ 33)	6884 (3442 x2)	7347 (3673.5 x2)
Δ ἐξαμαρτανόντων (§ 43)	3425	
E ἀσεβεῖν (§ 56)	3424	4812

³⁶ Christ 1882: 158, 193; Burger 1892: 354; Goodwin 1906: 177-9

³⁷ Goodwin 1906: 179.

Η ἀτιμαζόμενος (§ 74)	7028 (3514 x2)	
Θ οὔτοι τὸ πρᾶγμα (§ 86)	3540	3796
Ι ἀσελγής ἐστι (§ 98)	3483	4360
Κ ἀλλὰ μὴν (§ 106)	3531	
Μ πάντα μὲν δὴ (§ 129)	6973 (3486.5 x2)	8158 (4079 x2)
Ν οὔπερ εἵνεκα (§ 140)	3676	
Ο τὸν γε δὴ (§ 161)	7111 (3555.5 x2)	
Π οὐς πάλιν (§ 173)	3614	4087
Ρ ἀδικοῦντα (§ 183)	3637	
Τ ἐπηρεάζειν (§ 205)	7152 (3576 x2)	
Υ ἔλκοντά με (§ 216)	3666	
From Υ to the end	3735	

The sections without documents have figures from 3425 to 3666 characters. The sections with documents on the other hand show figures ranging from 3796 to 4360 characters. The only exception is the section between Α and Γ, which measures 7347 characters: an average of 3673.5 a section, just slightly longer than the longest section without documents. On the other hand, this section has just one document, a witness statement at § 22 which contains 463 characters. This shows that if we had mark Β, we would find here a section that is substantially longer (3905 characters) than any of those without documents, and one perfectly consistent with them (3442). The average number of characters a line in the sections without documents is 35.25 and according to this figure, the section from Υ to the end of the speech measures 106 lines. If we add this figure to the 2000 lines marked by the partial stichometry, we have a total of 2106 lines, very close to the 2101 lines recorded in the (corrupted) total stichometry. Among the ancient papyri, only one, *P.Oxy.* 56.3849 from the 2nd/3rd century AD, reports a passage in which some medieval manuscripts quote two oracles, § 52-3. The oracles are also present in the papyrus. On the other hand it is worth noting that Harpocration does not quote once a word or an expression coming from one of the documents in this speech, and in general seems unaware of their existence. Thus, it seems that also in the case of the *Against Meidias*, the ancient tradition, like the medieval manuscripts, was divided and the documents were found in some copies but not in others.

I will deal with the speeches *Against Aristocrates*, *Against Timocrates* and *Against Neaera* in a more detailed manner, since the presence of documents that are part of the stichometry, and the smaller length of the lines of *Against Neaera* deserve more detailed analysis. The speech *Against Aristocrates* (23) has been the object of stichometric analysis by Wilhem Christ, Friedrich Burger and William Goodwin.³⁸ While Christ and Burger, working on the lines of Bekker's edition for Tauchnitz, agree in considering the documents part of the *Urexemplar*, Goodwin has cast doubts on these results. Working directly on the lines of manuscript S, he concluded that just the documents between § 44 and 90, and one of the two documents between § 35 and 44 (probably the one at § 37) were originally included.

For this speech the total stichometry is not preserved in any manuscript. Nevertheless the stichometric marks referring to the partial stichometry are found in the manuscripts S (A, B, Γ, Δ), F and B (in both cases the marks are B, Γ, Δ, Θ, I, K, Λ, M, N, Ξ, Π, P, Σ, T, Y, Φ, and the two manuscripts agree with each other and with S). The last mark, Φ (§ 208, next to οἰκοδομεῖτε), refers to 2100 lines of the *Urexemplar*. The documents are found in sections A-B (§ 12 ὁ δὲ δὴ γένει – 23 εἰ μὲν δὴ), B-Γ (§ 23 – 35 οὐδὲ τοὺς), Γ-Δ (§ 35 – 44 φανήσεται), Δ-Θ (§ 44 – 81 κρίσεως κολάζει), Θ-I (§ 81 – 90 ποιῆσαι). By contrast, the sections from the beginning to A, and from I to Φ are devoid of documents in all the tradition, and can therefore be assumed to provide a reliable average of characters both per 100 lines and per line. The first section counts 3464 characters. The long piece of text between I and Φ counts 42236 characters, an average of 3519 characters per 100 lines. Accordingly the average line can be assumed to present about 35 characters. It may also be useful to provide the figure for the longest section and for the shortest, in order to have a general idea of the

³⁸ Christ 1882: 195 calculated an average of 84 Bekker lines; Burger 1892: 10 got a slightly different result, 82-83 lines. Goodwin 1901: 354 calculated about 153.7 lines of S per 100 lines of the *Urexemplar*.

acceptable variation in length for a section, due mainly to the effect of repeated copying on the collocation of the marks. The longest section is found between I and K (§ 90 – 102 ἵνα δ' ὥς), and measures 3597 characters, the shortest between the beginning and A, 3465 characters. Any figure between these two will be generally considered acceptable.

The first section to present quoted documents is found between A and B. This section presents just one law at § 22, and measures 3559 characters with this text tallied up, 3420 without it. The total calculation without the document seems too small, even if slightly. It would seem therefore that the document was indeed part of the *Urexemplar*, but because of the small difference between this measure and that of the section from the beginning to A it will be safer to give a judgement about this particular document at a later point, according both to the internal evidence of the text itself and to the general trend of the stichometry for the entire speech. The next section does not present the same problems: between B and Γ the law at § 28 must have been part of the *Urexemplar*, as the figure of characters with the document, 3554, is acceptable, while the one without it, 3336, is too low. The situation of the next section is even more straightforward: between Γ and Δ are found two laws (§ 37 and 44), and the count of characters without them, 3188, is far too low, while the figure with them, 3476 is perfectly consistent. The next preserved stichometric mark, Θ, marks 700 lines of the *Urexemplar*, and therefore the space between Δ and Θ corresponds to four sections of 100 characters. This part presents in the extant manuscripts four documents at § 51, 53, 60 and 62. The figure encompassing them, 14027, 3507 characters per 100 lines, is perfectly consistent with the other sections, while the one without them, 13594, about 3398 characters per 100 lines, falls slightly short. It must be noted that this last figure is not completely impossible in itself, even if somewhat anomalous. However, in order to support the conclusion that the documents in this case were encompassed in the

Urexemplar, it will suffice to anticipate that the analysis of them does not reveal any significant difference in style and composition from those which are safely known to have been part of the stichometric edition. Moreover these documents in their entirety appear in every single witness of the text, both medieval and ancient. This can afford us the assumption that, if they were present in all the tradition, they must have been present from the beginning. The last section, from Θ to I, presents three laws, at § 82, 86, 87, and casts no doubts on their authenticity: the figure with them, 3485, is acceptable, while the one without, 3189, is far too low.

With these results at hand it is very likely that the law at § 22 was present in the *Urexemplar*, since all the documents preserved in the extant manuscripts seem to have been part of the stichometric exemplar. These conclusions should not, however, be taken too far: at least for the last two sections, even though the general trend of this speech's stichometry and the concurring tradition of the speech speak for the presence of all the documents in the *Urexemplar*, the possibility that one or more laws among the ones at § 51, 53, 60, 62, and one among the last two of § 86 and 87 were absent from the stichometric edition cannot be excluded on numerical grounds. In these cases therefore, as well as for the law at § 22, even though their presence in the *Urexemplar* is very likely, a final judgement must be postponed until after a close analysis of the texts. The presence, or absence, of significant discrepancies between these texts and the ones known to have been part of the stichometric edition will place the judgement on stronger grounds.

Nevertheless further evidence of the presence of all the documents in the stichometric edition can be provided by the medieval tradition, in which every witness of the speech presents all of them, without significant differences in their text. A further reason for assuming a very ancient tradition of these insertions, actually as ancient as the tradition of the speech itself, is provided by the papyri. A witness of the 2nd century

AD, *P.Mich.* III.142, confirms the presence of the law at § 53, exactly as we read it, in all the tradition, and a short *lemma* in a *lexicon* to this speech dated 4th/5th century, *P.Berol.* 5008, reports and discusses one of the clauses of this law. *P.Rain.* I.9, of the 3rd century AD, presents also the last clause of the document at § 82. No witness of the speech, either ancient or medieval, presents any instance of a section where a document has been calculated to have been inserted in the stichometric edition, in which that document is actually not present. The indirect tradition for these documents is also wide, and all the relevant cases will be indicated in the *apparatus criticus*.

Much more complicated is the situation of the speech *Against Timocrates* (24). This speech has already received thorough analysis from Christ,³⁹ and the further survey by Burger⁴⁰ mostly confirmed his results. It presents partial and total stichometry in the manuscripts F and B, while S is devoid of both, as happens for the speech *Against Androtion* (22), so that Christ thought that the two speeches could have been part of the same roll.⁴¹

The total stichometry, preserved by B and Y, is XX (2000 lines), consistent with the partial one, which presents a substantial section, a little shorter than the average measure for 100 lines, after the mark T (1900 lines). The preserved marks for the partial stichometry are A, B, Γ, Δ, Z, H, Θ, I, Λ, M, N, Ξ, O, Π, P, Σ and T. One long law is preserved between A and B (§ 11 ὁσίων χρημάτων – 25 ἐν δὲ τῷ), one decree and one law between B and Γ (§25 – 37 βέλτιστον), three laws, including the one by Timocrates indicted in the trial at issue, between Γ and Δ (§ 37 – 46 προστετίμηται). There follow six laws between Δ and Z (§ 46 – 68 οἶμαι), while between Z and H (§ 68 – 78 καὶ δεῖν) a part of Timocrates' law is repeated. The next sections generally lack documents, except between I and Λ (§ 100 ὑπάρχοντας – 122 ἐνεθυμήθην), where

³⁹ Christ 1882: 194.

⁴⁰ Burger 1892: 10-11.

⁴¹ Christ 1882: 221. Cf. Burger 1892: 10, n. 1.

one further law is found, and between the marks N and Ξ (§ 142 μὲν τοῦ Σόλωνος – 156 ἂν μάλιστα), where the quotation reports the ὄρκος ἡλιαστών. On the other hand, the long part of text between Ξ and T is without documents and can be used to assess an average figure of characters per 100 lines, to be compared with the figures of the sections at issue. It contains all in all 17524 characters for five sections of 100 lines, which means about 3505 characters per 100 lines. It must therefore be noted that the number of characters per line in this speech, 35, is on average the same as for the speech *Against Aristocrates* (23). It is worth reporting moreover the figures for the shortest and the longest section, in order to single out a plausible range of acceptable measures per 100 lines: the first section, which runs from the beginning to § 11 (A, 100 lines), does not contain any document, and its figure for the characters is 3428, the lowest in this speech. The highest figure is instead that of the 100 lines between H and Θ, 3642 characters. Both these figures are probably altered by the copying process, but can nonetheless be a useful indication of what sort of variation in length can be expected for 100 ancient lines, and eventually be accepted in the absence of any more solid evidence.

The first section with quoted documents runs from A to B, and does not cast any doubt: the figure with the law is 5034, far too high, while without the document 3509 characters is perfectly acceptable. The law on *nomothesia* at § 20-23 cannot have been part of the *Urexemplar*. The same conclusion is valid for the next section: between B and Γ the figure with the decree at § 27 and the law at § 33, 4340, is too high, while if the documents are not encompassed the resulting number, 3527, is perfectly consistent with the other sections. A similar situation is found with the latest legal texts of the speech: if the law at § 105 is encompassed in the character count for the section between I and Λ, corresponding to 200 ancient lines, the total figure 7605, 3802 characters per 100 lines, is too high, while without the document the number decreases to 7097, 3548 characters per 100 lines, an acceptable figure. The same happens for the

ὄρκος ἡλιαστών at § 149-151: the figure with the document is 4502, completely inconsistent with the average number of characters per section, while without the oath we get 3483, which is perfectly acceptable.

According to these first calculations the documents of the *Against Timocrates* (24) were not part of the *Urexemplar*, yet the stichometric calculations for the paragraphs between § 37 and 78 (Γ-H) give very different results. In the section between Γ and Δ the documents are absolutely needed in order to get a figure of characters consistent with the other sections: without tallying them up in fact the number of characters is 2082, absolutely untenable, while with the documents the section provides a figure of 3529 characters, perfectly acceptable. This means that in this case the three laws were part of the *Urexemplar*. The same happens with the section between Z and H, where the repetition of some lines of Timocrates' law is needed in order to get an acceptable figure: the characters without it are 3374, which is too low a figure, while 3614, the number obtained by tallying up the lines of the law, is consistent with the average length of the other sections.

Much more complicated is the situation of the piece of text between Δ and Z. In this case the documents are many, six laws, and the figure of characters for these two sections of 100 lines seems inconsistent with the rest of the evidence both with the laws and without them: the figure without the laws, 6071, which means about 3035 characters per 100 lines is far too low, but also the number of characters found from tallying up the documents is inconsistent. This is 7430, 3715 characters per 100 lines, about 70 characters higher than the longest section found in the rest of the speech. It must therefore be concluded that some of the documents in this section were part of the stichometric edition, but not all of them. It is impossible to find out which documents could have been part of the *Urexemplar* just from the stichometry. Yet a few useful indications for guiding the further survey on the specific documents can be given. The

number of characters for each law is a helpful parameter. We can assume that for the 200 lines marked by Δ and Z every figure of characters between 6856 (twice the shortest section of the speech) and 7284 (twice the longest section) can be accepted. Therefore, we can easily point out that the absence of the law at § 63, with the short repetition of § 64, is alone sufficient in order to get the acceptable figure of 7240, which means 3445 characters per 100 lines. In this case all the other laws should be considered part of the stichometric edition, as the removal of any other document would produce an unreliable number. This is a plausible solution, but it is definitely not the only one: the removal of just the law at § 50 would produce an acceptable figure as well, 7096 characters, about 3548 per 100 lines. Yet this removal would not exclude the possibility that one further text (or even one document and a half) among the ones at § 54, 56 and 59, was not in the *Urexemplar*. Finally, the removal of any two texts among the ones at § 54, 56 (I consider here the two short laws as one) and 59 would suffice in order to provide an acceptable figure, as well as the removal of the three of them. This cannot provide more than some guidance for the analysis of the single texts: if internal evidence, such as oddities of style or content, show that the law at § 63-64 cannot be considered consistent with the other ones present in the *Urexemplar*, this means that the other texts in this section actually were in the *Urexemplar*. A similar consideration must be kept in mind when dealing with the first laws of the section: if the document at § 51 can be shown to have some inconsistent features, that will imply that among the following three laws no more than one, if any, can be excluded from the *Urexemplar*.

As in the case of the *Against Aristocrates* (23), all the documents of this speech are present in all the medieval tradition. Evidence on papyrus are *P.Oxy.* 2.232, 2nd/3rd century AD, for a substantial part of the law at § 54 and for the second law at § 56, *P.Oxy.* 4.701, of the 2nd/3rd century AD for part of the law at § 63 and the one at § 64, and *P.Oxy.* 2.233, 3rd century AD, for part of the Heliastic Oath of § 149-151. Again

there is no instance of a document reckoned to have been part of the stichometric edition, which happens to be missing from any witness of the relevant passage.

The last speech to have been traditionally reckoned to contain at least a few documents already included in the stichometric edition is the *Against Pantaenetus* (37). It is necessary therefore to assess these calculations, even though the speech is not a public speech. It presents five fragments of ἐγκλήματα between § 22 and 29, while other texts called to be read out by the secretary are not preserved in any manuscript. The situation for this speech is not really straightforward, mainly because no total stichometry is preserved, and the calculation can be based on just two marks, A and E, both of them next to the same passages in the manuscripts S, F and B. The first mark, A is noted next to § 10, ὡς ἐλυπήθην, while the second, E, marks § 54, εἰς ἐκείνους. The first section, from the beginning to A, counts 3507 characters, while the second, from A to E, corresponding to 400 lines of the ancient text, provides a figure of 13822 characters, which means an average of 3455 characters per 100 lines. If the documents are not tallied up the figure becomes 13197, about 3299 characters per 100 lines.

These figures cannot in themselves provide any serious guidance for assessing the presence of the ἐγκλήματα in the *Urexemplar*, as they are not sufficient for singling out a range of acceptable measures per 100 lines, in regard to this speech. Yet in the Demosthenic *corpus* the measures per 100 lines of the *Urexemplar* are neither completely random nor different for every speech. Instead, as assessed by Friedrich Burger⁴², it is possible to single out standard measures shared by substantial groups of speeches. As has been shown before, the average number of characters per line for the speeches *On the Crown* (18), *Against Meidias* (21), *Against Aristocrates* (23) and *Against Timocrates* (24) is about the same, 35 characters, and this figure is shared by

⁴² Burger 1892: 29-31.

nearly all the so-called δημόσιοι λόγοι and the δημηγορίαι,⁴³ as well as by the *Exordia* and the *Letters*. Another substantial group of speeches, presenting in the stichometric edition an average number of characters per line which is widely coherent, consists in the so-called ιδιοτικοὶ λόγοι, as well as in the ἐπιδεικτικοί ones. For these speeches the average figure is 33-34 characters a line. Exceptions to this general picture are the speeches *Against Olympiodorus* (48), which presents an anomalous measure per line, about 28 characters, shared just with one ancient edition of Herodotus,⁴⁴ and *Against Neaera*, whose stichometry, 32 characters a line, finds a parallel just in the partial stichometry preserved in the manuscripts F and B for the speech *On the False Embassy* (19),⁴⁵ The *Against Pantaenetus* (37) is one of the ιδιοτικοὶ λόγοι, and the figure provided by the first section of 100 ancient lines, from the beginning to A (3407 characters), is not consistent with anything but the average line of these genre of speeches: 33-34 characters. The average figures of characters per 100 lines provided by the section of the *Against Pantaenetus* (37) from A to E, 3455 with the documents and 3299 without, are either a little bit too high or a little bit too low if compared with the average for other private speeches where no documents are found in the tradition. One one carefully checks the other private speeches however, it is easy to find out that both the figures are sometimes matched by particular sections of these speeches. Therefore, the stichometric evidence alone does not suffice to decide whether the documents in this speech were in the *Urexemplar* or not.

Both Christ and Burger⁴⁶ argued that the ἐγκλήματα were part of the *Urexemplar* on the ground of the number of lines in the text edited by Bekker for Tauchnitz per

⁴³ Except the so-called Hellenic δημηγορίαι, that is the speeches *On the symmories* (14), *On the freedom of the Rodians* (15) and *On the Megalopolitans* (16), as well as the speech *On the treaty with Alexander* (17), which share their stichometry rather with the ιδιοτικοί and the ἐπιδεικτικοί λόγοι.

⁴⁴ Cf. Burger 1892: 34-41.

⁴⁵ While the total stichometry in all the manuscripts, and the partial one in S, point to a book format similar to the one of the other δημόσιοι λόγοι. Cf. Burger 1892: 7-8, 21, 30.

⁴⁶ Christ 1882: 194; Burger 1892: 12, 17.

stichometric section. Burger found that the first section could be reckoned to occupy 79 lines, a figure consistent with the other private speeches, while the second part presented 80.5 lines (on average) of text per 100 lines with the documents, and just 77 without them. As the first figure is closer to that of the first section than the figure without documents, he concluded that the documents were part of the *Urexemplar*. As has been shown in the previous paragraph, the situation is far less straightforward: since both the figures with documents and those without them are acceptable, the conclusions reached by Burger can no longer be supported. The stichometry cannot provide solid evidence about the provenience of the ἐγκλήματα, and the question as to whether or not they were part of the *Urexemplar* cannot even tentatively be answered at this point.

The *Against Pantaenetus* (37) cannot help us to understand the origin of the documents already inserted when the stichometric edition was composed. After the characteristics of stichometric and non-stichometric documents will be clear it will be possible, in a future study of the documents in the private speeches of Demosthenes, to assess the origin of these ἐγκλήματα.

For the speech *Against Neaera* stichometric marks, both marginal and at the end of the text, are found in the manuscripts S and Q. In this speech many documents are preserved, namely three laws (§ 16, 52, 87), one official oath (§ 78), one decree (§ 104), many witness statements (§ 23, 25, 28, 32, 34, 40, 47, 48, 54, 61, 71, 84, 123), the text of a settlement decided by arbitrators (§ 71) and the actual challenge (πρόκλησις) issued against Stephanus (§ 124). The first scholar to attempt a calculation was Christ.⁴⁷ He took into account only the total stichometry at the end of the speech, 1451 lines, and compared this figure with the Teubner text, finding out that the number of Teubner lines every 100 lines of the stichometric edition is 72.8 without the documents, but 81.7 with

⁴⁷ Christ 1882: 195-196.

the documents. The first figure is completely inconsistent with other speeches, and so he concluded that the documents were part of the stichometric text.

This calculation is wrong. In 1892 Burger,⁴⁸ repeated the analysis taking into account the partial stichometry and reached very different results. My calculations mostly confirm Burger's results. I will present here the results and an overview of the process.

The marks I use are the ones provided by the manuscript S, which are almost entirely confirmed by the later *codex*, Q. Q is an apograph of F and therefore belongs to a different branch of the tradition of the speech.⁴⁹ Therefore we can confidently state, for this speech as well as for those previously analyzed, that the stichometric marks derive from a very ancient copy, the *Urexemplar*, since they are consistent in different branches of the tradition that diverged very early. We can read B (200 lines) next to Χαρισίου at § 18, Γ (300 lines) next to ἐν Κορίνθῳ at § 30, Δ (400 lines) next to καὶ εἰσάγει at § 39, I (1000 lines) next to ἐξέστω εἰσιέναι at § 87, K (1100 lines) next to Λακεδαιμόνιοι at § 96, and M (1300 lines) next to μετρίαν at § 113. The number of characters in the first section from the beginning to letter B, that is the figure for two units of 100 lines, is 6662, ca. 3331 characters every 100 lines. This section has just a short document. The second section, from B to Γ, with many documents, contains 3818 characters. The third one, from Γ to Δ, contains 3818 characters. The next section, from Δ to I, that is, five units of 100 lines, also has several documents and contains 18682 characters, which means 3867 characters a unit. The unit from I to K contains 3407 characters, and preserves just two lines of a document. Finally, the space from K to M, namely two units of 100 lines, consists of 6783 characters, 3392 characters a unit, with a few documents. It is easy to see that these figures are heavily inconsistent when they

⁴⁸ Burger 1887: 654; Burger 1892: 26-27; his arguments are summarized in Drerup 1898: 236-237. Recently the entire question has been reassessed in Kapparis 1999: 56-58, with analogous results.

⁴⁹ Cf. Dilts 2002-9: vol. 4 p. VI. Burger 1892: 11 n. 1 and Trevett 1992: 181 seem unaware that stichometric marks are preserved also in Q.

should mark units of approximately the same length. It is also worth noting that the only two sections that contain a comparable number of characters are the ones with the fewest documents.

Let us make the calculation again without including the documents. The first section, from the beginning to B, contains 6407 characters, 3203 every 100 lines. From B to Γ the characters are 3235, from Γ to Δ they are 3248, from Δ to I they are 15969 for five sections, on average 3194 characters a section. From I to K we have 3315, the only very small irregularity, but in this section it is likely that the original mark slipped down a little bit because of a document inserted in the middle of the line originally marked with K. The last section, from K to M, the equivalent of two units of 100 lines, contains 6406 characters, that is, 3203 characters every 100 lines.

The figures in this case are almost perfectly consistent, and the slight variations can be easily explained as effects of the transmission. We can even calculate from this data an average number of characters per line for this speech in the ancient stichometric edition: 32 letters. This allows us a rough calculation of the ancient lines between M and the end of the speech: 143, consequently with a further mark, N, at the end of § 122. It is therefore clear that the inserted documents did not appear in the stichometric edition of the *Against Neaera*.⁵⁰ This means that none of the documents included in the oration was an original part of the text. They were all inserted into the text of the speech at a later stage in the transmission of the Demosthenic *corpus*.

The documents of this speech are preserved concurrently in all the medieval tradition. However, A, the ancestor of one of the main families of the medieval tradition, does not contain this speech, and therefore our picture of the presence of the

⁵⁰ The only remaining problem is the total stichometry of 1451 lines noted at the end of the speech in the manuscripts SFY and Q. This is patently inconsistent with our calculation of 1343 lines. It is probably right to accept in this respect the proposal of Drerup that an original XHHH^πI, 1351, close enough to our rough estimation, copied from some very ligated ancient manuscript, eventually gained a further H, becoming 1451.

documents in different editions of the speech is not complete. Moreover, we have no papyri reporting sections of the *Against Neaera*, and thus it is not possible to assess how widespread their presence in the speech was, and when they first appeared.

This analysis has singled out two different groups of documents: some of the documents were already part of the *Urexemplar* of the speeches whereas some other documents have been certainly inserted at a later date. Generalizations about the nature of the documents therefore are meaningless if they don't take into account this fundamental division. Each document should be compared with similar documents, and generalizations about the origin of the documents should be made separately for each group. But before analyzing the documents it is important to lay down some methodological guidelines.

1.4 Methodological principles⁵¹

It is quite obvious that in order to assess the reliability of documents, in particular laws and decrees found in the speeches of the orators, one must compare the information provided in the documents with other information found elsewhere about the same topic. The most obvious places to look for such information are the paraphrases in the speeches that either precede or follow the quotations, and the orators' discussions and interpretations of their provisions. As will be clear from the following chapters, the documents are often inconsistent with their paraphrases. However it is a very widespread assumption that the orators misreport the contents of laws, decrees and witness statements every time this serves to improve their argument. Therefore the fact that a document contradicts the information found in its paraphrase can sometimes be considered not to be enough evidence that the document is unreliable. To give a few examples, Kapparis in his analysis of the document at [Dem.] 59.104 actually states that 'the differences between the decree and the context should be explained as deliberate distortions by the orator intended to present the terms of this award as more stringent than they actually were.' Pelling claims that 'an audience would find it difficult, even immediately after hearing it, to recall that it was only some priesthoods, not all, from which Plataeans were excluded; or that the distinction between first and second-generation citizens applied only to the archonship, not to a priesthood. [...] Apollodorus is trying to persuade his audience that they have just heard something they have not.'⁵²

This argument however cannot withstand a careful reading of the orators: first, giving a misleading account of events which happened a long time ago, or even giving tendentious interpretations of legal texts, is a very different matter from misreporting the provisions of an official document just read out by the clerk. Texts as long as the

⁵¹ This chapter is a revised and extended version of Canevaro 2010: 341-5 and Canevaro-Harris 2012 (forthcoming).

⁵² Kapparis 1995: 387; Pelling 2000: 65-67.

ones we are concerned with, and the following summaries, together are likely to be read, however emphatically, in no more than a few minutes, to an audience familiar with the language and terminology of official documents.⁵³ The judges would therefore have immediately detected any inconsistency in paraphrases close to the actual quotations. This would have undermined the speaker's credibility and (if done by an accuser) would have been attacked by the defendant and used as evidence that his opponent was a liar. If a law or a decree does not support the speaker's argument, the best thing for the orator to do was not to ask the clerk to read it.

With this I am not claiming that Athenian orators did not misinterpret the laws that they asked the secretary to read out, nor that they did not occasionally quote selectively and excerpt the laws to be read out in order better to support their arguments.⁵⁴ When Andocides (1.88) interprets the law τοῖς νόμοις [...] χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος as: 'Nobody should use the laws that have been enacted before the archonship of Eucleides' he is clearly 'speaking loosely'⁵⁵ since the provision simply meant that offenses committed before the archonship of Eucleides could no longer be brought to trial.⁵⁶ It did not mean that only laws and decrees passed from the archonship of Eucleides onwards were valid. Andocides is misinterpreting the statute here because he wishes the judges to believe that the decree of Isotimides (Andoc. 1.8, 71) is no longer valid. However, although Andocides is clearly misinterpreting the statute, he is not misquoting it, and his paraphrase is so accurate that it makes it possible for the modern interpreter to understand the true meaning of the provision, in spite of the orator's efforts to conceal it.⁵⁷ As for selective quotation, it is enough to mention

⁵³ On the legal knowledge of the average Athenian *cf.* Harris-Leao-Rhodes 2010 *passim* and in particular the 'Introduction' by Harris at 1-7.

⁵⁴ The point about selective quotation is made by Gagarin 2008: 191-2 and Rubinstein 2009: 121-3.

⁵⁵ MacDowell 1962: 137.

⁵⁶ MacDowell 1962: 128-9.

⁵⁷ Another case of serious misinterpretation but not misquotation is Lys. 1.30-5. See Harris 2006: 283-95. Carey 1995: 408-10 also states that Lysias 'is guilty at least of a distortion'.

Demosthenes' reply to Aeschines' discussion (3.32) of the law restricting where proposed crowns could be awarded, in occasion of the trial of Ctesiphon in 330 BCE: 'Are you not ashamed to bring a charge because of envy and not because of any actual wrong, modifying laws and removing parts from them when they should rightly be read out in their entirety to those who have sworn to vote according to the laws?' Moreover a quick look at Demosthenes' discussion of various sections of the homicide law in the speech *Against Aristocrates* shows that the orator quoted and discussed specific provisions of the law.⁵⁸ This evidence shows that selective quotation happened.⁵⁹ However, selective quotation does not mean misquotation: whatever parts of a law a litigant decided to put in the sealed *echinos*, these must be the parts he discusses in his paraphrase. If a document contradicts the evidence of its paraphrase, or lacks some of the provisions discussed by the speaker, this is *prima facie* evidence against its authenticity.

Moreover, if the speakers were in the habit of misrepresenting the contents of the documents, we would then expect to find different accounts of the same document when paraphrased by different speakers. Yet that is not what we find. At the trial of Ctesiphon in 330 BCE both Aeschines and Demosthenes refer to three laws, one requiring magistrates to undergo an audit (Aeschin. 3.17-22; Dem. 18.111-18), one about crowns for magistrates (Aeschin. 3.11, 31; Dem. 18.111-18) and one about the announcement of crowns in the theatre (Aeschin. 3.35-6; Dem. 18.120-22). Aeschines and Demosthenes differ in their interpretation of these rules, but not about their provisions

⁵⁸ See below pp. 58-108 *passim*.

⁵⁹ However, claiming, as Gagarin 2008: 192 does, that the orators rearranged the clauses of the laws and made small changes to their wording is unwarranted by the evidence. The penalty for citing a non-existent law was death (Dem. 26.24). Moreover the only evidence adduced in support of this hypothesis is inconclusive: Gagarin notes that 'in a case having nothing to do with homicide (Dem. 43.57), the speaker rearranges the provisions he cites from Draco's homicide law and makes one or two small changes in the wording'. The stichometry of this speech shows that the documents were not part of its *Urexemplar* and were inserted at a later date (see Burger 1892: 25-6). Therefore the arrangement of the provisions and the wording, whether the document is authentic or not, have nothing to do with the actual speaker.

and their basic terms.⁶⁰ The same happens with a decree of the Council passed in Munichion 346, to which both Dem. 19.161 and Aeschin. 2.91, 98, 103 refer.⁶¹ Quotations from a law about the validity of wills summarized in many of Isaeus' speeches (Is. 1.11; 3.1; 4.14, 16; 6.9, 21, 28; 9.11, 13, 37; 10.2, 9; cf. Dem 46.16 and Hyp. *Ath.* 17) do not show any inconsistency. Demosthenes discusses the procedure of *nomothesia* in his speeches *Against Leptines* and *Against Timocrates*. The two speeches serve very different purposes, and particular aspects of the procedure are stressed accordingly, but there is no major disagreement between the two accounts. The two accounts of the procedure are identical: proposals for new laws must be posted at the monument of the Eponymous Heroes for all to read (Dem. 20.94; 24.25) and any law contrary to the new proposal must first be repealed; if the proponent fails to do this, he can be charged in court (Dem. 20.93; 24.32).⁶² When one compares an orator's account of a document with the copy found in an inscription, they are completely consistent. In the speech *Against Leptines* Demosthenes summarizes the provisions of a decree granting *ateleia* to Epikerdes of Cyrene (Dem. 20.41-5), and several fragments of the actual decree confirm his words.⁶³ The same happens with the accounts of two of the legal texts in Demosthenes' *Against Aristocrates*, one at paragraph 37-8 (which matches ll. 26-9 of *IG I³ 104*) and one at paragraph 60-1 (cf. *IG I³ 104* ll. 37-8). In these cases the orator's accounts match the inscription almost word for word.⁶⁴ The evidence shows that speakers, when discussing a document right before or after the clerk read it out, avoided misrepresenting its words.

In short, there is no reason to believe that the orators deliberately distorted the provisions of a law or a decree. Their summaries should be considered basically

⁶⁰ Cf. Harris 2000: 59-67.

⁶¹ Cf. Harris 1995: 79.

⁶² See below pp. 122-35 for a detailed comparison of these two accounts of *nomothesia*. For further examples see below pp. 196-8 and 269-72.

⁶³ *IG I³ 25*. Cf. Meritt 1970; West 1995.

⁶⁴ Cf. Stroud 1968: 53-4, 57.

reliable, and can and should be tested against each other when the same document is discussed more than once. Further details can also be added to the picture from evidence from outside the orators. The document's contents should then be tested against these reconstructions.

It has now been established that the documents should not contradict the information found in their paraphrases, and should contain all the features there summarized. Sometimes however the documents also contain details absent from, or discrepancies with, their summary. This is sometimes understood as evidence for their authenticity. This assumption is unwarranted by the evidence. A quick look at the documents in Demosthenes' *On the Crown* and Aeschines' *Against Timarchus* clearly shows that the persons who composed the forged documents relied on the paraphrases found in the adjoining text but also added plenty of details to give the misleading impression that they had an independent source. Ironically enough, such attempts to make the document look authentic often resulted in introducing words or phrases that are inconsistent with the language and terminology of contemporary documents: features that prove that the document is not authentic. A good example of this is the law about *hybris* quoted at Aeschin. 1.16, universally recognised as a forgery.⁶⁵ Aeschines, right before the quotation, states that 'in that law it is explicitly written, that 'if anyone commits *hybris* against a boy [...] or against a man or a woman, either free or slave, or if he does anything *paranomon* against anyone of these persons', in such a case the law has provided for indictments for *hybris*.' The forged law, however, starts with: 'If any of the Athenians commits *hybris* against a free boy...' and ends with 'There shall also be liable to these actions those who have offended against the body of slaves.' Apart from the wording deliberately altered in the forged law, the content is heavily inconsistent, since men and women are ignored, and many details about the procedure are added,

⁶⁵ Cf. Drerup 1898: 305-8; Fisher 2001: 138-40. The translation is also taken from Fisher.

'based on casual reading of the speech' and the forger's 'own ideas.' Even though the forged document contains some of Aeschines' phrasing, in Fisher's words, the document 'does not reflect Aeschines' language at all closely.'⁶⁶ This habit can be easily spotted in most of the documents of this speech, as well as in those of Demosthenes' *On the Crown*. A text of particular interest is the alleged Ctesiphon's decree honouring Demosthenes (Dem. 18.118). This text contains many independent, and clearly invented, details, in spite of the fact that Dem. 18 and Aeschin. 3 discuss at length the relevant decree. The material was by far enough for the forger to rely on and thus fabricate a consistent document, yet he actually added details and modified the information taken from the speeches.⁶⁷ This evidence, coupled with the previous argument about the accuracy of the orators' paraphrases and summaries, shows that disagreement between the document and the orator's words, far from proving the authenticity of the document, may actually be grounds for declaring it a forgery.

Another important methodological point concerns the texts of the documents: one should analyse them as they are found in the *paradosis*. Scholars often attempt to remove the problems found in the documents by means of transpositions, emendations, and deletions. These attempts to 'improve' the text are not methodologically sound. If one can determine on the basis of external evidence that a particular document is genuine, it is then legitimate to attribute minor errors to scribes copying the text. But to assume that a document is genuine and therefore to attribute every mistake to medieval scribes begs the question.⁶⁸ Moreover, such hypotheses are often highly implausible on textual grounds. As we have seen, the Demosthenic *corpus* does not have a medieval archetype, and the medieval families have been shown to stem from different ancient editions, either of the entire *corpus* or of single speeches, all independent from the very

⁶⁶ Fisher 2001: 139.

⁶⁷ Cf. Schläpfer 1939: 79-91.

⁶⁸ So MacDowell, *CR* 35/2 (1985) 319.

beginning of the ancient tradition.⁶⁹ This means that one must either argue that the same errors originated independently in different manuscripts or attribute them to the common ancestor of the families and conclude that the errors were present when the document was first inserted. The first possibility can safely be ruled out. Small problems with the text can certainly be scribal mistakes from a very early stage of transmission, before the *corpus* spread around the Mediterranean Sea. In fact, small mistakes are found sometimes in Demosthenes' text consistently in all the tradition, and must be ascribed to the original *Urexemplar*.⁷⁰ But emendations, however small, should be proposed only when other tests for authenticity have been passed. But major problems with the text cannot be explained as scribal errors. They must be mistakes made by someone who composed the document after the Classical period and did not understand Athenian law and legal procedure.

The last methodological point concerns the comparative material used when examining the language and terminology of a document: documents should conform to the language, style and conventions of Classical Athenian inscriptions of the same type. Developments through the period should be taken into account, and the comparative weight of inscriptions closer in time to the document is greater. Slight variations might not amount to decisive evidence of forgery, since standard formulas can 'in fact appear in several forms with small verbal differences',⁷¹ but the presence in a document of words or expressions never found in similar Attic inscriptions, or in any Attic inscription at all, casts serious doubts on the document's authenticity. Conversely, language and terminology of laws and decrees from other communities cannot be used

⁶⁹ See above pp. 47-8.

⁷⁰ Pasquali 1934: 273.

⁷¹ Rhodes 1980: 309.

as parallels.⁷² Finally, parallels from literary prose cannot amount to decisive evidence for authenticity, since literary texts often present grammatical structures and terminology that is consistently absent from contemporary documents.⁷³

These methodological principles will guide my analysis of the documents. When these documents are inconsistent with their paraphrases, or present features that conflict with other reliable information about Athenian history, law and institutions, or language and formulas never found in contemporary inscriptions, I will deem them non-authentic. With this I mean that they do not descend through direct transmission from the actual texts of the documents discussed in the speeches and therefore someone fabricated them to fill gaps. Whether their details derive from the imagination of some forger, from passages in the orators (with some misunderstanding) or from other sources (again, with some misunderstanding), they are not reliable. At best they are very early and clumsy pseudo-scholarly attempts at reconstructing the lost documents, at worst pieces of historical fiction. In any case, they are not more reliable than the orators' paraphrases and historians should not use them in their reconstructions of facts, laws and procedures.

In my study I will use the word 'forgery' interchangeably with 'non-authentic'. I am aware that studies of literary forgeries, and in particular Speyer's masterpiece, have developed a stricter definition of 'forgery', and I am also aware that by Speyer's definition, my documents could hardly be considered 'forgeries'. Speyer writes at the beginning of his study 'Die Fälschung kann als eine besondere Erscheinungsform der Pseudepigraphie bestimmt werden. Die Begriffe literarische Fälschung und Pseudepigraphie verhalten sich dann wie Species und Genus zueinander. Ein

⁷² Cf. Rhodes with Lewis 1997 *passim* for plenty of examples of the differences between the language and formulas of decrees from different communities, and in particular pp. 550-63 for an account of influences and differences.

⁷³ A case is the third-person imperative in -τωσαν, often found in literary texts from Classical Athens but avoided in documentary texts before 351 BCE (and used very rarely between 350 and 322). Cf. Threatte 1980-96: vol. 2, pp. 462-6 and Harris, *CP* 87 (1992): 76-87; 2008: 89 n. 48.

Pseudepigraphon ist ein literarisches Werk, das nicht von dem Verfasser stammt, dem es der Titel (die Subscriptio), der Inhalt oder die Überlieferung zuweisen. Bei jedem antiken Schriftwerk ist zu prüfen, ob das behauptete Verhältnis von Verfasser und Werk zu Recht besteht. Eine Fälschung liegt dann vor, wenn der wirkliche Verfasser mit dem angegebenen nicht übereinstimmt und die Maske als Mittel gewählt wurde, um Absichten durchzusetzen, die außerhalb der Literatur, das heißt der Kunst, lagen. Nur wo Täuschungsabsicht, also *dolus malus*, vorliegt, wird der Tatbestand der Fälschung erfüllt.¹⁷⁴ If I were to stick to this definition, in order to call my non-authentic documents 'forgeries' I should demonstrate that they were created with the intention to deceive. As will be clear in my conclusions, I do not believe that they were, and I would more comfortably call them 'reconstructions'. However, Speyer's definition is intended for literary texts, and does not account for the particular typology of such hybrid texts, which are in fact documentary fabrics inserted and transmitted in literary texts. Moreover the word 'reconstruction' would leave room for misunderstanding: it would give the impression that with some caution scholars could still take advantage of the information provided by those documents that I show not to be authentic. My aim is instead that of making clear that those documents shown to be non-authentic, whatever the intention of their creator(s), are as a whole unreliable and should not be used as sources for Athenian history. I will therefore use the word 'forgery' as a warning for historians.

⁷⁴ Speyer 1971: 13, 111. See for similar definitions Metzger 1972: 4 and Eco 2007: 203-18, especially 203-4.

2. The documents of the speeches *On the Crown* (18) and *Against Meidias* (21)

The documents of *On the Crown* (18) and *Against Meidias* (21) were all absent from the *Urexemplar* of these speeches, and are therefore later insertions. They have been the objects of careful analysis during the 19th and the 20th centuries and are mostly considered unreliable. I will content myself here with a short summary of the scholarly opinions about their authenticity.

2.1 The documents of the speech *On the Crown* (18)

No doubt persists about the authenticity of the documents of the speech *On the Crown*. After the work of Droysen,⁷⁵ based mainly on comparison between the historical information found in the documents and independent reliable evidence, they have been recognized as forgeries, and most of the relevant 19th century scholarship, as well as Piero Treves' influential article of 1940, was concerned with identifying a context for the forgeries.⁷⁶ As for the original problem of the authenticity of the documents, no one in the 20th century questioned Droysen's conclusions, and in 1939 Schläpfer confirmed them with a careful comparison between the language of these documents and Athenian official language as we find it mainly in inscriptions.⁷⁷ Wankel, in his extensive commentary on the speech, relies on Schläpfer's analysis.⁷⁸

The speech *On the Crown* includes 28 documents: 16 decrees (two Amphictyonic decrees at § 154 and 155, one decree of the Byzantians and the Perinthians, and one of the Chersonesians at § 90-1 and 92, 11 Athenian decrees, § 29, 37, 74, 75, 84, 115, 116, 118, 164, 165, 181-7, and a prescript at § 155), 2 laws (§ 105, 120), 2 witness statements (§ 135, 137), 3 letters (§ 39, 77-8, 157), 2 registers (§ 106), 2 texts of responses of Philip (§ 166, 167) and the text of Aeschines' *graphe* against Ctesiphon (§ 54-5). There is no need for a new detailed analysis of these documents. I will content myself with listing a few examples of typical historical errors and features inconsistent with the language and formulas of authentic documents. The most obvious signs of forgery are the names of the archons: to give a few examples, the text of the *graphe* at § 54 has Chaerondas as Eponymous Archon, but Chaerondas was archon in 338/7 BCE,

⁷⁵ Droysen 1893: 95-266. His work encountered some hostility in the first few years after its publication, but was later widely accepted. See Drerup 1898: 223-9 and Schläpfer 1939: 12-8 for an account of the debate.

⁷⁶ See below pp. 305-8.

⁷⁷ Schläpfer 1939.

⁷⁸ Wankel 1976: *passim*.

and Aeschines indicted Ctesiphon's decree in 336.⁷⁹ The decrees at § 29 and 37 have a Mnesiphilus as Eponymous Archon, but no Mnesiphilus is attested as archon in the 4th century. The same is true for the Neocles of the decree at § 73. In this decree, not only the archon's name is invented, but also Eubulus, the famous statesman son of Spintharus, from Anaphlystos, becomes Eubulus son of Mnesitheus from Kopros.⁸⁰ At § 75 moreover Aristophon of Azenia becomes Aristophon of Kollytos.⁸¹ At § 105 the archon Polycles is again invented, and so on in nearly every decree quoted in the speech. In the document at § 29 we find five members appointed for the Second Embassy to Philip, and the only name that matches with independent reliable information is that of Aeschines. In fact, we know that there were 10 ambassadors, not 5, and Demosthenes was one of them.⁸² Another historical inaccuracy is the fact that at § 90-1 we find a decree of the Byzantians and the Perinthians, whereas at § 89 Demosthenes asks the clerk to read out two different decrees of each city. In fact, a unique decree for both cities presupposes their *sympoliteia*. However the *sympoliteia* between Byzantium and Perinthus dates to the 3rd century, was interrupted in 202/1 and resumed in 196.⁸³ In addition to these problems, the texts often present language and formulas inconsistent with contemporary material, and in particular the prescripts of the decrees do not resemble Athenian prescripts: a striking example is the beginning of the decree at § 115 (Ἄρχων Δημόνικος Φλυεύς, βοηδρομῶνος ἔκτη μετ' εἰκάδα, γνώμη βουλῆς καὶ δήμου, Καλλίας Φρεάρριος εἶπεν, ὅτι δοκεῖ τῇ βουλῇ καὶ τῷ δήμῳ στεφανῶσαι). Sometimes the documents also mention officials and procedures that did not exist in ancient Athens (e.g. the decree at § 73 refers to the commander of an Athenian fleet as ναύαρχος, which is not an Athenian office). Such features and

⁷⁹ See Harris 1995: 138-42.

⁸⁰ PAA s.v. Εὐβούλος (n. 428495).

⁸¹ PAA s.v. Ἀριστοφῶν (n. 176170).

⁸² Cf. Schläpfer 1939: 47 for more details about this document.

⁸³ Cf. Treves 1940: 158 and Wankel 1976: 497. About the *sympoliteia* see Robert 1935: 64 n. 2.

errors prove beyond doubt that the documents in the speech *On the Crown* are not authentic, and must be later forgeries.

2.2 The documents of the speech *Against Meidias* (21)

The speech *Against Meidias* reports 13 documents: 5 laws (§ 8, 10, 47, 94, 113), 6 witness statements (§ 22, 82, 93, 107, 121, 168) and two oracles (§ 52-3). These documents were the first to be questioned after Droysen's work about those of Dem. 18. Westermann in 1844 proved beyond doubt that all the witness statements preserved in the speech are later forgeries, and MacDowell confirmed his analyses in his commentary on the speech.⁸⁴ These documents contain many post-classical forms: e.g. § 22 has the words ἔπερχος, καταγίγνομαι and διάχρυσον that are unattested in Attic texts; § 82 has οἶδαμεν instead of ἴσμεν (the same form is found also in the documents at § 93 and 121) and κρίσιν λελογχότα instead of the Attic δίκην εἰληκότα; § 93 has τοῦ κακηγορίου instead of τῆς κακηγορίας, and the un-Attic expression καταβραβευθέντα. Similar problems are found also in the other witness statements.⁸⁵

In his work Westermann deemed also the 5 laws and the oracles forgeries, but his results have been sometimes criticized. In particular Hermann and later Lipsius tried to defend the authenticity of the law about *hybris* of § 47, whereas Muecke and notably Drerup brought further evidence of its inauthenticity.⁸⁶ At § 94 the document inserted is a law about private arbitration, while Demosthenes is discussing a law about public arbitration. Some scholars have argued that the inserted document is the wrong law, yet is still an authentic statute, but this view has been rejected by Latte and Gernet.⁸⁷ As for the other three laws, Westermann's results have been questioned by Drerup, who defended their authenticity.⁸⁸

More recently, MacDowell in his commentary on the speech sided with Latte and Gernet in rejecting the document at § 94, but defended the authenticity of the four other

⁸⁴ Westermann 1844: *passim*; Drerup 1898: 297, 313-4. MacDowell 1991: *passim*.

⁸⁵ See MacDowell 1990: 333, 343, 386.

⁸⁶ Hermann 1847; Lipsius 1905-15: 421-3. Muecke 1872; Drerup 1898: 297-300

⁸⁷ Latte, *Gnomon* 2/4 (1926): 211; Gernet 1939: 391 n. 3.

⁸⁸ Drerup 1898: 300-8.

laws and the two oracles.⁸⁹ However in a detailed analysis of the documents at § 8 and 47 published as part of a review of MacDowell's commentary Harris brought further evidence against their authenticity, and later strengthened his arguments and extended the analysis to all the documents in the speech.⁹⁰ His surveys have convincingly demonstrated that also the documents at § 8, 10, 47, 52-3, 113, considered reliable by MacDowell, present features that speak against their authenticity.⁹¹ The law at § 8 has the *prytaneis* presiding over meetings of the Assembly, whereas from 378 BCE this duty belonged to the *proedroi*.⁹² The summary of Demosthenes at § 9 rightly has the *proedroi*. The document also has the form παραδιδότωσαν. Imperatives in -τωσαν never appear in Attic inscriptions before 352/1 BCE, and only once in the next half-century, whereas they become common in Hellenistic times.⁹³ In the documents in this speech they appear four times (in this document and in those at § 10 and 94).⁹⁴ The document at § 10, apart from the imperative ἔστωσαν, mentions *komoi* as part of the City Dionysia, whereas the festival featured only children's choruses, men's choruses, tragedies and comedies (*IG II² 2318*) and fails to mention those that commit violence, discussed by Demosthenes in his summary.⁹⁵ The law about *hybris* at § 47, unlike normal Athenian statutes, treats *hybris* not as a distinctive kind of offence, but rather as a generic category covering any kind of crime. Moreover, the expression γραφὰς ἰδίας

⁸⁹ MacDowell 1990: 317-8. See pp. 226-8; 230-5, 263-8, 337-8 for the other documents.

⁹⁰ Harris, *CP* 87 (1992): 76-8; 2008: 86-7 and *passim*.

⁹¹ Cf. Faraguna, *BMCR* 2009.12.13.

⁹² Rhodes 1972: 25-7; 1981: 533-4.

⁹³ Threatte 1996: 462-6.

⁹⁴ Harris, *CP* 87 (1992): 76-87; 2008: 89 n. 48.

⁹⁵ Harris 2008: 90 n. 50. Scafuro 2004: 130-4 defends the authenticity of this law, proposing or accepting emendations that would solve its problems, or explaining *ignotum per ignotius*. This approach begs the question, and Harris has shown that the problems are more numerous than those she discusses. In particular, she claims that the problem of the imperatives in -τωσαν 'is a blow not to the authenticity of the law, but to its integrity - the law is corrupt'. A Hellenistic scribe would have changed the correct form into the one current in his own day. This explanation is hardly conceivable: the Demosthenic *corpus* as a whole shows only five imperatives in -τωσαν, all of them in documents (Dem. 21.8, 10, 94, 56.38). Why would such a change occur only in the documents, and only for this particular form? In fact the speeches of Demosthenes, and indeed the whole of Classical Athenian literature preserved, show plenty of Attic forms that would have sounded strange to Hellenistic copyists, and nevertheless they are still there for us to read. Why should this case in particular be different?

does not make any sense in classical Attic Greek. It can be explained only if we understand ἰδιος as 'one's own', but this meaning is unattested before the Hellenistic time.⁹⁶ The law at § 113 is inconsistent with contemporary laws on bribery. MacDowell explains this by postulating that this is an earlier law from the 6th century. However there are no archaic forms in its text that point to this hypothesis, and its provision could easily be the result of a forger's misunderstanding of Demosthenes' words.⁹⁷ Finally, the oracles at § 52-3 do not conform to their description in Demosthenes' discussion, and although they are supposed to resemble Athenian laws about the Dionysia prescribing to institute choruses, make sacrifices and wear crowns, the first oracle does not mention any chorus and the second has nothing to do with Dionysos. MacDowell has argued that, although quite irrelevant to Demosthenes' argument, they might come from an Athenian collection of oracles, and be the best that Demosthenes could find. Alternatively, they might have been added later, but still in Athens, from such a collection of oracles, and the editor just chose the wrong texts. However, their mixture of Attic, Ionic/Epic and Doric forms is strange for Delphic oracles, and moreover the adjective ἰδιος is used with the meaning 'one's own', like at § 47, which points to a Hellenistic rather than Classical origin.⁹⁸

To sum up, most of the documents of the *Against Meidias* are generally considered forgeries, and none of the most debated laws withstands careful scrutiny. These documents were not present in the *Urexemplar* of the speech, and never spread to the whole tradition of this speech (they are lacking in A). They are probably forgeries inserted in the speech at a later stage of its transmission.

⁹⁶ Harris, *CP* 87 (1992): 77-8; Fisher 2001: 139 tried to defend this document but see Harris 2008: 103-4 nn. 94-99.

⁹⁷ MacDowell 1983 but see Harris 2008: 127-8 n. 179.

⁹⁸ MacDowell 1990: 270-5 but see Harris 2008: 105-6 nn. 106-7.

3. The *Against Aristocrates* (23)

The laws quoted in the *Against Aristocrates* (23) have been a key topic in 19th century analyses of the documents inserted in the speeches of the Attic orators. There was a long period, until about the middle of the century, in which every scholar seemed to find unacceptable inconsistencies in each document, and therefore considered every one of them a late forgery, including those in this speech. Friedrich Franke in 1848 was the first to deal specifically with this speech and considered its documents forgeries. His work was influential in the following years and was still the polemical target of Drerup in 1898 when he was studying these documents once again.⁹⁹ Nevertheless, the period of general conviction about all the documents was about to come to an end, and the homicide statutes reported by this speech were the first to be defended. A stele dated to 409/8 BCE, with the reinscribed text of Draco's law on homicide, was discovered and restored by U. Köhler, given the scant letters still readable, with the help of the *Against Aristocrates* and the *Against Macartatus*.¹⁰⁰ This seemed to demonstrate that not all the documents were clumsy forgeries like those in the *On the Crown* (18). A further step, for the *Against Aristocrates*, was made by Theodor Bergk, who tried to find a place for nearly all the provisions of the speech in the inscription, thus stretching too far the correspondences between the statutes quoted in Demosthenes and the few letters read by Köhler.¹⁰¹ On the other side, A. Philippi repeatedly contested the authenticity of these documents and reasserted, despite the evidence of the inscription, Franke's opinion. His conclusions were still followed by N. Wecklein in 1873 and by W. Herz in 1878.¹⁰²

⁹⁹ Franke, 1848; Drerup 1898: 230, 264-280.

¹⁰⁰ Köhler 1867: 27-36. The inscription has been published, after Köhler, as *CIA* I.61, *IG* I² 115 and finally, with the major improvements due to the work of Stroud 1968, as *IG* I³ 104. Cf. also Dittenberger 1915-1924, v. 1: 150 n. 194.10.

¹⁰¹ Bergk 1873.

¹⁰² Cf. Philippi 1872; Philippi 1874: 333-361; Wecklein 1873; Herz 1878.

The work on these documents, as the work on the entire question of the authenticity of the insertions in the Attic orators, virtually ceased with the 1898 survey by Drerup. He devoted an entire chapter to the *Blutgesetze*, and concluded it with the assertion: 'Die Fälschung der in die Rede gegen Aristokrates eingelegte Blutgesetze darf hiernach nicht mehr als erwiesen gelten.'¹⁰³ This statement was repeated, with reference to Drerup, throughout the 20th century, and the authenticity of the documents has generally been accepted. For instance Volpis, in a singularly well informed school commentary on the *Against Aristocrates* published in 1936, considered the authenticity of the documents to be no longer under discussion,¹⁰⁴ and the huge amount of work on Dracos's legislation done through the century never again questioned the documents, often quoting them as evidence for the reconstruction of the homicide regulations both in classical Athens and in the archaic period. It must be noted however that the assertion made by Drerup relied on a specific understanding of the nature and internal consistency of those regulations, and not, as did the surveys by Franke and Herz, on technical matters and mere confrontation with the words of the orator commenting on the statute or, later, on double-checking with the scanty remnants of the inscription. Drerup, although he discussed some technical problems of the texts, mainly based his defence of the documents on his own reconstruction of homicide procedures. It is odd to find references to his work as the definitive demonstration of the authenticity of these documents in 20th century accounts of the homicide regulations, when these accounts are actually alternative to his reconstruction, and therefore implicitly undermine it.¹⁰⁵ A similar problem exists on the other hand with the only recent attempt to contest the authenticity of a document in this speech: Carawan tried to demonstrate that the law on

¹⁰³ Drerup 1898: 280.

¹⁰⁴ Volpis 1936: 22.

¹⁰⁵ Cf. e.g. Carawan 1998: 88 n. 5. Sealey 1983: 276 is more cautious and, while describing the context of Drerup's work as a 'skeptical age', writes that in Drerup's opinion the documents in the *Against Aristocrates* have not been demonstrated to be forgeries. Later he discusses the law at § 53, and even though he accepts it, his treatment is not uncritical.

just homicide quoted at § 53 is not the one intended by Demosthenes to be read out by the secretary, but a later one mistakenly inserted by a later editor of the speech.¹⁰⁶ His arguments, as we will see, are tightly bound with his own reconstruction of the Athenian regulations about homicide, and accordingly are hardly tenable unless one endorses this reconstruction. A more thoughtful position, is that expressed by Louis Gernet in his introduction to the speech. He asserts that «Il n’y a pas lieu de poser, pour le *Contre Aristocrate*, la question de l’authenticité des lemmes des nos manuscrits: presque toujours, l’orateur les reprend textuellement et intégralement». This is certainly true. He adds then to his statement that it is possible to find «une correspondance rigoureuse entre les citations de l’orateur et le texte épigraphique».¹⁰⁷

These statements will be the starting point of this survey. In fact, as far as the comparison with the epigraphical evidence is concerned, just two of the laws quoted in the speech can be confidently restored in the inscription: the law about the killer of a murderer who abides by his obligations (§ 37 at ll. 26-29), and that about just homicide if one’s own possessions are in danger (§ 60 at ll. 36-38). Other 19th century attempts to restore parts of the inscription,¹⁰⁸ such as the law on abusing or blackmailing a murderer (§ 28, at ll. 30-31),¹⁰⁹ proved impossible after the new edition of the stele by Ronald Stroud and the 218 new letters read by him. Both the passages are, as will become clear, closely commented on and repeated in Demosthenes’ text, except for a few differences in wording. These differences, however small, will be checked in order to understand whether the text of Demosthenes or the quoted documents best match the scant remnants on the stele. But the first assertion by Gernet deserves more attention: as I have said, it is certainly true that «presque toujours, l’orateur [...] reprend textuellement et intégralement» the laws just quoted, but this does not always happen. In every law it

¹⁰⁶ Carawan 1998: 92-96.

¹⁰⁷ Gernet-Humbert 1959: 104.

¹⁰⁸ Cf. e.g. Bergk 1873.

¹⁰⁹ This restoration was first proposed by Köhler 1867: 35.

is possible to find slight differences in wording, which are worth checking, but sometimes the differences are more important, and can vary from different words in the documents to an entire clause that does not correspond to the comments by Demosthenes (§ 28).

Given that the legal information provided by these documents is mainly reliable, since Demosthenes himself confirms it, the occasional oddities are the only clue to understanding how these documents came to be part of the stichometric edition. That is, they will be key for understanding whether these documents were already present in Demosthenes' text, or in a separate dossier kept by him with the speech, or whether it was the editor of the stichometric edition who added them. And in this case, did he collect them from stelai, from the archive or (more likely) from his own memory and with the help of the following Demosthenic paraphrases, or did he just invent them? In the next chapters I will analyse all the documents of the speech, closely comparing them with the corresponding comments by the orator.

All these documents are quoted and discussed at § 22-64 of the speech.¹¹⁰ The aim of this section is to demonstrate that the decree proposed by Aristocrates for Charidemus is illegal. This decree makes whoever kills the general liable to arrest everywhere in Athens and in the allies' territories.¹¹¹ Demosthenes argues that it violates all Athenian regulations about homicide. These statutes are discussed to show how Aristocrates' decree violates both their individual provisions and their general aim and spirit. They are collectively held to be part of the homicide regulations ascribed to Draco.¹¹² Afterwards two further laws are quoted at § 86 and 87, the first forbidding

¹¹⁰ For a recent general survey of the speech, mainly concerned with rhetorical matters, Cf. Papillon 1998.

¹¹¹ Cf. § 16: γέγραφε' εὐθὺς 'ἀγώγιμον ἐκ τῶν συμμάχων εἶναι.'

¹¹² This seems to imply the first comment on the law quoted at § 86, one of the two not concerned with homicide. Demosthenes explicitly states: Ἔστι μὲν οὐκέτι τῶν φονικῶν ὅδ' ὁ νῦν ἀνεγνωσμένος νόμος. Cf. Gagarin 1981: 27 n. 49. At § 51 Demosthenes states that all the laws quoted up to that point are Draconian. This is probably a 4th century simplification, while the homicide provisions actually

leges ad hominem, and the second stating that a decree can never take precedence over a law. These laws will be analyzed only briefly here, since they are very short and are perfectly attested in the present form, the first by Demosthenes' account following the document, the second by Andoc. 1.89 (and partly by § 87 itself, and by Dem. 24.30). The law forbidding *leges ad hominem* will be analysed more thoroughly later, in the context of the speech *Against Timocrates* where it presents itself in a slightly different way and with an additional clause.¹¹³

encompassed statutes dating to different moments of the Athenian constitutional development. Cf. MacDowell 1963: 6; Gagarin 1981: 28;

¹¹³ Cf. below p. 206-13.

3.1 Dem. 23.22: willing homicide and wounding, arson and poisoning

NOMOS EK TΩN ΦΟΝΙΚΩΝ ΝΟΜΩΝ ΤΩΝ ΕΞ ΑΡΕΙΟΥ ΠΑΓΟΥ.

Δικάζειν δὲ τὴν βουλὴν τὴν ἐν Ἀρείῳ πάγῳ φόνου καὶ τραύματος ἐκ προνοίας καὶ πυρκαϊᾶς καὶ φαρμάκων, ἐάν τις ἀποκτείνει δούς.

EK TΩN ΦΟΝΙΚΩΝ ΝΟΜΩΝ ΤΩΝ ΕΞ ΑΡΕΙΟΥ ΠΑΓΟΥ om. cod. V : del. Dindorf coll.

51 : ΝΟΜΟΣ rubro scriptum est in SYP : om. F

LAW FROM THE LAWS ON HOMICIDE OF THE AREOPAGUS

The council of the Areopagus shall judge cases of intentional homicide and wounding, of arson and of poisoning, if someone kills by giving poison.

This law is not found in *IG I*³ 104. It is quoted almost *verbatim* at § 24. The words of Demosthenes read: τὴν βουλὴν δικάζειν φόνου καὶ τραύματος ἐκ προνοίας καὶ πυρκαϊᾶς καὶ φαρμάκων, ἐάν τις ἀποκτείνει δούς. The only differences between the document and Demosthenes' comment are the word order at the beginning of the sentence, and the absence of the specification τὴν ἐν Ἀρείῳ πάγῳ in Demosthenes' version. The word order is in this case scarcely significant, as the evidence for archaic Athens is very scanty, and, even if we limit our survey to the law reinscribed in *IG I*³ 104, in the first three lines both the cases are easily found: δικάζεν δὲ τοὺς βασιλέας at ll. 1-2 and τοὺς δὲ ἐφέτας διαγνῶναι at l. 3.

More interesting is that the expression τὴν ἐν Ἀρείῳ πάγῳ, related to τὴν βουλὴν, is absent from Demosthenes' words. There is no doubt that this expression is correct. Demosthenes himself at § 67 states that the Areopagos is to judge homicide cases, and at § 66 he asserts that it has never been deprived of such a competence.

Furthermore Poll. 8.117¹¹⁴ and *Ath.Pol.* 57.3 confirm that its competence refers specifically to φόνος and τραῦμα ἐκ προνοίας, πυρκαϊᾶς and φαρμάκων, ἐάν τις ἀποκτείνῃ δούς. Din. 1.6 also states that the Areopagus judged cases of φόνος ἐκ προνοίας. Nevertheless, the fact that the information provided by this expression is correct does not guarantee that it had a place in the law.

Franke argued that the expression is actually superfluous, for it is clear from the *lemma*, pointing to some stele on the Areopagos, that the council concerned is the Areopagus.¹¹⁵ The argument as it stands is far from conclusive. Yet Herz rightly noted that the use of βουλή alone referring to the Areopagos Council is far from infrequent.¹¹⁶ In fact, it recurs very often in the Attic orators: Herz gave as references Lys. 3.1, 3, 4, 5, 9, 10, 15, 18, 21, 23, 26, 28, 35, 40, and in Lys. 4.1, 12, 18, 19. More significant than these, where the expression is always the vocative ὦ βουλή pointing to the judges in a case of τραῦμα ἐκ προνοίας, it must be noted that βουλή alone recurs in both the already mentioned passages of Din. 1.6, which reads ἡ τῶν ἐκ προνοίας φόνων ἀξιόπιστος οὖσα βουλή, and *Ath.Pol.* 57.3 (εἰσὶ δὲ φόν[ου] δίκαι καὶ τραύματος, ἂν μὲν ἐκ προνοίας ἀποκτείνῃ ἢ τρώσῃ, ἐν Ἀρείῳ πάγῳ, καὶ φαρμάκων, ἐὰν ἀποκτείνῃ δούς, καὶ πυρκαϊᾶς· ταῦτα γὰρ ἡ βουλή μόνα δικάζει). This second passage actually names the Areopagos, but just as a place, as it does a few lines later with the Palladion, the Delphinion and the Phreatto. Afterwards, when referring to the council sitting up there, the expression is again just ἡ βουλή. The same happens in the *Against Aristocrates* again at § 215, where the first quoted law is recalled and the Areopagos Council is called just βουλή (ὁ πρῶτος νόμος ἄντικρυς εἶρηκεν, ἂν τις ἀποκτείνῃ, τὴν βουλήν δικάζειν). These references are not conclusive either, but they probably recall the text of the law nearly word for word. Yet the condition for assuming

¹¹⁴ Although the piece of information in this case could easily derive from the passage of Demosthenes discussed here.

¹¹⁵ Franke 1848: 4, I, 6.

¹¹⁶ Herz 1878: 17.

that the law presented just the word βουλή, without specific mention of the Areopagos, is that this law was part of a statute in which the reference to the Areopagos was self-evident. Otherwise such vagueness would have led to misunderstandings.¹¹⁷

Gagarin made a good case for a stele reporting all the regulations somehow relevant to the Areopagos Council.¹¹⁸ He mentioned as evidence for this, apart from the *lemma* preceding this law, Lys. 1.30 and 6.15. In the second case the topic is τραῦμα ἐκ προνοίας, and the wrongdoer is to be punished κατὰ τοὺς νόμους τοὺς ἐξ Ἀρείου πάγου. This may refer to the law discussed here, perhaps with the addition of some more specific regulations concerned with intentional wounding. Lys. 1.30 on the other hand is more precise. The law mentioned there is clearly the one quoted and discussed at Dem. 23.53-55,¹¹⁹ and is said to come ἐκ τῆς στήλης τῆς ἐξ Ἀρείου πάγου. The form βουλή without the mention of the Areopagos is not just attested by many references and actual rewordings of the law, but was understandable from the context of the law.

Yet the stele, in Gagarin's reconstruction, seems to encompass provisions like the one we read at § 53, which were originally part of other statutes, and were inscribed also but not only on the Areopagos.¹²⁰ Was this law one of these? Ruschenbusch calls the provision 'Gesetz über die Blutgerichtsbarkeit des Areopag'.¹²¹ This definition could ascribe the provision to general regulations about homicide jurisdiction, and therefore to a context not specifically related to the Areopagos. It may well be true, as is argued by Gagarin,¹²² that this law served as an amendment to Draco's homicide law, which

¹¹⁷ Unless we follow [Arist.] *Ath.Pol.* 8.4, which states that the Council was created by Solon. If this piece of information is reliable, then no misunderstanding would have been possible, since before Solon the Areopagos Council would have been the only one in existence. In any case, even if we consider this piece of information unreliable, the mention of the Areopagos in the law is still not necessary: see below.

¹¹⁸ Gagarin 1981: 26-29.

¹¹⁹ The law on just homicide, and not on *moicheia*. Cf. Harris 2006: 283-296.

¹²⁰ Gagarin 1981: 27.

¹²¹ Ruschenbusch 1960: 131.

¹²² Gagarin 1981: 136.

granted to the Areopagites jurisdiction over φόνος ἐκ προνοίας,¹²³ previously judged by the *ephetai*. However, the regulation itself does not seem to be part of a law about homicide. It is instead a law about the jurisdiction of the Areopagos Council, stating its competence not just over intentional homicide, but also over intentional wounding, arson and poisoning.¹²⁴ It could easily have encompassed other provisions regarding the Council. The attempts to narrow the range of these competences, interpreting all these cases as related to homicide, are not convincing. If poisoning is linked by the text of the law itself to homicide, the interpretation of τραῦμα ἐκ προνοίας as wounding with the intent to kill, 'premeditated homicide that failed' as Wallace calls it, is less straightforward. It is witnessed by the defendants in Lys. 3 and 4, and their interpretation has gained wide support among modern scholars.¹²⁵ Yet it is clear that narrowing the meaning of προνοία so that the plaintiff must demonstrate not just that the wounding was intentional, but also that the aim was actually killing, serves the defendant well by making the task of the accuser much more difficult. The word προνοία has been identified as a case of open texture, and it is very doubtful whether the narrow interpretation of the term was the predominant one. In fact, it is likely that wounding, in order to be considered τραῦμα ἐκ προνοίας, required no more than intent to wound.¹²⁶ As for arson, Bonner and Smith maintain that this crime was 'closely connected with homicide cases, because arson might involve loss of life.'¹²⁷ This is stretching the evidence. Killing by arson is not different from other kinds of homicide, as it could be intentional or not. Reading this passage as referring to homicide would

¹²³ ἐκ προνοίας is interpreted by MacDowell 1963: 45 as referring to at least both φόνος and τραῦμα, as shown by [Arist.] *Ath.Pol.* 57.3. Gagarin 1981: 106 n. 12 on the other hand reads the expression as referring just to τραῦμα. φόμος would indicate intentional killing by itself, without further specifications. It is easier to follow MacDowell in this case, as not just *Ath.Pol.* but also Din. 1.6 seems to support his reading.

¹²⁴ Cf. also Carawan 1998: 89-90.

¹²⁵ Cf. Lipsius 1905-1915: 605-607; Hansen 1981:14-16; Wallace 1989: 105.

¹²⁶ Cf. Phillips 2007: 85. See Loomis 1972 (with some misunderstandings) and Harris 2004: 245-51 for the meaning of ἐκ προνοίας.

¹²⁷ Bonner-Smith 1930: I, 258. Cf. also Gilbert-Brooks 1895: 280. Rhodes 1981: 642 considers this possible, but not definitely true.

imply that killing by arson alone would have been judged by the Areopagos Council, in spite of whether it was intentional. The evidence is too scanty for supporting such an anomaly.¹²⁸ The provision regarded the jurisdiction of the Areopagos Council, not specifically homicide. Therefore, even if Gagarin¹²⁹ was wrong in thinking that it was inscribed just on the stele on the Areopagos, the topic of the law in general, the Areopagos Council, would have made clear which was the βουλή in question, wherever it was inscribed (or archived).¹³⁰

A piece of evidence provided by Hansen¹³¹ in order to support the assumption that this provision regarded homicide and not simply the jurisdiction of the Areopagos, deserves further discussion since it can shed some light on the tradition of the text. This evidence is the *lemma* ΝΟΜΟΣ ΕΚ ΤΩΝ ΦΟΝΙΚΩΝ ΝΟΜΩΝ ΤΩΝ ΕΞ ΑΡΕΙΟΥ ΠΑΓΟΥ.

This *lemma* appears in the medieval manuscripts in a puzzling manner. In SYP the first word ΝΟΜΟΣ is written in red, followed by the rest of the expression in regular ink. In F on the other hand the word ΝΟΜΟΣ is completely missing, and just the following ΕΚ ΤΩΝ ΦΟΝΙΚΩΝ ΝΟΜΩΝ ΤΩΝ ΕΞ ΑΡΕΙΟΥ ΠΑΓΟΥ is found. Finally, a later manuscript from the 15th century, the *Coislinianus Graecus* 339, does not give the second part at all. Dindorf interpreted this puzzling tradition as a sign of interpolation, and Sykutris considered the suggestion likely. The second part of the *lemma* would be a *glossa* derived from § 51: ‘Ο μὲν νόμος ἐστὶν οὗτος Δράκοντος, ὦ ἄνδρες Ἀθηναῖοι, καὶ οἱ ἄλλοι δὲ ὅσους ἐκ τῶν φονικῶν νόμων παρεγραψάμην. The interpretation of the oddities in the tradition is not very straightforward. It is not clear which one would be the gloss, whether ΝΟΜΟΣ or ΕΚ ΤΩΝ ΦΟΝΙΚΩΝ ΝΟΜΩΝ ΤΩΝ ΕΞ ΑΡΕΙΟΥ ΠΑΓΟΥ, since the manuscript

¹²⁸ Cf. MacDowell 1978: 150; Wallace 1989: 105-106.

¹²⁹ Gagarin 1981: 136.

¹³⁰ Pace Drerup 1898: 279.

¹³¹ Hansen 1981: 14-16.

without the second part is a later one, and corruption is a plausible explanation. Yet the difference in color in SY and P shows that the two parts of the *lemma* did not remain on the same level. The lines of tradition represented by these manuscripts might have come to agree in showing such a strange feature either by contamination or through a common ancestor for this speech,¹³² but in both cases what seems evident is that at some stage something was added to an original reading, whether as a gloss or from another line of tradition it is not possible to tell. The manuscript F, which shows just the second part, might be a medieval witness of an ancient line in which the *lemma* did not encompass the word ΝΟΜΟΣ, but a corruption again cannot be excluded. In any case, what seems clear from such a variable tradition is that some work on the *lemma* was done both in the ancient times and in the Middle Ages, and nothing of it can be confidently said to stem back to an *Urexemplar*, let alone the orator's own draft. The second part of the *lemma* was added at some point (here Dindorf was probably right)¹³³ according to what the orator says at § 51, but was not there at the beginning, nor, as the document here was already in the stichometric edition, when the document was first inserted. It cannot therefore provide any reliable information about the heading of the law, nor support in any way the claim that the law as a whole concerns homicide. Hansen claims also that even if we do not accept the information provided by the *lemma*, the orator's assertion at § 51 that all the laws quoted come ἐκ τῶν φονικῶν νόμων is by itself enough evidence that also the first one is concerned primarily with homicide. This argument is not cogent either. In the same sentence Demosthenes states that these laws are all Draconian regulations, while it is clear that many of them cannot

¹³² A specific and thorough analysis of the tradition of this speech is still missing.

¹³³ Cf. also Drerup 1898: 279.

be part of Draco's legislation as they mention institutions that came into being much later.¹³⁴

To sum up, there is no good evidence that this first law was technically speaking part of the homicide regulations, even if it is plausible that this text transferred the competence over intentional homicide to the Areopagos Council. It dealt with other matters such as intentional wounding and arson (and poisoning). The unifying character of the provision is therefore the Areopagos Council's jurisdiction, and the *lemma* which precedes the document in Demosthenes' text, apart from being very insecure on textual grounds, is inconsistent with the document itself insofar as it repeats a simplification asserted by the orator at § 51, where he attributes all the provisions to Draco and claims that they are all concerned with homicide. The law deals instead with the Areopagos Council and so, whether it was inscribed just on the Areopagos itself or anywhere else, it was clear from the context which βουλή was actually meant. This clearly accounts for the reliability of the form used by all the extant sources paraphrasing this statute, which is invariably just βουλή instead of a more complete expression like the one of the document, τὴν βουλήν τὴν ἐν Ἀρείῳ πάγῳ.

What does this imply for the history of the document inserted in the speech? ¹³⁵ First of all, it must be accepted that this text, as the other ones in the speech, was part of the stichometric edition. It does not contain any feature which can set it apart from the rest of the documents quoted later on. Secondly, following Dindorf, it can be confidently said that the *lemma* as we read it was not in the text when the document was

¹³⁴ The Areopagus Council as a βουλή was created and judged homicide cases just after Draco, Cf. Plut. Sol. 19; Gagarin 1981: 125-132; Carawan 1998: 6-17; Wallace 1989: 34-39, even if he argues that the Areopagos at the time of Solon had already been a site for homicide trials for a long time, accepts that the judges up there were, before Solon, 51 *ephetai* and not a βουλή. The Heliaia was created as a tribunal by Solon, cf. Hansen 1981-2 and Boegehold 1995: 3-6. About the 'doctrine of continuity' expressed in this speech (and elsewhere) see Phillips 2008: 152.

¹³⁵ Other features of the document usually discussed, such as the actual meaning of the expression φαρμάκων, ἐάν τις ἀποκτείνει δούς, or the position of ἐκ προνοίας, have not been thoroughly treated here as they are not relevant in explaining the tradition of the document. They appear in fact in the same fashion in the orator's paraphrase, and every difficulty must be ascribed to the law itself, not to the document.

inserted. Moreover it is dubious, if we accept that the form in the statute was the simple βουλή, that the document in this form was already in the dossier handed by the orator to be read out during the trial. The specification τὴν ἐν Ἀρείῳ πάγῳ can in fact be considered an explanatory gloss, hardly needed by the orator or by the Athenian judges, let alone by the secretary of the court, and we know that the statutes sealed in the *echinos* and then spelled out during the trial had to be an accurate copy of the official ones.¹³⁶ Accordingly, as far as we can tell at this point in the survey, the condition of the text can be explained in only a few ways. It is possible that the original text was an accurate one, and the gloss entered later, or it might have been inserted in this fashion from the beginning. In the first case, we should think of an accurate text that already accompanied the orator's draft, possibly a copy of the dossier sealed in the *echinos*. This copy has been later inserted in the speech, and glossed before the speech (and the *corpus*) spread around the Mediterranean Sea. The manuscripts present a perfectly consistent text, and such a widespread, or better, total episode of contamination happening later in the transmission would be implausible. Therefore the gloss was inserted very early, before the stichometry was added and before the text traveled around the ancient world. We are talking again of the *Urexemplar*. The second possibility is that the text was inserted already with the specification. The text would again be the *Urexemplar*, before the stichometry was added, but in this case the person responsible for the preservation cannot be, as we saw, the orator. It is necessary to assume that both the text and the expression are the work of the early editor(s) of the *Urexemplar*.

In the first case the addition, more than a deliberate forgery of the text, would be an attempt to make the law intelligible with a view to a wider circulation. The absence

¹³⁶ Cf. Rhodes 1995: 310-311; Rubinstein 2000: 72 and n. 143; Cobetto Ghiggia 2002: 190-193; Fezzi 2004: 109-115; Faraguna 2009: 62-63 and *passim*.

at this stage of the mention of the Areopagos in the *lemma* made in fact such an addition very useful in order to understand the provision. On the other hand, the same reason can account for the addition also if the entire document was inserted in this fashion from the beginning. The text is no longer intended at this point to be spoken in front of the judges, but as a written work meant to be read and circulated. The addition of an explanatory gloss while integrating the documents into the speech does not mean therefore that the interpolation was inaccurate as a whole. The editor(s) may have added the gloss for intelligibility's sake, but at the same time may have chosen to use the exact word order of the statute, instead of the one used by Demosthenes in his paraphrase.¹³⁷

These two hypotheses can be easily reduced to one: we know, as has been shown before, from many sources about Athenian judicial practice and from the very absence of a huge amount of documents not just from the stichometry but from all the manuscripts, both ancient and modern, of all the orators, that the orators' drafts usually did not contain any document. Therefore, whatever the source of the text, a chart among Demosthenes' possessions, a stele, a copy consulted in the archive or even the editor's memory of a famous law helped by the following Demosthenes' paraphrase, someone at some point decided to insert this document (and the following ones) while copying the speech. Thus this first document in the stichometry shows that some editorial work over the quoted laws was actually done in composing the *Urexemplar*. Furthermore, the general reliability of this document and of the following ones points towards the hypothesis of a competent editor, an expert in Athenian laws and institutions, acting at a very early stage of transmission.

¹³⁷ The hypothesis of two different versions of the same law, slightly different in wording and only in one case encompassing the further specification about the Areopagos cannot be completely ruled out. Also in this case, some editorial work in this first phase of tradition is clear, since the editor used a different version of the text for his insertion, ignoring the version paraphrased by Demosthenes. Nevertheless it must be admitted that all the evidence accounts at least for a much wider popularity of the provision without the further specification.

3.2 Dem. 23.28: prohibition of torture and ransom

NOMOS.

Τοὺς δ' ἀνδροφόνους ἐξεῖναι ἀποκτείνειν ἐν τῇ ἡμεδαπῇ καὶ ἀπάγειν, ὥς ἐν τῷ <α'> ἄξονι ἀγορεύει, λυμαίνεσθαι δὲ μή, μηδὲ ἀποινᾶν, ἢ διπλοῦν ὀφείλειν ὅσον ἂν καταβλάψῃ. εἰσφέρειν δ' ἐ<ς> τοὺς ἄρχοντας, ὧν ἕκαστοι δικασταί εἰσι, τῷ βουλομένῳ. τὴν δ' ἡλιαίαν διαγιγνώσκειν.

εἰσφέρειν- διαγιγνώσκειν Lex. Pat. ad loc.

<α'> ἄξονι add. Cobet | ἀπαγορεύει A | δ' ἐ<ς> add. Schelling : δὲ codd. : om. Y | ἀναγιγνώσκειν S^aY

It shall be lawful to kill murderers in our land, and to arrest them, as declared in the first axon, but not to maltreat them, nor to demand a ransom, otherwise twice the harm brought about shall be paid. It shall be possible for everyone who wishes to carry out the case to introduce it before the archons, according to their competence. The Heliaia is to give judgement.

This law has been the object of much controversy, and its authenticity has often been questioned. In fact, just the first part of it is quoted in the following account given by the orator, whereas everything from ἢ διπλοῦν ὀφείλειν on is present only in the document. Demosthenes interprets it in a specific way: it is possible to ἀποκτείνειν (in the context 'cause the death', rather than just directly 'kill')¹³⁸ and arrest convicted murderers (§ 29 τοὺς ἀνδροφόνους... § 31 ἐξεῖναι ἀποκτείνειν καὶ ἀπάγειν), yet not any way one pleases, but in accordance with the axon (ὥς ἐν τῷ ἄξονι εἴρηται). The axon states, according to the orator, that they must be brought to the *thesmothetai*.

¹³⁸ Harris 2006: 391-404.

The *thesmothetai* then have the power to kill them. This means, in Demosthenes' interpretation, that the convicted murderer is punished by the law, and not by his personal enemies. The sense thus would be that the words ἀποκτείνειν καὶ ἀπάγειν do not refer to different choices, but to different stages of the same procedure: seizing the murderer, carrying him off to the thesmothetai, and then having him killed by them. Demosthenes carries on quoting the words of the law λυμαίνεσθαι δὲ [...] μή, μηδὲ ἀποινᾶν': no one can maltreat a convicted murderer, or demand a ransom for him. Then the orator sums up, reporting that the statute asserts how a convicted murderer must be put to death, and the place for doing that: τὴν τοῦ πεπονθότος εἰπὼν πατρίδα. The relationship between this statute and Aristocrates' decree is found at § 35: the laws allow the seizure of a convicted murderer just ἐν τῇ ἡμεδαπῇ, while Aristocrates wants to allow it also in the territory of the allies. Moreover, even when the seizure is allowed, it must be carried out in order to hand the murderer over to the thesmothetai (Demosthenes already told that this is what the axon states), therefore as an arrest, not as a private seizure.

This is all we can get from Demosthenes' explanation of the law read out by the secretary. The following part of the document has no parallel in his summary. For the purpose of understanding the nature of the document it will be useful first of all to analyse the consistency of the document's words with the following paraphrase, as far as the parallel goes. It will then be possible to work on the second part, where no comparison is available and therefore the only criterion shall be the internal consistency of the statute.

As for the first part of the statute, the only real differences between the document and the following account are the expression ἐν τῇ ἡμεδαπῇ, and the verb ἀγορεύει instead of εἴρηται. The expression ἐν τῇ ἡμεδαπῇ, even though it is not repeated immediately by Demosthenes, is found twice later at § 35, and the fact that some place

limitation on the applicability of the statute was imposed by the statute itself is openly stressed by Demosthenes at § 34-35. It is unlikely that he reserved so much space for a provision which was not even in the text read out by the secretary. Such a provision therefore must be postulated in the law to which Demosthenes is referring,¹³⁹ and therefore there are no problems with this particular expression. ἐν τῇ ἡμεδαπῇ in fact seems to have been part of the law inserted at § 44, and is safely attested in *IG I³ 104* at l. 30;¹⁴⁰ it was a common term in homicide statutes.¹⁴¹ As for the verb ἀγορεύει instead of εἴρηται, Franke asserted that this difference must be due to the forger, who tried to be at least a little bit detached from the text of the orator.¹⁴² This is hardly strong evidence against the document, since one single different word, a synonym, is not conclusive evidence. Nevertheless, it might be pertinent to quote Henri Weil on this matter: 'L'orateur a mis un équivalent pour ne pas dire 'ἀγορεύει' φησίν'.¹⁴³ Indeed, here the *variatio* (namely the avoidance of two consecutive present indicatives) is in the orator's version, and not in the document.

Apart from the differences between this sentence and the following account, which have been demonstrated not to be sufficient evidence against the reliability of the first part of the document, the most puzzling feature is still the clause ὡς ἐν τῷ ἄξιον ἀγορεύει. Herz wrongly thought that this was written by Demosthenes not as a quotation of the law, but as an explanation of its provisions, mechanically taken by the forger as part of them, and therefore copied in the document.¹⁴⁴ This assumption is untenable, since the clause is followed in Demosthenes' account by φησίν, clearly pointing to the law. The same structure is found at § 29, where the quotation τοὺς

¹³⁹ Drerup 1898: 270 rightly made this point.

¹⁴⁰ It is also very common in the 5th century: Cf. *IG I³ 52*, *IG I³ 372*, *IG I³ 376*, *IG I³ 378*, *IG I³ 383*.

¹⁴¹ Pace Franke 1848: 4, II and Herz 1878: 18-19. Philippi 1872: 577 ff. defends the expression, thinking with Köhler 1867: 35 that this part of the sentence was present in *IG I³ 104* at ll. 30-31. This is questionable (see below), but Philippi in principle is probably right.

¹⁴² Franke 1848: 5. Cf. also Herz 1878: 20-21.

¹⁴³ Weil 1886: 200 n. 5. Cf. also Drerup 1898: 270-271. He considered the orator's variant nothing more than 'redaktioneller Art'.

¹⁴⁴ Herz 1878: 20-21.

ἀνδροφόνους is again followed by φησίν. Köhler on the other hand restored the whole first part of the document, up to καταβλάψῃ, with the exception of this clause, at ll. 30-32 of *IG I³ 104*.¹⁴⁵ The clause ὥς ἐν τῷ ἄξονι ἀγορεύει, together with the whole inserted document, would therefore be an allusion to Draco's axon in a later amendment, stating limitations to the original measures, which were aimed at strengthening the devices of self-help.¹⁴⁶ Therefore Köhler corrected the text of the document, moving the reference to the axon after καταβλάψῃ, and considered the *paradosis* the result of textual corruption.¹⁴⁷ Philippi,¹⁴⁸ even though he considered the document a later amendment to Draco's law, contested this restoration, arguing, on the ground of Demosthenes' interpretation of the statute,¹⁴⁹ that the mention of the axon is not meant to allude to Draco's homicide laws, but to explain the range of applicability of the word ἀπάγειν by referring to Solon's provisions on *apagoge*.¹⁵⁰ The reference must therefore remain after ἀπάγειν. The same reading of the reference has been advanced by Gilbert.¹⁵¹ This first part of the provision would accordingly have been part of Draco's law, but just up to ἀπάγειν, without further explanation, as the mention of ἀπάγειν relied at the time of Draco on general knowledge. Afterwards, when an amendment was passed, the further specification was added in order to qualify the word ἀπάγειν in accordance with the new relevant regulations. Philippi and Gilbert have

¹⁴⁵ Köhler 1867: 35.

¹⁴⁶ This point has been made later by Hansen 1976: 100-103, 111-112, followed by Carawan 1998: 82. Cf. Democritus, B257-259 Diels-Kranz.

¹⁴⁷ He was also forced by the inscription to move ἐν τῇ ἡμεδαπῇ after both ἀποκτείνειν and ἀπάγειν. Stroud 1968: 55 n. 102 has followed him in this respect. Nevertheless, even if the integration is correct, this scarcely affects the document. It is not in any case a reproduction of Draco's law, but a later amendment, and therefore the word order of the stele is not reliable evidence on its own.

¹⁴⁸ Philippi 1874: 580-584.

¹⁴⁹ Cf. also Weber 1845: 158, who had already hinted at this possible interpretation.

¹⁵⁰ Herz 1878: 20-21, even though he did not understand that the document was not meant to be the original Draco's law but just an amendment to it, and therefore cast the reference to the axon out of it, still interpreted the same reference, when given by Demosthenes, as pointing to the statute about *apagoge*. He tried to support this view with the argument that Demosthenes says 'to kill and to arrest', understood as parts of the same procedure, otherwise they would have been 'to kill or to carry off'. This argument is pointless: the provision stated what is permitted by the law, and both the conjunctions fit just as well a list of actions, related to each other or not.

¹⁵¹ Gilbert-Brooks 1895: 486. Cf. also Glotz 1973: 319 ff.

been demonstrated by Stroud¹⁵² to be right at least in restoring the inscription only up to ἀπάγειν, since the whole sentence up to καταβλάψῃ is incompatible with new letters read by him in the inscription.¹⁵³ But are they right also in considering, with Demosthenes, the clause ὡς ἐν τῷ ἄξονι ἀγορεύει to refer to Solon's *apagoge* regulations? This question is difficult to answer, but if the restoration of ll. 30-31 of *IG* I³ 104 proposed by Stroud ([ἐξ]εῖ[ναι δὲ τοὺς ἀνδροφόνους ἀποκτείνειν ἢ ἀπάγειν, ἐὰν ἐν] τῇ ἡμεδ[απῇ...]) is in principle correct,¹⁵⁴ as the succession of the provisions in the statute makes very likely, then assuming with Philippi and Gilbert that the document was an amendment to Draco's law but that his internal reference pointed to some other statute about *apagoge*, is at least uneconomical. Demosthenes has probably misunderstood the reference, or twisted it in order to claim that no one was allowed to kill personally a convicted killer even in the Athenian territory, but had to bring him to the *thesmothetai* for execution. Thus he made Aristocrates' decree seem even more illegal. The internal reference pointed to Draco's law, of which our text is an amendment, and the discovery by Stroud of the heading of a 'second axon' at the bottom of the stele (*IG* I³ 104)¹⁵⁵ makes the proposal by Cobet of integrating α' to indicate the number of the axon very likely.¹⁵⁶

At this point in the enquiry we have an arguably reliable document reproducing, at least in its first part, an amendment to a provision originally found in Draco's law.

¹⁵² Stroud 1968: 54-55.

¹⁵³ Drerup 1898: 268, even though he did not employ any new evidence provided by the inscription, endorsed their conclusions with some very pertinent considerations: if Draco's law contained also the prohibition on maltreatment and ransom, then one should expect the means for enforcing this provision to be clearly stated as well. In other words, we cannot imagine that this part was in the law, without admitting that the following provisions on the penalty and the competent magistrates must also have been encompassed. But they definitely cannot fit the inscription. Therefore everything after ἀπάγειν must be ruled out.

¹⁵⁴ Stroud 1968: 54-56, in particular n. 102. His integration is suggested just *exempli gratia*, and Gagarin 1981: 61 n. 85 is probably right in pointing out that, according to the general usage of the stele, we would expect here the verb κτείνειν rather than ἀποκτείνειν. But, even with a slight rewording, such as the καὶ κτείνειν καπάγειν proposed by Gagarin, Stroud's guess is still valid.

¹⁵⁵ Stroud 1968: 55 n. 101.

¹⁵⁶ Cf. also Gagarin 1981: 25 n. 44 (*pace* Ruschenbusch 2010: 45). Against this integration is Carawan 1998: 91 n. 9, who thinks that the amendment was inscribed before the relevant axon, and therefore did not need any further specification.

This amendment was therefore later than Draco, and added to the original right to kill or arrest the murderer the prohibition on maltreating him or asking a ransom. The following account given by Demosthenes widely confirms the document up to this point and, when some difference is found, the document seems to be acceptable. By contrast, as for the second part of the document, no parallel by the orator is available.

This second part begins with the statement of the penalty for people who maltreat the convicted murderer, or demand a ransom for him. This must be the payment of twice the harm brought about. A similar provision is found in Dem. 21.43. Demosthenes is there talking about the law on damage, which states that a damage, if caused voluntarily, must be compensated by twice its original value, whereas if it is involuntary, by the single amount. Franke argues that this must be the source of the forger, since a provision about *blabe* has nothing to do with a law on homicide, and hence the punishment for such offences must have been administered according to the law on damage, without any need to repeat here the relevant penalty.¹⁵⁷ With just this clause as evidence nothing definitive can be said about this matter, except that the statement of the penalty at this point, even though it seems the same as in the case of a normal *dike blabes*, would not be pointless. A *dike blabes*, inasmuch as it is a *dike*, can be brought just by the victim of the offence. Now, in this particular case, the victim is *atimos* because of the conviction in the previous homicide trial, and therefore has no possibility of prosecuting the offender. As a result, this statute, if it is reliable, does not repeat a provision of the *dike blabes*, but states the same penalty, for a similar offence, in a different kind of trial, arguably a *graphe* brought by τῷ βουλομένῳ.¹⁵⁸ So the provision is not in itself unacceptable; however, this does not mean that it is authentic.

¹⁵⁷ Franke 1848: 5. The same position is held by Philippi 1874: 338-346 and Herz 1878: 21-22.

¹⁵⁸ Cf. Drerup 1898: 268-269. On the distinction between *dikai* and *graphai* cf. Lipsius 1905-1915: 237-244; Harrison 1971: 74-78; Rhodes 1993: 160.

The same conclusion can be reached for the reference to the Heliaia in the last sentence. Herz deemed it to be no more than guesswork by the forger.¹⁵⁹ This follows from the fact that he considered the statute referred to in this context a law of Draco. Therefore any allusion to the Heliaia was for him nonsense, since there is no evidence that the Heliaia actually existed, and had judicial functions before Solon.¹⁶⁰ But since the provision has been recognized as an amendment to Draco's law, there is no reason to consider the mention of the Heliaia out of place in this context. On the contrary, the Heliaia is exactly the body we would expect to judge these cases. Again this is not enough evidence for the authenticity of the clause, since this argument might easily have come to the mind of an ancient forger, and information about the jurisdiction of the Heliaia was at the time probably even more abundant than now. Yet on the other hand the clause does not provide, as Herz suggested, an argument against the reliability of the text.

Some more difficulties are created by the next clause. As it stands in the *paradosis*, it does not make any sense. εἰσφέρειν δὲ τοὺς ἄρχοντας [...] τῷ βουλομένῳ consists of the accusative 'the archons' as the subject of an unlikely εἰσφέρειν, which holds an even more unlikely *dativus commodi* τῷ βουλομένῳ (for everyone who wishes to carry it out).¹⁶¹ Therefore, the archons should introduce the case (or the offender) to the court (all this is understood) for anyone¹⁶² who wishes to carry it out. First of all, Franke rightly pointed out that the proper Attic verb for *causam aut rem in iudicium adducere*, when the subject is an official, is εἰσάγειν.¹⁶³ However, if the

¹⁵⁹ Herz 1878: 26.

¹⁶⁰ [Arist.] *Ath.Pol.* 7.3, 9.1. Cf. Hignett 1952: 97; Hansen 1981-1982; Hansen 1989: 258-262; Boegehold 1995: 17-20. Pace Bonner, Smith 1930: I, 158, who thought that Solon just reorganized a pre-existing Heliaia.

¹⁶¹ Reiske and Weber *ad locum* understood it as a *dativus commodi*, but Franke 1848: 6; Herz 1878: 25-26; and even Drerup 1898: 268 pointed out its *ungewöhnlichkeit*.

¹⁶² Gagarin 1981: 25 n. 45 advanced the hypothesis that the dative be understood as 'on behalf of anyone who wishes...', but then admitted that this would be too stretched, and hardly Greek.

¹⁶³ E.g. Dem. 46.22; 47.24, 26, 27, 28; Plat. *Gor.* 521c, 521d. Cf. Franke 1848: 6; Herz 1878: 24-25; Drerup 1898: 268 presented just two, rather far apart, parallels to the verb in similar cases and with this

amendment is very archaic, then the formula might not yet have been fixed. But even if we assume that the sentence is grammatically acceptable, the procedure it explains is unlike normal Athenian practice.¹⁶⁴ In Athenian legal practice the accuser summons the defendant before the appropriate official, and the official, when he accepts the case, introduces the case to a lawcourt.

Because of this difficulty, many scholars have tried to emend the text to make it consistent with normal Athenian procedure. This is circular reasoning. There is no point in making a text acceptable through emendation and then claiming that because of its internal consistency it must be held as a trustworthy source. What is needed in order to justify such a correction is external evidence of its likely trustworthiness. In this particular case such evidence exists (which does not justify similar interventions in other documents). This is the peculiar usage of *δικασταί*, and the verb *διαγιγνώσκειν*. *δικάζειν* referred in archaic times to the activity of a magistrate (or the king), namely pronouncing the sentence in a trial, 'stating the right' as Wolff defined his role,¹⁶⁵ while *διαγιγνώσκειν* meant actually deciding between two options on the basis of evidence.¹⁶⁶ The contrast between the two terms is found clearly in *IG I³ 104*, and finds a parallel in the couple *καταδικάζειν* and *κρίνειν* in the Gortyn Code (1.4, 1.8, 5.43-44, 5.54, 11.30).¹⁶⁷ This opposition does not exist in later times,¹⁶⁸ and *δικάζειν* quickly comes to mean simply 'to judge', the function previously (and here) expressed by *διαγιγνώσκειν*. This is also a strong ground for the reliability of this second section of the document, which must have been part of the Solonian code, or have been passed

sense: *IG IX, 1, 694* (from Corcyra) ὁ[ι] δὲ εἰς τὰ δικαστήρια φερέτω, and *Lex.Seg.* 250.11-12 τῶν δὲ ἐνδείξεων εἰσέφερον εἰς δικαστήριον ἃς μὲν οἱ ἔνδεκα, ἃς δὲ οἱ θεσμοθέται. Yet he also concluded that the case is rather unlikely.

¹⁶⁴ When *εἰσάγειν* is followed by a dative, the dative always refer to the defendant, never to the accuser. Cf. e.g. [Arist.] *Ath.Pol.* 58.3, 59.4, 61.1.

¹⁶⁵ Wolff 1946: 75-76.

¹⁶⁶ Cf. *id.* and Gagarin 1981: 47-48; Hansen 1981-1982: 27; Humphreys 1983: 235 n. 1; Boegehold 1995: 17-18 n. 3; Carawan 1998: 49-68. These interpretations, and others that I have not listed, do not completely agree about the meaning of the two words, but all accept the antiquity of their opposition.

¹⁶⁷ Cf. Wolff 1946: 75-76; Harrison 1971: 38 n. 1.

¹⁶⁸ Gernet-Humbert 1959: 189-190.

right after him,¹⁶⁹ and clearly speaks for a conscientious insertion made by the editor of the text, confirming the impression given by the first law quoted at § 22.

Since the document seems to be reliable, the expression εἰσφέρειν δὲ τοὺς ἄρχοντας [...] τῷ βουλομένῳ must be fixed. The best solution is the one proposed by Schelling.¹⁷⁰ He proposed considering τῷ βουλομένῳ as held by an understood ἐξεῖναι. The meaning would be: it is therefore possible, for anyone who wishes, to εἰσφέρειν δ' ἐ<ς> τοὺς ἄρχοντας. Assuming a small corruption the sense of the clause is restored. The magistrates are no longer introducing the case to the individual citizens, but rather the individual citizens are bringing the case before the magistrates. The sentence is still strange but this might be explained by its antiquity, and moreover it resembles the expression ἀποφέρειν γραφὴν πρὸς τὸν ἄρχοντα found Ps.-Dem. 58.32 (cf. also *Lex.Pat.* 149.2). Furthermore, Plato in his *Laws* (772c) preserves a perfect parallel of the expression when he writes εἰσφέρειν εἰς τοὺς νομοφύλακας. Here, whichever is the object of εἰσφέρειν, that object is understood as in our passage, and the names of the officials are introduced by εἰς.

The further specification, ὧν ἕκαστοι δικασταί εἰσι, cannot affect the question of the authenticity. It refers to the attributions τῶν ἀρχόντων. The charges (understood in the text) must be brought before the archons according to their jurisdiction. ὧν thus refers to the understood 'charges'.¹⁷¹

¹⁶⁹ Cf. Gagarin 1981: 25-26 for a cautious approach, while Boegehold 1995: 19 n. 14 and Carawan 1998: 90 attribute it to Solon, and Ruschenbusch 1966 inserts it among the Solonian fragments as F16.

¹⁷⁰ Schelling 1842: 68, hence generally accepted by all the editors and commentators.

¹⁷¹ An understood ταῦτα (which Weber even tried to integrate in the text), or more explicitly τὰς γραφὰς περὶ τούτων. Cf. Drerup 1898: 168. More recent works have generally endorsed this interpretation: Cf. e.g. Gagarin 1981: 25; Boegehold, Camp 1995: 18 n. 3; Carawan 1998: 90. I leave aside the perfect correspondence with Dem. 47.71 since in that case the expression comes from an inserted document, and its reliability is still to be demonstrated. The interpretation I just gave of this specification has been challenged by Weil 1886: 199 n. 1, with the argument that the passage presents the plural ἕκαστοι, which cannot mean 'each archon', for which we would expect the singular ἕκαστος. The plural would be instead a collective subject, indicating the magistrates in general, all performing the functions of δικασταί. The lawgiver would have left the competent magistrate unspecified in order to make his provision valid in spite of future procedural changes, and not because λυμαίνεσθαι and ἀποινᾶν are different charges to be handled by different magistrates, since this meaning is not suitable to the other occurrence of the expression in Dem. 47.71, in which the charge dealt with is just one. As I said,

that occurrence might not be reliable, since it is found in a document absent from the stichometry, and therefore inserted much later. The reading given by Weil overcomplicates the passage. As I have already explained, ὧν refers to an understood ταῦτα, and the plural ἕκαστοι does not cause problems for my interpretation. In fact ἕκαστοι as indicating a group, as a collective plural, is just one of the possible meanings of the pronoun. It is as often used in the sense of 'each one of a group separately' (Il. 1.550; Aesch. *Supp.* 932; Pl. *Leg.* 799a), which is exactly the meaning implied in this passage.

3.3 Dem. 23.37: the killing of a murderer

NOMOS.

Ἐὰν δέ τις τὸν ἀνδροφόνον κτείνει ἢ αἴτιος ᾗ φόνου, ἀπεχόμενον ἀγορᾶς ἐφορίας καὶ ἄθλων καὶ ἱερῶν Ἀμφικτυονικῶν, ὥσπερ τὸν Ἀθηναῖον κτείναντα, ἐν τοῖς αὐτοῖς ἐνέχεσθαι, διαγιγνώσκειν δὲ τοὺς ἐφέτας.

ὥσπερ- ἐφέτας Lex. Pat. ad loc.

δέ om. SYP^a | ἀπεχόμενον ἀγορᾶς ἐφορίας καὶ ἱερῶν Ἀμφικτυονικῶν καὶ ἄθλων Herz | ἐφυρείας F^a | ἐν del. van Herwerden Herz cf. § 41

If then someone kills the murderer or is the cause of his death, as far as the murderer steers clear of the frontier markets, of the athletic contests and of the Amphictyonic rites, he is to be liable to the same punishment as if he kills an Athenian citizen, and is to be judged by the Ephetai.

This law was long ago shown by Köhler¹⁷² to be consistent with ll. 26-29 of *IG I*³ 104, and new letters discovered by Stroud¹⁷³ have confirmed his judgment. It's text is consistent, almost word for word, with the orator's following account at § 38 (ἔάν τις ἀποκτείνει τὸν ἀνδροφόνον' φησὶν 'ἢ αἴτιος ᾗ φόνου, ἀπεχόμενον ἀγορᾶς ἐφορίας καὶ ἄθλων καὶ ἱερῶν Ἀμφικτυονικῶν, ὥσπερ τὸν Ἀθηναῖον κτείναντα, ἐν τοῖς αὐτοῖς ἐνέχεσθαι, διαγιγνώσκειν δὲ τοὺς ἐφέτας').

Some expressions, though difficult to explain and so explained by many scholars in very different ways, cannot be doubted, as the document and the following quotation perfectly agree in terminology. Namely, the adjective Ἀμφικτυονικῶν must refer just

¹⁷² Köhler 1867: 34-35.

¹⁷³ Stroud 1968: 53-54.

to the rites. With the exclusion of the convicted killer from them and from all the ἄθλων, as Demosthenes interprets the expression, the lawgiver must have pursued the aim to avoid any encounter between the killer and the relatives of the victim.¹⁷⁴ The ἀγορᾶς ἐφορίας (frontier-markets) should be interpreted as a relic.¹⁷⁵ Demosthenes at § 39 defines them as the places where the borderers in old times used to gather with their neighbours, but their existence at the time of the republication of the law, let alone at the time of Demosthenes, is very unlikely.¹⁷⁶ The most controversial point is the competence assigned by the statute to the *ephetai*. Cases of homicide committed against exiled murderers who keep clear of the prohibited places should be mainly intentional, due to the wish for revenge of the relatives of the victim, and should therefore, according to the law quoted at § 22, be handled by the Areopagos Council. The explanations for this anomaly have been many. Both Drerup and De Sanctis,¹⁷⁷ trying to give an explanation which was synchronically consistent with all we know about homicide statutes, imagined that this law did not actually state that an exiled murderer, when killed, was treated as an Athenian citizen. It only states that the killer must be punished as though he killed an Athenian. But it is possible at the same time that the killed murderer was still considered bereft of his rights. He was judged therefore by the *ephetai* in the Palladion, as happened to metics and foreigners. The evidence about the earliest phases of the homicide regulations, as stated by MacDowell,¹⁷⁸ is too scanty to be conclusive on this issue. To mention just the most recent alternative hypotheses, it is

¹⁷⁴ Pace Latte *RE* VI, s.v. *Mord*: 286-287, who thinks that the adjective must refer to both the games and the rites, since the Athenian state has no power to exclude anyone from places outside its jurisdiction. Cf. against this view MacDowell 1963: 121 and Stroud 1968: 53-54. Nevertheless, supporting this view does not mean accepting the emendation by Herz 1878: 26-27, who changes the word order of the provision in καὶ ἱερῶν Ἀμφικτυονικῶν καὶ ἄθλων in order to make it match Demosthenes' discussion at § 39-40.

¹⁷⁵ Ruschenbusch 2010: 47 admits that they are *unbekannt*.

¹⁷⁶ Stroud 1968: 53-54 mentions several reasons for ruling out their existence at the time of the republication, namely that the Spartans were at the time in control of Deceleia, the Boeotian cavalry in 410 attacked Athens (Xen. *Hell.* 1.1.34; Diod. 13.65) and the Megarians endangered the west border (and were eventually defeated by the Athenians in 410/109; Cf. *Hell.Oxy.* 1.1; Diod. 13.65).

¹⁷⁷ Drerup 1898: 272-273; De Sanctis 1975: 179.

¹⁷⁸ MacDowell 1963: 5-7.

also possible that at the time of Draco the Areopagos was not concerned with homicide at all, as stated recently by Gagarin and Carawan,¹⁷⁹ and therefore the *ephetai* were to judge all the cases of homicide. Afterwards the *ephetai* came to be intended as homicide judges, encompassing also the Areopagites. Alternatively Wallace could be right in assuming that the Areopagos was already in charge of intentional homicide, but at the time of Draco it was not a Council that was summoned on the hill of Ares, as after Solon, but precisely the *ephetai*.¹⁸⁰ In any case, the text of the document is confirmed nearly word for word in the following account by the orator, and there is no question about its authenticity.

The only slight differences are in the first clause; the document presents a further *δέ*, though not in all the medieval tradition, and the verb *ἀποκτείνῃ*, instead of *κτείνῃ*, before and not after *τὸν ἀνδροφόνον*. As previously stated, slight differences in wording are scarcely significant, since they can be explained as casual miscopying, or even as stemming from slightly different official copies of the same law.¹⁸¹ In addition, in Demosthenes' words (§ 39) we read also the version found in the document, a few lines later, just without the *δέ*. One cannot draw any firm conclusions from this. But it is a fact that *IG I³ 104* at ll. 26-27 presents the provision exactly as it stands in the document, also with the *δέ*. It is possible, as believed by Herz,¹⁸² that the editor of the document just happened to choose the right version from the two presented by Demosthenes' text. And the *δέ* itself, since it is not present in all the tradition, could be a lucky emendation by some later scribe, added on account of the beginnings of other provisions in the same speech. But this is just guesswork. What is clear again is that

¹⁷⁹ Gagarin 1981: 133-135; Carawan 1998: 161.

¹⁸⁰ Wallace 1989: 17-18.

¹⁸¹ For instance, as noted by Stroud 1968: 54, *IG I³ 104* at l. 28 contains 52 characters, instead of the expected 50. This could be a simple imprecision due to the inscriber, but it is also possible that the text in the speech came from a different copy of the same statute, and therefore presented slight differences. The restoration in this case would be almost, but not completely, correct.

¹⁸² Herz 1878: 26-27.

some editorial work has been done at the time of the insertion, and the epigraphic parallel proves it correct.¹⁸³

¹⁸³ The stele with Draco's laws is of no help in the case of ἐν τοῖς αὐτοῖς ἐνέχεσθαι, which is repeated by Demosthenes both in the same form and without the ἐν. L. 29 of the inscription in fact consists of 51 letters, just one more than the standard measure of 50. This figure is anomalous, but if we delete the preposition, the figure 49 is still as anomalous. Herz 1878: 26-27 asserted that the form without ἐν is preferable, but I cannot see why. The form ἐνέχεσθαι plus ἐν with the dative is perfectly usual for stating a penalty. Cf. Gagarin 1981: 40 n. 30.

3.4 Dem. 23.44: persecution and plunder of a murderer

NOMOS.

Ἐάν τις τινα τῶν ἀνδροφόνων τῶν ἐξεληλυθόντων, ὧν τὰ χρήματα ἐπίτιμα, πέρα ὅρου ἐλαύνῃ ἢ φέρῃ ἢ ἄγῃ, τὰ ἴσα ὀφείλειν ὅσα περ ἂν ἐν τῇ ἡμεδαπῇ δράσῃ.

τινα om. SFaY | ἢ φέρῃ del. Herwerden Westermann Herz coll. 49 (sed cf. 46) cf. 60, 61 | ὀφείλει SFY

If someone, beyond the border, pursues or despoils some murderer in exile from the territory, whose goods are not confiscated, he is to incur the same penalty as if he did it in our land.

This statute is not found in *IG I*³ 104.¹⁸⁴ Demosthenes quotes it while discussing its provisions almost word for word at § 45-46.

Many hypotheses have been advanced in order to set this provision in the context of the other homicide statutes. It has been mainly considered Draconian, or, as Drerup argued, with a Draconian influence, even if it does not appear in the preserved stele.¹⁸⁵ This may well be true, but the possibility cannot be excluded that the provision was part of the amendment to the original Draco law for which the statute at § 28 is evidence.¹⁸⁶ As far as we know in fact, Draco's law contained a provision which allowed anyone to kill an exiled murderer who had come back into the Athenian territory (ll. 30-31), and another provision forbidding it when the murderer steers clear of the prohibited places (ll. 26-29). If, as Gagarin pointed out, the provision quoted at § 28 is an amendment to

¹⁸⁴ Cf. Stroud 1968: 42.

¹⁸⁵ Carawan 1998: 77; Drerup 1898: 271.

¹⁸⁶ Cf. the compelling argument made by Gagarin 1981: 24-26. Gilbert-Brooks 1895: 516 already dated it soon after Draco.

ll. 30-31 of the inscription, still allowing the killing of the exiled murderers found in the Athenian territory, but forbidding torture and ransom, this statute could well be an amendment adding further provisions for murderers who steer clear of the Athenian territory. In fact, it shares with the former the characteristic of referring to other statutes. § 28 refers to the first axon, ll. 30-31, whereas this law refers specifically to the provisions valid in the Athenian territory.¹⁸⁷

The first clause is perfectly identical in both instances, while the second one, τὰ ἴσα ὀφείλειν ὅσα περ ἂν ἐν τῇ ἡμεδαπῇ δρᾷσῃ, presents slight differences. The words in the orator's comment are in fact γράψας ταῦτ' ὀφείλειν ἅπερ ἂν οἴκοι δρᾷσῃ. Both Franke and Herz resolutely asserted that the correct form must be the one reported by the orator, and the expression ἐν τῇ ἡμεδαπῇ would have been chosen by the later editor according to § 35, for variation.¹⁸⁸ This assertion is arbitrary. The text of the document does not present any grammatical problem, and the provision is too old for drawing any conclusion on the ground of terminology. Moreover, part of the expression ἐν τῇ ἡμεδαπῇ is clearly read in *IG I³ 104 l. 30*, and it is also very likely to have been part of the statute witnessed by § 28 and 35 of this speech (perhaps an amendment to that section of Draco's law). So, whatever the origin of the provision here discussed, the expression ἐν τῇ ἡμεδαπῇ is attested,¹⁸⁹ and is as possible as anything else. Anyway, the adverb οἴκοι is not an impossible choice either, as it is quite an archaic form, and attested, even though just in one case, in the 5th century: *IG I³ 21=SEG 31.6*. Nothing conclusive can be said in this case about the difference between the document and the orator's comment. Both the variants are acceptable; the orator

¹⁸⁷ Furthermore, the provision assessing the payment of double the damage caused seems to recall the law about *dikai blabes* mentioned at Dem. 21.43. See also Ruschenbusch 2010: 47.

¹⁸⁸ Franke 1848: p. 7, IV; Herz 1878: 27-28.

¹⁸⁹ This is the only evidence for this adjective in Athenian inscriptions dated before the beginning of the 5th century, but in the 5th century it is attested quite widely: Cf. *IG I³ 52*, *IG I³ 372*, *IG I³ 376*, *IG I³ 378*, *IG I³ 383*.

might have combined quotation and paraphrase, or it is even possible that both variants already existed in different copies of the law.

But what does this provision actually forbid, and what kind of murderers does it cover? The application of this statute is expressly restricted to unwilling killers. This is clear from the specification ὧν τὰ χρήματα ἐπίτιμα, and is confirmed both by the following comment made by Demosthenes and by Harpocration, *s.v.* Ὅτι οἱ ἄλόντες ἐπ' ἀκουσίῳ φόνῳ ἐξουσίαν εἶχον εἰς διοίκησιν τῶν ιδίων, Δημοσθένης ἐν τῷ κατ' Ἀριστοκράτους ὑποσημαίνει καὶ Θεόφραστος ἐν τῷ γ' τῶν Νόμων δηλοῖ (o42 Keaney), who mentions this passage and the twelfth book of Theophrastos' *Laws*. There is no reason to doubt this evidence.¹⁹⁰

The second line of the document refers to the man who πέρα ὅρου ἐλαύνῃ ἢ φέρῃ ἢ ἄγῃ a convicted murderer. He is to be punished with the same penalty as if he did it at home. The passage is not clear. Herz, following some remarks made by Herwerden and Westermann,¹⁹¹ noted that, while in the text and in the immediately following summary at the beginning of § 46 the expression is ἐλαύνῃ ἢ φέρῃ ἢ ἄγῃ, afterwards, both at the end of this same paragraph and again at § 49, the verbs are just ἐλαύνειν καὶ ἄγειν. Furthermore at § 46 Demosthenes, when referring to these verbs, says πέρα δ' οὐκ ἔα τούτων οὐδέτερον ποιεῖν, alluding to only two verbs, and not three. All these scholars drew from this fact the conclusion that the text reported by Demosthenes is the better one, and the reading of the document must be rejected. The argument they made in order to support their claim is that φέρειν ἢ ἄγειν is the Greek form for the Latin *ferre et agere*,¹⁹² meaning to plunder, to despoil for booty.¹⁹³ This

¹⁹⁰ This evidence is not doubted by Ruschenbusch 1960: 140, MacDowell 1963: 121, Gagarin 1981: 60 n. 83, Ruschenbusch 2010: 46. *Pace* Carawan 1998: 77 n. 79, 151 n. 19, who refers to Gagarin but misunderstands his statement.

¹⁹¹ Herz 1878: 27-28. *Cf.* Westermann 1865: III, 27; Volpis 1936: 71.

¹⁹² *Cf.* e.g. Liv. 3.37; 38.18.

¹⁹³ The remark is certainly correct. *Cf.* IG I³ 72; II.5.484, 23.512, Eur. *Tr.* 1310; Ar. *Nub.* 248; Hdt. 1.48, 3.39; Xen. *Hell.* 3.2.2 and LSJ: *s.v.* ἄγω I.3; φέρω V.2 for other examples.

expression is generally found with the accusative of place, and ἄγειν means to seize and drive away animals and human beings (slaves), while φέρειν points to the goods. Now, while this meaning is appropriate for the law quoted at § 60-61 of this speech, where the matters discussed are goods and booty, here the law would be, in these scholars' interpretation, concerned just with ἐλαύνειν καὶ ἄγειν, to pursue and to arrest, to drive away the murderer. This, according to Demosthenes' explanation, would be possible just from inside the border τῆς τοῦ παθόντος πατρίδος, but not πέρα ὅρου. The decree of Aristocrates therefore, stating that the killer of Charidemus ἀγώγιμος ἔστω everywhere, would conflict with the present provision.

The deletion of ἢ φέρῃ proposed by Herwerden, Westermann and Herz, while noted in the *apparatus*, has never been accepted. Nevertheless, the interpretation given by Demosthenes has often been followed in the translations. Vince translates: 'If any man outside the frontier pursues or violently seizes the person of any homicide who has quitted the country...' MacDowell does the same: 'Anyone who beyond the frontier drives or carries or leads an exiled killer...'¹⁹⁴ Phillips believes that this provision was enacted 'to prevent overzealous relatives from forcibly repatriating an exiled killer so as to declare him in trespass and punish him accordingly'.¹⁹⁵ These interpretations are certainly possible, since sometimes φέρειν ἢ ἄγειν means just 'bear and carry' (*cf.* Pl. *Phdr.* 279c; *Leg.* 817a; Xen. *Cyr.* 3.3.2). Yet the expression with this meaning, and without any link to booty, is rather rare. ἐλαύνειν itself is often used in archaic times with the meaning of 'carry off, drive away', referring mainly to stolen cattle and horses (*Cf.* Od. 9.237, 12.253; Il. 4.299, 5.236; but still Xen. *Hell.* 4.8.18). Accordingly, the whole sentence seems to present a rather concrete vocabulary, as noted by Gernet,¹⁹⁶ consistently pointing to the circumstance of plundering for booty. Therefore,

¹⁹⁴ MacDowell 1963: 121.

¹⁹⁵ Phillips 2008: 64, 79.

¹⁹⁶ Gernet-Humbert 1959: 190. He rightly translates: 'Quiconque, en dehors des frontières, exercera poursuite et pillage sur un meurtrier émigré...'.

Westermann was probably right in his analysis of the expression as referring to goods instead of to the person of the murderer (as was argued by Demosthenes).¹⁹⁷ Yet this is not a good reason to emend the expression. Demosthenes could well have avoided in his comment the φέρειν, leaving the single ἄγειν, in order to support his claim that the decree proposed by Aristocrates, inasmuch as it declares the killer of Charidemus ἀγώγιμος, contravenes this law. But Demosthenes was probably twisting, as he often does, the meaning of the law in order to make it fit his argument. On the contrary, it is likely that this law had nothing to do with seizing and carrying off a person. It was concerned with the goods of the exiled murderer (involuntary homicide). Those which he had at home were already protected, since they were still, as stated by the statute itself, ἐπίτιμα. This law, possibly an amendment of the original one, protected also the goods the murderer owned outside the territory of Athens, stating that any hostile action against his property carried out abroad would have been punished as though it had happened in the territory of Athens.

The text of this document is therefore consistent in itself, it does not present any problematic feature and, when it happens to endorse one reading of the following paraphrase against another, it sides with the right one. The general impression is thus the same as that given by the preceding documents: a conscientious editorial work, presumably done in Athens at a very early stage of the tradition, by someone who knew very well the homicide laws of Athens.

¹⁹⁷ Ruschenbusch 2010: 46 has it both ways: '[...] Repressalien verübt, indem er das Vieh wegtreibt, seine Habe wegträgt oder ihn selbst abführt...'

3.5 Dem. 23.51: charges of homicide for indictments against murderers

NOMΟΣ.

Φόνου δὲ δίκας μὴ εἶναι μηδαμοῦ κατὰ τῶν τοὺς φεύγοντας
ἐνδεικνύντων, ἐάν τις κατὶ ὅποι μὴ ἔξεστιν.

P. Mich. III 142 | κατὰ - ἐνδεικνύντων Schol.D.22.33.97c

No private action for homicide shall be brought anywhere against people who present an indictment against an exile, if he returns where he is not allowed to.

This law is not reported by *IG I³ 104*. Yet it is quoted almost word for word in the following account by the orator. The text there is: ‘κατὰ τῶν ἐνδεικνύντων’ φησὶ ‘τοὺς κατιόντας ἀνδροφόνους ὅποι μὴ ἔξεστι δίκας φόνου μὴ εἶναι.’

The main difference is in the word order, while the last clause ἐάν τις κατὶ, though different from the section of the paraphrase just quoted, is reported afterwards, at § 52, with the same words. Herz¹⁹⁸ opted for the form κατιόντας, which would be confirmed, he claimed, by *IG I³ 104*. Philippi in fact considered this text to follow those of § 28 and 37.¹⁹⁹ Those texts seem to appear at ll. 26-31 of *IG I³ 104* with a rather different word order, according to a restoration proposed by Köhler, and therefore some difference should be postulated for this provision as well. This is not a conclusive argument at all. Moreover, a further restoration of this provision after ll. 26-31 has long been demonstrated to be unacceptable.²⁰⁰ The problem of whether the wording of the document or the one in Demosthenes’ summary is the original one cannot be solved;

¹⁹⁸ Herz 1878: 22.

¹⁹⁹ Philippi 1874: 338-346.

²⁰⁰ Herz himself a few lines later expressed some doubt.

both alternatives have equal chances of being correct, and they could even have been part of variants of the same law appearing in different copies of it.

Other differences which trouble scholars are τοὺς φεύγοντας of the document instead of τοὺς ἀνδροφόνους of the following paraphrase, and the adverb μηδαμοῦ, present just in the document. Both these readings of the document have been doubted by Franke, supported by Herz.²⁰¹ They argue that the reading τοὺς ἀνδροφόνους is used by Demosthenes in what is supposed to be an exact quotation.²⁰² In the following paragraph the verb φεύγειν is found three times, and the alleged forger of the document would have chosen this verb for variation. This may well be true. But it must be pointed out that in this section Demosthenes has mostly been concerned with showing that in all the quoted provisions the killer is alluded to as ἀνδροφόνος, which would mean in his interpretation 'convicted murderer'. This would imply that a trial is indispensable, whereas Aristocrates' decree declares the killer ἀγώγιμος without any trial. Therefore a slight change in wording made by Demosthenes is not impossible, and could be motivated by the attempt to make the provisions even more consistent with his purpose than they actually were.²⁰³ Moreover, the restoration of φεύγεν as the penalty for involuntary homicide at l. 11 of *IG I³ 104*, proposed by Köhler on the ground of this passage, has remained unquestioned, and a new epsilon read by Stroud²⁰⁴ seems to confirm it. None of these arguments can be taken as conclusive, and nothing solid can be said on this matter. In any case, even if the document were wrong, a single word,

²⁰¹ Franke 1848: 8 and Herz 1878: 22.

²⁰² Franke 1848: 8 argues moreover that this law must be closely connected with the provision at § 37, and there the reading is τὸν ἀνδροφόνον. Therefore we should accept such a reading also in this provision. Drerup 1898: 278 has rightly pointed out that at § 28 the topic is ἀποκτείνειν and ἀπάγειν, not just *endeixis*. So he concluded that even if a connection existed, it must have been looser than Franke assumed. His point is definitely correct, since the restoration of the provision after ll. 26-31 of *IG I³ 104* is, as we saw, impossible.

²⁰³ Cf. Phillips 2008: 122-3 suggests that Draco was actually referring to exiles in general, and not to exiles due to homicide.

²⁰⁴ Stroud 1968: 41-42.

which is in fact not misleading, cannot alone compromise the reliability of the editor of these documents.

The same can be said for the adverb μηδαμοῦ. Against the remark that it *esse ineptum apparet* (Herz) since *Athenis quid fieri velle, praecepit Draco, non quid in aliis terris* (Franke) many attempts have been made to justify its presence.²⁰⁵ Henri Weil²⁰⁶ gives the most likely explanation of the adverb, commenting 'le mot μηδαμοῦ n'a rien d'étrange, quoi qu'on en ait dit'. It means 'nulle part, devant aucun tribunal'. Charges of homicide concerning the author of an indictment against an exiled murderer who did not abide by the terms of his exile were not to be heard by any court: the official was to drop them immediately. μηδαμοῦ is therefore not inconsistent with the general sense of this statute.

Yet the question of the position of this provision among the other statutes concerning homicide, and its meaning, is still open. The provision actually asserts that no charge can be brought, and no legal action can be held, against the author of an indictment (ἐνδείξις) against a murderer who does not abide by his exile. The most likely explanation is that given by Westermann: he thought that this law was somehow connected with the one at § 37. In that case the matter was the prohibition on killing a convicted murderer who steers clear of the forbidden places. Yet the provision did not talk just of killers, but also of αἴτιος φόνου. This further provision would be a specification *ex abundanti cautela* that the author of an indictment by which a convicted

²⁰⁵ Drerup 1898: 278 argued that the adverb must be intended to cover all the places mentioned at § 28 as prohibited to exiled killers, which are not part of the Attic territory, namely the athletic games and the Amphictyonic rites. In those cases killing the homicide would have been an offence against the God, because of the God's Peace. Accordingly, the only option for the person who met the killer of a relative on such occasions was to denounce the manslayer in front of a local authority, and to have the question handled *in loco* or the homicide extradited to Athens. The explanation is fascinating, but it must be noted that the provision does not seem concerned with the treatment of homicides (at home or anywhere), just with the treatment of the author of the *endeixis* against a killer. To support Drerup's interpretation we would need at least another provision directly concerned with the matter. Moreover, μηδαμοῦ is not connected with the *endeixis*, but with *dikai phonou* against the author of an *endeixis*. The point is not where the indictment actually happens, but that a subsequent trial against its author is impossible, regardless of its setting (that is, regardless of the court, as we will see).

²⁰⁶ Weil 1886: 208 n. 2.

murderer is executed cannot be considered αἵτιος φόνου.²⁰⁷ The legitimacy of ἐνδείξις (in that case *apagoge*)²⁰⁸ is in fact expressly asserted by the provision of § 28. This does not mean of course that this provision physically followed the other one on a stele.

To sum up, the document does not present any trace of a later insertion, and must be accepted as part of the stichometric edition. However, in this case it is very difficult to assess the reliability of the editor in inserting the document, mostly for lack of parallel evidence.

²⁰⁷ Cf. Westermann 1865: 29; Volpis 1936: 26-77 and 76-7. Pace Herz 1878: 22.

²⁰⁸ About ἐνδείξις in general and in this particular case cf. MacDowell 1963: 122 and Hansen 1976: 100-103, 111-118. The interpretation just given is also implied in the treatments of the provision in MacDowell 1963: 122 and Carawan 1998: 82.

3.6 Dem. 23.53: lawful homicide

NOMΟΣ.

Ἐάν τις ἀποκτείνει ἐν ἄθλοις ἄκων, ἢ ἐν ὁδῷ καθελὼν ἢ ἐν πολέμῳ ἀγνοήσας, ἢ ἐπὶ δάμαρτι ἢ ἐπὶ μητρὶ ἢ ἐπ’ ἀδελφῇ ἢ ἐπὶ θυγατρὶ, ἢ ἐπὶ παλλακῇ ἢν ἂν ἐπ’ ἐλευθέροις παισὶν ἔχῃ, τούτων ἕνεκα μὴ φεύγειν κτείναντα.

P. Mich. III 142 l ἢ- καθελὼν Harp. k 5, o 2 Sud. o 47 Eust. 1.110.5

ἢ ἐπὶ μητρὶ om. S

If someone kills someone else unintentionally during athletic contests, or overcoming him on the road, or in war without being aware of it, or catching him in intercourse with the wife, the mother, the sister, the daughter or the concubine held for the purpose of free children, on that account the killer is not to flee into exile.

This law about lawful homicide has always been the object of much controversy. Despite an attempt by Theodore Bergk,²⁰⁹ supported by Philippi, to restore its provisions at *IG I³ 104 l. 36*, it has been demonstrated by Dittenberger that the statute cannot possibly fit the *lacuna*, because of one single epsilon already read by Köhler.²¹⁰ His point has been reinforced by the discovery of three new letters at l. 36, and others at l. 37, due to the work of Stroud.²¹¹ Therefore, the statute was not in the section of Draco's laws still preserved to us on stone. Nevertheless the reliability of most of the clauses is

²⁰⁹ Bergk 1873: 669 ff; Philippi 1874: 351.

²¹⁰ Dittenberger 1883: 1.89 n. 52.

²¹¹ Stroud 1968: 36 ff.

indisputable, since they are repeated word for word in Demosthenes' account.²¹² Yet a few differences have troubled interpreters, namely the clause ἢ ἐν ὁδῷ καθελὼν, neither reported nor hinted at in the following paragraphs, the participle ἄκων, which is absent as well, and the conclusion τούτων ἔνεκα μὴ φεύγειν κτείναντα, instead of which Demosthenes uses expressions like οὐκ ἀδικεῖν, εἶναι καθαρὸν, οὐ δίκην ὑπέχειν, ἄθῳον ποιεῖν (§ 55). These differences are key to assessing the nature of the document.

A strong indication against these clauses, and therefore against the reliability of the document, comes from *Ath.Pol.* 57.3. There this law is clearly alluded to, and the provisions listed are exactly the same as those in Demosthenes' account, although in reverse order: ἐὰν δ' ἀποκτεῖναι μὲν τις ὁμολογῇ, φῇ δὲ κατὰ τοὺς νόμους, οἷον μοιχὸν λαβών, ἢ ἐν πολέμῳ ἀγνοήσας, ἢ ἐν ἄθλῳ ἀγωνιζόμενος, τούτῳ ἐπὶ Δελφινίῳ δικάζουσιν.²¹³ It can easily be noticed that the passage does not show any trace of the further expressions just quoted. Furthermore, the textual witnesses of this passage are absolutely consistent. Except for the expression ἢ ἐπὶ μητρὶ, which is absent from S (its absence is easily explainable as a mechanical mistake by a scribe who missed this entry off the list because of the repetition of ἢ ἐπὶ), the document is present and consistent in all the medieval tradition. Moreover, all the ancient witnesses agree in presenting also the problematic expressions. A papyrus of the 2nd century AD, *P.Mich.* III.142, presents the whole text, including all three puzzling elements. Other witnesses show that the passage, in particular the expression ἐν ὁδῷ καθελὼν, also puzzled the ancient commentators. Harpocration discusses it twice (under the entries καθελὼν and

²¹² They are also alluded to in other passages, both in the orators and in other sources. The cases listed here were not the only occasions in which lawful homicide was contemplated, but their presence in a single statute, listed together, is granted by [Arist.] *Ath.Pol.* 57.3, *Cf.* below. For a survey of all the cases of lawful homicide *cf.* MacDowell 1963: 70-81; Gagarin 1978.

²¹³ 'And one who admits homicide but declares it to have been legal (for instance when he has killed a man caught as a seducer), or who in war has killed a fellow-citizen in ignorance, or in an athletic contest, is tried at the Delphinium...'

ὁδός), *Souda* gives the same account as Harpocration (under ὁδός), and traces of this discussion are found also in Eust. 1.110.5. The same question is addressed also in a *lexicon* of the *Against Aristocrates* found in an Egyptian papyrus dated to the 4th or 5th century AD (*P.Berol.* 5008).²¹⁴ It might be observed that none of these witnesses dates earlier than the II century AD, and therefore they are not old enough to exclude a corruption which made its way into the document later than the original insertion in the stichometric edition. However, Harpocration shows traces of two different explanations for the expression, and though one of them might be his own, there is a good chance that both stem back to previous works. Moreover, all together these witnesses, both ancient and medieval, offer a glimpse into a wide range of ancient editions of this speech, which makes cross-contamination quite an unlikely possibility, since the original edition quickly spread all around the Mediterranean. To sum up, there is a very good chance that the document was originally inserted in this particular form. Therefore, if the puzzling expressions should prove clearly untenable, this would have consequences in our consideration of the overall reliability of that first editor.

First of all, it must be observed that the passage of the *Ath.Pol.* is not supposed to be an exact quotation of the statute, and accordingly a perfect identity in wording between it and the document is not needed. The first suspect feature is the participle ᾄκων. It has been generally accepted as authentic and even restored in Demosthenes' text, yet on account of the mistaken reading of l. 36 of *IG I³ 104* proposed by Bergk.²¹⁵ Herz went so far as to think that the participle was on the stele, yet Demosthenes failed to report it in his account, and a forger, guessing its presence from οὐ τὸ συμβᾶν ἐσκέψατο, ἀλλὰ τὴν τοῦ δεδρακότος διάνοιαν (§ 54), happened to be right.²¹⁶ Now this reconstruction is very bold, mainly since the restoration in the stele has proven

²¹⁴ Cf. Gibson 2002: 165-166.

²¹⁵ Bergk 1873: 669 ff; Philippi 1874: 351.

²¹⁶ Herz 1878: 28-29.

impossible, but some of the arguments used to support it still have value. In fact, the comment of Demosthenes quoted above is probably trustworthy, and on the other hand it is quite unlikely that every sort of homicide was to be lawful just because it happened during the athletic games. The lack of intention to kill as a condition for lawfulness is in this case self-evident, and this can account for the omission both in Demosthenes' account and in the *Ath.Pol.*²¹⁷ The only serious challenge to the actual possibility of finding such a participle in this context has come from Carawan.²¹⁸ He contests the possibility that the discriminating factor in the case of homicide committed during an athletic contest was intentionality, since he argues that at the time of Draco the *ephetai* did not usually judge matters of intent.²¹⁹ Therefore, the law to which Demosthenes is alluding in the passage would be Draco's law, since there is no hint at intentionality in his account (except the mention of *διάνοια* which Carawan dismisses as a rhetorical device), while the one quoted would be a forgery or, more likely, a different, later law. We would have, then, two laws about the same topic, the earlier one without hints at intentionality (the one alluded to by Demosthenes), and a later one (with these hints) mistakenly inserted by an editor in the wrong place. This seems to me a circular argument.

All we can say about ἄκων is that it does make sense, it is attested independently in *IG I*³ 104 (twice) at l. 17 and, though it is not in Demosthenes and Aristotle, it is found in the corresponding provision in *Plat. Leg.* 9.865a (εἴ τις ἐν ἀγῶνι καὶ ἄθλοις δημοσίοις ἄκων). This is not enough to prove that it was present in the original law; nor, however, does it prove that it was not.

The same can be said of the last sentence of the document, τούτων ἔνεκα μὴ φεύγειν κτείναντα. Carawan postulated a different formula for every different

²¹⁷ Cf. also Drerup 1898: 276.

²¹⁸ Carawan 1998: 92-96.

²¹⁹ Carawan 1998: 93 and more generally about intent in archaic law 33-83.

circumstance, as we find in the following account (§ 54-55): οὐκ ἄδικεῖν for the killer in athletic contexts, εἶναι καθαρόν and οὐ δίκην ὑπέχειν for the man who kills in warfare, finally ἄθῳον ποιεῖν for the killer of a seducer.²²⁰ The formula of the document would be therefore forged, or part of a later, simplified, statute. This argument does not seem to me very compelling. Demosthenes is giving explanations for every case mentioned by the law, and the different ways in which he marks the lawfulness of a homicide are just due to desire for *variatio*. Moreover, the presence in an archaic homicide statute of the expression εἶναι καθαρόν would be very strange, since Draco, through all his homicide law, actually avoids any mention of matters of pollution relating to homicide.²²¹ The clause τούτων ἔνεκα μὴ φεύγειν κτείναντα on the other hand, though it cannot be safely demonstrated as authentic, is fairly acceptable, and the mention of φεύγειν is very likely, since exile is the only penalty against homicide explicitly stated in the Draco's law stele.²²² Again the provision cannot obviously be shown to be authentic without further evidence, but none of its features makes it untenable.²²³

The last difference between the document and the following account is the presence of ἡ ἐν ὁδῷ καθελὼν. This expression has puzzled interpreters since antiquity, and many attempts have been made to explain its meaning: none of them definitive. Many scholars have accepted the ancient interpretation of Harpocration, *Souda* and *P.Berol.* 5008: the expression would refer to a case in which one kills on the road a highwayman waiting in ambush (ἐν λόχῳ καὶ ἐνέδρῳ).²²⁴ Thalheim on the other hand has advanced the hypothesis that the provision may refer to a death caused by

²²⁰ Carawan 1998: 94-95.

²²¹ Both MacDowell 1963: 1-5; 141-150 and Gagarin 1981: 164-167 have argued against the impact of pollution doctrine on legal statutes and practice. Cf. also Carawan 1998: 17-20 and, for a restatement of the question, Parker 1983: 104-143, 367-392.

²²² Death penalty was probably not explicitly stated, but came as a consequence of a condition of *atimia*, in case the homicide did not go into exile. Cf. Gagarin 1981: 120-125.

²²³ Cf. Drerup 1898: 276.

²²⁴ See Bergk 1873: 669-673; Lipsius 1905-1915: 616 n. 59 (strangely he rejects Harpocration, but then advances the same hypothesis); MacDowell 1963: 75-76; Carawan 1998: 92 n. 12 and many others.

unintentionally making someone fall from a mountain path.²²⁵ Drerup gave up any attempt to explain the formula as it stands, and considered it either very archaic and no longer understandable, not even by the orator and Aristotle, who therefore do not quote it, or corrupted, in which case he proposed the emendation ἐν ὅλῳ καθελὼν, connecting the expression with the following case of a homicide committed in war ἀγνοήσας.²²⁶

This is obviously nothing more than guesswork, both by the ancient and by the modern scholars mentioned, and therefore I will not attempt here any other explanation or emendation, which would not be any more reliable than those just listed. The evidence is just too scanty to allow us to explain or amend this expression with confidence. What then are the consequences for the reliability of the document? The first option, endorsed by Franke and Herz,²²⁷ would be to declare the expression not original but forged. The author of such a forgery might have been either the original editor of the speech, and this would have consequences for the overall reliability of the documents inserted here, or a later scribe, a less likely possibility, because we should in this case postulate a very early interpolation, just after the original editing, or an enormous case of cross-contamination. The overwhelming problem with this solution is a methodological one: assuming forgery is a very weak solution when it is not possible, as here, to understand what the forger wanted to say.

Drerup rightly pointed out the problems with this interpretation, and advanced three different hypotheses. The first, as just shown, is corruption. It is the weakest hypothesis, since it presents the same problems as the possibility of a forger who added just this expression. Either he must have intervened in the earliest stages of transmission, or his forgery must have spread in a huge instance of cross-contamination.

²²⁵ Thalheim 1894: 50 n. 4.

²²⁶ Drerup 1898: 277.

²²⁷ Franke 1848: 9-11; Herz 1878: 29-31.

Nevertheless this hypothesis is possible, and cannot be completely ruled out. The second option is that the expression is not comprehensible because it is very archaic, and refers to something that even the Athenians of classical times could no longer understand. The statute was thus reworked by the Athenians at a later stage, casting off the relic of too old provisions. The new statute would be that commented on by Demosthenes (and paraphrased by Aristotle), while the editor inserted the original one. This hypothesis too is possible in principle, but is somewhat uneconomical. The third hypothesis is the most plausible: the expression was indeed very old, and the editor has been also in this case very conscientious in quoting the law in its entirety. Yet Demosthenes and Aristotle avoided its mention exactly because they did not understand it, and therefore would not have been able to explain its meaning.²²⁸

It is easy to see that the text of this law is not straightforwardly acceptable, and nothing very solid can be extracted from analysis of it. As it stands, neither the hypothesis of originality nor that of fabrication seem to account perfectly for its condition. The document however is the most attested in the tradition, both ancient and medieval, and widely quoted with this very wording in the indirect sources, which accounts for its antiquity, and for its integrity. It can therefore confidently be confirmed as already present in the *Urexemplar*, together with all the other documents in this speech. Its text presents just one main difficulty, while other differences between it and the following account can easily be explained. In fact, in the case of these differences, the document seems even more consistent with the homicide laws than Demosthenes' words. Instead, one particular expression seems unexplainable, but 'si ces mots sont obscures, ce n'est pas la une raison d'accuser la licence d'un faussaire, tant s'en faut'.²²⁹

²²⁸ Cf. also Weil 1886: 209 n. 5: 'il n'est pas absolument impossible [...] que l'orateur se soit dispensé d'expliquer ce qu'il ne comprenait pas'.

²²⁹ Weil 1886: 209 n. 5.

3.7 Dem.23.60: killing in defence of one's own goods is legitimate

NOMOS.

Καὶ ἐὰν φέροντα ἢ ἄγοντα βία ἀδίκως εὐθὺς ἀμυνόμενος κτείνῃ, νηποινεὶ τεθνάναι.

νηποινεὶ τεθνάναι cf. Andoc.1.95 Pl. Leg.874c Meletemata 22, Epig.App.40

And if someone kills straight off in defence the man who is violently and illegally seizing (spoiling) him, the killing is not to be punished.

This provision is both found in this form in *IG I³ 104*, ll. 37-38,²³⁰ and reported word for word in the following account by Demosthenes. The only slight difference, but a completely insignificant one, is the word order ἄγοντα ἢ φέροντα at § 61 instead of the document's φέροντα ἢ ἄγοντα.²³¹

The law concerns seizure of one's property,²³² and allows in this case the immediate killing of the thief in defence: but only if he is seizing the property with violence. Gagarin argued that the very existence of this law is evidence that not every episode of self-defence involved the killing of the attacker, and self-defence was not a

²³⁰ The integration, already proposed by Köhler, has been confirmed by the discovery of new letters made by Stroud 1968: 57.

²³¹ Demosthenes might have changed the word order to avoid hiatus.

²³² Cf. above pp. 88-90 for the meaning of the expression φέρειν ἢ ἄγειν. That the expression refers just to goods here is accepted by Westermann 1865: 27; Herz 1878: 33-34; Volpis 1936: 83-84; Gernet-Humbert 1959: 125 'Si on tue sur-le-champ, et en se défendant l'auteur d'une dépossession violente et commise sans droit...'; MacDowell 1963: 76; Stroud 1968: 57; Christ 1998: 522; Pierro in Canfora 1974-2000: vol. 3 pp. 238-239 and n. 23 '...colui che lo depreda violentemente e ingiustamente dei suoi averi...'. Gagarin 1978: 113 and n. 9, supported by Carawan 1998: 91, on the other hand argues that the reference is to the seizing of both men and property. Gagarin 1981: 63 repeats this view, and claims that the target of the provision was mainly pirates and highwaymen, not burglars. In both cases he provides as evidence for his claim the next paragraph (§ 61). I cannot see how this might support his view. At § 62, about the eventuality that Charidemus may φέρειν ἢ ἄγειν, Demosthenes writes: ἴστε γὰρ δήπου τοῦθ' ὅτι πάντες οἱ στρατεύμ' ἔχοντες, ὧν ἂν οἴωνται κρείττους ἔσεσθαι, ἄγουσι καὶ φέρουσι χρήματ' αἰτοῦντες. The matter seems again to be just χρήματα.

generally applied principle of justification in homicide cases.²³³ Killing in defence was allowed just in this particular case.²³⁴ Cases against murderers who claimed they had committed just homicide were probably held at the Delphinium, as in all the cases listed by the law at § 53.

The document is in this case perfectly consistent with both the summary and the inscription, and does not present any problem or clue of either skilful or clumsy editing, nor does it show any feature which can set it apart from the other insertions of this speech.

²³³ *Cf.* Gagarin 1978.

²³⁴ As well as in case someone steals something at night, as the law discussed at Dem. 24.113 shows. Christ 1998: 522 argues that this other statute was specifically implemented in order to cover, at least at night, cases of thieves acting without violence. *Cf.* below pp. 226-7.

3.8 Dem. 23.62: the entrenchment clause

NOMOS

Ὅς ἂν ἄρχων ἢ ιδιώτης αἴτιος ᾗ τὸν θεσμόν συγχυθῆναι τόνδε, ἢ μεταποιήσῃ αὐτόν, ἄτιμον εἶναι καὶ παῖδας ἀτίμους καὶ τὰ ἐκείνου.

<τοῦ> τὸν add. Lamb. | ἀτίμους del Taylor

Whoever, whether among the magistrates or a private citizen, is cause of the violation of this statute, or will modify it, is to be disfranchised, with his children and his goods.

This law is quoted extensively by Demosthenes in his following comment of § 62: ὅς ἂν ἄρχων ἢ ιδιώτης αἴτιος ᾗ τὸν θεσμόν συγχυθῆναι τόνδε, ἢ μεταποιήσῃ αὐτόν, ἄτιμος ἔστω καὶ οἱ παῖδες καὶ τὰ ἐκείνου. The text there is almost perfectly consistent with that of the document, except for minor features, like the imperative ἔστω instead of εἶναι, and the absence of the repeated ἀτίμους. Köhler tried to restore this text at l. 47 of *IGI*³ 104, on the basis of the alleged reading μετ]απ[ο]λέ[σει], but Stroud showed that this restoration is 'epigraphically impossible'.²³⁵

The provision must nevertheless be very old, as the form θεσμός shows.²³⁶ Ruschenbusch in his *Solonos Nomoi* presents this law as a possible fragment of a statute by Solon (F22), on account of two passages, Dio Chrys. 80.6 (F93a) and Gell. *N.A.* 2.12 (F93b), which hint at some entrenchment clause referring to the laws of Solon.²³⁷ These passages provide a paraphrase which at least in the first case²³⁸ somewhat resembles the

²³⁵ Stroud 1968: 58.

²³⁶ Cf. Gagarin 1981: 23; Carawan 1998: 91-92.

²³⁷ Ruschenbusch 1966: F22 and FF93a-b. Cf. also Wallace 1989: 58.

²³⁸ Dio Chrys. 80.6: καὶ τὴν ἀράν, ἣν Ἀθηναῖοι περὶ τῶν Σόλωνος ἔθεντο νόμων τοῖς ἐπιχειροῦσι καταλύειν, ἀγνοεῖτε κυριωτέραν οὖσαν ἐπὶ τοῖς ἐκείνου νόμοις. πᾶσα γὰρ ἀνάγκη τὸν συγχέοντα

words of this law. Gagarin and Carawan on the other hand suggest that this law was originally Draconian, as after the next quoted law in the speech (§ 82) Demosthenes asserts that every law previously mentioned concerns homicide.²³⁹ They may well be right, since the impossibility of restoring the provision in the part of Draco's law we have does not exclude the possibility that it was set somewhere else, maybe at the end of the second axon the heading of which Stroud has been able to read at the bottom of our preserved text.²⁴⁰ The evidence provided by Dio Chrysostomus is not in fact conclusive, as the text on which Ruschenbusch relies is heavily emended in order to resemble this Demosthenic passage.

The only real difference between the document and the following paraphrase is, as we have seen, the infinitive εἶναι instead of the imperative ἔστω of Demosthenes' account. Both Franke and Herz²⁴¹ have considered the imperative preferable, on account of Dem. 20.156 (ἐάν τις ἀπαιτήσῃ χάριν ὑμᾶς, 'ἄτιμος ἔστω' φησὶ 'καὶ ἡ οὐσία δημοσία ἔστω.'). Yet this passage clearly refers to another law, the law of Leptines, and its usage of the imperative does not account in any way for the imperative in a much older statute. In fact, both the options are plausible, as the text of the Draco's law preserved in *IG I³ 104* shows: it presents in a few lines both the infinitive (ll.11-13 φεύγεν, δικάζεν, διαγν[ὁ]ν[α]ι, αἰδέσασθαι...) and the imperative (ll. 18-20 ἐσέσθον, χαιρέσθον, ἐνεχέσθον...).

The repetition of ἀτίμους in the document is hardly significant. Franke has interpreted it, following Taylor, Schäfer, as another sign that the forger was fond of *variatio*, and has mentioned three similar passages (Dem. 9.42, 43 and Dem. 19.271) in

τὸ θεσμὸν ἄτιμον ὑπάρχειν, πλὴν παίδας καὶ γένος οὐκ ἐπέξεισιν, ὥς ἐκεῖ, τῶν ἀμαρτανόντων, ἀλλ' ἕκαστος αὐτῷ γίγνεται τῆς ἀτυχίας αἴτιος.

²³⁹ Gagarin 1981: 23 and Carawan 1998: 79, 92.

²⁴⁰ Stroud 1968: 58-60.

²⁴¹ Franke 1848: 11-2; Herz 1878: 33-34.

which the adjective is not repeated.²⁴² Some epigraphical instances of similar entrenchment formulas could also be added (e.g. *IG I³ 46*, ll. 26-27; *IG II² 43* with ἀτίμος)²⁴³ to confirm that this repetition was in classical times quite unusual, but the early date of the text does not allow us to draw any conclusions from the later standard usage. Weber rightly commented: *at nihil in Dracoins lege mutandum est, libris adversantibus, neque haerendum in repetitione v. ἀτίμους, quam legislatoris diligentiae concedamus.*²⁴⁴

To sum up, this document is largely consistent with the following account, and the very slight oddities do not provide enough material for assessing which version of the provision was the original one, and whether the document has just been drawn from the orator's paraphrase or has a different origin. Nevertheless, it shows no features that can speak against its presence in the *Urexemplar*, and therefore its presence in the stichometry must be confirmed. Moreover, also in this case, the text provides no reasons against the hypothesis of a conscientious editing.

²⁴² Franke 1848: 11-2.

²⁴³ An analogous construction is the one used for the statement clauses of the citizenship grants. In that case too, the repetition of the adjective is never found. Cf. Henry 1983: 64-68.

²⁴⁴ Weber 1845: *ad locum*. Cf. also Drerup 1898: 279.

3.9 Dem. 23.82: hostages

NOMOS.

Ἐάν τις βιαίῳ θανάτῳ ἀποθάνῃ, ὑπὲρ τούτου τοῖς προσήκουσιν εἶναι τὰς ἀνδροληψίας, ἕως ἂν ἡ δίκας τοῦ φόνου ὑπόσχωσιν ἢ τοὺς ἀποκτείναντας ἐκδώσι. τὴν δὲ ἀνδροληψίαν εἶναι μέχρι τριῶν, πλεον δὲ μή.

ἀνδροληψίαν- μή P. Rainer I 9

If someone dies a violent death, it is to be possible on his account for the relatives to take hostages, until they undergo a trial for homicide or hand over the actual murderers. The hostages are to be up to three, no more.

This law allows the family of a victim to take hostages in case the killer of their relative is not handed to be judged in court. It must be mainly concerned with killings which happened outside Attica, and taking hostages was a means for having the killer extradited by his *polis* (or the *polis* in which he lives).²⁴⁵

This provision is not found in *IG I*³ 104, and while Ruschenbusch includes it among the laws of Solon (as part of Draco's homicide law, which was confirmed by Solon),²⁴⁶ Gagarin and more recently Phillips take the expression βιαίῳ θανάτῳ as representative of a later date, not before the 5th century (no epigraphical examples exist before the middle of the 5th century, and the first instance of the adjective is found in

²⁴⁵ For detailed interpretations of this statute Cf. Dareste 1889; Lipsius 1905-1915: 267 especially n. 8; MacDowell 1963: 28-31; Bravo 1982; Phillips 2008: 241-7.

²⁴⁶ Cf. Ruschenbusch 1960:140-142; Ruschenbusch 1966: F13. He argues that the provision was originally intended to cover killings committed in Attica, as a means to force the killer to submit to justice. He restated this position recently in Ruschenbusch 2010: 40-2. This position is endorsed by Carawan 1998: 43. See also Bravo 1982: 133 n. 10 for other references. *Contra* Lipsius 1905-15: 267 Bravo 1982; Todd 1993: 331.

Herodotus).²⁴⁷ The provision would therefore date to the 5th century, the imperial decrees of which match very well with the tone of the provision.

The provision is quoted in the following account given by the orator at § 83 exactly word for word, except for one minimal difference: in Demosthenes' account we read twice ἀνδροληψίον instead of ἀνδροληψίαν. The difference between the two terms has been stated by Weber, followed by Herz and Lipsius:²⁴⁸ ἀνδροληψία would be the actual seizure of a hostage, whereas ἀνδροληψίον is the *ius comprehensionis*, in the words of Herz.²⁴⁹ Both terms are acceptable in this context, and both are attested in other sources about this provision, namely Poll. 8.50-51 and *Lex.Seg.* 213.30-214.2. No conclusion about the quality of the editing of this document can be drawn from this text.

²⁴⁷ Gagarin 1981: 143 and Phillips 2008: 241-7.

²⁴⁸ Weber 1845: *apud* § 82; Herz 1878: 39; Lipsius 1905-1915: 267 n. 8. Cf. also MacDowell 1963: 27; Bravo 1982: 142.

²⁴⁹ Drerup 1898: 279 reverses the distinction, and thinks that the right is expressed by the plural ἀνδροληψίαι. This does not make any difference for our purpose. Nonetheless, the traditional distinction seems more convincing.

3.10 Dem. 23.86: laws *ad hominem*

NOMOS

Μηδὲ νόμον ἐπ' ἀνδρὶ ἐξεῖναι θείναι, εἰ μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις.

Μηδὲ - Ἀθηναίοις Andoc.1.87, Dem.24.59, 46.12

ἐπ' ἀνδρὶ νόμον Andoc.1.87 : ἐξεῖναι ἐπ' ἀνδρὶ Dem.24.59, 46.12

No law shall be passed regarding an individual without applying to all citizens alike.

The orator, right after the law is read out, explicitly states that this statute does not come from the laws on homicide, but is as relevant. From Andoc. 1.85-9 we know that it was passed by a newly appointed board of *nomothetai* after the restoration of democracy and the revision of the 'laws of Draco and Solon' in 404/3.²⁵⁰ However, Demosthenes' argument here is specious: he claims that since laws cannot address individuals, and it is generally agreed that decrees ought to be drafted according to the laws, then a decree should not address an individual. The *a fortiori* argument is obviously unjustified, since the very distinction between decrees and laws makes sense just inasmuch as decrees cover the individual cases that laws are not allowed to.

The wording of the document corresponds almost exactly to the summary of the orator in the same paragraph (we have there ἐφ' ἅπασιν instead of ἐπὶ πᾶσιν Ἀθηναίοις), and therefore nothing substantial about sources and accuracy of the editor can be inferred from this document.

The provision with this very wording (except for negligible differences) is reported also in other passages of the orators: in this speech it is repeated again at § 218

²⁵⁰ Cf. Canevaro - Harris 2012 (forthcoming).

(οὐκ ἔῃ νόμον, ἂν μὴ τὸν αὐτὸν ἐπὶ πᾶσι τιθῇ τις, εἰσφέρειν: ὁ δ' ἐπ' ἀνδρὶ γράφει ψήφισμ' ἴδιον), and elsewhere it is found in Andoc. 1.89, Dem. 24.18, 59, 116, 159, 188, and Dem. 46.2. Furthermore, the provision is reported as a document in Andoc. 1.87 and Dem.24.59. In these two cases however another clause is added, stating in one case that a law *ad personam* is possible if voted by secret ballot with a *quorum* of 6000, in the other that a law must apply to all the citizens and be voted by secret ballot with a *quorum* of six thousand. These further provisions in both versions can hardly be reconciled with our other sources on Athenian legislative practices, and this casts doubt on the authenticity of those two documents. The issue will be discussed more thoroughly in connection with Dem. 24.59.²⁵¹

²⁵¹ Cf. below pp. 206-13 and Canevaro - Harris 2012 (forthcoming).

3.11 Dem. 23.87: the hierarchy of laws and decrees

NOMOS

ψηφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι.

ψηφισμα - εἶναι Andoc.1.87, cf. Dem.24.30

νόμου om. F

No decree, whether of the Council or Assembly, shall override a law.

This last provision comes as a seal to this section of the speech. After mentioning all the laws which Aristocrates' decree allegedly contradicts (whether correctly or not), Demosthenes asks the clerk to read out a statute explicitly forbidding that a decree shall override a law. This statute, creating a hierarchy between laws and decrees,²⁵² should prove conclusively that Aristocrates' decree is illegal. This provision, like the previous one, was approved in the context of the restoration of democracy in 404/3, and the two are paraphrased together in Andoc. 1.89.

The content of the document is confirmed by Demosthenes' following summary (ὅποτε τοίνυν τὰ ψηφίσματα δεῖν κατὰ τοὺς νόμους ὁμολογεῖται γράφειν),²⁵³ and § 218 (οὐκ ἐᾷ ψηφισμὸς ὁ νόμος κυριώτερον εἶναι νόμου) closely follows its wording. The same wording is found elsewhere in the orators: Dem. 24.30 has εἰδότα δ' οὐκ ἐὼνθ' ἕτερον νόμον ψηφισμὸς οὐδέν, οὐδ' ἂν ἔννομον ἦ, νόμου κυριώτερον εἶναι, Hyp. 5.22 ὁ [μὲν Σόλων οὐδ' ὁ] δικαίως ἔγραφεν ψήφ[ισμά τις τοῦ νόμου] οἶεται δεῖν κυριώ[τερον εἶναι...]. Furthermore, the previously mentioned passage by Andocides presents a text which is exactly identical to our document:

²⁵² For the importance of this provision in making the distinction between *nomoi* and *psephismata* cf. Hansen 1979: 28-9.

²⁵³ This interpretation of the provision is found also in Dem. 20.92; 22.43.

ψήφισμα δὲ <μηδὲν> μήτε βουλῆς μήτε δήμου <νόμου> κυριώτερον εἶναι.²⁵⁴ The specification μήτε βουλῆς μήτε δήμου is not otiose, nor does it need to be a gloss from the orator: the existence of decrees of the Council alone, even if subsidiary to those of the Assembly, is confirmed by plenty of epigraphical evidence²⁵⁵ and therefore the formula seems perfectly appropriate.

To sum up, the document does not present any feature incompatible with its summary, nor with any other source on Athenian legislation. Its wording is confirmed by many sources and does not present problems. However, the absence of any piece of information that one could not deduce either from the speech or from other passages of the orators does not allow us to infer anything new about the editorial work on this speech.

²⁵⁴ The emendations of Blass and Reiske in Andocides' text seem necessary, and are confirmed by all the other passages of the orators. The same wording is also found in the document quoted at Andoc. 1.87, but the legal documents in this speech seem generally the work of a forger. In this particular case the speech itself probably provided the forger with the text to insert. Cf. Canevaro - Harris 2012 (forthcoming)

²⁵⁵ Cf. Rhodes 1972: 271-5 for a comprehensive list of decrees of the Council, and pp. 82-7, 126-7 for full discussion of the issue.

4. The *Against Timocrates* (24)

After Droysen showed that the documents preserved in the speech *On the Crown* are forgeries, the first two scholars to assess the authenticity of the documents preserved in the other speeches of the Attic orators were Friedrich Franke and Anton Westermann. In 1844, while Westermann was examining the documents of the speech *Against Meidias*,²⁵⁶ Franke, in a review of Schelling's *De Solonis legibus apud oratores Atticos*, doubted the authenticity of many other documents: among which some of the most important contained in the *Against Timocrates*.²⁵⁷ In 1850, in the first part of his ground-breaking *Untersuchung über die in die attischen Reden eingelegten Urkunden*, Westermann offered a close analysis of the documents of the *Against Timocrates* reported at § 20-3, 27, 33, 39, 40, 59 and deemed all of them forgeries.²⁵⁸ Finally, in 1859, Westermann published three *Leipziger Universitätprogrammen* that dealt with the document reported at § 149-51 of this speech, and showed that it cannot be the original Athenian Heliastic oath.²⁵⁹

Westermann's condemnation of these documents was widely endorsed in subsequent years. In particular, his arguments were summarized by Benseler in his 1861 German commentary of the speech, and by Wayte in his 1882 English commentary.²⁶⁰ Moreover, Max Fränkel in 1878 published an excellent study of the Athenian Heliastic oath²⁶¹ that strengthened Westermann's verdict that the document at § 149-51 was inauthentic. However, from 1886 onwards, Westermann's views started to be questioned. In this year Henri Weil, in his edition and commentary of the speech, criticized Westermann's approach to most documents, and claimed that even where an effective defence of the documents is impossible, namely for the first and the last

²⁵⁶ Westermann 1844.

²⁵⁷ Franke 1844.

²⁵⁸ Westermann 1850.

²⁵⁹ Westermann 1859.

²⁶⁰ Benseler 1861; Wayte 1882.

²⁶¹ Fränkel 1878.

document of the speech, this was due to our defective knowledge of Athenian law.²⁶² In the same year Schöll published a lengthy study of Athenian *nomothesia*²⁶³ in which he argued against Westermann for the authenticity of the documents at § 20-3, 27 and 33, and Hoffman argued, in a *Straßburger Dissertation* dedicated to Schöll,²⁶⁴ for the authenticity of the document purportedly reporting the Heliastic oath. In 1896 however Ludwig Ott gave a balanced account of the arguments for and against the authenticity of the Heliastic oath as reported at § 149-51 of this speech and sided with Westermann and Fränkel against Hoffman.²⁶⁵ Finally, in 1898 Drerup defended the authenticity of the documents at § 20-3, 27, 33, 59, 149-51 and part of 71 of the *Against Timocrates*, partially following Schöll and partially arguing directly against Westermann.²⁶⁶

After the work of Schöll and Drerup the authenticity of the documents reported in the *Against Timocrates* has generally been accepted. The documents that were the object of their studies have been used in many reconstructions of Athenian *nomothesia*,²⁶⁷ and those that were just implied to be authentic have been uncritically employed as historical documents.²⁶⁸ Exceptions are only the last two documents reported in the speech. The authenticity of the two parts of the document quoted at § 105, although generally accepted, has been doubted by Hillgruber and by Scafuro, who have deemed the text either forged or heavily corrupted.²⁶⁹ As for the Heliastic oath reported at § 149-51, the *communis opinio* is that this text is a later forgery and scholars usually follow Fränkel's reconstruction.²⁷⁰

²⁶² Weil 1886: 67-8 and *passim*.

²⁶³ Schöll 1886.

²⁶⁴ Hoffman 1886.

²⁶⁵ Ott: 1986: 97-102.

²⁶⁶ Drerup: 1898: 248-64.

²⁶⁷ Cf. the works mentioned below at pp. 118-21

²⁶⁸ Cf. for examples many of the studies mentioned in the notes to this chapter.

²⁶⁹ Hillgruber 1988: 66-8 and Scafuro 2005.

²⁷⁰ Cf. e.g. Cronin 1936: 18; Bonner-Smith 1938: 152-6; Scafuro 1997: 50-1; Mirhady 2007, even if he does not follow Fränkel uncritically; Harris 2006a. Lipsius 1905-15: 151-2 advanced the hypothesis that some parts might be authentic and some interpolated, but see Ott 1896: 97-102 and below p. 248.

None of the scholars discussing these documents has formulated a systematic methodology for evaluating their authenticity. To give an example, MacDowell in 1975 wrote about the documents of the *Against Timocrates*: 'The documents in that speech are now generally accepted as genuine, and I so accept them here. The correct approach to such texts is never to reject them out of hand, but to try to explain them. Only if they cannot be reconciled with other evidence should they be dismissed as forgeries; and in fact the Timokrates documents fit into our picture of *nomothesia* satisfactorily.'²⁷¹ This has been in general the methodology employed in assessing the reliability of the documents in this speech: they have been used to build complicated hypotheses about Athenian legislation and they have been considered reliable as long as they were consistent with these hypotheses. This has been done both explicitly, such as in the works of Schöll and Drerup who tried to prove the authenticity of these documents by offering reconstructions where they could fit, and implicitly, as in the works of MacDowell, Rhodes and Hansen about *nomothesia*.²⁷² In fact, the weaknesses of this method are evident from the very fact that these reconstructions never agree with each other, and that none of them has won general consent.²⁷³ A more sensible approach, as I explained in the chapter on methodology, is to analyze the orator's summaries and paraphrases of the laws and decrees and to compare them with each other and with external evidence. This account must then be compared with the document, in order to assess its reliability. The language and formulas found in the document must also be checked against contemporary inscriptions.

Another important issue in the assessment of the documents of this speech is provided by stichometric calculations: these documents were not inserted in the speech all at the same time. Some of them, namely those at § 39-40, 42, 45 and 71, were part of

²⁷¹ MacDowell 1975: 62. Cf. also MacDowell 2009: 186.

²⁷² MacDowell 1975; Hansen 1979-80; Rhodes 1984; Hansen 1985; Rhodes 2003.

²⁷³ I will deal in detail with these works below at pp. 118-21 when discussing the accounts of *nomothesia* in Demosthenes. Cf. my extensive discussion of these reconstructions in Canevaro 2012 (forthcoming).

the *Urexemplar* of the speech like those of the speech *Against Aristocrates*. These documents must therefore be checked to find out whether or not they share some features with those of Dem. 23, and whether they are as reliable. The documents at § 20-3, 27, 33, 105 and 149-51 on the other hand cannot have been part of the *Urexemplar* and are later insertions. Finally, it is impossible to determine through stichometry whether the documents at 50, 54, 56, 59 and 63 were part of the *Urexemplar*. The features of each of these documents must therefore be checked against both the stichometric and the non-stichometric documents to find out whether they belong to the group of the later insertions or were present already in the *Urexemplar*. To sum up, in analyzing these documents one must be aware that one is dealing with two different groups of texts, inserted into the speech at different times, in different contexts and by different editors.

Most of the documents in the *Against Timocrates* are quoted in the first half of the speech. In the first part of this section Demosthenes tries to demonstrate that the procedure followed by Timocrates in enacting his law violates the law about *nomothesia*. Thus at § 20-3 he asks the secretary to read out this law, and then proceeds to explain how Timocrates did not follow this procedure. At § 27, to prove his point he asks the secretary to read out the decree of appointment of the *nomothetai*, to show that Timocrates did not abide by the times imposed in the law on *nomothesia*. In the second part of this section Demosthenes argues that Timocrates' law has not only been enacted in violation of the correct procedure, but it also violates many existing statutes. At § 33 Demosthenes asks the *grammateus* to read out a law forbidding anyone from enacting a law contradicting an existing law without first repealing it. Following the discussion of this law, Demosthenes first quotes and analyzes the law of Timocrates (§ 39-40) and then lists and discusses a series of existing statutes whose provisions Timocrates' law contradicts (§ 41-67). The bulk of the documents are found in this part of the

speech. Demosthenes then proceeds to show why Timocrates' law is also poorly drafted and harmful for the *polis*. The last two documents found in the speech purport to be a law about thieves and trespassing *atimoi* (§ 105), whom Timocrates' law would save from imprisonment, and the Heliastic oath, which is fully quoted to show the judges that they have never sworn not to imprison Athenian citizens, and they have every right to do so when the laws prescribe it.

The analysis of the documents in the speech will begin with a discussion of *nomothesia*, which is necessary in order to assess the documents inserted at § 20-3 and 33. These two documents will be analyzed first, and then the rest of the documents will be studied in the order in which they appear in the speech.

4.1 The documents on *nomothesia* (Dem. 24.20-3 and 33)

The two documents inserted in the speech at § 20-3 and 33 purport to be two parts of the Athenian legislation on *nomothesia*. This procedure did not exist in the fifth century, and was created after the archonship of Eucleides. In the fifth century BCE the Athenians did not make any distinction between laws (*nomoi*) and decrees (*psephismata*). The Assembly passed both kinds of measures in the same way, and both general enactments and short-term provisions held the same legal status. At the end of the fifth century however the Athenians decided to make a distinction between the two kinds of measures and created the rule that no decree would be superior to a law (Andoc. 1.86; Dem. 23.86, 218; 24.18, 59, 116, 188; 46.2).²⁷⁴ The Assembly continued to pass decrees in the same way, but a new body of *nomothetai* was created to ratify laws (*nomoi*). There were also two separate procedures for rescinding the two kinds of measures: one could bring a *graphe paranomon* (a public action against an illegal decree) against a *psephisma* and a *graphe nomon me epitedeion theinai* (a public action against an inexpedient law) against a *nomos*. This much is clear; scholars do not agree however about the procedure for passing a new law (*nomothesia*) in fourth-century Athens.

The most notable reconstructions of the procedure are those of D. M. MacDowell, P. J. Rhodes and M. H. Hansen. All of these reconstructions rely on the documents at § 20-3 and 33 as the main evidence for the procedure. MacDowell identified no fewer than five different procedures.²⁷⁵ One of these procedures was concerned with enacting new laws (Dem. 20.92) and replaced an older procedure (Dem. 20.89-91, 93-4). The other procedures are described in Aeschines' *Against Ktesiphon* (3.38-40) and in the two

²⁷⁴ For the difference between laws and decrees in the fourth century see Hansen 1978; Hansen 1979. See also Hansen, 1991; Rhodes 1987; R. Sealey 1987: 41-5. Note however that the documents quoted at Andoc. 1.87 (cf. Canevaro - Harris 2012 forthcoming) and Dem. 24.59 (see below pp. 206-13) are forgeries.

²⁷⁵ MacDowell 1975.

documents of Demosthenes' *Against Timocrates* (24.20-3 and 33), the second being again a procedure laid down later in the fourth century. There are several problems with his reconstruction. In particular, Demosthenes at 20.91-2 does not seem to discuss an actual law; he is only describing how bad politicians break the law. If MacDowell were correct in his chronology of the different procedures, there would have simultaneously been two different panels of *nomothetai* in the middle of the fourth century, one appointed from those who had sworn the Heliastic Oath (Dem. 24.20-23) and another panel appointed from all Athenians (Dem. 20.92), both performing exactly the same functions. This is hardly credible.²⁷⁶ Furthermore, if MacDowell's chronology is right, Demosthenes (20.92) would be claiming that a law which had been repealed many years before was still valid.

Rhodes followed MacDowell in his belief that *nomothesia* went through several stages in the early fourth century, but offered a different reconstruction.²⁷⁷ Rhodes believes that Dem. 20.89-94 refers to the procedures found in documents inserted at Dem. 24.20-23 and 33. The latter was originally a rider to the former but gradually became an independent statute. During this time the law at Dem. 24.20-23, which required that new legislation could only be enacted in Hekatombaion, was forgotten. As a result, politicians started enacting laws at various points of the year. At both trials Demosthenes was attempting to restore the correct practice. This reconstruction also presents some problems: first, the law described at Dem. 20.89-94 does not correspond to the procedures described in the documents found in *Against Timocrates*. The law at Dem. 20.89-94 concerns the procedure for enacting new legislation; the two documents in *Against Timocrates* concern a general confirmation of the law code and the procedure for repealing laws. Nor do the individual provisions match, and the documents in

²⁷⁶ Cf. Rhodes 1984: 56.

²⁷⁷ Rhodes 1980: 305-6.

Against Timocrates do not lay down the procedure for the public action against an inexpedient law. Rhodes also believes that early in the fourth century legislation could only be enacted at the beginning of the year and only to replace existing statutes repealed on 11 Hekatombaion. This, however, would have made it impossible for the Athenians to enact necessary legislation during the rest of the year (e.g. *ad hoc* changes of the *merismos* for the purpose of funding a festival or a grant of honours like those prescribed in *IG* II² 222, *IG* II² 330 and *IG* VII 4254). It is also unlikely that the Athenians ignored a valid law on such an important issue for several years before Demosthenes brought the violation to everyone's attention.

Hansen²⁷⁸ reduces the procedures to three. The first procedure is described in the document found at Dem. 24.20-23, the second in the document found at Dem. 24.33 (which Hansen believes is the same procedure which is discussed at Dem. 20.89-94), and the third at Aeschin. 3.38-40 (a procedure for removing contradictory laws). According to Hansen, the first two procedures existed simultaneously and were used to appoint *nomothetai*. In this reconstruction the law at Dem. 24.20-23 provides a procedure to modify, repeal or introduce new laws starting at a meeting of the Assembly to be held on 11 Hekatombaion and ending with a decision of the *nomothetai*. The procedure in the document at Dem. 24.33 would lead to the same outcome, but through a procedure which could be initiated at any time of the year. This reconstruction also encounters several objections. First, the document found at Dem. 24.33 does not correspond to the description of the procedure discussed at Dem. 20.89-94. Many provisions mentioned in the latter are missing in the document (like the precise times of the procedure and the requirement of posting the new laws before the Eponymous Heroes). Hansen tries to evade this objection by claiming that the document at Dem. 24.33 is incomplete and that the complete document would have contained the missing

²⁷⁸ Hansen 1979-80 and 1985.

provisions. Yet many of these missing provisions are in fact found in the document at Dem. 24.20-23; it would have been strange for the Athenians to enact two different laws at the same time for the same purpose and with almost identical contents. Finally, it strains credibility to believe that in the *Against Leptines* Demosthenes (20.89-94) describes a statute about repealing existing laws (document at Dem. 24.33) as one about enacting new laws.²⁷⁹

All these reconstructions present problems, and none of them accounts for all the evidence and is therefore clearly superior to the others. The reason why none of these reconstructions has been successful is that the evidence they attempt to explain is itself contradictory. The documents' reliability must be assessed before using them to reconstruct the procedure, and to evaluate them it is necessary to study the orators' paraphrases to find out the basic features of *nomothesia* without using the information in the documents. This will provide us with a reconstruction of the procedure, against which the documents can be checked.

The main evidence for the procedure of *nomothesia* is found in Demosthenes' summaries of the statutes on *nomothesia* in this speech and in the speech *Against Leptines* (20), where Demosthenes (20.92) asks for a single law about *nomothesia* to be read out and then discusses its contents, which concern the procedure for enacting new laws. The manuscripts of the speech do not however preserve a text of this law. A passage from Aeschines' *Against Ktesiphon* (3.38-40) discusses the procedure to be followed for ensuring that there are no contradictions among the laws, but this evidence is not pertinent to the topic of the two laws.²⁸⁰

²⁷⁹ Even though the statute could be interpreted as allowing enacting new laws to replace old ones, one cannot deny that the wording of the document at Dem. 24.33 makes it clear that the topic is repealing old laws. See below p. 148.

²⁸⁰ What is not clear is the relationship between this passage and the *ad hoc* commissioners elected by the people to remove contradictory laws mentioned in Dem. 20.91. MacDowell 1975: 72 and Rhodes 1984: 60 think that the *thesmothetai* at some point were put in charge of the procedure instead of the commissioners. Hansen 1985: 356 thinks that *thesmothetai* and commissioners worked together.

To begin with, some preliminary evidence about *nomothesia* can be elicited from contemporary inscriptions reporting fourth-century laws.²⁸¹ First, the motion and the enactment formulas for a law are usually 'be it resolved by the *nomothetai*' and the '*nomothetai* have resolved' (δεδόχθαι τοῖς νομοθέταις or ἔδοξε τοῖς νομοθέταις)²⁸² and do not mention the Council or the Assembly.²⁸³ Decisions of the Council subsequently passed by the Assembly mention both (ἔδοξε τῇ βουλῇ καὶ τῶι δήμῳ, or a probouleumatic formula requiring that the proposal be submitted to the Assembly). The formula ἔδοξε τῇ βουλῇ is consistently used for decisions of the Council that do not need any further approval by the Assembly.²⁸⁴ By analogy, the decisions of the *nomothetai*, since the Assembly is never mentioned, must be final.²⁸⁵ Second, the prescripts of the *nomoi* preserved in contemporary inscriptions indicate that they were passed not at one time of the year but at different dates throughout the year.²⁸⁶ Sessions of the *nomothetai* could therefore be summoned at any time during the year, and laws could be passed in any prytany. Third, three decrees of the Assembly order that a proposal be submitted to the *nomothetai*.²⁸⁷ One of them, *IG* VII 4254 ll. 39-40 employs the expression ἐν τοῖς πρώτοις νομοθέταις, which implies that minor legislation did not require a session of specially appointed *nomothetai*, but could wait for the first one available.

²⁸¹ In chronological order *SEG* 26.72; Stroud 1998; *Agora Excavations*, inv. no. I 7495 (unpublished); *IG* II² 140; *IG* II² 244; *SEG* 12.87; *IG* II² 334 + *SEG* 18.13; *IG* II² 333; *SEG* 35.83. Cf. also the regulations for the Mysteries at Eleusis in a fourth-century inscription (Clinton 2005: no. 138 and 2008: 116).

²⁸² δεδόχθαι τοῖς νομοθέταις is found in *Agora* Inv. 7495 (unpublished, see Alessandri 1982: 7-11), *IG* II² 240, *IG* II² 244, *SEG* 12.87, *SEG* 35.83, *IG* II² 334 + *SEG* 18.13. *SEG* 26.82 has ἔδοξε τοῖς νομοθέταις.

²⁸³ The only exception is Stroud 1998, which mentions neither the *nomothetai* nor the Assembly nor the Council. Also, in *IG* II² 333 νομο[θετῶν ἔδρα] has been restored by Foucart, but Lambert 2005: 40 restores νόμο[ς περὶ τῆς ἐξετάσεως τῶν], which is likely to be correct.

²⁸⁴ Cf. Rhodes 1972: 82-7, 271-5.

²⁸⁵ Cf. MacDowell 1975: 63. Pace Atkinson 1939: 113.

²⁸⁶ *IG* II² 333 is enacted on Skirophorion 8, *SEG* 12.87 in the ninth prytany, *IG* II² 240 in the fifth, the seventh or the tenth prytany.

²⁸⁷ *IG* II² 222, *IG* II² 330 and *IG* VII 4254.

In *Against Timocrates* Demosthenes (24.17) starts the main part of his legal case by saying that he wishes first to explain the statutes which Timocrates has violated in passing his law.²⁸⁸ He claims that the laws are clear about the procedures to be followed when enacting a new law (περὶ τῶν μελλόντων τεθήσεσθαι νόμων). At 18 he states that first (πρῶτον) there is a time (χρόνος) during which one must legislate (νομοθετεῖν). Then (εἶτα), even at that time (τότε) one is not allowed to legislate as he pleases but must first place a copy of his proposed law in front of the monument of the Eponymous Heroes for everyone to see (σκοπεῖν τῷ βουλομένῳ). Next (μετὰ ταῦτα), the proposed law must be the same for all citizens, and in addition to all this (πρὸς τούτοις) all opposing laws must be repealed (λύειν τοὺς ἐναντίους). Demosthenes mentions the fact that the laws contain other provisions that are not relevant for his case. Finally he states that if the proposer of legislation fails to follow any of these provisions, any Athenian who wishes is allowed to bring a public charge against him (τῷ βουλομένῳ δίδωσι γράφεσθαι). The provisions listed are linked by connectives like πρῶτον, εἶτα, μετὰ ταῦτα, πρὸς τούτοις, whose exact meaning here is unclear. Some of the provisions describe the procedure to be followed when enacting new laws; others contain rules about the substance of new laws. There is no need to think that Demosthenes follows the order of the provisions found in the actual statute. He has more likely selected only those provisions relevant to his case and placed them in an order determined by the sequence of his arguments.

At §19 Demosthenes accuses Timocrates of violating every provision listed so far. He will start with the fact that Timocrates enacted his law in defiance of all the laws (παρὰ πάντας τοὺς νόμους ἐνομοθέτει), and afterwards he will deal with his other offences. Then he asks the *grammateus* to take and read the relevant laws (in the plural:

²⁸⁸ I accept the Demosthenic authorship of the speech and refer to Demosthenes as the author, although I am aware that Diodorus pronounced it in court. Cf. Dem. 24.6-16 with MacDowell 2009: 181-5.

καί μοι λαβὲ τουτουσὶ τοὺς νόμους). Demosthenes' legal discussion follows this arrangement: it starts with a section about the procedural violations committed by Timocrates (§ 24-32), then discusses the rule requiring the repeal of any law with clauses contradicting the new law to be enacted (§34-39). Finally, after the law of Timocrates is read out, Demosthenes lists the opposing laws which should have been repealed but were not (§39-67). In this last section we find the statute ordering that a law must be the same for all the Athenians (§ 59).²⁸⁹

Demosthenes' account continues at § 24, where he starts to discuss the law just read by the *grammateus*. After a general praise of the statute, at § 25 he states that first (πρῶτον) there must be a διαχειροτονία about whether a new law is to be proposed (πότερον εἰσοιστέος ἐστὶ νόμος καινός) or the laws in force are considered sufficient. This vote must be held ἐφ' ὑμῖν, which must be interpreted here as 'in the Assembly', since the stage at which the *nomothetai* are summoned is still to come, and the word διαχειροτονία is never used in Athenian sources for a vote by judges in court.²⁹⁰ After this stage (μετὰ ταῦτα), if the Assembly votes that proposals for new legislation can be introduced (ἂν χειροτονήτ' εἰσφέρειν), it is however not permitted for anyone to enact new statutes immediately (οὐκ εὐθὺς τιθέναι προσέταξαν). The law orders that the appointment of the *nomothetai* be discussed at the third meeting of the Assembly (and does not allow legislation to be enacted at that time either). In the meantime whoever wants to propose a new law must post it before the monument of the Eponymous Heroes for everyone to read (τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους πρόσθεν τῶν ἐπωνύμων).

Up to this point the procedure prescribed by the law asked to be read out at § 20 is quite clear. To submit new laws a vote about whether new legislation can be proposed

²⁸⁹ The document inserted at that point is not authentic. See below pp. 206-13.

²⁹⁰ Cf. Staveley 1972: 84-5; MacDowell 1975: 70; Hansen 1977: 123-37; 124; Hansen 1985: 93-4; Rhodes 2003: 126-7.

must be held in the Assembly. If the decision is positive, copies of the proposals must be placed before the monument of the Eponymous Heroes. At the third Assembly the method for appointing *nomothetai* must be discussed, and, presumably, a decree of appointment must be passed. In my discussion I have consistently used the plural, speaking of 'proposals' for 'new laws'. That the preliminary vote must have been a general vote, allowing, if positive, to propose laws in general, is clear from the clause τοῖς βουλομένοις εἰσφέρειν ἐπιθέναι τοὺς νόμους. This inference is confirmed by IG VII 4254 ll. 39-40: the Assembly prescribes in a decree that the *prytaneis* submit a piece of legislation ἐν τοῖς πρώτοις νομοθέταις, in the first available meeting of the *nomothetai*. As soon as the procedure for new legislation was begun after a preliminary vote, one had to submit a proposal to the *nomothetai* on behalf of the Assembly, but there did not have to be another preliminary vote for that proposal. This implies that the preliminary vote, if positive, would have allowed several proposals to be made, and was therefore a general invitation to submit proposals.

What Demosthenes says about *nomothesia* up to this point is sufficiently clear. It is equally important to pay attention to what Demosthenes does not say in this section. At § 26 Demosthenes lists the violations committed by Timocrates: he did not place a copy of his proposal before the Eponymous Heroes and did not therefore give the Athenians a chance to read it. Most important, he did not observe the times prescribed in the laws (οὐτ' ἀνέμεινεν οὐδένα τῶν τεταγμένων χρόνων ἐν τοῖς νόμοις): 'the meeting of the Assembly at which you voted on the laws being on 11 Hekatombaion (ἐν ᾗ τοὺς νόμους ἐπεχειροτονήσατε, οὔσης ἑνδεκάτῃ τοῦ ἑκατομβαιῶνος μηνός), he proposed his law on the 12th of the same month.'

What about the specific clause ἐν ᾗ τοὺς νόμους ἐπεχειροτονήσατε at § 26? The key to understanding this clause is the meaning of ἐπεχειροτονεῖν. Scholars, under the influence of the document at § 20-23, have always interpreted this sentence as

referring to an ἐπιχειροτονία τῶν νόμων, a general approval (confirmation) of all the laws to be held every year on the 11th of the first prytany. Such an interpretation however would imply that Demosthenes is alluding here in passing to a general, annual vote on the laws, the key element of the procedure he is commenting on, after having ignored it all through his account. I believe the verb should be interpreted in a less specific way as 'to put a matter to the vote' and refers to the διαχειροτονία described at § 24.

In the Demosthenic *corpus* the verb, or the substantive ἐπιχειροτονία, occurs ten times (excluding our case): it occurs twice in spurious documents of *On the Crown* (Dem. 18.29 and 105), which cannot be used to determine its meaning. Moreover, six other occurrences are in Demosthenes' *Against Timocrates*. The *First Philippic* (Dem. 4) and the speech *Against Theocrines* ([Dem.] 58) yield one each. Three are in the document at Dem. 24.20-3. The remaining three occurrences in the *Against Timocrates* refer to different contexts. At § 39 the verb is used in the document reporting the law of Timocrates, and its wording is confirmed by § 84: the law prescribes that τοὺς δὲ προέδρους ἐπιχειροτονεῖν ἐπάναγκες, ὅταν τις καθιστάναι βούληται sureties for their debt. The meaning in this context is clearly the etymological one: to put a particular matter to the vote, in this case the approval of sureties.²⁹¹ At § 50 the word ἐπιχειροτονία is used in a document that purports to be a law about supplication to the Council or the Assembly on behalf of a debtor. The *proedroi* shall not allow an ἐπιχειροτονία before the debtor has paid his debt. Whether authentic or not,²⁹² this document uses the word, again, with the simple etymological meaning 'a vote on' a matter. Particularly useful is the occurrence of the verb at Dem. 4.30: ἐπειδὴν δ' ἐπιχειροτονήτε τὰς γνώμας, ἂν ὑμῖν ἀρέσκη, χειροτονήσετε. In this passage the

²⁹¹ Cf. Rhodes 1981: 452, *pace LSJ* s.v. ἐπιχειροτονέω 2.

²⁹² The stichometry of the manuscript does not allow one to decide whether the document was part of the *Urexemplar* or not. Cf. below pp. 34-5.

action of 'putting proposals to vote' is followed by the approval (χειροτονήσετε) of one of them. As Gilbert A. Davies rightly pointed out 'there is no sound support for Liddell and Scott's rendering 'sanction by vote': also τὰς γνώμας means 'all the proposals before you,' *i.e.* my own and others which may be made; and they cannot all be sanctioned.'²⁹³ This particular meaning is the essential one, and is found also in the *Ath.Pol.* At § 43.5 we read that in the sixth prytany the *prytaneis* put to the vote whether there shall be an ostracism or not (ἐπὶ δὲ τῆς ἑκτῆς πρυτανείας [...] περὶ τῆς ὀστρακοφορίας ἐπχειροτονίαν διδόασιν, εἰ δοκεῖ ποιεῖν ἢ μή). At § 37.1 the Thirty present two laws to the Council and order them to be put to the vote (νόμους εἰσήνεγκαν εἰς τὴν βουλὴν δύο κελεύοντες ἐπχειροτονεῖν).²⁹⁴ Rhodes singles out a more specialized use of the verb (and of the connected substantive) meaning 'to confirm a decision already taken'.²⁹⁵ The verb is used in this sense in regard to a particular vote held in every *kuria* Assembly on whether the magistrates are satisfyingly performing their duties or not. This vote is mentioned in *Ath.Pol.* 43.4, 61.2 and 61.4 and [Dem.] 58.27. However, it is clear that such a specialized meaning is secondary, and derived from the primary one: 'to put a matter to the vote'. *Ath.Pol.* 55.4 makes this passage clear; the *dokimasia* of the nine Archons is held in front of the Council, and then in a tribunal. The procedure leads to an ἐπχειροτονία in the Council, and to a ψήφος in the tribunal (δίδωσιν ἐν μὲν τῇ βουλῇ τὴν ἐπχειροτονίαν, ἐν δὲ τῷ δικαστηρίῳ τὴν ψήφον). Although the vote in the Council is technically speaking a vote of confidence (a 'confirmation of a decision already taken'), it is apparent that the reason

²⁹³ Davies 1949 *ad locum*.

²⁹⁴ Rhodes 1981: 452 singles out here a specific meaning 'vote in approval of'. von Fritz - Kapp 1950:183 stick to the more generic meaning 'put the matter to vote.' I believe with Rhodes that the context makes clear that the two laws had to be approved; yet I do not think that we need to postulate a further technical meaning here. The passage simply says that the Thirty ordered the Council to put a vote on the two laws. That the outcome of the vote could not be anything else than approval is implied.

²⁹⁵ Rhodes 1981: 452, 523, 619, 682, 686.

for its name is that it is a 'vote on' the archons held by raising of hands. The main meaning of ἐπιχειροτονεῖν is simply 'to put a matter to the vote'.²⁹⁶

Now, nothing in Demosthenes' account of the law on *nomothesia* points to any other meaning for ἐπιχειροτονεῖν than 'put a matter to the vote'. At Dem. 24.24 he describes, as we have seen, a διαχειροτονία on whether new laws can be proposed or not. After the vote, if positive, anyone could present proposals for new laws. The vote is on πότερον εἰσοιστέος ἐστὶ νόμος καινός, whether a new law can be proposed, and not a vote of approval of the 'code' of Athenian laws. The διαχειροτονία was held in two stages, at which voting by raising of hands followed each one of two questions: the first question was probably 'Who thinks that a new law is to be brought in (εἰσοιστέος ἐστὶ νόμος καινός)?' The second was therefore 'Who thinks that the existing laws are sufficient (ἀρκεῖν οἱ κείμενοι [νόμοι])?'²⁹⁷ This needs have nothing to do with a vote of approval of the 'code' of law. A parallel for such a preliminary vote allowing proposals is provided by the law on *adeia* discussed at § 45-6 of this speech: no proposal is allowed about the condition of *atimoi* and debtors of the public treasury unless a preliminary vote (with a *quorum* of six thousand) in the Assembly grants *adeia* to consider such matters.

The obvious reading of ἐν ᾗ τοὺς νόμους ἐπιχειροτονήσατε at § 26 is therefore 'at which you voted on the laws' (plural), meaning 'on whether laws can be proposed'. Basically the same concept (in a different context) is expressed at *Ath.Pol.* 43.5 with περὶ τῆς ὀστρακοφορίας ἐπιχειροτονίαν διδόναι, εἰ δοκεῖ ποιεῖν ἢ μή. The verb ἐπιχειροτονήσατε is only a brief way of describing the entire process described at §24, and does not refer to a general vote of confidence on the 'code' of laws. This meaning is found in our sources only in connection with the ἐπιχειροτονία τῶν ἀρχῶν, and even

²⁹⁶ The verb (or the connected substantive) appears thrice in Athenian inscriptions: in *IG* II² 24, *SEG* 21.528 and 41.51

²⁹⁷ Cf. Hansen 1977: 124; Hansen 1979-80: 94 n. 5; Hansen 1985: 365-8; Rhodes 1981: 126-7.

in that case it is subordinated to the primary, generic meaning of 'putting the conduct of the magistrates to the vote.' Demosthenes here only refers, again, to a preliminary vote about whether to allow proposals of new laws.

The last issue to discuss in relation to Demosthenes' account of the text read out at § 20 is the 'times prescribed by the laws' (§ 26 τεταγμένων χρόνων ἐν τοῖς νόμοις) that Timocrates has not respected. 'Times' had already been mentioned at § 18. At § 26 Demosthenes, as we have seen, lists the infractions committed by Timocrates. He does not discuss here other provisions of the law; he just lists which provisions Timocrates has not respected, and then tells the judges what he has done instead. Every violation in the list corresponds to one of the clauses in the law presented at 25: the bills must be published before the monument of the Eponymous Heroes for everybody to see and make up their mind, while Timocrates has neither published his proposal nor allowed the Athenians the chance to consider it. Moreover he did not respect the 'times' prescribed by the law. Demosthenes is here alluding, again in passing, to something he has already discussed: after the preliminary vote the appointment of *nomothetai* must be discussed in the third Assembly (§ 25 τὴν τρίτην ἀπέδειξαν ἐκκλησίαν). These are the τεταγμένοι χρόνοι Demosthenes is alluding to. In fact, he proceeds to show how Timocrates infringed this provision: the preliminary vote was held on the 11th of Hekatombaion, and Timocrates enacted his law on the 12th of the same month, without waiting for the third Assembly to discuss the appointment of the *nomothetai*. The ἀλλὰ in the middle of the sentence, creating a strong opposition between the τεταγμένοι χρόνοι and Timocrates's behaviour grants this. Therefore, Demosthenes is not alluding here to a provision of the law on *nomothesia* setting a compulsory vote on the 11th of Hekatombaion. At § 28 Demosthenes emphasizes again that Timocrates' offence was to propose that his law be enacted on the next day (ἔγραψεν αὐριον νομοθετεῖν). Demosthenes never states nor implies that there was a requirement to hold a vote about

the laws on 11 Hekatombaion. If there was to be such a vote, he would have listed it with the other provisions at § 25. Nothing in Demosthenes' account of *nomothesia* in this section is inconsistent with the epigraphic evidence, which shows that one could initiate the *nomothesia* procedure at any time of the year.

I will now discuss Demosthenes' account of the law read out at § 33, and I will then compare my provisional results with the discussion of *nomothesia* in the *Against Leptines*. After listing Timocrates' infractions the *grammateus* reads out (§ 27) a decree summoning the *nomothetai* the day immediately after the preliminary vote, with the excuse of the arrangements for the *Panathenaia*.²⁹⁸ The discussion of the procedural infractions committed by Timocrates carries on to § 31. At § 32 Demosthenes closes this section of his discussion and introduces a new topic, already anticipated at § 18: Timocrates enacted a law that violates many other statutes. This, Demosthenes anticipates, is illegal because a law prescribes that nobody can present new laws contrary to existing ones. If one does, a public action can be brought against the proposer (ἀνάγνωθι δέ μοι λαβὼν τουτονὶ πρῶτον τὸν νόμον, ὃς διαρρήδην οὐκ ἔᾱ νόμον οὐδέν' ἐναντίον εισφέρειν, ἐὰν δέ τις εισφέρῃ, γράφεσθαι κελεύει).²⁹⁹ What is the relationship between this law and the one discussed at §§24-26? This law is described by Demosthenes as new and different from the previous one (τουτονὶ πρῶτον τὸν νόμον). However, a law such as the one summarized here obviously concerns legislation, and defines what the previous one ignored: it states what a new law cannot contain, and provides a procedure to bring against new laws that do not respect its provisions. Hansen rightly points out that '*nomos* can mean anything from one line of a law to complete legislation', and adduces as evidence of this the case of the

²⁹⁸ This decree has been recently shown to be a forgery by Piérart 2000: 245-50. Rhodes 2003: 125 n. 8 does not rely on it in his argument. See below pp. 151-61 for a fuller analysis of this document.

²⁹⁹ I translate here *κελεύει* with 'authorizes' since the verb in similar contexts does not mean 'orders' but simply 'provides for it'. Athens did not know compulsory prosecution for any crime. Cf. Dem. 29.9 with MacDowell 1989: 257-72 and MacDowell 2009: 46-7. See also Harris 2006: 131 for another example.

Against Aristocrates, where at § 37 and 60 Demosthenes discusses as different laws two texts that are found in the same inscription as part of a single statute (*IG I³ 104 ll. 26-29, 37-8*).³⁰⁰ Therefore the law read out by the *grammateus* at § 33 of the *Against Timocrates* is likely to be a further section of the legislation on *nomothesia*. The law one would expect to find here would be one prohibiting anyone from proposing a law that contradicts an existing one and providing public actions against an inexpedient law if such a law is enacted by the *nomothetai*.

The account of the law at § 34 is consistent with what has been anticipated at § 32: Demosthenes again clearly states that one cannot pass a law contradicting other statutes. Demosthenes adds that if anyone proposes such a law, he must repeal the opposing laws to enact the new one (οὐκ ἐὰ τοῖς ὑπάρχουσι νόμοις ἐναντίον εἰσφέρειν, ἐὰν μὴ λύσῃ τὸν πρότερον κείμενον). Demosthenes proceeds to explain the rationale behind this rule: this provision is necessary in order to let the judges cast a righteous vote (πρώτον μὲν ἵν' ὑμῖν ἐξῇ τὰ δίκαια ψηφίζεσθαι μετ' εὐσεβείας). In fact, if there were laws contradicting each other, the judges would not be able to make decisions and would be forced to violate their pledge in the judicial oath to vote according to the laws because they would have to follow one law and not follow another law (§35).³⁰¹ The lawgiver enacted such rules in order to protect the judges against this hypothetical situation. The law just read out therefore prescribes that no law contradicting existing statutes can be proposed, unless these statutes are repealed. If anybody fails to follow these provisions, anyone can accuse him through a γραφή νόμον μὴ ἐπιτήδειον θεῖναι.

Demosthenes also states here (καὶ ἔτι πρὸς τούτῳ) that the lawgiver enacted such provisions in order to make 'you' guardians of the laws (βουλόμενος φύλακας

³⁰⁰ Hansen 1985: 359.

³⁰¹ See on judicial oath Harris 2006a: 157-81.

ὑμᾶς τῶν νόμων καταστήσαι). The word ὑμᾶς in forensic speeches can refer to the judges only, or to the entire citizen body. Because he is describing how difficult it is to render verdicts according to the oath, it is clear that here ὑμᾶς refers explicitly to the judges, those among the Athenians who swore the annual Heliastic Oath. However Demosthenes in the following passage at § 37-8 seems to extend this claim to the people of Athens as a whole: he lists many different safeguards of the laws, claiming that none of them is in itself sufficient and concludes with: τίς οὖν μόνη φυλακὴ καὶ δικαία καὶ βέβαιος τῶν νόμων; ὑμεῖς οἱ πολλοί.

In this section Demosthenes, following his claim that his audience are the real guardians of the laws, provides, as we have seen, a list of 'insufficient' safeguards. Here Demosthenes is no longer summarizing the provisions of the law read out at § 33. He is just singling out all the mechanisms of control deployed through the procedure of *nomothesia*, to reveal their weaknesses. There is no need therefore to attribute all these mechanisms to the law at § 33.³⁰² Two of the mechanisms discussed here have already been mentioned: the provision for publication of the proposals before the monument of the Eponymous Heroes has been mentioned at § 25, and must have been contained in the law read out at § 20. The provision granting everybody the right to bring a γραφή νόμον μὴ ἐπιτήδειον θεῖναι is mentioned at § 32 and must have been the final provision of the law read out at § 33, and possibly the last of the provisions on *nomothesia*, providing a procedure for prosecuting whoever infringes any of the rules previously stated. Demosthenes however mentions here a further safeguard: the election of *synegoroi* (τοὺς συνηγόρους, οὓς χειροτονεῖτε).³⁰³ He does not give many details about their role, and simply points out that they might be ineffective, because somebody could convince them to stay silent. We can assume however that such *synegoroi* must

³⁰² Pace Hansen 1985: 348.

³⁰³ Cf. Rubinstein 2000: 44.

have been elected to speak in defence of the opposing laws that would have been repealed before the enactment of a new one. There is in fact no need for elected *synegoroi* speaking for the new law, since the proposer himself would have argued his case in person. Such a function is consistent with the role of the four *syndikoi* elected (ἡγορνται) to assist Leptines in defending his law (Dem. 20.146, 152, 153), whatever the differences between the two cases and the two procedures followed.³⁰⁴ At what point of the procedure were they appointed? Schöll more than one century ago correctly pointed out that the election in Athens was used only when experts were needed, and this must be the case here.³⁰⁵ In our reconstruction such an observation carries even greater weight, since, as we have seen, the preliminary vote opened the doors to any proposal, and it was impossible before the 'third Assembly' to know what laws had been proposed, and what opposing laws had therefore to be repealed. Electing the *synegoroi* at any point before the 'third Assembly' would have been pointless, because it would not have been possible to select experts of the laws to be repealed. Moreover, the very mechanism of the publicity in front of the monument of the Eponymous Heroes in order to let the Athenians make up their minds seems to be established explicitly in order to have, at the 'third Assembly', candidates for the election of the *synegoroi*. To sum up, the election of the *synegoroi* is likely to have happened at the 'third Assembly', together with the appointment of the *nomothetai*. A provision about this was certainly contained in the legislation on *nomothesia*, but it is impossible to tell whether it was part of the section read out at § 20-3, or the section read out at § 33.

³⁰⁴ I do not discuss here the legal context of the *Against Leptines*, to which I plan to come back in a separate essay. For various interpretations of what happened in that case see Wolff 1970: 35-7; Calabi Limentani 1982: 357-368; Hansen 1979-80: 95-99 and 1985: 368-71. With Hansen I believe that the four *syndikoi* were elected with that procedure in mind. The *synegoroi* are identified with the *syndikoi* also by Schöll 1886: 109 and Wotke *RE* Suppl. 8.579. Pace Atkinson 1939: 110 and MacDowell 1975: 67.

³⁰⁵ He therefore athetized the final clause of the document at § 20-3 which set their election at the same time as the preliminary vote, since electing experts before the proposals were published would have been nonsense (Schöll 1886: 108). Cf. also Atkinson 1939: 113. MacDowell 1975: 67 reports Schöll's opinion, but points out that in that first Assembly the people voted on the sections of the 'code' of laws, and therefore *synegoroi* could be appointed that were experts of the particular section to revise. We have seen that there is no reason to believe that an annual approval of the 'code' of laws ever existed.

At this point our reconstruction of the Athenian *nomothesia* based on the *Against Timocrates* seems to be consistent in itself and with the epigraphical material. We need now to check it against the other Demosthenic speech written for a γραφή νόμον μὴ ἐπιτήδειον θείναι: the *Against Leptines*.³⁰⁶ I will concentrate on the summary of the legislation on *nomothesia* (§ 93-4) provided immediately after the *grammateus* read out the relevant law. That is the place where Demosthenes is more likely to give a faithful picture of the law(s) about *nomothesia*.

At § 93 the speaker starts his account by claiming that it is clear to anyone who has listened to the text of the law how excellent are Solon's provisions for the enactment of new laws (ὄν τρόπον [...] ὁ Σόλων τοὺς νόμους ὡς καλῶς κελεύει τιθέναι). This is consistent with Dem. 24.18 (περὶ τῶν μελλόντων τεθήσεσθαι νόμων) and 24 (πότερον εἰσοιστέος ἐστὶ νόμος καινός): the topic of the statute is the enactment of new laws. Demosthenes also states that opposing laws must be repealed when enacting a new law.³⁰⁷ This provision is recalled at Dem. 24.32 and 34 as the main topic of the law read out at § 33. The reasons given for this provision, mainly to avoid confusion for the judges, are consistent in both speeches. Demosthenes then (§ 94) turns to stages of the procedures prior to those just listed (καὶ πρὸ τούτων) and recalls that the proposals must be first published before the Eponymous Heroes, as we know from Dem. 24.25 and 37. He then adds that the bills must be read 'often' in the Assembly by the *grammateus* (καὶ τῷ γραμματεῖ παραδοῦναι, τοῦτον δ' ἐν ταῖς ἐκκλησίαις ἀναγιγνώσκειν, ἵν' ἕκαστος ὑμῶν ἀκούσας πολλάκις). This rule is not found in the *Against Timocrates*, but is confirmed by Din. 1.42 and supplies a further detail about the procedure.

³⁰⁶ For the political context of this speech see Canevaro 2009.

³⁰⁷ I do not discuss here the identity of the *nomothetai*. This, together with the procedure for repealing laws described in Demosthenes' speech *Against Leptines* and Aeschines' speech *Against Ctesiphon* (3.38-40) will be the subject of a separate essay.

It is easy to see that this short account is coherent with the reconstruction we have drawn from the *Against Timocrates*. The two accounts are consistent with each other and confirmed in some parts by the epigraphical material to provide the following rules: 1) a preliminary vote in the Assembly, at any point of the year, had to be held in order to allow new laws to be proposed (Dem. 24.25); 2) the new proposals had to be posted in front of the monument of the Eponymous Heroes (Dem. 24.25; 20.94); 3) the bills had to be read out by the *grammateus* in each Assembly until the appointment of the *nomothetai*, to allow everyone to make up their minds (Dem. 20.94); 4) in the third Assembly after the preliminary vote, on the basis of the bills presented, the people had to discuss the appointment of the *nomothetai* and pass a decree of appointment (Dem. 24.25; 20.92); 5) presumably in the same context expert *synegoroi* were elected to defend those laws whose repeal was necessary for enacting the new laws (Dem. 24.36; 20.146); 6) opposing laws had to be repealed in order to be able to enact new laws (Dem. 24.32, 34-5; Dem. 20.93); 7) if the proposer of a new law failed to abide by any of these provisions, anyone could bring him to trial through a γράφῃ νόμον μὴ ἐπιτήδειον θείναι (Dem. 24.32).

This reconstruction must now be compared with the procedure laid down in the two documents at § 20-3 and 33.

4.1.1 Dem. 24.20-3: the procedure of *nomothesia*

ΕΠΙΧΕΙΡΟΤΟΝΙΑ ΝΟΜΩΝ.

Ἐπὶ δὲ τῆς πρώτης πρυτανείας τῇ ἐνδεκάτῃ ἐν τῷ δήμῳ, ἐπειδὴν εὕξεται ὁ κήρυξ, ἐπιχειροτονίαν ποιεῖν τῶν νόμων, πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εἴτα οἱ κεῖνται τοῖς ἐννέα ἄρχουσιν, εἴτα τῶν ἄλλων ἀρχῶν. ἢ δὲ χειροτονία ἔστω ἢ προτέρα, ὅτῳ δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί, ἢ δ' ὑστέρα, ὅτῳ μὴ δοκοῦσιν· εἴτα τῶν κοινῶν κατὰ ταῦτά. τὴν δ' ἐπιχειροτονίαν εἶναι τῶν νόμων κατὰ τοὺς νόμους τοὺς κειμένους. ἐὰν δὲ τινες τῶν νόμων τῶν κειμένων ἀποχειροτονηθῶσι, τοὺς πρυτάνεις, ἐφ' ὧν ἂν ἢ ἐπιχειροτονία γένηται, ποιεῖν περὶ τῶν ἀποχειροτονηθέντων τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν· τοὺς δὲ προέδρους, οἳ ἂν τυγχάνωσι προεδρεύοντες ἐν ταύτῃ τῇ ἐκκλησίᾳ, χρηματίζειν ἐπάναγκες πρῶτον μετὰ τὰ ἱερὰ περὶ τῶν νομοθετῶν, καθ' ὅ τι καθεδοῦνται, καὶ περὶ τοῦ ἀργυρίου, ὁπόθεν τοῖς νομοθέταις ἔσται· τοὺς δὲ νομοθέτας εἶναι ἐκ τῶν ὁμωμοκότων τὸν ἡλιαστικὸν ὄρκον. ἐὰν δ' οἱ πρυτάνεις μὴ ποιήσωσι κατὰ τὰ γεγραμμένα τὴν ἐκκλησίαν ἢ οἱ πρόεδροι μὴ χρηματίσωσι κατὰ τὰ γεγραμμένα, ὀφείλιν τῶν μὲν πρυτάνεων ἕκαστον χιλίας δραχμὰς ἱερὰς τῇ Ἀθηνᾷ, τῶν δὲ προέδρων ἕκαστος ὀφειλέτω τετραράκοντα δραχμὰς ἱερὰς τῇ Ἀθηνᾷ. καὶ ἔνδειξις αὐτῶν ἔστω πρὸς τοὺς θεσμοθέτας, καθάπερ ἐάν τις ἄρχῃ ὀφείλων τῷ δημοσίῳ· οἳ δὲ θεσμοθέται τοὺς ἐνδειχθέντας εἰσαγόντων εἰς τὸ δικαστήριον κατὰ τὸν νόμον, ἢ μὴ ἀνιόντων εἰς Ἄρειον πάγον, ὥς καταλύοντες τὴν ἐπανόρθωσιν τῶν νόμων. πρὸ δὲ τῆς ἐκκλησίας ὁ βουλόμενος Ἀθηναίων ἐκτιθέτω πρόσθε τῶν ἐπωνύμων γράψας τοὺς νόμους οὓς ἂν τιθῇ, ὅπως ἂν πρὸς τὸ πλῆθος τῶν τεθέντων νόμων ψηφίσῃται ὁ δῆμος περὶ τοῦ χρόνου τοῖς νομοθέταις. ὁ δὲ τιθεὶς τὸν καινὸν νόμον ἀναγράψας εἰς λεύκωμα ἐκτιθέτω πρόσθεν τῶν ἐπωνύμων ὁσημέραι, ἕως ἂν ἐκκλησία γένηται. αἰρεῖσθαι δὲ καὶ

τοὺς συναπολογησομένους τὸν δῆμον τοῖς νόμοις, οἳ ἂν ἐν τοῖς νομοθέταις
λύωνται, πέντε ἄνδρας ἐξ Ἀθηναίων ἀπάντων, τῇ ἐνδεκάτῃ τοῦ
ἐκατομβαιῶνος μηνός.

1 ΕΠΙ ΧΕΙΡΟΤΟΝΙΑΝ S | 2 περὶ del. Schöll | 2-3 περὶ τῶν κοινῶν A | 3 ἡ δὲ χειροτονία S : ἡ δ'
ἐπιχειροτονία A F Y P | ἀρχῶν susp. Dobree | 5 κοινῶν codd. : λοιπῶν Westermann : κοινῶν καὶ
τῶν ἄλλων Sykutris | κατὰ ταῦτά F : κατὰ αὐτά S : κατ' αὐτά A (apostr. add. manus secunda) | 7
ἀποχειροτονία A Y P (P⁷⁰: ἐπιχειροτονία) | 9 τυγχάνωσι A P Schol. ad loc. : τύχωσι S F Y |
παρεδρεύοντες S Y | 10 τοῦ om. S F Y P | 11 τὸν om. A | 12 ποιῶσι S F Y P | κατὰ τὰ
προγεγραμμένα A F Y P | 13 κατὰ τὰ γεγραμμένα (προγεγραμμένα F Y P) om. A | ὀφείλιν
τῶν codd. : ὀφειλόντων A | 15 ἔστω αὐτῶν A | 18 Ἀθηναίων νομοθετεῖν F | 20 ἐκτεθέντων F |
22 <ἡ> ἐκκλησία add. Dobree | 23 οἶοι A | 23-4 τῇ ἐνδεκάτῃ τοῦ ἐκατομβαιῶνος μηνός del.
Schoell cf. 26

THE APPROVAL OF THE LAWS

On the eleventh day of the first prytany in the Assembly; after the herald says the prayers, the approval of laws shall proceed as follows: first those laws concerning the Council, second the general ones, then those concerning the nine archons and then those of the other magistrates. First, those satisfied with the laws about the Council will raise their hands and then those who are not satisfied, and later in the same way they shall vote about the general statutes. The approval of laws shall be conducted according to the existing laws. If some existing laws are rejected, the *prytaneis* in whose term the voting takes place shall devote the last of the three Assemblies to discussing the rejected laws; the chairmen of this Assembly shall, immediately after the religious observances, put the question about the sessions of *nomothetai* and the fund from which their payment is to be drawn. Only persons who have sworn the judicial oath can be appointed as *nomothetai*. If the *prytaneis* do not convene the

Assembly as above or the chairmen do not put the question in discussion, each *prytanis* shall owe a thousand drachmas sacred to Athena and each chairman forty drachmas sacred to Athena. And an *endeixis* shall be lodged with the *thesmothetai* as in the case of anyone who holds office while in debt to the public treasury; and the *thesmothetai* are to introduce the cases of those against whom information was given to the court according to the law, otherwise they are not going to become members of the Areopagus on the ground of obstructing the rectification of the laws. Before the day of the Assembly any Athenian who wishes may display in front of the monument of the Eponymous Heroes the laws he proposed, in order that the Assembly may vote about the time allowed to the *nomothetai* with due regard to the number of the proposed laws. Anyone proposing a new law shall write it on a white board and display it in front of the Eponymous Heroes as many days as remain until the day of the Assembly. The Assembly, on the eleventh of the month Hekatombaion, shall elect five persons from all the Athenians who will defend the laws under repeal in front of the *nomothetai*.³⁰⁸

Stichometric calculations have shown that this document cannot have been part of the *Urexemplar* of the speech. However, the scholia contain many remarks about the text of this document that show that it was present in copies of the speech circulating in late antiquity.³⁰⁹

There are major differences between the document and Demosthenes' accounts in this speech and in the *Against Leptines*. 1) The procedure described by Demosthenes is one for enacting new laws, whereas the document provides for an annual vote of approval of the entire 'code' of laws and for the rejection of some. 2) Demosthenes

³⁰⁸ This translation is adapted from Arnaoutoglou 1998: 88-9.

³⁰⁹ If, following Heath 2004: 132-83, we attribute many of these *scholia* to Menander, we can at least keep the late 3rd century AD as a *terminus ante quem*.

describes a preliminary vote to allow new proposals (plural) to be made whereas the document describes a vote of approval for the existing laws section by section. 3) The document sets this vote of approval in the 11th day of the first prytany of every year and provides, in case some laws are not approved, for the appointment of the *nomothetai* following a discussion in 'the last of the three Assemblies'. Demosthenes, on the other hand, supported by the epigraphical evidence, shows that the *nomothetai* could be appointed at any point of the year. 4) The document provides for the election of five *synegoroi* in the same Assembly on the 11th of the first prytany. Demosthenes, on the other hand, implies that they were appointed later after the proposals for new laws were presented. A closer analysis of the features of the document confirms that it cannot be an authentic Athenian statute.

1) The expression 'after the herald says the prayers' (ἐπειδὴν εὔξεται ὁ κήρυξ) to indicate that a matter must be the first item on the agenda of an Assembly meeting, just after the sacrifices, is unparalleled in Athenian inscriptions. The customary expression, in Athens and elsewhere, was μετὰ τὰ ἱερά, 'after the sacrifices.'³¹⁰

2) In the document we find the phrase ἐπχειροτονίαν ποιεῖν τῶν νόμων. The verb ποιεῖν is in the active, but there is no subject for it. The subject should be the *proedroi* or the people. Even if we assume that the subject is understood, the expression is nevertheless unparalleled. In Athenian inscriptions the *proedroi* put to the vote (ἐπιψηφίζειν), they never ποιεῖν χειροτονίαν (or words derived from the same root), it is always the δῆμος (or the βουλή) that (ἐπ- or δια-) votes by show of hands (χειροτονῆσαι).³¹¹ In literary sources the verb used with χειροτονίαν (or derivatives) is

³¹⁰ This expression is found in the document later at § 21. It was widespread in the Greek world. A search in the PHI database yields 34 occurrences in Athenian inscriptions (e.g. *IG* II² 107.16; 185.8; 212.57; 238 fr. bc1.13-4), but 345 from the Aegean Islands and Crete, and 69 from Asia Minor. τὰ ἱερά refers to the sacrifices, cf. Harris 2006: 91-2.

³¹¹ Cf. e.g. *IG* II² 28.14, 22-3; 211.5-6; 244.28 for the people, 244.10 for the Council.

invariably δίδωμι.³¹² It is easy to see where a later forger could find such an expression: at § 25 Demosthenes writes καὶ πρῶτον μὲν ἐφ' ὑμῖν ἐποίησαν διαχειροτονίαν. However, the subject of ἐποίησαν is there οἱ νόμοι, specifically those about *nomothesia*. The expression means 'and first the laws set a vote among you (in the Assembly)', and in this sense is perfectly normal. The forger took it from this context and misunderstood it.

3) The document describes the procedure for ἐπιχειροτονία and orders the confirmation πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εἶτα οἱ κεῖνται τοῖς ἐννέα ἄρχουσιν, εἶτα τῶν ἄλλων ἀρχῶν. Scholars have seen in these categories the organization of the Athenian 'code' of laws. Laws would have been grouped in these broad categories, in the Stoa Basileios or in the archives, according to the official responsible for them.³¹³ The second part of the *Ath.Pol.* would be based on the actual arrangement of the laws of Athens, and would confirm the content of the document.³¹⁴ MacDowell has also, accordingly, argued that if the laws were arranged according to the officials in charge of them, then the category τῶν κοινῶν cannot refer to laws common to all citizens, but must refer to laws common to all the officials.

This is not the place to discuss the hypothesis of a 'code' of laws arranged by the names of the competent officials. I shall limit myself to pointing out a few difficulties in the text of the document. First, the grammar of the clause does not work: the clause ἐπιχειροτονίαν ποιεῖν τῶν νόμων requires a genitive of category, and περὶ τῶν

³¹² Cf. for the 5th and 4th century Aeschin. 3.39, Dem. 24.25, 50, 22.9 and *Ath.Pol.* 43.5, 55.4. They confirm that the correct verb is δίδωμι. The only exception seems to be Dem. 21.6, where we find καταχειροτονίαν ὁ δῆμος ἐποίησατο. However καταχειροτονία in this case does not mean simply a vote, it means a vote of censure in a *proboule*, although without legal effects (see Harris 2008: 79). The expression therefore does not mean, as in all the other cases, 'to put a matter to the vote', but 'to condemn'. ποιεῖν with χειροτονία becomes common in later periods. Cf. e.g. Plut. *Nicias* 12.5; Paus. *Att. Att.On.* 1.9; Didymus Caecus, *Comm.* 2.256; Lib. *Orat.* 15.5; Socr. *Schol. Hist.* 2.24, 6.14 etc.

³¹³ Cf. Schöll 1886: 85-95; Kahrstedt 1938: 11; Ruschenbusch 1966: 27-31; MacDowell 1975: 67; Rhodes 1981: 33-9; Sickinger 1999: 149-50.

³¹⁴ Cf. the essays quoted in the note above and in particular Rhodes 1981: 33-4. This correspondence is not beyond doubt. For the arrangement of the second part of the *Ath.Pol.* see also Hansen 1974: 10-12 and Harris 2006: 30-2.

βουλευτικῶν ('make a vote of confirmation about the laws about the bouletic [sc. laws]') as it stands does not make any sense.³¹⁵ Moreover τῶν ἄλλων ἀρχῶν as it stands recalls the ἐπιχειροτονία τῶν ἀρχῶν, a procedure that has nothing to do with an approval of the Athenian 'code of laws', and is, unlike this procedure, well attested (cf. *Ath.Pol.* 43.4, 61.2 and 61.4 and [Dem.] 58.27). Schöll, in order to save the provision, proposes that τῶν ἀρχῶν is haplography for τῶν τῶν ἀρχῶν.

A second difficulty is in the next sentence (ἡ δὲ χειροτονία ἔστω ἢ προτέρα, ὅτῳ δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί, ἢ δ' ὑστέρα, ὅτῳ μὴ δοκοῦσιν· εἴτα τῶν κοινῶν κατὰ ταῦτά). The document spells out the procedure of approval, but stops with the 'common laws' and does not say anything about the last two categories. Their absence from the description of the actual procedure points to an interpretation of the last categories not as subdivisions of the 'code' of laws, but rather as an actual ἐπιχειροτονία of the officials, which has nothing to do with the legislation on *nomothesia*.³¹⁶

The third difficulty is that later in the document we read that ἐὰν δέ τινες τῶν νόμων τῶν κειμένων ἀποχειροτονηθῶσι ('if some existing laws are rejected'), a later Assembly must discuss the appointment of the *nomothetai* περὶ τῶν ἀποχειροτονηθέντων. This passage refers to actual laws rejected in the annual vote of approval, but the document provides only for approval of macro-sections of the 'code'. When and how 'were some of the existing laws rejected' (τινες τῶν νόμων τῶν κειμένων ἀποχειροτονηθῶσι)? One might argue that the Athenians voted on every single law section by section, but this would have taken far longer than one meeting of the Assembly. A further, general difficulty in accepting a vote *kapitelweise* is that we never find in our sources, neither literary nor epigraphic, any mention of such

³¹⁵ Schöll 1886: 86, in order to save the provision, has athetized περὶ.

³¹⁶ This was already noted by Westermann 1850: 14.

categories. If these categories were listed and spelt out every year in the Assembly, we would expect the Athenians to be generally aware of them, and the orators to refer to them in order to make the statutes mentioned easily recognized. Instead, we find νόμους τελωνικούς (Dem. 24.101), φονικούς νόμους (Dem. 23.51), a μεταλλικὸν νόμον (Dem. 37.35), ἐμπορικούς νόμους (Dem. 35.3), περὶ διαθηκῶν νόμους (Hyp. 3.17), a περὶ τῆς κακηγορίας νόμον (Isoc. 20.3), a περὶ τῆς ἀργίας νόμον (Dem. 57.32), but never a single mention of any of the categories found in the document.³¹⁷

4) The next clause in the document, τὴν δ' ἐπιχειροτονίαν εἶναι τῶν νόμων κατὰ τοὺς νόμους τοὺς κειμένους, is otiose. The document reports the statute about the ἐπιχειροτονία τῶν νόμων, and it lays down the procedure for approval. Thus there is no point in specifying that the vote of approval is given κατὰ τοὺς νόμους τοὺς κειμένους: either there were no pre-existing laws on the topic, or the new procedure overrode them. The rule therefore makes no sense.³¹⁸

5) The next sentence provides that in case any of the laws is rejected, the *prytaneis* must schedule the discussion of the rejected laws τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν. Such an expression (or similar) is unparalleled in Athenian inscriptions and has troubled many scholars. Its meaning seems to be clear: it specifies a total of three Assemblies that were held, presumably, every prytany, and prescribes that discussion on the rejected laws must be scheduled for the third of these meetings in the first prytany. However *Ath.Pol.* 43.3 clearly states that οἱ δὲ πρυτανεύοντες [...]συνάγουσιν [...] τὸν δὲ δῆμον τετράκις τῆς πρυτανείας ἐκάστης. Hansen and Mitchel³¹⁹ have proposed that the system of four meetings of the Assembly every prytany must be dated later than this speech, as late as about 350 BCE, and previously, in accordance with the document, there were only three meetings per prytany. Demosthenes (§ 25) however

³¹⁷ A forthcoming essay by E. M. Harris provides more examples and shows that Athenian laws were organized not by procedure but by substantive content.

³¹⁸ The same remarks have been made by Westermann 1850: 19 and Schöll 1886: 99-100.

³¹⁹ Hansen - Mitchel 1984: 13-19.

states that the discussion about the appointment of the *nomothetai* must be held τὴν τρίτην [...] ἐκκλησίαν. Schöll rightly noted that in Athenian inscriptions εἰς τὴν πρώτην ἐκκλησίαν always refers to the following Assembly (e.g. *IG II² 103 l. 14*) and therefore τὴν τρίτην [...] ἐκκλησίαν must refer to the third Assembly after the first one.³²⁰ This would confirm the figure of four Assemblies per prytany provided by the *Ath.Pol.*

Hansen tries to refute Schöll's argument by pointing out that the Greeks usually counted inclusively, and the fact that τὴν πρώτην ἐκκλησίαν means 'the following Assembly' does not prove that τὴν δευτέραν ἐκκλησίαν means 'the second Assembly' after the original one. I doubt whether such an ambiguity would have been acceptable in official language: if Hansen is right, ideally it would have been possible to refer to the 'following Assembly' both with τὴν πρώτην ἐκκλησίαν and τὴν δευτέραν ἐκκλησίαν, and this second expression would have meant both 'the following Assembly' and 'the second Assembly' after the original one. No evidence supports this implausible hypothesis. Moreover at Dem. 20.94 we read that the bills had to be read many times (πολλάκις) in the Assembly. One could not call one meeting of the Assembly, or even two, 'many times'. It would require at least three meetings. Moreover Din. 1.42 states that Demosthenes μετέγραφε καὶ μετεσκεύαζε τὸν νόμον (his trierarchic law) καθ' ἐκάστην ἐκκλησίαν. Again, I find it hard to believe that ἐκάστην ἐκκλησίαν can refer to one, or even two (it would have been ἐκατέραν) meetings of the Assembly. Hansen counters this argument by claiming that in the first case the procedure was probably a different one, and in the second the number of Assemblies per prytany had already been changed. However, Demosthenes' wording clearly points to 'the third Assembly' after the original one. The document is clearly in disagreement with the orator. Schöll tried to solve this difficulty by hypothesizing that τὴν τελευταίαν

³²⁰ Schöll 1886: 101.

τῶν τριῶν ἐκκλησιῶν might mean 'the last of the three (remaining) Assemblies'. But this interpretation strains the Greek and is less satisfactory than the straightforward reading of the phrase.

However, an alternative solution exists. If we look at the *scholia* to this passage (24.20 Dilts) we read κατὰ μῆνα τρεῖς ἐκκλησίας ἐποιοῦντο, and then a list of typical days for Assemblies that is confirmed by the epigraphical evidence.³²¹ This piece of information is found also in *Schol.Dem.* 18.73, 19.123, 154 Dilts, *Schol.Aesch.* 1.60, 3.24 Schultz, *Schol.Ar. Ac.*19, Phot. s.v. κυρία ἐκκλησία. All these texts are likely to derive from an independent source which was, as the widespread attestations show, well known from at least the 2nd century AD (Harpocration s.v. σύγκλητος ἐκκλησία provides the *terminus ante quem*). A later forger, independently aware of this piece of information and faced with τὴν τρίτην [...] ἐκκλησίαν in Demosthenes' account, might have easily concluded that the orator was referring to the third Assembly of the month. Yet this is not what Demosthenes says. He states that the discussion about the appointment of the *nomothetai* is to take place at the third meeting of the Assembly after the initial vote to allow new legislation: no sooner, no later.

6) The date at the beginning of the document is given according to the bouleutic calendar, whereas at the end we find 'on the eleventh of the month Hekatombaion', which follows the festival calendar. However in the fourth century we never find the date expressed according to the festival calendar in inscriptions before 341/0.³²² This law, if authentic, would have been enacted at the end of the fifth or at the beginning of the fourth century. The speech itself dates from the 350s. The presence of a date expressed according to the festival calendar is unacceptable.³²³

³²¹ Harris 1991: 325-41. Hansen 1987: 35-50 claims that the information applies only to the period of the twelve tribes but see Harris 2006: 118-120.

³²² *IG II²* 229.4-5. Cf. Henry 1977: 37.

³²³ Harris 2006: 104 n. 5; Hansen 1993: 99-113 at 101-2.

8) There follows a long section about the penalties for *prytaneis*, *proedroi*, and *thesmothetai* who do not perform their duties. Afterwards the document requires that copies of the proposals be placed before the monument of the Eponymous Heroes, in order to allow the people to assess the time needed by the *nomothetai* and appoint them accordingly. The last provision deals with the election (αἰρεῖσθαι) of advocates of the laws to be repealed (τοὺς συναπολογησομένους τοῖς νόμοις). We have seen above that the rationale for the election of advocates of the laws would require them to be chosen when the laws to be repealed are known, that is 'in the third Assembly'. One could not know what opposing laws (if any) were to be repealed until after the proposals for new laws were made at subsequent meetings of the Assembly.³²⁴ In the document they are nevertheless appointed τῇ ἐνδεκάτῃ τοῦ ἑκατομβαιῶνος μηνός. Schöll, in order to solve this problem, has proposed to athetize the indication of the date. Such an emendation is not acceptable unless the document's authenticity can be independently confirmed.

9) Demosthenes at § 36 calls the advocates of a law συνηγόρους. At Dem. 20.146 he calls them σύνδικοι. Both these terms are attested in contemporary Athenian inscriptions.³²⁵ Instead, the participle συναπολογησομένους or any other form of the verb συναπολογέομαι are unattested in Attic inscriptions. The two words employed by Demosthenes are technical terms, yet the participle in the document, where we should expect official language, is not.³²⁶

The person who composed the document at Dem. 24.20-23 was a skilful forger, one who knew the Attic orators and possibly had access to a *lexicon* or commentary.

³²⁴ Cf. above pp. 129-30 and 133.

³²⁵ σύνδικος is found in inscriptions up to the end of the fourth century in *SEG* 3.117.7; 42.217.8-9; *GRBS* 26:165.49.5; 51.17. συνήγορος is found in *IG* II² 1183.14; 1237.32; 1251.10-1; *III* App. 38.6-7; Ziebarth, *Neue Verfluchungstafeln*, *SPAW* 1 (1934) 2.2; *SEG* 44.226.6, 10; 28.103.41-2. For differences between the two terms, and the overlap in their application see Rubinstein 2000: 43-5.

³²⁶ Participles of συναπολογέομαι are found in fourth-century prose only at Dem. 25.56; Hyp. 1.10; Lycurg. 1.138. They are never employed as technical terms but simply mean 'one who joins in mounting one's defence'. It is also interesting that the verb is found in the Demosthenic *corpus* only in two other places: Dem. 24.157, 159, both in the speech where we find the document.

Whatever he knew, the document is not consistent with Demosthenes' accounts in *Against Leptines* and *Against Timocrates* and contains features that find no parallel in contemporary documents.

4.1.2 Dem. 24.33: *nomothesia* and opposing laws

NOMOS.

Τῶν δὲ νόμων τῶν κειμένων μὴ ἐξεῖναι λύσαι μηδένα, ἐὰν μὴ ἐν νομοθέταις. τότε δ' ἐξεῖναι τῷ βουλομένῳ Ἀθηναίων λύειν, ἕτερον τιθέντι ἀνθ' ὅτου ἂν λύῃ. διαχειροτονίαν δὲ ποιεῖν τοὺς προέδρους περὶ τούτων τῶν νόμων, πρῶτον μὲν περὶ τοῦ κειμένου, εἰ δοκεῖ ἐπιτήδειος εἶναι τῷ δήμῳ τῷ Ἀθηναίων ἢ οὐ, ἔπειτα περὶ τοῦ τιθεμένου. ὁπότερον δ' ἂν χειροτονήσωσιν οἱ νομοθέται, τοῦτον κύριον εἶναι. ἐναντίον δὲ νόμον μὴ ἐξεῖναι τιθέναι τῶν νόμων τῶν κειμένων μηδενί. ἐὰν δέ τις λύσας τινὰ τῶν νόμων τῶν κειμένων ἕτερον ἀντιθῇ μὴ ἐπιτήδειον τῷ δήμῳ τῷ Ἀθηναίων ἢ ἐναντίον τῶν κειμένων τῷ, τὰς γραφὰς εἶναι κατ' αὐτοῦ κατὰ τὸν νόμον ὃς κεῖται ἐὰν τις μὴ ἐπιτήδειον θῇ νόμον.

4 τῷ Ἀθηναίων codd. : τῷ Ἀθηναίῳ S | 5 τοῦτον τὸν κύριον S | 6-7 μηδενί - κειμένων om. P add. in marg. | 7 ἀντιθῇ codd. : ἀντιτιθῇ S^{c (m.a.)} | 8 ἢ om. S^a |

It is prohibited to repeal any existing law except at a session of *nomothetai*. And then, any Athenian who wishes to repeal a law shall propose a new law to replace the one repealed. And the chairmen shall take a vote by show of hands about those laws, first about the existing one, if it seems that the law is advantageous to the Athenians or not, and then about the proposed one. The law which the *nomothetai* vote for shall be the valid one. It is not allowed to introduce a law in conflict with existing laws, and if anyone, having repealed an existing law, proposes a new law not advantageous for the Athenians or in conflict with any of the existing laws, indictments shall be

lodged against him according to the existing law regarding the proposer of an unsuitable law.³²⁷

The stichometry shows that this document was not present in the *Urexemplar* of the speech. The *scholia* provide comments on the document, which show that it was present in manuscripts circulating in late antiquity.

Demosthenes, both in his adjacent summary (§ 32-5) and in his summary of the law about *nomothesia* in the *Against Leptines* (Dem. 20.93-4), clearly states that the statute supposed to be read here by the *grammateus* ordered that those who proposed new laws according to the procedure previously described had to propose the repeal of any contradictory law. If they failed to do so, they were liable to a γραφή νόμον μὴ ἐπιτήδειον θείναι. This document instead provides a procedure for repealing existing laws to which Demosthenes never refers, and orders that those who repeal a law have to propose a new law in its place. This reverses the order of the procedure's steps in Demosthenes' paraphrase. If the law proposed to replace the existing law contradicted existing statutes, the repeal of those laws had to be proposed too. This procedure has nothing to do with the straightforward provisions summarized by Demosthenes.

Moreover, the document's content is contradictory, and some of its features reveal that it cannot be a genuine document.

1) The document contradicts itself; in its first sentence it states that 'it is prohibited to repeal any existing law except at a session of *nomothetai*',³²⁸ but in its last sentence it provides a different way to do it, through a γραφή νόμον μὴ ἐπιτήδειον θείναι, which had to be heard by judges, not *nomothetai*. That a γραφή νόμον μὴ ἐπιτήδειον θείναι, if successful, resulted in the repeal of the law enacted by the

³²⁷ This translation is adapted from Arnaoutoglou 1998: 89-91.

³²⁸ The forger might have been misled by Dem. 3.10. This passage mentions the possibility of appointing *nomothetai* for the sole purpose of repealing laws, but his language makes it clear that their normal function was to ratify laws and that his own proposal would have been an innovation.

defendant, is witnessed by the very existence of the speeches *Against Timocrates* and *Against Leptines*. In fact, we know that the charge brought by Apsephion was successful and resulted in the repeal of Leptines' law.³²⁹ Both cases were heard by judges, not by a panel of *nomothetai*.³³⁰

2) The sentence 'the chairmen shall take a vote by show of hands about those laws' (διαχειροτονίαν δὲ ποιεῖν τοὺς προέδρους περὶ τούτων τῶν νόμων) is unparalleled. In all our sources the *proedroi* always give (διδόναι) a διαχειροτονίαν. This expression derives, again, from § 25 (καὶ πρῶτον μὲν ἐφ' ὑμῖν ἐποίησαν διαχειροτονίαν: 'and first the laws set a vote among you'), where the subject was however the laws on *nomothesia*.

3) At § 32 Demosthenes states that the law about to be read by the *grammateus*, in case someone enacts a law in contrast with existing statutes, γράφεσθαι κελεύει. This expression means that the law permits anyone to bring a public action and lays down the procedure for it.³³¹ The document on the other hand does not lay down any procedure, but states that if one enacts a law in contrast with existing statutes and does not repeal them, the γράφαὶ 'shall be lodged against him according to the existing law regarding the proposer of an unsuitable law.' Instead of describing the proper procedure, the document refers to a further law: τὸν νόμον ὃς κεῖται ἐάν τις μὴ ἐπιτήδειον θῇ νόμον.

³²⁹ See Dio Chrys. 31.128 with Harris 2008: 20-21.

³³⁰ The orator addresses the audience with the words ἄνδρες δικασταί at Dem. 20.1, 15, 29, 36, 45, 55, 64, 67, 69, 79, 87, 95; 24.1, 19, 24, 43, 51, 64, 72, 111, 113, 121, 122, 123, 124, 125, 130, 134, 136, 139, 140, 142, 143, 144, 145, 146, 147, 151, 152, 153, 154, 167, 200, 212. Hansen 1985: 350 postulates that during the first year after its enactment a law was not fully in force, but had an intermediate status, and could be repealed in a tribunal. After one year it became one τῶν δὲ νόμων τῶν κειμένων, a part of the 'code', and could be repealed only by the *nomothetai*. This seems to me to explain *ignotum per ignotius*. This intermediate status is clearly excluded by the law of Diokles, quoted and discussed at Dem. 24.42-4, which states that τοὺς νόμους [...] τοὺς δὲ μετ' Εὐκλείδην τεθέντας καὶ τὸ λοιπὸν τιθεμένους κυρίους εἶναι ἀπὸ τῆς ἡμέρας ἧς ἕκαστος ἐτέθη. This document was, according to the stichometry, part of the *Urexemplar* (see p. 34), and Hansen 1990 himself accepts it as an authentic statute. Cf. below pp. 173-80.

³³¹ Cf. Dem. 29.9 with MacDowell 1989: 257-72, MacDowell 2009: 46-7. Demosthenes obviously does not mean that the law 'orders' the prosecution of the law's proposer.

The provisions described in this document are quite inconsistent with Demosthenes' accounts of *nomothesia* in the *Against Leptines* and *Against Timocrates*. They are also contradictory, and one phrase finds no parallel in contemporary inscriptions. Moreover there is no reason to believe that the additional information found in the inserted document that is not found in the accompanying summary derives from an independent source and is reliable. The disagreements between the document and the orator's account can be more likely explained as due to clumsy composition from the orator's words.

4.2 Dem. 24.27: Epicrates' decree

ΨΗΦΙΣΜΑ

Ἐπὶ τῆς Πανδιονίδος πρώτης, ἑνδεκάτῃ τῆς πρυτανείας, Ἐπικράτης εἶπεν, ὅπως ἂν τὰ ἱερὰ θύηται καὶ ἡ διοίκησις ἱκανὴ γένηται καὶ εἴ τινος ἐνδεὶ πρὸς τὰ Παναθήναια διοικηθῇ, τοὺς πρυτάνεις τοὺς τῆς Πανδιονίδος καθίσαι νομοθέτας αὔριον, τοὺς δὲ νομοθέτας εἶναι ἓνα καὶ χιλίους ἐκ τῶν ὁμωμοκότων, συννομοθετεῖν δὲ καὶ τὴν βουλήν.

ΨΗΦΙΣΜΑ ΤΙΜΟΚΡΑΤΟΥΣ S^c | Ἐπικράτης A Y Schol. ad loc. : Τιμοκράτης S F P | ὡς κάλλιστα ante θύηται add. Schoell cf. 28 | πῶς ἡ διοίκησις S | προσδεῖ A | τοὺς ante πρυτάνεις om. A

During the first Pandionis, on the eleventh of the prytany, Epicrates proposed: in order that the sacrifices may be offered, the funds for them may be sufficient, and if anything is needed for the Panathenaea funds may be provided, the *prytaneis* from Pandionis should have the *nomothetai* meet tomorrow, there should be 1001 *nomothetai* from those who have sworn the oath and they should pass laws in conjunction with the Council.

The stichometry has shown that this document cannot have been part of the *Urexemplar* of the speech. It has therefore been inserted at a later date, but early enough to allow the name Epikrates to appear in the *scholia ad locum* (24.27 Dilts).

In the passage preceding the document Demosthenes discussed the regulations on *nomothesia* and explained the correct procedure for passing new legislation. In particular, he points out that the discussion about the actual appointment of the *nomothetai* must happen in the 'third Assembly' after the preliminary vote on

nomothesia, and the *nomothetai* must be appointed even later. At § 26 he states that the law of Timocrates has been enacted on the 12th of Hekatombaion, the very day after the preliminary vote. Timocrates has not respected the times required by the law. Moreover, on the 12th of Hekatombaion the Athenians celebrate the feast of the Cronia, and therefore the Council is adjourned (καὶ διὰ ταῦτ' ἀφειμένης τῆς βουλῆς). Nevertheless Timocrates, with others involved in the plot (μετὰ τῶν ὑμῖν ἐπιβουλευόντων), contrived to summon the *nomothetai* by decree on that date with the pretext of the Panathenaia. Demosthenes then asks the *grammateus* to read out the decree (§ 27), in order to show the judges that 'they' (Timocrates and his allies) did not leave anything to chance, and deliberately plotted to violate the regulations about *nomothesia*. After the decree is read out, at § 28, the orator wants the judges to notice how ingeniously the proposer of the decree (ὁ γράφων αὐτὸ), with the excuse of financial needs and of the approaching Panathenaia (τὴν διοίκησιν καὶ τὸ τῆς ἐορτῆς προστησάμενος κατεπείγον), ignored the times prescribed by the law and ordered to 'legislate tomorrow' (αὔριον νομοθετεῖν). Demosthenes immediately dismisses the reason for summoning the *nomothetai* provided in the decree. They are summoned οὐχ ἵν' ὥς κάλλιστα γένοιτό τι τῶν περὶ τὴν ἐορτήν. These words seem to be modelled on and parody those of the actual decree: we find in contemporary inscriptions expressions such as ὅπως ἂν τῇ] Ἀθηνᾶι ἡ θυσία ὥς καλλίστ[η ἤ] Παναθηναίοις τοῖς μικροῖς (*Agora* 16.55 ll. 5-6), ὅπως ἂ]ν ὥς κάλλι[σ]τα γίγν[ωνται τὰ Διονύσια τῶ]ι θεῶι (*IG* II² 712 ll. 9-11), ὅπως ἂν ἡ θυσία γίγνηται ὥς καλλίστη (*SEG* 28.103 ll. 5-6), or ὅπως ὥς κάλλιστα γένηται τὰ Διονύ[σ]ια (*IG* II² 1186 ll. 10-11).³³² Something similar is likely to have been in the decree. Demosthenes then states what he believes to be the true reason for such a decree, namely to enact the law of Timocrates

³³² See also Piérart 2000: 246, who believes however that 'la formule qui figurait dans le décret est indiquée sans doute possible par Démosthène lui-même'. These words therefore would not be modelled on the decree; they would be the very words of the decree.

(he uses the plural αὐτοῖς: 'for them', 'that law of theirs') without anyone being aware of it and therefore without opposition. At § 29 Demosthenes proves his allegations by pointing out that no business concerning the finances and the festival was dealt with the day after, and Τιμοκράτης οὕτως κατὰ πολλὴν ἡσυχίαν ἐνομοθέτει.

This account makes clear what must have been the content of the decree: it was passed on the 11th of Hekatombaion, and summoned the *nomothetai* for the day after (αὔριον) to deal with the re-allocation of part of the city budget in order to fund any last-minute costs of the Panathenaia.³³³ The procedure is well known: the city budget (διοίκησις) was at this time pre-allocated in fixed quotas, and this division was called μερισμός. The μερισμός was fixed by law, and therefore could not be modified by decree. When extraordinary expenses arose, the Assembly decreed the appointment of the *nomothetai* in order to modify temporarily the μερισμός and allocate part of the city budget to these extraordinary expenses.³³⁴ Such a procedure is attested in contemporary inscriptions: *IG* II² 222, *IG* II² 330 and *IG* VII 4254 are honorary decrees that require the Assembly to make extraordinary expenditures and ask the *nomothetai* to modify the μερισμός in order to increase the Assembly's allowance, so that these expenses can be covered. *IG* VII 4253 moreover honours Phanodemus for having legislated correctly about the sacrifices and the festival of Amphiaraios (ll. 10-5: καλῶς καὶ φιλοτίμως νενομοθέτηκεν περὶ τὸ ἱερὸν τοῦ Ἀμφιαράου ὅπως ἂν ἢ τε πεντετηρεῖς ὡς κάλλιστη γίγνηται καὶ αἱ ἄλλαι θυσίαι τοῖς θεοῖς τοῖς ἐν τῷ ἱερῷ τοῦ Ἀμφιαράου). He is honoured for having correctly performed the same procedure followed in this decree. This is why Demosthenes states twice that the decree (allegedly) concerned the διοίκησις and the Panathenaia (§ 28: τὴν διοίκησιν καὶ τὸ

³³³ This is the meaning of διοίκησις. See Stroud 1998: 81: 'a general fund in the financial administration of the polis, which was not otherwise targeted for individual use'.

³³⁴ Cf. Rhodes 1972: 50 n. 1, 101.

τῆς ἐορτῆς προστησάμενος κατεπεῖγον; § 29: τῆς διοικήσεως καὶ τῶν Παναθηναίων).

The orator's account also implies that the proposer of this decree was not Timocrates: at § 26 he contrives his plan μετὰ τῶν ὑμῖν ἐπιβουλευόντων, at § 28 the proposer of the decree is called generically ὁ γράφων αὐτὸ, and the aim of the decree is to enact the law αὐτοῖς ('for them', 'of theirs') without opposition. When the subject is again Timocrates in person, Demosthenes clearly states it (at § 29: Τιμοκράτης οὐτοσί).

A close analysis of the document shows that many of its features either betray clumsy rewording of the orator's paraphrase or are inconsistent with the language and terminology of contemporary inscriptions. The document starts with a very short prescript (Ἐπὶ τῆς Πανδιονίδος πρώτης, ἑνδεκάτῃ τῆς πρυτανείας, Ἐπικράτης εἶπεν), dating the decree to the 11th of the first prytany, that is to the 11th of Hekatombaion, the first month of the year, since at this time the archon-year and the Council-year coincided. Demosthenes provides this date at § 26. However, we do not find anywhere in the speech the indication of the tribe in prytany, and the inscriptions at the moment do not allow us to confirm or to deny that in 354/3 that tribe was Pandionis. The same prescript (except for the fact that the date is there the 12th instead of the 11th) is also found in the two documents allegedly reporting the law of Timocrates at § 39-40 and 71: both, according to the stichometry, part of the *Urexemplar*. The second of these documents also gives the name of the chairman of the *proedroi*. The difficulty in accepting both the name of the chairman and the Pandionis tribe, and therefore the reliability of this information will be discussed in that context.³³⁵ Here it will suffice to say that the prescript in this form lacks many standard features. The normal formula of dating at this time was ἐπὶ τῆς ---ίδος + ordinal + πρυτανείας and ordinal of the day +

³³⁵ Cf. below pp. 169-71.

πρυτανείας,³³⁶ usually but not invariably (e.g. *IG* II² 127 ll. 4-7) with the name of the chairman of the *proedroi* in the middle. Thus the dating formula that we find in the document lacks at least the word πρυτανείας after the first ordinal. Yet such an arrangement is not unparalleled: cf. ἐπ[ι] τῆς Ἐρεχ[θ]ηίδος[ἐνάτης] (*IG* II² 114 l. 1, the space at the end of the line is too short for πρυτανείας),³³⁷ ἐπὶ τῆς Ἀκαμαντίδος ἐνάτης (*IG* II² 218 ll. 3-4), ἐπὶ τῆς Αἰγινήδος δεκάτης· τετάρτ[η] τ[ῆς] πρυτανείας (*IG* II² 224 ll. 3-4). However, even if we accept the wording of the dating formula, the prescript still lacks the names of the archon, the secretary, and the chairman of the *proedroi*, and the enactment formula. Often Athenian inscriptions of this period lack some of the formulas providing this information, but they never lack so many and such fundamental ones. To sum up, we cannot at this stage confirm or reject the date provided in the document, but we do know that its prescript cannot be the full one. Either it has been forged at a later date, or it is an extract of the authentic prescript.³³⁸ And even in this case, it can hardly prove the authenticity of the document, since the same information is provided in the two documents reporting the law of Timocrates (§ 39-40 and 71), present in the text since the *Urexemplar* and the likely source of the information.³³⁹

More striking is the clause ὅπως ἂν τὰ ἱερὰ θύηται καὶ ἡ διοίκησις ἱκανὴ γένηται. θύηται is not unparalleled in Athenian inscriptions, but it is very infrequent. We find it only twice: ὅπως ἂν τῶι Ἡρακλεῖ τῶι ἐν Ἀκριδι πρόσσος ἦι ὡς πλείστη καὶ ἡ θυσία θύηται ὡς καλλίστη (*SEG* 28.103 ll. 19-20) and ὅπως ἂν τὰ τε προθύματα θύηται ἃ ἐξηγέται Εὐθύ[δ]η[μ]ος ἱερεὺς τῷ Ἀσκληπιῷ καὶ ἡ

³³⁶ Cf. Henry 1977: 27.

³³⁷ Cf. Schöll 1886: 120.

³³⁸ Schöll 1886: 119-21 comes to the same conclusion.

³³⁹ Cf. below pp. 168-9

ἄλλη θυσία γίγνηται ὑπὲρ τοῦ δήμο τοῦ Ἀθηναίων (*IG* II² 47 l. 25).³⁴⁰ The orator's account, as we have seen, suggests that the expression needed here would involve ὡς κάλλιστα, and possibly the verb γίγνομαι.³⁴¹ *SEG* 28.103 ll. 19-20 quoted above would be a good example. Even more standard, and perfectly consistent with Demosthenes' words, is the formula found earlier in the same inscription (*SEG* 28.103 ll. 5-6: ὅπως ἂν ἡ θυσία γίγνηται ὡς καλλίστη) and in *Agora* 16.55 ll. 5-6 (a law on the Panathenaia of 336/5: ὅπως ἂν τῇ Ἀθηνᾷ ἡ θυσία ὡς καλλίστ[η] ἢ Παναθηναίοις τοῖς μικροῖς). A further example is the decree honouring Phanodemus (*IG* VII 4253 ll. 13-4: ὅπως ἂν ἡ τε πεντετηρὶς ὡς κάλλιστη γίγνηται καὶ αἱ ἄλλαι θυσίαι τοῖς θεοῖς τοῖς ἐν τῷ ἱερῷ τοῦ Ἀμφιαράου). More generic formulas like ὅπως ἂν ὡς κάλλι[σ]τα γίγν[ωνται] τὰ Διονύσια τῷ θεῷ (*IG* II² 712 ll. 9-11) and ὅπως ὡς κάλλιστα γένηται τὰ Διονύ[σ]ια (*IG* II² 1186 ll. 10-11) would match Demosthenes' paraphrase even better. His account in fact always mentions the διοίκησις and Panathenaia, but never refers specifically to sacrifices. Demosthenes clearly states at § 29 that the *nomothetai* were summoned περὶ μὲν τούτων, τῆς διοικήσεως καὶ τῶν Παναθηναίων. At any rate, Demosthenes' wording here is consistent with many inscriptions and indicates that the formula in the decree must have involved the words ὡς κάλλιστα.³⁴² Its absence casts doubts on the authenticity of the document.

The expression ἡ διοίκησις ἱκανῇ γένηται is unparalleled and incorrect. It is probably due to clumsy paraphrasing of Demosthenes' words at § 28 and 29. As we have seen above, Demosthenes uses διοίκησις to allude to a very specific procedure for modifying the *merismos* of the city-budget. διοίκησις is often found in contemporary inscriptions and in the orators, and its generic meaning is 'general administration,

³⁴⁰ In *SEG* 21.253 l. 24 and in *IG* II² 43 l. 17 the verb is restored, and the restorations are far from safe. In literary sources we find this form only in Xen. *Lac. Pol.* 13.3 and [Dem.] 59.75.

³⁴¹ Piérart 2000: 246 comes to similar conclusions on this expression.

³⁴² It is also notable that the only occurrence of such provisions for the funding of a festival without ὡς κάλλιστα (or an analogous superlative expression) is *IG* II² 47 l. 25, dating to the very beginning of the 4th century. By the 50's of the century this habit was probably fully established.

government' (cf. e.g. Isoc. 1.37, 12.128). More often however, especially in inscriptions,³⁴³ it is used in its technical financial sense of 'general financial administration', or more simply 'city-budget' (e.g. § 97).³⁴⁴ The meaning required in the document, that of 'assuring sufficient funding', is unattested and incorrect.³⁴⁵ This use clearly points to the hypothesis of a forger who misunderstood Demosthenes' words because he did not know about the procedures concerning the *merismos*.

The next clause, καὶ εἴ τινος ἐνδεῖ πρὸς τὰ Παναθηναῖα διοικηθῇ, is again unparalleled. ἐνδεῖ is found in Athenian inscriptions only in inventories, and the expression εἴ τινος ἐνδεῖ is never found either in inscriptions or in literary texts. The verb διοικέω in the aorist passive form διοικηθῇ (or in any other person of the aorist passive) is never used in classical Greek, and expressions resembling the present one occur only in three Egyptian papyri (*PCairo*, Zenon 2, 59217 l. 5; *PLille* 1, 16 l. 9; *PSI* 10, 110 l. 21, from the 3rd and 2nd century BCE).³⁴⁶

The next sentence, τοὺς πρυτάνεις τοὺς τῆς Πανδιονίδος καθίσαι νομοθέτας αὔριον, lacks epigraphical parallels, since no decree of appointment of the *nomothetai* has survived. That the *prytaneis* had to summon the *nomothetai* must be correct, and yet this information, found also in the document at § 20-3, does not need to be drawn from any independent source. Dem. 18.73 and 169-70 make clear that they were in charge of summoning the Assembly and Aeschin. 3.39 links them to the *nomothetai*.³⁴⁷ The expression καθίσαι νομοθέτας is drawn from § 25, 26 and 29 of this speech. That the appointment was for αὔριον is clear from the context and explicitly stated at § 28. However, a search in the PHI database among the surviving inscriptions from Attica

³⁴³ Cf. e.g. Stroud 1998 l. 59; *IG* II² 223 l. b11; *IG* II² 463 l. 84; *IG* II² 488 l. 18; *IG* II² 1202 l. 11; *SEG* 43.26 l. 13. The integration proposed at ll. 18-19 in *IG* II² 674 (διαχειροτονήσαι τὸν δῆμον, ὅπόσον δεῖ αὐτοῖς μερίσαι εἰς τὴν διοίκησιν τῆς θυσίας) cannot therefore be correct. I would suggest instead εἰς τὴν ἐπιμέλειαν τῆς θυσίας] (cf. *Agora* 16.86 l. 13).

³⁴⁴ Cf. Rhodes 1972: 106-10; 1981: 514-6, Stroud 1998: 81 and in particular Rhodes 2007.

³⁴⁵ Cf. also Piérart 2000: 246-7.

³⁴⁶ Cf. Piérart 2000: 247.

³⁴⁷ On their duties see [Arist.] *Ath.Pol.* 43.3-4, 44.4 with Rhodes 1972: 20-22 and 1981: 520-6.

shows that αὔριον, to mean 'tomorrow', is never found by itself in official language. Out of 177 entries the word is used 174 times after εἰς (or ἐς), and three times in the expression ἡ αὔριον ἡμέρα (*IG I³ 73* ll. 43-4; *Agora* 16.22 l. b11; *SEG* 22.274 l. 20).³⁴⁸

The next provision in the document prescribes that τοὺς δὲ νομοθέτας εἶναι ἓνα καὶ χιλίους ἐκ τῶν ὁμωμοκότων. The document at § 20-3 also reports that the *nomothetai* had to be appointed among those who had sworn the Heliastic Oath. The source of both documents on this can easily have been Dem. 20.93. Piérart has rightly pointed out that if the *nomothetai* were by definition appointed ἐκ τῶν ὁμωμοκότων, and such a provision was already in the laws on *nomothesia* in general, its repetition here in a decree of appointment is superfluous.³⁴⁹ If they were not, the presence of this expression here is unacceptable. The number of 1001 *nomothetai* given here can be neither confirmed nor rejected. Piérart notes that Poll. 8.101 gives the number of 1000 *nomothetai*, and therefore hypothesizes that Pollux, far from drawing this information from the speech,³⁵⁰ might share a source with our document.³⁵¹ This is not impossible, but it is probably safer to conclude that a forger could easily make up such information from other sources: we know from abundant evidence that *dikasteria* for public trials were usually composed of 501 judges, but could be extended to 1001, 1501 and even to 6000: the entire Heliaia. Harp. s.v. ἡλίαια καὶ ἡλίασις states that the Heliaia was composed of 1000 or 1500 judges.³⁵² A forger who had such information could have easily inferred that the system of appointment and the size of the panels were the same for the *nomothetai*. It is also remarkable that the only passage in the orators giving the

³⁴⁸ The occurrences in the orators seem to conform to this pattern: the only occurrence of αὔριον by itself is in Antiph. 6.21, from the 5th century. In the 4th century we find εἰς αὔριον in Lys. 23.9 and Aeschin. 2.46, ἡ αὔριον ἡμέρα in Lys. 26.6 and Hyp. *In Dem.* 9, and αὔριον alone, not surprisingly, only in Dem. 24.28, in the account of this decree.

³⁴⁹ Piérart 2000: 247.

³⁵⁰ This was the opinion of Schöhl 1886: 102, 123.

³⁵¹ Piérart 2000: 249-50.

³⁵² Cf. Hansen 1995: 10 n. 14 for references to other sources providing similar information.

number of 1001 for a *dikasterion* is in this very speech, at § 9. This passage might well have suggested the number of 1001 to a forger.

The last clause of the document, συννομοθετεῖν δὲ καὶ τὴν βουλήν, presents many problems. None of the prescripts of the laws preserved in inscriptions mention the Council.³⁵³ They only mention the *nomothetai*. The abundant evidence of decrees on stone shows that when the Council participated in drafting decrees, the enactment formula was invariably 'resolved by the Council and the People'.³⁵⁴ If the Council had to συννομοθετεῖν with the *nomothetai*,³⁵⁵ why is it never mentioned in the prescripts of the laws? Hansen on the other hand has proposed that the work of the Council might have consisted of no more than drafting the agenda for the meeting.³⁵⁶ However, this was the duty of the *prytaneis*, and they have already been independently mentioned in the document. That the task of the Council in the document can be reduced to that of the *prytaneis* must therefore be excluded.

Hansen however believes that summoning the Council was necessary since the *prytaneis* needed a *probouleuma* to draft the agenda, and on the 12th of Hekatombaion the Council was adjourned because of the Cronia. He suggests therefore that the decree of Epicrates was an emergency decree and proposes this course of events on the 12th of Hekatombaion: 'the Council met in the morning, appointed a board of *proedroi* and passed a *probouleuma* in accordance with which the *prytaneis* were instructed to summon the *nomothetai*'.³⁵⁷ This reconstruction cannot be accepted for two reasons: first, in *IG* II² 222, *IG* II² 330 and *IG* VII 4254, involving similar procedures, the Assembly orders that proposals be presented to the *nomothetai*, but no further *probouleuma* is needed. Second and more important, at § 47 Demosthenes clearly states

³⁵³ See above p. 121-2 and n. 181.

³⁵⁴ See Rhodes 1972: 52-81.

³⁵⁵ See MacDowell 1975: 69.

³⁵⁶ Hansen 1985: 364. At n. 45 he refers to Hansen 1978, but part of his argument there is based on the identity of the *proedroi* of the *nomothetai*, about which he has in Hansen 1985 changed his mind.

³⁵⁷ Hansen 1978: 157.

that Timocrates enacted his law surreptitiously, when the Council was adjourned (ἐν παραβύστῳ, τῆς βουλῆς μὲν ἀφειμένης). Thus the decree cannot have provided for summoning the Council in spite of the Cronia, since the Council was not actually summoned, and the law of Timocrates was nevertheless enacted. This evidence also rules out the hypothesis that the collaboration between *nomothetai* and the Council in taking decisions about new laws was in this case exceptional. The Council was adjourned, thus no collaboration was possible. Moreover *IG II² 333 l. 13* attests a meeting of the *nomothetai* on the 6th of Skirophorion, a festival day to Artemis.³⁵⁸ Either that was a further extraordinary occasion or, more likely, the *nomothetai*, like the *dikasteria*, still met on monthly festival days. To sum up, it is impossible to reconcile the provision συννομοθετεῖν δὲ καὶ τὴν βουλήν both with the evidence of the speech and with that of inscriptions.³⁵⁹ It must be the work of a later forger.

Where did the forger find such information? It is likely that this provision of the document derives from a misreading of Demosthenes' allusions to the fact that the Council was adjourned (§ 28, 29, 47). Because of these allusions the forger must have assumed that the Council played an active part in the work of the *nomothetai*. It must be noted however that Demosthenes never explicitly says that it is illegal to summon the *nomothetai* during the Cronia. If it were, he would certainly have added this to his list of violations of the laws committed by Timocrates and his associates. Instead, he mentions only that the Council was adjourned. This, combined with the evidence of *IG II² 333 l. 13*, allows us to understand Demosthenes' rhetorical trick: he cannot argue that the *nomothetai* could not be summoned during the Cronia, since that would have been false. Lawcourts and *nomothetai* could indeed be summoned on monthly festival days. He therefore stresses the fact that the Council was adjourned to give the judges the

³⁵⁸ See Mikalson 1975: 168.

³⁵⁹ Piérart 2000: 247-9 also notes that the verb συννομοθετεῖν is found only once in Classical sources: at Plat. *Leg.* 7.833e, about collaboration between legislators and specialists: nothing to do with our document.

impression that political activity *tout court* was suspended, without overtly lying. A later forger did not understand the sense of Demosthenes' allusions to the Council and assumed that it had an active role in legislation.

This analysis has shown that the document cannot be reconciled with the orator's account and that its wording and provisions conflict with contemporary inscriptions. It cannot therefore be an authentic Athenian decree.

The last question to discuss is the name of the proposer. Epicrates is found among the main manuscripts in AY, and in the *scholia ad locum*. Timocrates is found instead in SFP. All the editors follow Dindorf in choosing Epicrates, since this is clearly the *lectio difficilior*. A forger might have invented a name, as often happens in the decrees of *On the Crown*. In fact, as noted above, the speech clearly points to a different proposer for this decree,³⁶⁰ and that might have been noticed by the forger. However an unpublished law for the funding of a festival (*Agora* inv. 7495) dating to 354/3, (around) the same year as our speech,³⁶¹ shows an Epicrates as its proposer. Piérart (among others)³⁶² has concluded that this Epicrates must be the same as the proposer of our decree, and the name in the document must therefore be correct. Since he rejects the authenticity of the document as a whole, he has postulated that the name Epicrates must have been preserved independently, perhaps in a lost version of the *lemma* preceding the document. Nothing conclusive can be said to confirm or refute this hypothesis. It is possible that the name has been preserved independently. However, a search in the *LGPN* yields 562 results, 159 of which are from Attica. Epicrates was a rather popular name in antiquity, and chance cannot be ruled out as the reason for the correspondence.

³⁶⁰ Cf. also Wayte 1882: 109; Piérart 2000: 248.

³⁶¹ Lewis 1954: 32 dates the speech to this year. Sealey 1955: 74 and Cawkwell 1962: 40-2 accept Dion. Hal. *Amm.* 1.4 and date the speech to 353/2.

³⁶² Cf. Develin 1989: 287-8; Piérart 2000: 248.

4.3 Dem. 24.39-40 and 71: the law of Timocrates

NOMOS

[39...] ἐπὶ τῆς Πανδιονίδος πρώτης, δωδεκάτῃ τῆς πρυτανείας, Τιμοκράτης εἶπεν, καὶ εἴ τιτι τῶν ὀφειλόντων τῷ δημοσίῳ προστετίμηται κατὰ νόμον ἢ κατὰ ψήφισμα δεσμοῦ ἢ τὸ λοιπὸν προστιμηθῇ, εἶναι αὐτῷ ἢ ἄλλῳ ὑπὲρ ἐκείνου ἐγγυητὰς καταστήσαι τοῦ ὀφλήματος, οὓς ἂν ὁ δῆμος χειροτονήσῃ, ἢ μὴν ἐκτείσειν τὸ ἀργύριον ὃ ὤφλεν. τοὺς δὲ προέδρους ἐπιχειροτονεῖν ἐπάναγκες, ὅταν τις καθιστάναι βούληται. [40] τῷ δὲ καταστήσαντι τοὺς ἐγγυητάς, ἐὰν ἀποδιδῶ τῇ πόλει τὸ ἀργύριον ἐφ' ᾧ κατέστησε τοὺς ἐγγυητάς, ἀφείσθαι τὸν δεσμὸν. ἐὰν δὲ μὴ καταβάλῃ τὸ ἀργύριον ἢ αὐτὸς ἢ οἱ ἐγγυηταὶ ἐπὶ τῆς ἐνάτης πρυτανείας, τὸν μὲν ἐξεγγυηθέντα δεδέσθαι, τῶν δὲ ἐγγυητῶν δημοσίαν εἶναι τὴν οὐσίαν. περὶ δὲ τῶν ὠνουμένων τὰ τέλη καὶ τῶν ἐγγυωμένων καὶ ἐκλεγόντων, καὶ τῶν τὰ μισθώσιμα μισθουμένων καὶ ἐγγυωμένων, τὰς πράξεις εἶναι τῇ πόλει κατὰ τοὺς νόμους τοὺς κειμένους. ἐὰν δ' ἐπὶ τῆς ἐνάτης <ἢ δεκάτης> πρυτανείας ὀφλῇ, τοῦ ὑστέρου ἐνιαυτοῦ ἐπὶ τῆς ἐνάτης [ἢ δεκάτης] πρυτανείας ἐκτίνειν.

1 πρώτης om. SFY^a | 3 ἢ om. Y^a | ὀφειλήματος S *cf.* 42.28 | 4 ἢ μὴν codd. : ἡμῖν S^a | ἐκτίσειν SAFYP : corr. Blass | 6 ἐφ' οἷς SF | 7 τὸν δεσμὸν S^aYP : τῶν δεσμῶν S^cAF : τοῦ δεσμοῦ Liban. Arg. 1.1 et Bu. coll. 86, 93 | 9 ἐκλεγέντων A | μισθώματα SFYP | 10 <τῶν> ἐγγυωμένων Ald. | 11 ἢ δεκάτης add. Dobree | 12 ἐπὶ τῆς ἐνάτης ἢ δεκάτης πρυτανείας del. Dobree Dilts : ἢ δεκάτης del. Westermann

NOMOS

[71...] ἐπὶ τῆς Πανδιονίδος πρώτης πρυτανείας δωδεκάτῃ τῆς πρυτανείας τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινοῦσιος, Τιμοκράτης εἶπεν: καὶ εἴ τιτι τῶν ὀφειλόντων τῷ δημοσίῳ προστετίμηται κατὰ νόμον ἢ κατὰ ψήφισμα

δεσμοῦ ἢ τὸ λοιπὸν προστιμηθῇ, εἶναι αὐτῷ ἢ ἄλλῳ ὑπὲρ ἐκείνου ἐγγυητὰς καταστήσαι.

καὶ εἵ - δεσμοῦ AB 175.23 | καὶ εἵ - προστιμηθῇ Schol. Dem. 24.68.152c Dilts

πρώτης πρυτανείας δωδεκάτη τῆς πρυτανείας S^cAYP : πρώτης πρυτανείας δωδεκάτη F :
πρώτης πρυτανείας S^a : πρώτης δωδεκάτη τῆς πρυτανείας Weil *cf.* 27, 39 | ἐπεψήφισεν Schoell |

[39...] During the prytany of Pandionis, on the twelfth day of the prytany, [of the *proedroi* Aristocles of Myrrinous put to vote,] Timocrates proposed: even if, in accordance with a law or a decree, an additional penalty of imprisonment has been imposed, or shall be imposed in future, on anyone of those in debt to the public treasury, it is to be permitted for him, or for another man on his behalf, to provide as sureties of the debt any man whom the people approves by a vote, to guarantee that he will make the payment which he incurred. The *proedroi* must put it to the vote whenever anyone wishes to provide sureties. [40] If the man who has provided the sureties pays to the city the money for which he provided them, he is to be granted release from imprisonment. If the money is not paid either by him or by the sureties in the ninth prytany, the man who has received a guarantee is to be imprisoned and the sureties' property is to be confiscated. With regard to those who have purchased [the right to collect] taxes and their sureties and collectors, and lessees of leased property and their sureties, payments are to be exacted by the city in accordance with the existing laws. If he incurs payment in the ninth prytany, he is to pay up in the ninth or tenth prytany of the following year.³⁶³

³⁶³ The translation is adapted from MacDowell 2009: 184.

The law of Timocrates, the object of Diodorus' accusation, is read out first at § 39-40 before the orator begins a closer scrutiny of its provisions, and later its first section is repeated at § 71. The stichometric analysis shows that both of the documents, at least in part, were in the *Urexemplar* of the speech. No ancient papyri containing this section of the text are preserved, and only one clause of it is found in the *scholia* (24.68.152c Dilts), in relation to § 71, which only discusses the rhetoric of the passage. This confirms that the document was present in the text during antiquity. The stichometry shows that it was there from the beginning. Libanius also reports a version of the law in his *hypothesis* to the speech, mainly consistent with the documents, although shorter and with some rephrasing.

The texts of the two documents reporting the law are consistent, except for the fact that the second has the name of the chairman of the *proedroi*, absent from the first. The second document however stops at ἡ ἄλλω ὑπὲρ ἐκείνου ἐγγυητὰς καταστήσαι.

The law of Timocrates is discussed through the whole legal section of the *Against Timocrates*. After the law is read out at § 39-40 the orator shows that Timocrates failed to repeal contradictory laws as prescribed by the norms on *nomothesia*. At § 71 Demosthenes wants the law to be read out again, but stops the *grammateus* half way through (ἐπίσχες: αὐτίκα γὰρ καθ' ἕκαστον ἀναγνώσει). He then discusses the provisions showing how and why they will be harmful to the city. Through the discussion of the provisions most of the law of Timocrates is actually quoted by Demosthenes, and the bulk of both documents' text is perfectly consistent with Demosthenes' quotations. The first sentence, present in both the documents (καὶ εἴ τι νῦν τῶν ὀφειλόντων τῷ δημοσίῳ προστετίμηται κατὰ νόμον ἢ κατὰ ψήφισμα δεσμοῦ ἢ τὸ λοιπὸν προστιμηθῇ, εἶναι αὐτῷ ἢ ἄλλω ὑπὲρ ἐκείνου ἐγγυητὰς καταστήσαι τοῦ ὀφλήματος, οὐς ἂν ὁ δῆμος χειροτονήσῃ, ἢ μὴν ἐκτείσειν τὸ ἀργύριον ὃ ὠφλεν), is quoted word for word at § 79 of the speech, and parts of it are found at § 41,

44, 55, 64, 72, 73 (in a mock law used by Demosthenes to make fun of Timocrates' bill), 77, 82, 83, 93 and 207. The next sentence (τοὺς δὲ προέδρους ἐπιχειροτονεῖν ἐπάναγκες, ὅταν τις καθιστάναι βούληται) is quoted word for word at § 84 and paraphrased, yet with very close wording, at § 55.

The next one (τῷ δὲ καταστήσαντι τοὺς ἐγγυητάς, ἐὰν ἀποδιδῶ τῇ πόλει τὸ ἀργύριον ἐφ' ᾧ κατέστησε τοὺς ἐγγυητάς, ἀφείσθαι τὸν δεσμὸν) is found mostly at § 86, and the expression ἀφείσθαι τὸν δεσμὸν is quoted or paraphrased at § 77, 93 and 207. Some of the manuscripts (S^cAF) give the genitive plural τῶν δεσμῶν, and Libanius' *hypothesis* has τοῦ δεσμοῦ, as we find at § 93 in Demosthenes' words. Libanius and some of the medieval copyists obviously found a genitive more appropriate here. This is because ἀφίημι with *accusativum personae* and *genitivum rei* means 'release from a thing' (*LSJ s.v.* II.1b). The expression would therefore mean 'release from prison' with the plural 'τῶν δεσμῶν', and 'release from imprisonment' with the singular τοῦ δεσμοῦ. The expression with this meaning is ambiguous: Demosthenes makes it clear that the law of Timocrates did not release debtors from prison; it rather provided that, if they presented sureties of their debts, they were not to go to prison in the first place. At § 64 Demosthenes in fact contrasts the law of Timocrates with a previous law of his and clearly states: 'is it possible for a man to enact two more contradictory provisions than these: that convicted malefactors shall be kept in prison until they have paid their fines, and that these same malefactors may present sureties, and not be imprisoned?' (ἔστιν οὖν ὅπως ἂν ἐναντιώτερά τις δύο θεῖη τοῦ δεδέσθαι, τέως ἂν ἐκτείσωσι, τοὺς ἀλόντας, καὶ τοῦ καθιστάναι τοὺς αὐτοὺς τούτους ἐγγυητάς, ἀλλὰ μὴ δεῖν;). The genitive plural is therefore unacceptable, and the genitive singular used by Demosthenes himself at § 93 is slightly imprecise, or perhaps is used in a figurative sense; releasing from imprisonment means remitting the punishment of imprisonment. In fact, correct Attic Greek for 'remitting

somebody from a charge' or 'a punishment' is ἀφίημι with *dativum personae* and *accusativum rei*.³⁶⁴ This is the structure used by Demosthenes himself in his paraphrase of this very sentence at § 207: εἴ τινι προστετίμηται δεσμοῦ καὶ τὸ λοιπὸν τινι προστιμήσῃτε, τοῦτον ἀφείσθαι. This is the structure we would expect in the actual law, since the person is expressed with the *dativus* τινι. To confirm that the document shows an appropriate structure it will suffice to quote an inscription presenting exactly the same structure: τοῖς δὲ ποιησαμέν[οι]ς συμμαχίαν πρὸς Ἀθηναίος καὶ τὸς συμ[μ]άχος ἀφείναι τὸν δῆμον τὰ ἐγκτήματα ὅσος ἂν τυγχάνῃ ὄντα ἢ ἴδια ἢ [δ]ημόσια (*IG II² 43 ll. 25-9*). The document therefore presents here an appropriate structure, superior to Demosthenes' quotation at § 93.

The next section of the document (ἐὰν δὲ μὴ καταβάλῃ τὸ ἀργύριον ἢ αὐτὸς ἢ οἱ ἐγγυηταὶ ἐπὶ τῆς ἐνάτης πρυτανείας, τὸν μὲν ἐξεγγυηθέντα δεδέσθαι, τῶν δὲ ἐγγυητῶν δημοσίαν εἶναι τὴν οὐσίαν) is found with the same words in Demosthenes' quotation at § 87. The same happens for the sentence περὶ δὲ τῶν ὠνουμένων τὰ τέλη καὶ τῶν ἐγγυωμένων καὶ ἐκλεγόντων, καὶ τῶν τὰ μισθώσιμα μισθουμένων καὶ ἐγγυωμένων, found in slightly paraphrased versions at § 41 and 59. The expression τὰς πράξεις εἶναι τῇ πόλει κατὰ τοὺς νόμους τοὺς κειμένους is found in a provision reported by Demosthenes at § 100, where he claims it should have been extended more widely to all the debtors, and not only to the purchasers of taxes (καὶ κατὰ τούτων εἶναι τὰς πράξεις κατὰ τοὺς ὑπάρχοντας νόμους). It can also be noted that the expression ὑπάρχοντας νόμους is never found in inscriptions, whereas τοὺς νόμους τοὺς κειμένους as in the document is attested (*cf. IG II² 98 ll. 9-10*).

The bulk of the document is therefore perfectly consistent with the orator's paraphrases, and when the document uses a different word from that found in the

³⁶⁴ See [Dem.] 59.30 (ἀφίεναι οὖν αὐτῇ ἔφασαν εἰς ἐλευθερίαν χιλίας δραχμᾶς), Dem.21.79 (τὰς δίκας ὡς αὐτῶν οὕσας ἀφίεσαν τοῖς ἐπιτρόποις), Ar. *Nub.* 1426 (ὅσας δὲ πληγὰς εἴχομεν πρὶν τὸν νόμον τεθῆναι, ἀφίεμεν, καὶ δίδομεν αὐτοῖς προῖκα συγκεκόφθαι), Plb. 21.24.8 (μόνον ταύταις ἀφείσθαι τὸν φόρον).

speech, the former is more consistent with documentary language than the latter. However, the section analyzed is preceded by a prescript and followed by a further provision. Neither of them is found in Demosthenes, and both present problems.

The last provision, ἐὰν δ' ἐπὶ τῆς ἐνάτης πρυτανείας ὄφλη, τοῦ ὑστέρου ἐνιαυτοῦ ἐπὶ τῆς ἐνάτης ἢ δεκάτης πρυτανείας ἐκτίνειν, does not make any sense as it stands. *Ath.Pol.* 47.3 and 54.2³⁶⁵ make it clear that the standard date for payments to the public treasure, although not the only one,³⁶⁶ was the ninth prytany. This document, in the section confirmed by the orator's account, gives the same date. The ninth prytany is confirmed also by Andoc. 1.73 and [Dem.] 59.7. We would expect that, if such a provision existed, it would have moved the deadline to the ninth prytany of the following year. No ancient source in fact mentions the tenth prytany, or the ninth and the tenth prytany together, as a deadline for payments and, in Wayte's words, 'the expression ἐνάτης ἢ δεκάτης is too vague for the language of a law'.³⁶⁷ Benseler and Wayte used this provision as evidence of the overall inauthenticity of the document.³⁶⁸

The provision is obviously unacceptable as it stands, yet a very economical emendation of the text, proposed first by Westermann and later by Schöll,³⁶⁹ cannot be rejected out of hand. They simply moved ἢ δεκάτης from the second πρυτανείας to the first, obtaining a sensible provision which gave a fair amount of time for payment also to those who incurred debts at the end of the year. In the introduction I explained why it is dangerous to postulate corruptions in the text of Demosthenes when the *paradosis* is consistent. Since a medieval archetype never existed, such corruptions must have happened at a very early stage of transmission, before the *corpus* (or the

³⁶⁵ The second passage with a slightly different wording: πρὸ τῆς θ' πρυτανείας. Cf. MacDowell 1962: 110 and Rhodes 1981: 599.

³⁶⁶ Harrison 1971: 173-175 and Rhodes 1972: 150 note that not all the payments were due in the ninth prytany; some were due every prytany, and some every three months. However, the standard date for most of the payments was the ninth prytany. See Hunter 2000: 26-7.

³⁶⁷ Wayte 1882: 121.

³⁶⁸ Benseler 1861: 217; Wayte 1882: 121.

³⁶⁹ Westermann 1850: 57; Schöll 1886: 132 n. 1.

document, when it has been inserted later) spread around the ancient world. This militates against explaining massive inconsistencies between a document and the orator's account as corruptions that occurred in the document during the transmission of the text of Demosthenes. Instead they are likely to have been there from the beginning. In this case however the document appeared already in the *Urexemplar*, and such a small corruption (a numeral copied from the wrong line, between two expressions which are otherwise exactly the same) could easily have occurred even in the very first copies of the speech. Or it might be an original mistake of the editor, the small size of which cannot jeopardize the reliability of the document as a whole.

Another problem is found in the prescript of the document. This section, as it appears at § 39, is vulnerable to the same objections as the prescript of the decree of Epicrates at § 27: the formula is not unattested, and no epigraphical evidence speaks against the fact that Pandionis was the first tribe in prytany in the year in which the law was passed. However, no inscription confirms this either, and the prescript lacks too many features to be a complete one. It can either have been forged like (or together with) that at § 27, or be an extract of the original prescript, and therefore the source of that at § 27. The reason for such an extract, focusing only on the date of the law, would be connected with Demosthenes' argument. He has claimed at § 24-6 that Timocrates has not respected the times prescribed in the legislation on *nomothesia*, and has enacted his law the day after the preliminary vote in the Assembly. The date of the law is therefore good evidence, whereas other features are not important in this context.³⁷⁰ This would provide an acceptable rationale for mentioning only the date, in the case of both the orator himself and the editor of the *Urexemplar*. On the other hand, no other document present in the *Urexemplar*, neither of Dem. 23 nor of Dem. 24, has any prescript, and Dem. 24 shows two different stages of tradition: some documents were in

³⁷⁰ See above pp. 129-30.

the *Urexemplar* and some were added later. It is not impossible that clauses and further specifications were added to the older documents when the newer were eventually inserted.

The situation here is further complicated by the version of the prescript quoted at § 71. There the name of the chairman of the *proedroi* is added: τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινοῦσιος. The demotic however cannot be accepted. Myrrhinous is part of the tribe Pandionis, and therefore Aristocles was one of the current *prytaneis*; he could not be chairman of the *proedroi* of the Council at the same time.³⁷¹ This has been regarded by Westermann, and more recently by Mossé, as the main reason to reject the document's authenticity.³⁷² The question has however been reopened by Rhodes and MacDowell³⁷³ who brought *IG II² 222* ll. 49-50 as evidence that the *proedroi* of the *nomothetai* are not the same as those of the Council and of the Assembly, and therefore the rule against the tribe in prytany did not apply to them. The inscription has in fact: οἱ [πρ]όεδροι καὶ [ὁ ἐπιστά]της τῶν νομοθετῶν. Hansen has subsequently accepted this reconstruction and claimed: 'The only reason, however, for suspecting the law quoted is precisely that the *proedros* is one of the *prytaneis*. This is to beg the question, and so I now accept the quotation of Timokrates' law as genuine'.³⁷⁴ Hansen himself however in a previous article provided plenty of reasons to reject this reconstruction.³⁷⁵ Although he has later retracted his view on this point, I believe that his original treatment of the question was basically correct, and we cannot single out specific *proedroi* of the *nomothetai*.

³⁷¹ Cf. Rhodes 1972: 25-8.

³⁷² Westermann 1850: 55-6; Mossé 2004: 97.

³⁷³ Rhodes 1972: 28; MacDowell 1975: 63. Before them nobody doubted that the *proedroi* presiding over the *nomothetai* were the same body as those presiding over the Council and the Assembly. See Westermann 1950: 55; Schöll 1886: 132 n. 1; Drerup 1898: 255-6; Kahrstedt 1938: 3; Atkinson 1939: 125.

³⁷⁴ Hansen 1979-80: 103 n. 17.

³⁷⁵ Hansen 1978a.

I will now summarise his points, to show that there are good reasons to reject the *proedroi* of the *nomothetai*. First, in all the laws and decrees referring to the *nomothetai* the *proedroi* are always called simply *proedroi*, with no further specification.³⁷⁶ Second, the first part of *IG II² 222* is damaged. Hansen assumes for the sake of argument that the decree is probouleumatic. In the damaged section we would in that case expect a formula like ἐψηφίσθαι τῇ βουλῇ τοὺς προέδρους οἱ ἂν λάχωσι προεδρεύειν ἐν τῷ δήμῳ εἰς τὴν πρώτην ἐκκλησίαν.³⁷⁷ The decree then prescribes honours for Peisitheides of Delos, among which there is a pension to be paid monthly to him. The approval of such a pension must be referred to the *nomothetai* by the *proedroi* of the relevant day (Il. 4-6 ἐν δὲ τοῖς νομοθέται[ς] τ[οὺς προέδρ]ους οἱ ἂν προεδρεύωσιν [καὶ τὸν ἐ]π[ισ]τάτην προσνομοθετῆ[σαι τὸ ἀρ]γύριον τ[ο]ῦτο μερίζειν τ[οὺς ἀποδ]έκτας τῷ ταμίᾳ τοῦ δήμ[ου εἰς τὸ]ν ἐνιαυτὸν ἕκαστον).³⁷⁸ At Il. 48-52 the decree prescribes a punishment in case the *proedroi* fail to present the bill. Which *proedroi*? The ones presiding in the Assembly (τοὺς προέδρους οἱ ἂν λάχωσι προεδρεύειν ἐν τῷ δήμῳ) on day X or the ones presiding over the *nomothetai* (ἐν δὲ τοῖς νομοθέται[ς] τ[οὺς προέδρ]ους οἱ ἂν προεδρεύωσιν) on day Y, presumably a few days later? The secretary drafting the decree probably wrote οἱ [πρ]όεδροι καὶ [ὁ ἐπιστ]άτης τῶν νομοθετῶν to make clear that the punishment was intended for the *proedroi* of day Y. Hansen shows with this argument that the inscription is not necessarily evidence of separate *proedroi*. He then provides more circumstantial evidence for the identification. The agenda for the *nomothetai*, as that for the Assembly, was drafted by the *prytaneis*.³⁷⁹ Moreover the secretary of the Council was in charge of publishing not only decrees, but also laws, and had therefore to be present at the

³⁷⁶ For the references see above pp. 121-2 and n. 181.

³⁷⁷ Rhodes 1972: 65.

³⁷⁸ According to the procedure described above pp. 153-4.

³⁷⁹ See Aeschin. 3.39 and above p. 125.

sessions of the *nomothetai*.³⁸⁰ This evidence shows in my opinion that the *proedroi* of the *nomothetai* were none other than the *proedroi* of the Council and of the Assembly.

This leaves us with the problem of Aristocles' demotic. The possibilities are: the demotic is wrong; the name of the tribe is wrong; they are both wrong and forged. If we accept this last possibility, the consequence is that at least part of the document has been invented. This would be the only case among the documents already in the *Urexemplar* in which a piece of information seems to have been completely made up. However, as I noted before, since the speech was tampered with at a later stage of transmission, it is not impossible that someone added the prescript to a document already present from the beginning. The error would not therefore affect the reliability of the rest of the stichometric documents. The fact that τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινοῦσιος appears only in the second quotation of the law at § 71 but not at § 39 might also suggest that only this formula was inserted later, while the date itself was there from the beginning. Still, we have no way to test this against the epigraphical evidence. A further possibility, proposed first by Meier and endorsed by Schöll, Drerup and Lewis,³⁸¹ is to envisage a corruption in the demotic, presumably due to a misreading of an abbreviation: Μυρρινοῦσιος would be a misreading of the abbreviation for ἐγ Μυρρινοῦπτης. The same considerations as for the last clause of the document are valid here. The corruption is a small one, even more so if we postulate an abbreviation, and this possibility cannot be rejected out of hand.

To sum up, the bulk of the document is consistent with the orator's account and with contemporary inscriptions. Its features are very similar to those of the other documents of the *Urexemplar* and its wording seems reliable. However, the prescript and the last provision present problems. Both problems can be explained as minor

³⁸⁰ *IG* II² 140 l. 31; *SEG* 12.87 ll. 23-4; *SEG* 26.72 ll. 47-8.

³⁸¹ Schöll 1886: 132 n. 1; Drerup 1898: 255-6; Lewis 1954: 32; Piérart 2000: 132. Cf. also Westermann 1950: 55.

corruptions and solved by minor emendations. This option leads however to no more than well-grounded guesswork. It is as likely that all or part of these sections have been forged. But even in that case, the variable nature and dating of the documents of this speech mean that the invented details cannot necessarily be attributed to the *Urexemplar*, and the features of the other stichometric documents, as well as those of the central section of the present one, advise against it. The most likely hypotheses are either that the prescript and the last provision are slightly corrupted, and they have been so from the very earliest stages of transmission, or that all or part of them was added much later together with the forged documents in the speech. Nothing more than this can be confidently drawn from this analysis.

4.4 Dem. 24.42: Diocles' law

NOMOS

Διοκλῆς εἶπεν: τοὺς νόμους τοὺς πρὸ Εὐκλείδου τεθέντας ἐν δημοκρατία καὶ ὅσοι ἐπ' Εὐκλείδου ἐτέθησαν καὶ εἰσὶν ἀναγεγραμμένοι, κυρίου εἶναι. τοὺς δὲ μετ' Εὐκλείδην τεθέντας καὶ τὸ λοιπὸν τιθεμένους κυρίου εἶναι ἀπὸ τῆς ἡμέρας ἧς ἕκαστος ἐτέθη, πλὴν εἴ τῳ προσγέγραπται χρόνος ὄντινα δεῖ ἄρχειν. ἐπαγράψαι δὲ τοῖς μὲν νῦν κειμένοις τὸν γραμματέα τῆς βουλῆς τριάκοντα ἡμερῶν· τὸ δὲ λοιπὸν, ὅς ἂν τυγχάνῃ γραμματεύων, προσγραφέτω παραχρῆμα τὸν νόμον κύριον εἶναι ἀπὸ τῆς ἡμέρας ἧς ἐτέθη.

Diocles said: the laws enacted before the archonship of Eucleides under the democracy and those that were enacted in the archonship of Eucleides and have been written up shall be in force. Those enacted after the archonship of Eucleides and enacted henceforth shall be in effect from the day in which each was enacted, except in case the time from which one must be in effect is specified. The secretary shall add this provision to the laws now in effect within thirty days; henceforth, whoever happens to be the secretary, shall immediately add that the law is in effect from the day in which it was enacted.

This document, as the stichometry has shown, was definitely part of the *Urexemplar* of the speech. The context of the quotation and the content of the law are clear: Demosthenes has just asked the clerk to read out in full the law of Timocrates (§ 39-40). He anticipates at § 41 that the clauses of the law most vulnerable to criticism are the ones providing that the statute must apply to past as well as future cases, and the one providing that this law must not apply to tax-farmers and lessees. This second clause allegedly contrasts with the prohibition on passing laws *ad hominem* (§ 59), and will be

discussed below. The first clause is instead immediately discussed: Demosthenes (§ 43) explains that, since the statute just read out by the clerk (§ 42) asserts that laws are to be valid from the day they were passed, the law of Timocrates must be invalid, as it states that its provisions must apply also to previous actions. Then, the orator discusses a particular provision of the law just read out granting that, in case a law explicitly expresses from what date it must apply, this date must be respected. Demosthenes discusses this particular provision to make it clear that it does not allow Timocrates to extend the range of application of his law to the past. In fact, Demosthenes claims, the exception is aimed at respecting specifications like 'this law is to be valid from the year of the archon after the present one.' After making clear the intent of the legislator, Demosthenes carries on and notes (§ 44) that the law of Timocrates refers to the past generically, without providing any starting date for its application.

It is clear from this brief summary that the orator's account confirms only the central section of the document we read at § 42. The speech (§ 43) informs us that the law *κελεύει γὰρ ἕκαστον ἀφ' ἧς ἡμέρας ἐτέθη κύριον εἶναι, πλὴν εἴ τῳ χρόνος προσγέγραπται, τούτῳ δὲ τὸν γεγραμμένον ἄρχειν*. At § 44 it is repeated that the law *κελεύει τὸν γεγραμμένον χρόνον ἢ τὴν ἡμέραν ἀφ' ἧς ἂν τεθῇ κυρίαν εἶναι*. These paraphrases are consistent with the contents of the document and, for the most part, with its wording. The slight differences do not pose a problem, since no form in this section of the document is unattested in contemporary Athenian inscriptions.³⁸²

The additional pieces of information provided by the document must be analysed on their own merits. The first part of the document prescribes different rules for laws enacted at different times. The first sentence concerns the laws enacted before the archonship of Eucleides: they must be valid, on the condition that they were passed

³⁸² The expression *ὄντινα δεῖ ἄρχειν* is clear in meaning and perfectly Attic in form. It is obvious that the word to be understood in connection with *ὄντινα* is *χρόνον*. Cf. Wayte 1882: 123, following Jurinus, Dobree, Dindorf and Benseler. *Contra* Schäfer 1827: 198 who supplies *ἄρχοντα*, overcomplicating the sentence.

under democracy. The wording of this sentence does not present any suspicious feature: the word δημοκρατία is rare in Athenian inscriptions, but the decree of Theozotides³⁸³ attests its official use right after the restoration of democracy in 403/2, possibly earlier,³⁸⁴ and the law of Eucrates of 337/6 BCE (*Agora* 16.73), closely resembling the wording of the laws concerned with tyranny mentioned in Andodoc. 1.95 (as a Solonian law), Dem. 20.159 and Lyc. 1.124-7 (as a decree of Demophantus), confirms that its presence is appropriate.³⁸⁵

The contents on the other hand seem to clash with information found in other ancient sources, mainly in Andoc. 1.82-89. It is therefore necessary to provide here an accurate discussion of Andocides' argument in order to find out whether our document really contradicts some of the provisions listed there. Andocides argues at length that the laws passed before the archonship of Eucleides are no longer valid. This would serve his purpose in demonstrating that he is no longer liable to the provisions of a decree of Isotimides, stating that those who have committed impiety and have confessed cannot enter the temples (§ 71). He mentions (§ 82) that after the restoration of democracy the Assembly ordered a revision of the laws of Draco and Solon. The laws approved had to be inscribed in the Stoa Basileios.³⁸⁶ Then he claims (§ 85-6) that after the laws were inscribed (ἐπειδὴ ἀνεγράφησαν) the Athenians passed a further statute ordering that ἀγράφω δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἐνός. What he is trying to argue is that ἄγραφος in this case was contrasted to ἀναγεγραμμένος, and therefore after the archonship of Eucleides a magistrate could bring a case to trial only κατὰ τοὺς ἀναγεγραμμένους νόμους, that is according to the laws revised, approved

³⁸³ Stroud 1971: 281 l. 6.

³⁸⁴ I am informed by P. J. Rhodes, whom I thank, that a forthcoming article by Matthaïou pre-dates this text to 410 or soon afterwards.

³⁸⁵ For a discussion of these texts cf. Canevaro - Harris 2012 (forthcoming). For the word δημοκρατία cf. Sealey 1973.

³⁸⁶ See Droysen 1873: 37; MacDowell 1962: 121; Ostwald 1986: 513, n. 60, 519. Robertson 1990: 46-52 proposes the courtyard of the Prytaneion, but see Rhodes 1991: 99.

and inscribed in the Stoa Basileios.³⁸⁷ Many modern scholars have endorsed this interpretation.³⁸⁸ Now, if Andocides' interpretation of this statute is right, the first provision of the law of Diocles is inconsistent with it.³⁸⁹ This interpretation is however very problematic: Andocides himself mentions at § 116 a statute inscribed in the Eleusinium, and considers it valid. Moreover, as Clinton has rightly pointed out,³⁹⁰ the adjective ἄγραφος is more likely to be contrasted with γεγραμμένος than with ἀναγεγραμμένος. Unwritten laws are contrasted with generically written ones, not necessarily with re-inscribed ones.³⁹¹ This statute, far from contradicting the document we are here concerned with, is very likely to have been overinterpreted by Andocides in order to make his case stronger.³⁹² If the interpretation that he proposes were right, and the decree of Isotimides had not been inscribed in the Stoa Basileios, then there would be no case: this law would have been enough to grant him acquittal.³⁹³ Yet he feels the need to carry on discussing other statutes.

One of these is mentioned by Andocides at § 88. It states that τοῖς δὲ νόμοις χρῆσθαι ἀπ' Εὐκλείδου ἄρχοντος, and seems, again, to contradict the first provision of our document: it is implied, but not clearly stated, by Andocides here, at § 89 and

³⁸⁷ Andocides gives this same interpretation at § 89.

³⁸⁸ Harrison 1955: 33; MacDowell 1962: 126-7; Ostwald 1973: 91-2; Sealey 1987: 37; Rhodes 1991: 97; Sickinger 1999: 100.

³⁸⁹ The scholars just mentioned seem to overlook the consequences of Andocides' interpretation, with the exception of Rhodes 1991: 90-1, who tries to account for the contradiction by noting that 'Athenian laws were not always impeccably drafted.'

³⁹⁰ Clinton 1982: 34.

³⁹¹ Without claiming with Joyce 2008: 517 n. 47 that the unwritten laws are here the customary rules mentioned by Pericles in Thuc. 2.37.3, it is better to understand 'unwritten laws' simply as laws not passed by the Athenians, and therefore not recorded, or repealed, and thus not recorded anymore.

³⁹² Cf. Canevaro - Harris 2012 (forthcoming).

³⁹³ MacDowell 1962: 202-3 argues that the decree of Isotimides, being a decree and not a law, was not affected by this statute, and therefore Andocides would here be trying to make a case for interpreting regulations relative to laws as applying also to decrees. The distinction between laws and decrees had not yet been implemented in 415. According to the words Andocides uses to describe the decree of Isotimides, its text prescribed that εἴργεσθαι τῶν ἱερῶν τοὺς ἀσεβήσαντας καὶ ὁμολογήσαντας. This seems to me to be a general rule, applying forever and not for a short time: exactly the sort of rule the Athenians in the fourth century would call a law. Therefore there is no point in claiming that the laws quoted by Andocides at § 85-9 did not apply to this statute since it was not a law. Either the statute declaring unwritten laws invalid refers to all the laws not inscribed in the Stoa Basileios, and therefore the decree of Isotimides is no longer valid, or it does not, and the decree of Isotimides is still valid. Andocides piles up provisions each one of which, if interpreted as he proposes, would be enough to grant him acquittal.

again at § 93 and 99, that the meaning of the provision is that only the laws passed after the archonship of Eucleides must be employed. However, at § 89, when Andocides states that no decree passed before 403/2 is valid, he is discussing the effect of all the laws previously quoted, and not just of this one. If, because of this single law, no statute passed before 403/2 was valid, then there would again be no case, and no need to quote any other law. In fact the Greek, if read literally, has a different meaning: 'the laws are to be followed from the archonship of Eucleides.'³⁹⁴ That is, crimes committed against the laws before the archonship of Eucleides can no longer be brought to trial.³⁹⁵ This interpretation makes perfect sense in the context of the other provisions usually mentioned together with this one. These provisions state that judgements and arbitrations already given under democracy must be valid, but the acts of the Thirty must not.³⁹⁶ The law as a whole was clearly concerned with stating which offences could still be brought to court after the restoration of democracy. It had nothing to do with the validity of laws in general. Again, a closer look shows that this law does not contradict the first section of the document at Dem. 24.42. The very effort made by Andocides to prove his case, and the fact that such a case was brought to trial, is evidence that rules explicitly contradictory to this provision did not in fact exist, and make the existence of the provision we find in our document very likely.³⁹⁷

The first section of the document also deals with laws passed and 'posted' in the archonship of Eucleides, stating that they are to be valid. This provision again does not conflict with any other account, and is confirmed in some of its details by other sources, both epigraphic and literary. Hansen has proposed interpreting the specification

³⁹⁴ Cf. MacDowell 1962: 128-9.

³⁹⁵ Such a rule is clearly alluded to in Aeschin. 1.39.

³⁹⁶ Cf. below for a discussion of these provisions.

³⁹⁷ This is not the place to discuss the implications of this document for the reconstruction of the alleged 'recodification' of the end of 5th century. Clinton 1982 denies that such a recodification encompassed more than the laws of Draco and Solon, whereas Hansen 1990 claims that a complete re-codification happened, but the *anagrapheis* proceeded to destroy all the steles which were no longer to be valid, and thus the code consisted of the laws in the Stoa Basileios and of all the steles, wherever they were standing, which survived the action of the *anagrapheis*.

ἀναγεγραμμένοι as referring not to the general act of inscribing a text,³⁹⁸ as in many Athenian inscriptions,³⁹⁹ but to the activity of the *anagrapheis* attested by the speech *Against Nicomachus* of Lysias (30) and by Andoc. 1.82 ff. The prescript of the reinscribed version of the law of Draco on homicide, *IG I³ 104* ll. 1-10, makes clear that the activity of the *anagrapheis* was recorded on the relevant inscriptions. Declaring valid the laws ἀναγεγραμμένους in this context means referring explicitly to the republication of the laws of Draco and Solon mentioned in Andoc. 1.81-2, 85, 89 for 403/2. *IG I³ 104* also confirms that after the restoration of democracy a number of laws were so defined. To understand the rationale behind this provision it is important to remember that the laws of Draco and Solon revised and inscribed in 403/2 were not new measures. Therefore, the lawgiver could not include them in the category of the laws passed after the restoration of democracy, which had to be valid from the day on which they had been passed. These laws had already been valid for a long time, and their confirmation by the *anagrapheis* simply stated that they were allowed to continue being valid. Thus, this provision seems justified by its context, and confirmed in one of its details by an inscription. To sum up, given the position of the archonship of Eucleides as an institutional watershed, the precise definition, some time after the restoration of democracy, of the validity of all the different measures passed in different regimes and in different ways seems particularly appropriate, and no feature speaks against its authenticity.

After the next section of the document, consistent with the orator's account, stating that laws passed after the archonship of Eucleides are to be valid from the day on which they were passed, except if differently stated in their text, we read ἐπιγράψαι δὲ τοῖς μὲν νῦν κειμένοις τὸν γραμματέα τῆς βουλῆς τριάκοντα ἡμερῶν· τὸ δὲ

³⁹⁸ Hansen 1990: 64-5.

³⁹⁹ E.g. *IG II² 27* ll. 9-10 ἀναγράφαι αὐτὸν ἐστὶ λημι λιθίνῃ.

λοιπόν, ὃς ἂν τυγχάνῃ γραμματέων, προσγραφέτω παραχρῆμα τὸν νόμον κύριον εἶναι ἀπὸ τῆς ἡμέρας ἧς ἐτέθη. The wording of this provision seems distinctively Attic. ἐπιγράφειν is the appropriate verb for 'adding' or 'appending' something to an existing document, and is widely used in Athenian inscriptions.⁴⁰⁰ The role implied for the secretary of the Council, namely dealing with (and publishing) laws and decrees, is confirmed by many epigraphic sources, and the reference to the secretary of the Council instead of the γραμματεὺς κατὰ πρυτανείαν is particularly accurate, since by 363/2 the system had changed, and the new γραμματεὺς κατὰ πρυτανείαν dealing with laws and decrees was no longer a member of the Council.⁴⁰¹ The requirement that the secretary of the Council add to the existing laws the time specification within thirty days is not problematic. The requirement to perform a task in a fixed number of days is often found in Athenian official practice,⁴⁰² and a requirement of thirty days is not unparalleled: the *logistai* had thirty days to present the financial accounts of all the magistrates dealing with public money in front of a lawcourt over which they themselves presided;⁴⁰³ all the *archai* had to submit themselves to *dokimasiai* if they stayed in charge more than thirty days;⁴⁰⁴ in *IG* I³ 46 ll. 33-4 a provision orders the colonists to leave Athens within thirty days. τὸ λοιπόν is the normal expression found in inscriptions to mean 'henceforth'.⁴⁰⁵ The expression ὃς ἂν τυγχάνῃ γραμματέων is again not unparalleled: the most widely attested Attic way of expressing this concept is ἀεὶ with the participle,⁴⁰⁶ but we often find also the relative with ἂν, a form of τυγχάνω and the participle.⁴⁰⁷ Finally, the word παραχρῆμα to

⁴⁰⁰ Cf. e.g. *IG* I³ 76 ll. 28-9 ἐπι[γράφσ]αντες ἐν ταῖς στέλαις τῶν ἀρχόν[των] τὰ ὀνόμα[τα]...

⁴⁰¹ Cf. for full discussion of the sources Rhodes 1972: 134-8.

⁴⁰² Cf. e.g. *IG* I³ 45 ll. 7-14; *IG* I³ 40 ll. 12-4; *IG* I³ 64 ll. 6-7; *IG* I³ 85 ll. 7-12; *IG* I³ 93 l. 15; *IG* I³ 105 ll. 38-9, 51. See in general Sickinger 1999: 88, 225 n.130.

⁴⁰³ [Arist.] *Ath.Pol.* 54.2. Harp. s.v. λογισταί.

⁴⁰⁴ Aeschin. 3.14

⁴⁰⁵ Cf. Harris 2006: 425-7 for full discussion and examples of the expression.

⁴⁰⁶ Cf. e.g. *IG* II² 226 ll. 9-10 καὶ τοὺς στρατηγοὺς τοὺς ἀεὶ στρατηγοῦντας.

⁴⁰⁷ Cf. e.g. *IG* II² 106 ll. 8-9 οἱ ἂν [τ]υγχά[νωσι] προεδρ[υ]έοντες, and *IG* I³ 71 l. 27; *IG* II² 128 ll. 10-1; *IG* II² 145 ll. 17-8; *IG* II² 152 ll. 13-4; *IG* II² 172 ll. 11-2; *IG* II² 188 ll. 2-3; *IG* II² 192 ll. 5-6; *IG* II² 553

require immediate action is not unattested in Athenian inscriptions.⁴⁰⁸ One could object to this provision that not all fourth-century laws preserved on stone include the implementation date. However, as Sickinger has shown, there is plenty of evidence for implementation dates on archival copies of official documents from the fifth century,⁴⁰⁹ and it is very likely that this provision refers to an obligation to add implementation dates on all the archival copies of new laws.⁴¹⁰

To sum up, there are no discrepancies between this document and the following account by the orator. Where the document provides additional information, this does not conflict with any other ancient source. The details can often be confirmed by other sources, both literary and epigraphic. The language is appropriate for a late fifth-century Athenian law, both grammatically and in the specific, almost formulaic, expressions employed. There is therefore no reason to suspect its authenticity.⁴¹¹ This text, like many of the documents that were present in the *Urexemplar*, is evidence of careful editing at that stage of transmission, and must be considered reliable.

ll. 16-7; *Agora* 16.52 ll. 17-8; *Agora* 16.52 ll. 10-11; *SEG* 16.52 ll. 7-8; *SEG* 32.50 ll. 10-1; *SEG* 34.72 fr. b1 l. 2.

⁴⁰⁸ Cf. Threatte 1996: 410 n. 12.

⁴⁰⁹ Sickinger 1999: 83-91.

⁴¹⁰ Cf. Sickinger 1999: 117, 150.

⁴¹¹ Pace Wayte 1882: 122.

4.5 Dem. 24.45: *adeia* for *atimoi* and debtors⁴¹²

NOMOS

μηδὲ περὶ τῶν ἀτίμων, ὅπως χρὴ ἐπιτίμους αὐτοὺς εἶναι, μηδὲ περὶ τῶν ὀφειλόντων τοῖς θεοῖς ἢ τῷ δημοσίῳ τῷ Ἀθηναίων περὶ ἀφέσεως τοῦ ὀφλήματος ἢ τάξεως, ἐὰν μὴ ψηφισαμένων Ἀθηναίων τὴν ἄδειαν πρῶτον μὴ ἔλαπτον ἑξακισχιλίων, οἷς ἂν δόξη κρύβδην ψηφίζομενοις. τότε δ' ἐξεῖναι χρηματίζειν καθ' ὅ τι ἂν τῇ βουλῇ καὶ τῷ δήμῳ δοκῇ.

δημοσίῳ S F: δῆμῳ S⁷⁰: A P⁷⁰: I τῷ AF: τῶν S Y P I ψηφισαμένοις P super lineam

... neither about disfranchised citizens, that they need to be re-enfranchised, nor about debtors to the gods or to the public treasury of the Athenians, on the remission or composition of the debt, if permission is not granted by no less than 6000 Athenians, who so resolve voting by secret ballot. Then it shall be permitted to deliberate according to what the Council and the Assembly have resolved.

This document must have been part of the *Urexemplar* of the speech, since its absence would make the stichometry of this section unacceptable. The presence of at least two quotations from it in the *Schol. ad loc.* (ἐπιτίμους; περὶ ἀφέσεως τοῦ ὀφλήματος ἢ τάξεως) provides another glimpse of the diffusion of this document in ancient editions: this document is not only present in all the preserved medieval manuscripts, but was present also in the edition used by the scholiast, or by the commentator whose work has been excerpted in the *scholia*. A section of this document is also quoted in Andocides' *On the Mysteries* (§ 77), but that document is a forgery,

⁴¹² This is not the place to discuss the meaning of the word *adeia*, its various uses, and the legal implications of this norm. For general discussion cf. McElwee 1975, Miller 2007: 307-9.

and the relevant part was probably created on the basis of this speech. The speech of Andocides cannot therefore be used as a parallel.⁴¹³

The contents of the document correspond closely to the following discussion by the orator. Demosthenes in his paraphrase states that the law does not allow anyone to speak or any official to bring to discussion the situation of the *atimoi*, nor of the debtors, to consider remitting or composing⁴¹⁴ their debts, unless they have been given permission by six thousand Athenians voting by secret ballot (ἄλλος οὗτος νόμος, οὐκ ἐὼν περὶ τῶν ἀτίμων οὐδὲ τῶν ὀφειλόντων λέγειν οὐδὲ χρηματίζειν περὶ ἀφέσεως τῶν ὀφλημάτων οὐδὲ τάξεως, ἂν μὴ τῆς ἀδείας δοθείσης, καὶ ταύτης μὴ ἔλαπτον ἢ ἑξακισχιλίων ψηφισαμένων). According to the orator, Timocrates, disregarding this law, has pardoned those who have been sentenced to prison, providing that they present sureties, without any preliminary vote by the Assembly. Moreover, the law provides that even if the Assembly gives the permission, no Athenian is allowed to act as he wishes on these matters, but has to proceed in accordance with the deliberations of the Council and the Assembly (καὶ ὁ μὲν νόμος, οὐδ' ἐπειδὴν τὴν ἀδειαν εὕρηται τις, ἔδωκεν ὥς ἂν βούληται πράττειν, ἀλλ' ὥς ἂν τῇ βουλῇ καὶ τῷ δήμῳ δοκῇ). Timocrates has not followed any of these provisions, but passed his law when the Council could not be summoned because of the Sacred Month. The orator then sums up Timocrates' infractions: he should have first asked the Council to schedule the discussion of the issue of *adeia* in the next Assembly, then he should have convinced the Assembly to grant him *adeia* and only later should he have proceeded to legislate according to the rules of *nomothesia* (πρῶτον μὲν πρόσδοον γράψασθαι

⁴¹³ Cf. Canevaro - Harris 2012 (forthcoming).

⁴¹⁴ The meaning of *τάξις* in this context seems unparalleled in the ancient sources. However, the word is used in the same way in the document and in the orator's account. Its presence therefore should not worry us. *Schol.Dem.* ad § 45 provides a reasonable explanation for this usage: παρακαλέσαι τὸν δῆμον μὴ περὶ παντελοῦς ἀπαλλαγῆς τοῦ χρέους, ἀλλὰ περὶ μέρους, ἵνα μέρος μὲν καταβάλῃ, τὸ δὲ ἄλλο μέρος συγχωρηθῇ. ἄφεσις involves complete cancellation of debts, whereas *τάξις* is an arrangement to pay only a part of it. Cf. Wayte 1882: 127 and Pecorella Longo 2004: 85 n. 2.

πρὸς τὴν βουλήν, εἶτα τῷ δήμῳ διαλεχθῆναι, καὶ οὕτως, εἰ πᾶσιν Ἀθηναίοις ἐδόκει, γράφειν καὶ νομοθετεῖν περὶ τούτων...). MacDowell has rightly noted that the orator's argument is questionable. The speaker claims that Timocrates has granted ἄφεσις to the debtors providing that they present sureties, which the law explicitly prohibits, yet the law, in the orator's words, discusses ἄφεσις τῶν ὀφλημάτων, not from prison, and the debtors, although they avoid prison, do not cease to be debtors as a result of Timocrates' law.⁴¹⁵ Thus, the fact that Demosthenes' summary allows us to refute his own argument guarantees that here he is not loosely paraphrasing. Instead he is likely to be following closely the words of the law.

The wording of the document is strikingly similar to the paraphrase of the orator. Since the orator, as we have seen, is likely to keep close to the wording of the law, this close similarity does not in itself betray forgery. The document could on the other hand have been reconstructed from the context. To assess its reliability it is therefore necessary to examine the differences between the document and the following summary. The speech does not provide any detail that is missing in the document. I will here concentrate on the wording of the document, in the sections in which it closely resembles the paraphrase, in order to analyze the few slight differences between the two, and in the additional details provided by the document.

First, it must be noted that the document cannot, as it stands, report the complete text of the law: its text in fact starts *ex abrupto* with μηδὲ περὶ τῶν ἀτίμων, and continues listing the second category of people about whom it is not possible to deliberate; it then states the exception, namely the grant of *adeia* by the Assembly. The main verb is missing. The following paraphrase has χρηματίζειν, which is likely to be the right verb here. This verb is often used with the meaning 'to bring to discussion', said of officials, with a legal connotation, in the literary sources (e.g. Dem. 24.55; Ar.

⁴¹⁵ MacDowell 2009: 188.

Th. 377; *Arist. Pol.* 1298b29; *Rh.* 1359b3), and this usage is confirmed by many Athenian inscriptions from the classical period (e.g. *IG I*³ 71 ll. 18, 20, 29, 35; 89 l. 21; 138 l. 18; 254 l. 39; *IG II*² 1 l. 50; 103 l. 16).⁴¹⁶ The paraphrase has also the verb λέγειν, which is used for 'giving speeches' and 'discuss'. Whatever the right verb here, its absence alone cannot provide grounds against the authenticity of the document. The provision is still comprehensible, and the hypothesis of an oversight made by an otherwise careful editor is in itself as likely as that of careless forgery.

In the first sentence the mention of both the *atimoi* and the debtors could appear redundant, since the debtors were a subcategory of the *atimoi*. One could therefore argue that such a repetition is appropriate, as an explanation, in the paraphrase of the orator but not in the law itself. However, the distinction is found not only here, but is often repeated in legal contexts in other fourth-century sources.⁴¹⁷ The fact that the expression is found in this form in different ancient places points to the hypothesis of a close paraphrase. Moreover, if the provision is carefully analyzed, the expression is not otiose. Obviously the mention of the two categories separately does not mean that the debtors were not *atimoi*. The distinction rather concerns how the rights could be recovered.⁴¹⁸ *Atimoi* had lost their rights for good (καθάπαξ in *Dem.* 21.32, 87). The Assembly was therefore required to restore their status altogether. Debtors on the other hand recovered their rights as soon as they no longer owed anything to the state. Thus, a request to the assembly on their behalf would not be explicitly concerned with making them *epitimoi*, but rather with cancelling their debts. They would be restored in their rights as a result of the cancellation of their debts. Consequently, although the result of proposals dealing with *atimoi* and debtors was the same, the proposals themselves were likely to be very different. If the law had mentioned only the *atimoi*, a viable line of

⁴¹⁶ A search in the PHI database of Greek inscriptions yields 303 results.

⁴¹⁷ *Dem.* 25.30; 58.45; *Plat. Pol.* 555d; [*Arist.*] *Ath. Pol.* 63.3; *Hyp.* fr.33. Cf. also *Schol. Dem.* 20.156 Dilts.

⁴¹⁸ See Hansen 1976: 67-8 n. 3 and Hansen 1981a: 350-1.

argument for debtors would have been that their proposals did not mention explicitly their status of *atimoi*, nor did they explicitly require in their bills to be reinstated in their civic rights, and therefore they did not need any *adeia*. By clearly stating the distinction, the legislator in this case avoided any confusion about the actual range of application of the norm: *adeia* was necessary for restoration of civil rights in all cases, whether the restoration was explicit or indirect. If this interpretation is correct, then it is easy to see that the additional clause ὅπως χρὴ ἐπιτίμους αὐτοὺς εἶναι in the document is perfectly appropriate, as it states clearly what cannot be discussed in the Assembly in regard to *atimoi*, right before a further clause stating what cannot be discussed in regard to debtors.

The next discrepancy with the paraphrase encountered in the document is the specification τοῖς θεοῖς ἢ τῷ δημοσίῳ τῷ Ἀθηναίων in connection with the debtors.⁴¹⁹ This specification however is not problematic. The orators often refer to ὀφείλοντες τῷ δημοσίῳ (Andoc. 1.73; Isoc. 12.10; Dem. 22.33; 24.123; 58.45; 59.5; cf. also *Ath.Pol.* 63.3), but the complete formula τῷ δημοσίῳ τῷ Ἀθηναίων is never found in literary sources.⁴²⁰ It is found instead in one Athenian inscription, *Agora* 19 = *Poletai* P26 ll. 1-2.⁴²¹ Inscriptions moreover often record the names of debtors of the treasury of a specific god (e.g. *IG* I³ 10 ll. 21-2; *IG* I³ 153 ll. 17-8; *IG* II² 1237 ll. 90-2; *IG* II² 1194 ll. 15-7; *IG* II² 1361 ll. 8, 13-4, 15; *Agora* 16.36[1] ll. 36-8) and debts τοῖς θεοῖς in general (*IG* I³ 32 ll. 15-6; *IG* I³ 52 ll. a1-2, 8, b23). The two specifications are never found together in inscriptions, but this is not surprising: inscriptions record single debtors owing sums of money, and these sums must be due to a specific treasury. The expressions τοῖς θεοῖς ἢ τῷ δημοσίῳ τῷ Ἀθηναίων would be nonsense there. To

⁴¹⁹ On the status of public debtors cf. Hansen 1976: 67-72; 84-8; 92-8 and Hunter 2000: 21-5.

⁴²⁰ Thuc. 5.18.7 is not a literary parallel, since the expression recurs in the quotation of the text of the Peace of Nicias: not in literary prose, but in an official text. Moreover the expression there refers to Athenian prisons, not to the Athenian treasury.

⁴²¹ The simple formula ὀφείλοντες τῷ δημοσίῳ occurs in inscriptions. Cf. e.g. *IG* I³ 59 fr. e l. 47 for the 5th century and *Agora* 19 = *Poletai* P26 fr. b col. 4 ll. 469, 504, 527-8.

confirm that the mention of the two categories of debtors together in official documents is not problematic, it will suffice to quote the paraphrase of a law at Dem. 58.14: ἕτερον δὲ τρίτον, ὅς ὁμοίως κελεύει κατὰ τε τῶν ὀφειλόντων τῷ δημοσίῳ τὰς ἐνδείξεις τὸν βουλόμενον ποιεῖσθαι τῶν πολιτῶν, καὶ ἐάν τις ὀφείλῃ τῇ Ἀθηνᾷ ἢ τῶν ἄλλων θεῶν ἢ τῶν ἐπωνύμων τῷ ('There is a third law also, which enacts that any one of the citizens who pleases may lodge criminal information against those who owe money to the treasury, or if any man is indebted to Athena or to any one of the rest of the gods, or to the eponymous heroes'). The following paragraph, after the actual reading of the law, asks the judges to pay attention to the words ἢ τῶν ἐπωνύμων τῷ, confirming that the paraphrase was very close. Therefore, although our document here provides a detail absent from the paraphrase of the orator, the additional expression is confirmed by legal quotations in the orators and by epigraphical evidence.

The regulations for ἀδεία are expressed in the orator's paraphrase with these words: ἂν μὴ τῆς ἀδείας δοθείσης, καὶ ταύτης μὴ ἔλαττον ἢ ἑξακισχιλίων ψηφισαμένων. The document presents a more concise ἐὰν μὴ ψηφισαμένων Ἀθηναίων τὴν ἀδειαν πρῶτον μὴ ἔλαττον ἑξακισχιλίων. The language of the document is here perfectly consistent with the epigraphical usage. The document then adds the requirement of secret ballot (οἷς ἂν δόξῃ κρύβδην ψηφίζομένοις). This requirement is absent from the text of the speech, but is found in relation to a *quorum* stipulation in the regulations on naturalization paraphrased in [Dem.] 59.89.⁴²² As Hansen has convincingly argued, based on both literary and epigraphical sources, voting by ballot in the Assembly had less to do with secrecy than with the need for an accurate counting of votes.⁴²³ This need must have been particularly felt when a *quorum* of six

⁴²² The requirement of a secret ballot is found in Athenian inscriptions in *IG* II² 1141 = *Agora* 16.44 l. 6 and 1183 ll. 17-18.

⁴²³ Hansen 1977: 131-3. On this specific aspect of voting by ballot (but not on the general reconstruction of the voting procedures) the same conclusion was also reached by Boegehold 1963: 368-72. Hansen's reconstruction is now generally accepted: cf. Rhodes 1981: 126-7.

thousand was required. A prescription to vote by secret ballot is therefore necessary in this context, and its addition in the document appropriate. No other discrepancies occur between the document and the paraphrase of the orator.

This analysis has shown that this document, consistently with the other documents present in the *Urexemplar* of Demosthenes' speeches, does not present any idiosyncratic feature that may speak against its authenticity.⁴²⁴ Its text is mainly confirmed by the paraphrase of the orator, and where there are discrepancies, the document has plausible wording consistent with contemporary inscriptions. The few additional details provided by the document are all accounted for by contemporary sources, both literary and epigraphical, and can often be shown to be necessary to the working of such a statute. To sum up, this document must be considered reliable, and its insertion is evidence of careful editing at an early stage of the transmission of the speech.

⁴²⁴ *Pace* Wayte 1882: 126 and Navarre - Orsini 1954: 145 n. 1.

4.6 Dem. 24.50: the law on supplication

NOMOS

ἐὰν δέ τις ἰκετεύῃ ἐν τῇ βουλῇ ἢ ἐν τῷ δήμῳ περὶ ὧν δικαστήριον ἢ ἡ βουλὴ ἢ ὁ δῆμος κατέγνω, ἐὰν μὲν αὐτὸς ὁ ὀφλὼν ἰκετεύῃ πρὶν ἐκτεῖσαι, ἔνδειξιν εἶναι αὐτοῦ, καθάπερ ἐάν τις ὀφείλων τῷ δημοσίῳ ἡλιάζεται· ἐὰν δ' ἄλλος ὑπὲρ τοῦ ὀφληκότος ἰκετεύῃ πρὶν ἐκτεῖσαι, δημοσίᾳ ἔστω αὐτοῦ ἢ οὐσία ἅπασα. ἐὰν δέ τις τῶν προέδρων δῶ τι τὴν ἐπιχειροτονίαν, ἢ αὐτῷ τῷ ὀφληκότῃ ἢ ἄλλῳ ὑπὲρ ἐκείνου, πρὶν ἐκτεῖσαι, ἄτιμος ἔστω.

1 ἢ om. S | ἢ om. F | 2 ἰκετεύσῃ A^a | 2, 4, 5 ἐκτεῖσαι corr. Blass : ἐκτίσαι SAFYP | 2 <κατ'> αὐτοῦ AFYP | 3 ὀφληκότως (?) F^a | 4 αὐτοῦ ἔστω A | πᾶσα

If anyone makes a supplication in the Council or in the Assembly about those that a tribunal, the Council or the Assembly convicted, if the convicted himself makes the supplication before he has paid, there shall be an *endeixis* against him in the same way as if some debtor of the public treasury sits as a judge; and if someone else makes the supplication on behalf of the convicted before he has paid, all his substances shall become public property. If one of the *proedroi* puts the matter to the vote either for the convicted himself or for another on his behalf before he has paid, he shall be *atimos*.

It is impossible from the stichometric analysis to determine whether this document was part of the *Urexemplar*. It is therefore necessary to rely entirely on the comparison with the orator's account and on close analysis of the wording.

Demosthenes' reason for quoting this law and his argument here are weak. He claims that the law of Timocrates conflicts with many different laws, and the one just

read out is one of them (§ 51). The orator proceeds to interpret the lawgiver's reason for enacting such a law: he knew Athenians' humanity and gentleness and was afraid that they could harm their own public interests (τὰ κοινὰ § 52). He therefore enacted that the convicted wrongdoers (τοὺς μετὰ τῶν νόμων κρίσει καὶ δικαστηρίῳ μὴ δίκαια ποιεῖν) were not allowed to take advantage of the people's good nature, and to beg and make supplications with the excuse of some misfortune. Thus he forbade making any supplications on matters regarding such people. They were instead to stay silent and do what is right (ἀλλὰ ποιεῖν τὰ δίκαια σιγῇ). At § 53 Demosthenes explains his argument: begging is better than giving orders, and placing a suppliant branch (οἱ τιθέντες δὲ τὰς ἱκετηρίας δέονται) is begging, whereas enacting a law is giving an order (οἱ νόμοι μὲν ἅπαντες προστάτουσιν ἃ χρὴ ποιεῖν). Timocrates enacted a law to save Androtion from prison, when even making a supplication about any matter concerning him would have been illegal. He is therefore even guiltier. The argument is clearly specious: from Demosthenes' words it is clear that the law is concerned with supplications and has nothing to do with enacting laws. The argument *a fortiori* is a good rhetorical device, but is not persuasive from a legal point of view.⁴²⁵

Demosthenes' words have generally been interpreted as referring to the principle of *res iudicata*.⁴²⁶ No convicted wrongdoer was allowed to make supplication to cancel or reduce his penalty. However this interpretation is not warranted by the text: Demosthenes states that convicted wrongdoers are not allowed to make supplications with the excuse of some misfortune (μετὰ συμφορᾶς ἱκετεύειν ἔχοντας φορμὴν), and that supplications are forbidden about matters concerning such people (μήθ' ἱκετεύειν μήτε λέγειν ὑπὲρ τῶν τοιούτων). He never says that the law is concerned only with supplications about the sentences and the penalties passed against

⁴²⁵ Cf. also MacDowell 2009: 188.

⁴²⁶ This is the interpretation of Demosthenes's account provided by Naiden 2004: 75 and 2006: 179. Cf. also MacDowell 2009: 188.

wrongdoers. It is concerned with supplications made μετὰ συμφορᾶς [...] ἔχοντας ἄφορμῇν. It is difficult to interpret this phrase as referring exclusively to sentences and penalties. The expression is deliberately vague, and the absence of the article before συμφορᾶς suggests that Demosthenes means simply 'some, whatever misfortune'. The expression ὑπὲρ τῶν τοιούτων again is vague, and can refer to any affair concerning the convicted wrongdoers. So the law, as far as Demosthenes' paraphrase is concerned, states that convicted wrongdoers are not allowed to make any supplication whatsoever, nor is anyone else on their behalf. There is no hint of any specific concern with penalties and sentences.

Before checking whether the document conforms to this description, the usual understanding of its provisions must, again, be challenged. The first clause (ἐὰν δέ τις ἱκετεύῃ ἐν τῇ βουλῇ ἢ ἐν τῷ δήμῳ περὶ ὧν δικαστήριον ἢ ἡ βουλή ἢ ὁ δῆμος κατέγνω) is translated thus by Murray in his Loeb translation: 'If any person make petition to the Council or to the Assembly in respect of any sentence of a Court of Justice or of the Council or of the Assembly.' MacDowell writes: 'a law forbids supplication in the Boule or the Ekklesia against a penalty imposed by a court or the Boule or the Ekklesia until after the penalty has been paid.'⁴²⁷ This interpretation makes no sense: what is the point in making a supplication for relief from a penalty after the penalty has been paid? This reading, according to which the document would be, again, concerned with *res iudicata*, is however neither the only one nor the preferable one. In fact the verb καταγιγνώσκω in all its constructions⁴²⁸ always points to someone (either in the genitive or in the accusative) that has been accused or convicted. This is sometimes understood, but it is always clear from the context. Instead the verb is found with the absolute meaning of 'giving a sentence' only in the expression δίκην

⁴²⁷ MacDowell 2009: 188.

⁴²⁸ Cf. Canevaro - Harris 2012 (forthcoming).

καταγιγνώσκειν (cf. e.g. Ar. Eq. 1360). Since in our clause δίκην is missing, it is much more natural to read the clause as 'if anyone makes a supplication in the Council or in the Assembly about those that a tribunal, the Council or the Assembly convicted'. This interpretation is moreover consistent with Demosthenes' account: the document prescribes that no supplication about any issue shall be allowed on matters regarding those who have been convicted, exactly as the orator reports. Such an interpretation is consistent with the general *atimia* of public debtors, who are excluded from the workings of the *polis* as a whole.

The document however contains many other details that must be checked against the other sources. The first clause of the document tells us that supplications to the Athenians were made before the Council and before the Assembly, and that trials were held and sentences passed in Athens by lawcourts, the Council or the Assembly. Both pieces of information are arguably correct. Wherever a bough is placed, at the altar of the Council (*IG II² 218*), at that of the Twelve Gods (Plut. *Per.* 31.2; Hdt. 6.108.4; Lyc. 1.93) or of Artemis at Mounychia (Dem. 18.107), the supplication is dealt with by the Council and the Assembly. The first step is the evaluation of supplications by the Council, which can reject them or send them to the Assembly (with a *probouleuma*) recommending approval or rejection, or without any recommendation at all. The second and definitive step is the assessment by the Assembly.⁴²⁹ As for the list of bodies that heard trials and gave sentences, namely tribunals, the Council and the Assembly, no objection can be raised against the document. *Ath.Pol.* 45.2 describes the jurisdiction of the Council and Dem. 47.43 makes clear that the Council had the power to impose fines

⁴²⁹ The procedure is thoroughly explored, on the basis of the epigraphical and literary material, by Naiden 2004: 80-3 and 2006: 173-83. *IG II² 218* shows clearly the whole procedure. Rhodes 1972: 55-7 and 1981: 528 has argued that sometimes the Council may have been bypassed, since specific Assemblies were scheduled for hearing supplications, and supplications made then did not need previous approval by the Council. This does not contrast with the wording of the document.

of up to 500 drachmas.⁴³⁰ The sources show clearly that the Assembly, at least until the mid-fourth century, tried important political cases, and inflicted heavy penalties, sometimes even death.⁴³¹ Finally, δικαστήριον can refer in our sources both to the people's court and to homicide courts. All the different homicide courts are in fact called δικαστήρια in the long account of Dem. 23.67-76. Thus the document is actually forbidding supplications about those whose sentences have been passed by any body with the power of hearing trials. The clause is perfectly consistent with what we know of Athenian law and institutions, and adds important information to the orator's account. The phrase at § 52 in the orator's account, τοὺς μετὰ τῶν νόμων κρίσει καὶ δικαστηρίῳ μὴ δίκαια ποιεῖν ἐγνωσμένους, with its slightly convoluted construction, could well be a paraphrase of this clause. Notably, κρίσις is also used of trials held by the Council and the Assembly,⁴³² and its presence next to δικαστηρίῳ (otherwise a reduplication)⁴³³ might allude to the document's wording. To sum up, this clause does not contain any idiosyncratic feature, and the construction with ἐὰν δέ τις is attested in a great number of Athenian inscriptions.⁴³⁴

The document proceeds to single out different penalties for the convicted wrongdoer, if he makes the supplication in person, and for anybody else doing it on his behalf. The second clause of the document (ἐὰν μὲν αὐτὸς ὁ ὀφλὼν ἱκετεύῃ πρὶν ἐκτεῖσαι, ἔνδειξιν εἶναι αὐτοῦ, καθάπερ ἐάν τις ὀφείλων τῷ δημοσίῳ ἡλιάζεται) specifies that the charge and punishment for making supplications in person before one has paid the penalty inflicted for his crime is the same as when an *atimos* sits as judge.

⁴³⁰ Cf. also SEG 26.72 ll. 32-6. On the power of inflicting fines of up to 500 drachmas cf. Rhodes 1972: 147 and 1981: 540. In general on the jurisdiction of the Council cf. Rhodes 1972: 144-207 and 1981: 477-8, 489-90, 537-43, 549. For *eisangeliai* cf. below pp. 216.

⁴³¹ Cf. Dem. 49.10 and the famous trial of the *strategoi* after the battle at the *Arginousai* (Xen. *Hell.* 1.7). Another case heard by the Assembly was that for which Lysias wrote the *Against Ergocles* (Lys. 28). For other cases cf. Hansen 1975: catalogue pp. 66-120 nos. 2, 3, 75, 76, 80, 81, 82, 85, 86, and 15-7 for the change between 362 and 355.

⁴³² E.g. [Arist.] *Ath. Pol.* 41.2, 45.2. Cf. Hansen 1987: 107-8.

⁴³³ But Wayte 1882: 131 points out that this can also be read as a hendiadys.

⁴³⁴ Cf. Threatte 1996: 340. A search in the Attic inscriptions of the PHI database yields 148 results.

ὁ ὀφλῶν, aorist participle of ὀφλισκάνω, is common in inscriptions.⁴³⁵ πρὶν with infinitive is also widely found in inscriptions,⁴³⁶ as is ἐκτίνω.⁴³⁷ The contents of this provision are impossible to check against the orator's account. His summary is very vague on the details of the law just read out. His paraphrase does not in fact follow the text of the law, but comments on the legislator's alleged intent in writing it. Expressions like μὴ δίκαια ποιεῖν ἐγνωσμένους⁴³⁸ and ποιεῖν τὰ δίκαια σιγῇ are utterly vague, and are used to express general principles. The document focuses on people sentenced to pay a fine,⁴³⁹ and prescribes that no supplications can be made by them or about them before they have paid it. That people convicted to pay a fine were the focus of the law is neither confirmed nor refuted by the orator's account, yet the provision as it stands is intrinsically coherent, and the phrase πρὶν ἐκτεῖσαι makes good sense. No source in fact suggests that when an Athenian was convicted to pay a fine and paid it his citizen rights remained curtailed in any way. He fully regained his status. The provision πρὶν ἐκτεῖσαι is therefore necessary.

The procedure prescribed against the convicted man making a supplication in person is the same as in case a debtor ἡλιάζεται. Prescribing as penalty for a crime the same as was prescribed for a different crime was not a rare practice in Athens. At Dem. 20.156 the orator quotes among the penalties prescribed by Leptines in his law ἐὰν δ' ἁλῶ, ἔνοχος ἔστω τῷ νόμῳ ὅς κείται, ἐάν τις ὀφείλων ἄρχῃ τῷ δημοσίῳ. The sentence is remarkably similar. In that case, Demosthenes explains that the intended penalty is death. In the case of a debtor of the state sitting as a judge the procedure is

⁴³⁵ Cf. *IG* I³ 6 ll. 31, 39; 21 l. 59; *Agora* 16.339 l. b12; *Poletai* P26 ll. 459, 506. For ὀφλισκάνω in inscriptions cf. Threatte 1996: 481, 486, 544-5, 567, 582.

⁴³⁶ Cf. e.g. *IG* I³ 84 l. 9; 105 l. 45; 1453 l. 17; *II*² 1196 l. 9; 1673 l. 44.

⁴³⁷ Cf. e.g. *IG* I³ 41 l. 116; *II*² 30 ll. 8, 16; 412 l. 6; *Poletai* P26 l. 491; *SEG* 32.81 l. 6.

⁴³⁸ Demosthenes always uses this expression in general statements or for a wide variety of behaviours or offenses, never to refer to a specific crime or legal condition. Cf. Dem. 15.28; 18.104, 107; 19.153; 40.5; 41.23.

⁴³⁹ ὀφλῶν can from time to time mean simply 'convicted' (*LSJ* s.v. A), but ἐκτίνω means 'to pay' and the more general meaning 'to serve a sentence' is relegated to the expression δίκην ἐκτίνειν (*LSJ* s.v.). In fact, epigraphical and literary sources, to encompass both corporal and financial punishments, employ the expression πάθειν ἢ ἀποτεῖσαι (cf. e.g. *Agora* 16.56 l. 33; Dem. 24.118).

endeixis and the penalty must be decided by the judges (*agon timetos*). If they opt for a fine, the debtor must be imprisoned until he pays both the fine and the original debt (*cf. Ath.Pol.* 63.3). But the penalty could be even harsher, and *Dem.* 21.182 informs us about the case of Pyrrhus, one of the Eteobutadae, in which the penalty was death.⁴⁴⁰ Slightly suspect is here the word ἡλιάζεται. The usual word for 'sitting as a judge in a popular court' in literary sources is δικάζειν, and ἡλιάζεσθαι never appears in Attic inscriptions. However I could not find any clear example in inscriptions of δικάζειν used in this sense either. ἡλιάζεσθαι is used precisely in this sense, almost as a technical term in *Phryn.* fr. 63 Kock, *Ar. Eq.* 798, *Lys.* 980 and *Ves.* 772 and by *Harp. s.v.* ἡλίαία καὶ ἡλίασις, attributing the usage to *Lysias*, and there is no reason to doubt it.⁴⁴¹

The next provision concerns anyone making a supplication on behalf of τοῦ ὠφληκότος. The punishment in this case is: δημοσία ἔστω αὐτοῦ ἢ οὐσία ἅπασα. This penalty is attested with the very same words in *Agora* 16.73 l. 21 (ἢ οὐσία δημοσία ἔστω αὐτοῦ; *cf.* also *IG II²* 1631 l. 362-3; 111 l. 41-2).

The last clause prescribes *atimia* if one of the *proedroi* puts something to the vote ἢ αὐτῷ τῷ ὠφληκότῃ ἢ ἄλλῳ ὑπὲρ ἐκείνου before he pays. The only slightly suspect element in this clause is τις τῶν προέδρων δῶ τιτι τὴν ἐπιχειροτονίαν. ἐπιχειροτονία, in the accusative, is found once in Attic inscriptions (*SEG* 45.51 l. 9), but the text is too fragmentary and we cannot guess either the relevant verb or the context. The literary sources confirm that the correct verb here is δίδωμι,⁴⁴² and not ποιεῖν as in the document at § 20-3. Thus, although the construction is not exactly paralleled in inscriptions, its grammar is correct. The verb usually found with the *proedroi* is ἐπιψηφίζειν, but always in the formulaic construction τῶν προέδρων

⁴⁴⁰ *Cf.* in general Hansen 1976: 96-8.

⁴⁴¹ On legal terms in Attic comedy and drama see Harris 2006: 425-30 and Harris - Leão - Rhodes 2010 *passim*.

⁴⁴² *Cf.* above pp. 139-40 n. 312.

ἐπεψήφισεν ὁ δεῖνα, and with no variation or elaboration whatsoever. The clause we find here is instead specifically constructed for the purpose of this provision, with a distinctive meaning ('to put something to the vote for somebody'), and there is no reason to reject it.

To sum up, the document is generally consistent with the orator's account. None of the information provided conflicts with any other source about Athenian laws and institutions. Its provisions are inherently consistent and not contradictory. Its grammar is correct, and its language mainly conforms to contemporary inscriptions, without presenting any feature patently unacceptable. The stichometry does not allow us to tell whether it was present in the *Urexemplar* or not, but its characteristics advise us to consider it so. As many other stichometric documents it seems carefully drafted, and does not contain any trivial error. Its provisions are likely to be on the whole reliable.

4.7 Dem. 24.54: *res iudicata*

NOMOS

ὅσων δίκη πρότερον ἐγένετο ἢ εὐθυνα ἢ διαδικασία περὶ τοῦ ἐν δικαστηρίῳ,
ἢ ἰδίᾳ ἢ δημοσίᾳ, ἢ τὸ δημόσιον ἀπέδοτο, μὴ εἰσάγειν περὶ τούτων εἰς τὸ
δικαστήριον μηδ' ἐπιψηφίζειν τῶν ἀρχόντων μηδένα, μηδὲ κατηγορεῖν
ἐόντων ἃ οὐκ ἐῷσιν οἱ νόμοι.

ὅσων - ἐπιψηφίζειν P.Oxy.2.232

τοῦ A^a | ἢ ἰδίᾳ ἢ δημοσίᾳ A

On matters about which there has been a previous prosecution, or an *euthyna* or a *diadikasia* on something in court, whether in a public or in a private trial, or the state has been the vendor, none of the magistrates shall bring a trial to court, nor shall he put the matter to the vote, and they shan't allow accusations that are not allowed by the laws.

The stichometry of the speech does not allow us to tell whether the document was part of the *Urexemplar*. The presence of part of it in *P.Oxy.* 2.232, dating from 2nd/3rd century AD, provides the *terminus ante quem* for its insertion.

The rationale for the reading and discussion of the law at § 54-5 is as follow: Demosthenes claims that Timocrates has infringed the provisions of this law from the very beginning of his statute. The law just read out forbids the reconsidering of matters already decided by a tribunal (ὁ μὲν γ' οὐκ ἐῷ περὶ ὧν ἂν ἅπαξ γνῶ δικαστήριον πάλιν χρηματίζειν). Timocrates instead orders that the Assembly must reconsider the penalty inflicted by the tribunals and cancel the additional imprisonment if the

convicted presents sureties. Moreover the law forbids magistrates to put such matters to the vote (καὶ ὁ μὲν νόμος μὴδ' ἐπιψηφίζειν φησὶ τῶν ἀρχόντων παρὰ ταῦτα μὴδένα) whereas Timocrates' law orders the *proedroi* to put sureties to the vote whenever any debtor wishes.

The law, as Demosthenes summarizes it, states the principle of *res iudicata* and makes courts' decisions binding. The law of Timocrates does not order that imprisonment cannot be inflicted as a penalty at once, but only after the ninth prytany if the convicted has not paid his fine. This would regulate what penalties a court can and cannot inflict, and would therefore be perfectly acceptable. Instead it gives the Assembly the power to change penalties already inflicted by courts, and in fact forces it to do so when a debtor presents sureties. This clearly contrasts with the provisions reported by the orator. However, we do not know whether the actual law forbade magistrates to put such matters to the vote only in tribunals or anywhere.⁴⁴³ If the law were concerned only with courts, then Demosthenes' argument would be specious. This is in fact suggested by other allusions to this law elsewhere. At Dem. 20.147 we read οἱ νόμοι δ' οὐκ ἐώσι δις πρὸς τὸν αὐτὸν περὶ τῶν αὐτῶν οὔτε δίκας οὔτ' εὐθύνας οὔτε διαδικασίαν οὔτ' ἄλλο τοιοῦτ' οὐδὲν εἶναι. This account suggests that the law is concerned specifically with trials, and not with any kind of vote. It also adds *euthynai*, *diadikasiai* and 'other similar things' to normal *dikai*. The decisions given in all these actions must be binding. At Dem. 38.16 the speaker again states ἅπαξ περὶ τῶν αὐτῶν πρὸς τὸν αὐτὸν εἶναι τὰς δίκας. The wording of all these passages is very close and must reflect the language of the actual law. Other passages in the orators seem to allude to the same law. Dem. 36.24 discusses the law about *paragraphe*⁴⁴⁴ and claims that it does not allow a charge to be brought on matters about which a release or

⁴⁴³ This point is made by MacDowell 2009: 188, who relies however on the document.

⁴⁴⁴ For this procedure *cf.* Wolff 1966; Isager - Hansen 1975: 123-31, 227; MacDowell 1978: 214-7.

discharge has already been given (οὐκ ἐόντων τῶν νόμων δίκας ὧν ἂν ἀφῇ τις ἅπαξ λαγχάνειν, cf. also Dem. 37.1). After the law is read out the orator discusses it and states (§ 25) that the law mentions discharges and releases together with other cases when a new charge cannot be brought (τά τ' ἄλλ' ὧν μὴ εἶναι δίκας, καὶ ὅσα τις ἀφῆκεν ἢ ἀπήλλαξεν). The argument proceeds: εἰ γάρ ἐστι δίκαιον, ὧν ἂν ἅπαξ γένηται δίκη, μηκέτ' ἐξεῖναι δικάζεσθαι, all the more it is unjust to bring a charge when a release or discharge has been given. The prohibition mentioned again concerns bringing a charge twice about the same matter. The law seems to be the same. This very argument is found with few differences also at Dem. 37.19-20: after stating that ὧν ἂν ἀφῇ καὶ ἀπαλλάξῃ τις, μηκέτι τὰς δίκας εἶναι the orator lists some of the other cases in which a charge cannot be brought, to stress that his own case is the most shameful. The first example concerns public sales (ἃ μὲν γὰρ τὸ δημόσιον πέπρακεν). The second concerns decisions taken by a court (περὶ ὧν ἔγνω τὸ δικαστήριον). It is again the case of holding trials twice on the same matter. The orator then hints at the fact that the law lists other cases (καὶ περὶ τῶν ἄλλων τῶν ἐν τῷ νόμῳ).

From all these allusions it is possible to draw quite an accurate account of the law: it forbids to hold *dikai*, *euthynai*, *diadikasiai* on matters already decided with similar procedures, or settled with a release or a discharge, or that have been the object of a public sale. No magistrate shall put such a matter to the vote. If anyone does bring such a charge, the defendant has the right to bring a *paragraphe* against him.⁴⁴⁵

The document's contents are only partially consistent with this description. As for the information provided in the document, nothing requires the use of an independent

⁴⁴⁵ This does not mean that Demosthenes is here discussing the law on *paragraphe*. The original law on *paragraphe* was probably that of Archinus (Isoc. 18.1-3) and dealt with prosecutions brought in violation of the reconciliation agreement of 403 (but Rhodes 1981: 473 does not believe the procedure was created and employed then for the first time). New laws later enacted extended the scope of *paragraphe* to cover many other cases. The provisions discussed in the passages I have mentioned must have had exactly this purpose. They all deal with the principle of *res iudicata* and, in the words of Isager and Hansen (1975: 127), were 'collected in one law'.

source, and all the details are found in the Demosthenic *corpus*. Yet the document lacks two elements that were, according to the other sources, mentioned in the law: it does not list releases and discharges, and it does not name *paragraphe*, the procedure available against charges brought against its provisions.

The wording presents a few striking features. First, it does not at all resemble the wording of Dem. 20.147 and 38.16, which seem to quote the law very faithfully. Furthermore εὐθυνα, out of 210 occurrences in Attic inscriptions,⁴⁴⁶ is never found in the singular. In fact, the paraphrase of the law at Dem. 20.147 has the plural, which is consistent with the epigraphical usage.⁴⁴⁷ Moreover ἡ διαδικασία περί του is unparalleled both in inscriptions and in literary sources. περί του is an utterly vague expression, and του is found in Attic inscriptions only in formulas like ἐάν του δέωνται (cf. e.g. *IG* II² 448 l. 81). That διαδικασία did not need further qualification, unless one wanted to make explicit to what διαδικασία he was referring, is shown by *IG* II² 1237 ll. 13-6: ὅποσοι μήπω διεδικάσθησαν κατὰ τὸν νόμον τὸν Δημοτιωνιδῶν, διαδικάσαι περὶ αὐτῶν τὸς φράτερας αὐτίκα μάλα. There was no need to state explicitly that the law referred to those who διεδικάσθησαν 'about something'. It might be only coincidental, but the only other occurrence of περί του in the orators is in this very speech at § 51.

The last clause of the document (μηδὲ κατηγορεῖν ἐόντων ἃ οὐκ ἐώσιν οἱ νόμοι) is difficult to accept. The two previous clauses express orders and have verbs in the infinitive (μὴ εἰσάγειν [...] μὴδ' ἐπιψηφίζειν) held by accusative singulars (τῶν

⁴⁴⁶ According to the PHI database.

⁴⁴⁷ In literary sources from the 5th and 4th centuries, TLG yields 145 results for the stem of εὐθυνα, and only 7 (Lys. 10.27; 11.9; 25.30; Aeschin. 3.17; [Arist.] *Ath.Pol.* 48.5; Arist. *Rh.* 1411b; Ar. *Vesp.* 571) in the singular. In [Arist.] *Ath.Pol.* 48.5 the singular is due to the expression πάλιν εἰσάγουσιν ταύτην τὴν εὐθυναν εἰς τὸ δικαστήριον. Arist. *Rh.* 1411b has the singular because of βλάβη τις, but immediately before it shows the normal plural (καὶ ὅτι αἱ πόλεις τῷ ψόγῳ τῶν ἀνθρώπων μεγάλας εὐθύνας διδόασιν· ἢ γὰρ εὐθυνα βλάβη τις δικαία ἐστίν). In Aeschin. 3.17 it is due to the expression εἰ μή τις ἐστὶν εὐνοίας εὐθυνα (τις requires the singular). Lys. 10.27 has οὔτε τοῖς πολίταις οὐδεμίαν πώποτε ὥφλεν εὐθύνην (the negative needs the singular). It is clear that the technical usage of the word is in the plural, and the singular is found only due to expressive needs in literary prose or poetry.

ἀρχόντων μηδένα). The last clause expresses a further order, on the same level as the previous ones, but does it with a present participle in the genitive plural. This participle seems to be held by τῶν ἀρχόντων, a specification of the original subject μηδένα. Even if we accepted a genitive here, we would expect it to refer to μηδένα, and not to its specification, τῶν ἀρχόντων. This structure, in a clause giving an order, is unparalleled and grammatically hard to accept, in particular in what purports to be official language. This last clause moreover does not make any sense: it provides that the magistrates shall not allow accusations that the laws do not allow (ἃ οὐκ ἐῷσιν οἱ νόμοι). The clause refers to 'the laws' in general, and seems to allude to other, different laws. Yet this is supposed to be the law concerned with forbidden accusations and it is not clear to what other laws it should refer.⁴⁴⁸

To sum up, although it has no blatantly incorrect provisions, the document does not present any independent detail. All of its features could easily have been drawn from the Demosthenic *corpus*. On the other hand, some features are missing which we know from our sources were part of the law. The wording of the document moreover does not conform to any of Demosthenes' summaries, not even when several summaries report identical formulas. Moreover, some words and expressions are unparalleled in Attic inscriptions and are never found in official Athenian language. The document seems therefore to be a well-informed, yet clumsy reconstruction made by someone who was well-versed in the Demosthenic *corpus*, but whose work was not very accurate. The stichometry does not allow us to tell whether the document was part of the *Urexemplar*, but our analysis suggests that it was not. Its features resemble more closely the non-stichometric documents of this and other speeches.

⁴⁴⁸ Cf. also Wayte 1882: 132.

4.8 Dem. 24.56: valid and invalid acts after the Thirty

NOMOS

τὰς δίκας καὶ τὰς διαίτας, ὅσαι ἐγένοντο ἐπὶ τοῖς νόμοις ἐν δημοκρατουμένη
τῇ πόλει, κυρίας εἶναι.

NOMOS

ὅποσα δ' ἐπὶ τῶν τριάκοντα ἐπράχθη ἢ δίκη ἐδικάσθη, ἢ ἰδίᾳ ἢ δημοσίᾳ,
ἄκυρα εἶναι.

τὰς - εἶναι Andoc.1.87 | ὅποσα - εἶναι P.Oxy.2.232

ἐπὶ τοῖς νόμοις om. Andoc.1.87 | ὅποσα codd. : οὗτος ἂ A | δίκη F | ἰδίᾳ ἢ δημοσίᾳ A P.Oxy.2.232
ut videtur

All judgements and arbitrations shall be valid, where given under the democracy
according to the laws.

But what was done under the Thirty, or the judgement(s) delivered, whether in
private or in public, shall be invalid.

The stichometry does not indicate whether these documents were part of the
Urexemplar of the speech. On the other hand, the presence of the second document in
P.Oxy. 2.232 provides a *terminus ante quem* for its insertion: late 2nd or early 3rd century
BCE.

No feature of these two documents contrasts with the following summary by the
orator. After the clerk reads the first provision stating that judgements and arbitrations
given under the democracy shall be valid, the orator comments that at least those
judgements which punished the culprit with imprisonment are not going to be valid
anymore because of the law of Timocrates. Afterwards (§ 57), after the second

provision is read out, the orator claims that since the acts of the Thirty are to be invalid according to the law quoted, the law of Timocrates, making some judgements given under democracy invalid, implicitly equates democracy with the Thirty.

The first document corresponds word for word with the document quoted in Andoc.1.87. The documents in Andocides' speech *On the Mysteries* are usually unreliable,⁴⁴⁹ yet the particular document we are concerned with repeats *verbatim* the words of Andocides in the following paragraph.⁴⁵⁰ We know from that passage that this was one of the laws proposed by the *nomothetai* right after the restoration of democracy in 403, and its aim was probably that of deciding what sentences had to be valid, and what crimes from the previous years could or could not be prosecuted. Thus, it stated that judgements and arbitrations⁴⁵¹ delivered under democratic regimes had to be valid. It also stated, as Andocides' speech reports, that 'the laws are to be followed from the archonship of Eucleides.' This means that trials already held had to stay valid, but no new trial could be held for crimes committed before 404/3.⁴⁵² In this context, the further provision alluded to by Demosthenes at § 57, which states that the acts of the Thirty are not to be valid, makes perfect sense.⁴⁵³

This however does not prove that the documents are genuine, likely to have been present in the *Urexemplar*, or that they were added later on the basis of an independent and reliable source. The first document in fact could easily have been drawn from Andocides' passage. As for the second, it does not provide any information that could not be found in Demosthenes' discussion, and its presence in *P.Oxy.* 2.232 attests only

⁴⁴⁹ Cf. Canevaro - Harris 2012 (forthcoming).

⁴⁵⁰ Evidence that Andocides was actually quoting, and not paraphrasing, is the use of *dike* as 'judgement' at § 88. In all the speeches of Andocides this is the only case in which the word has this meaning, instead of the usual 'punishment' or 'atonement'. Cf. Wolf 1950-6: vol. 3 part 2 p. 178; MacDowell 1962: 129.

⁴⁵¹ Since the public arbitrators did not exist in Athens earlier than 399 (cf. MacDowell 1971: 267-73, Rhodes 1995: 305-6, *contra* Gernet 1939: 392-4), the law probably referred to private arbitrations, or arbitrations carried out by the deme-judges. Cf. MacDowell 1962: 128.

⁴⁵² Cf. above pp. 176-7.

⁴⁵³ This provision is also alluded to in Aeschin. 1.39, and the *scholion* to the passage paraphrases it.

that it was possible to find it in the speech between the end of the 2nd, or the beginning of the 3rd century AD.

To provide a tentative hypothesis for the origin of these documents it is necessary to focus on the very few discrepancies with the orators' accounts (§ 57 and Andoc.1.88-9). The first document presents just a minor discrepancy with Andocides' speech: we find, in addition to the requirement that the judgements and arbitrations, in order to be valid, must have been given under a democratic regime, the expression ἐπὶ τοῖς νόμοις. A specification to the effect that the judgements and arbitrations, to be valid, need to be given according to the laws does not seem to involve any difficulty, and MacDowell has proposed that it be restored also in Andocides' text.⁴⁵⁴ However, this terminology is unparalleled. In classical Athenian texts, both epigraphic and literary, the invariable expression for 'according to the laws' is κατὰ τοὺς νόμους.⁴⁵⁵ ἐπὶ τοῖς νόμοις is never found in inscriptions, and just once in literary texts from 5th and 4th century, in Plat. *Leges*. 719e in the expression ὁ τεταγμένος ἐπὶ τοῖς νόμοις ('the one who is in charge of our laws'), with a very different meaning from the one implied here.⁴⁵⁶ To sum up, this document seems to be drawn from Andoc. 1.87-8, and the only addition to that text is distinctively un-Attic.

The second document again does not present any discrepancy in content with the following discussion by the orator. Its words closely follow Demosthenes' paraphrase at § 57: ὁ γοῦν νόμος οὕτως, εὐλαβούμενος, ὥς ἐμοὶ δοκεῖ, τὸ τοιοῦτον ἀπείπε τὰ πραχθέντ' ἐπ' ἐκείνων (i.e. ἐπὶ τῶν τριάκοντα) μὴ κύρι' εἶναι. The only addition in the document is the expression ἢ δίκη ἐδικάσθη, ἢ ἰδίᾳ ἢ δημοσίᾳ. There is no need of an independent source for such a piece of information; that trials are meant is implied

⁴⁵⁴ MacDowell 1962: 128.

⁴⁵⁵ I do not provide here a list of the occurrences, since it would be too extensive. It will suffice to say that a search in the PHI database of inscriptions yields 70 results for Attica, and a TLG search in 5th and 4th century texts 145.

⁴⁵⁶ The translation given is by Pangle 1988: 106. For a discussion of the passage of the *Laws* cf. Schöpsdau 2003: 234

by the context, and the orator explicitly mentions the courts at § 58, when he claims that if the judges confirm the law of Timocrates, they implicitly admit that the tribunals of the democracy are responsible for the same injustices as those of the Thirty. Therefore, the mention of judgements in the provision is neither necessary nor impossible, and nothing can be said about the nature of the document on the basis of its content. However its grammar, in Wayte's words, is 'not happy'. Reiske proposes to understand ἡ δίκη ἐδικάσθη as ἡ ὁπόση δίκη ἐδικάσθη. Yet there are to my knowledge no cases in Attic of ὁπόσος (understood or not) making a singular noun collective: in the singular ὁπόσος invariably denotes size or space, whereas it denotes number in the plural (cf. LSJ s.v.). The correct Attic form would be ὁπόσαι δίκαι or ἐάν τις δίκη.⁴⁵⁷

This grammatical problem alone does not disqualify the document. However, since no independent information is provided in either of the texts, and in both cases the only expressions not drawn directly from Demosthenes' words present difficulties, it is safer to believe that these two inserts have been reconstructed on the basis of Andoc. 1.87-8 and of the discussion at § 57-8 of this speech. Accordingly, even though the stichometry does not allow us to tell whether these documents were already in the *Urexemplar*, it is more likely that they have been added at a later stage of transmission.

⁴⁵⁷ Cf. Wayte 1882: 135 and Schäfer 1827: 208.

4.9 Dem. 24.59: prohibition on laws *ad hominem*

NOMOS

μηδὲ νόμον ἐξεῖναι ἐπ' ἀνδρὶ θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις
τιθῇ ψηφισαμένων μὴ ἔλαττον ἑξακισχιλίων οἷς ἂν δόξη κρύβδην
ψηφίζομενοις.

μηδὲ - Ἀθηναίοις Dem.23.86 , 46.12, Andoc.1.87

μηδένα YP^a | ἐπ' ἀνδρὶ ἐξεῖναι Dem.23.86, 46.12 (FQ) : ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι
Andoc.1.87, 89 | ἐὰν μὴ - Ἀθηναίοις om. A | τιθῇ del. Blass | ἢ add. Reiske post τιθῇ | <ἐὰν μὴ>
add. Petit post τιθῇ | ψηφισαμένων - ψηφίζομενοις del. Dindorf

No law shall be enacted regarding an individual, if it is not enacted regarding all
citizens alike and approved by no less than six thousand that so decide voting by
secret ballot.

The first part of this law has already been discussed in connection with Dem.
23.86.⁴⁵⁸ The following discussion by the orator confirms its provisions, claiming that
the law οὐκ ἓξ νόμον ἀλλ' ἢ τὸν αὐτὸν τιθέναι κατὰ τῶν πολιτῶν πάντων. The
content of this part is confirmed also by other passages in this speech, namely § 18, 116,
159 and 188. The very wording of the provision, except for negligible differences, is
found elsewhere in the orators: Dem. 23.86, as we have seen, reports it both in a
stichometric document and in the following paraphrase (μηδὲ νόμον ἐπ' ἀνδρὶ ἐξεῖναι
θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐφ' ἅπασιν, *cf.* also Dem. 23.218), and so do Dem. 46.2
(μηδὲ νόμον ἐξεῖναι ἐπ' ἀνδρὶ θεῖναι, ἂν μὴ τὸν αὐτὸν ἐφ' ἅπασιν Ἀθηναίοις) and

⁴⁵⁸ *Cf.* above pp. 109-10.

Andoc. 1.89 (μηδ' ἐπ' ἀνδρὶ νόμον τιθέναι ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις).

The second part however is not found in Demosthenes' paraphrase, nor in any other paraphrase elsewhere in the orators. The stichometric document at Dem. 23.86 also ignores it. The only other place where we can read of the requirement of a *quorum* of six thousand Athenians voting by secret ballot in relation to laws *ad hominem* is Andoc. 1.87, in a document reporting this and others provisions.⁴⁵⁹ The wording there is ἐὰν μὴ ἑξακισχιλίοις δόξη κρύβδην ψηφίζομένοις. At § 89, when Andocides lists the documents discussed, this provision is absent.

It must be noted first of all that the two documents, even though both present the clause about the *quorum* and the secret ballot, do not agree about the provision they are expressing. Andoc. 1.87 prescribes that laws *ad hominem* can be passed if voted by secret ballot with a *quorum* of six thousand. The clause therefore states an exception to the prohibition on passing laws *ad hominem*. The document we are here concerned with states instead that laws *ad hominem* are not allowed, and laws must apply to all the Athenians and be voted by no less than six thousand by secret ballot. No exception to the rule is stated here. The law asserts instead that a *quorum* of six thousand voting by secret ballot is always required for a law.

The options here are two: either the second part of the law, present in different versions in Andocides and Dem. 24.59, is due to an independent source which provided the information missing in the orators, or both these documents are forgeries. In fact, the clause, in both its versions, is not above suspicion.

I will first analyze the text of the law as it stands in the manuscripts of Demosthenes. In that version, the law prescribes that no law *ad hominem* can be passed,

⁴⁵⁹ Cf. for discussion of the documents in that speech in general, and for this provision in particular, Canevaro - Harris 2012 (forthcoming).

and the laws must apply to all the citizens alike and be voted by secret ballot with a *quorum* of six thousand. Such a clause does not make any sense when compared with what we know about Athenian legislation. 1) The document does not specify where the *quorum* is required. It is hard to believe that such a *quorum* was required with the *nomothetai*. If this were the case, we should assume that the *nomothetai* were at every session as numerous as the Athenians taking part in the Assembly meetings, and often more numerous.⁴⁶⁰ We must conclude therefore that the Assembly was to vote by secret ballot with a *quorum* of six thousand. However, Rhodes⁴⁶¹ has rightly pointed out that the Assembly is not in charge of enacting laws in the fourth century, the *nomothetai* are. Following the decree of Teisamenus (Andoc. 1.83-4) he also claims that this law cannot refer to the *nomothesia* of 404/3, since at the time the *nomothetai* from the demes were in charge. This is probably not true, as I have shown elsewhere, and it is more likely that the Assembly was in charge at the time, and the *nomothetai* only drafted legislation.⁴⁶² However, if we interpret the rule as referring just to the 404/3 *nomothesia*, then we would have a *una tantum* provision, proposed by the *nomothetai* to curtail their own action, and afterwards improperly used in many instances in the fourth century by the orators, although it was no longer valid. 2) There are two parallels for a *quorum* of six thousand voting by secret ballot, and they are very precise about the stage of the procedure at which this *quorum* is needed. Dem. 24.45 and its summary at § 46 prescribe the requirement of a *quorum* of six thousand to grant *adeia* for *atimoi* to speak in front of the Assembly about their reinstatement, and clearly state that it shall not be allowed to deliberate about an *atimos* ἂν μὴ τῆς ἀδείας δοθείσης, καὶ ταύτης μὴ ἔλαττον ἢ ἑξακισχιλίων ψηφισαμένων. The *quorum* is required before the matter is discussed. At [Dem.] 59.89 a naturalization grant is not to be valid ἐὰν μὴ τῇ ψήφῳ εἰς

⁴⁶⁰ Cf. Dem.20.93 for the requirement for the *nomothetai* to swear the Heliastic oath, and Aristot. *Ath. Pol.* 24.3, Ar. *Vesp.* 662 and *Suda* s.v. *πρυτανεία* for their number.

⁴⁶¹ Rhodes 1984: 59; 1991: 97-8.

⁴⁶² Cf. Canevaro - Harris 2012 (forthcoming).

τὴν ἐπιούσαν ἐκκλησίαν ὑπερεξακισχίλιοι Ἀθηναίων ψηφίσωνται κρύβδην ψηφίζόμενοι. So the *quorum* is needed here after the decision has been made, in the next Assembly. The text of our law does not give any indication about the stage at which the *quorum* is required: whether it is supposed to be an authorization to deliberate or a ratification of the rule. 3) At § 20-32 of this speech the speaker argues at length that the procedure for enacting a new law has a very rigid timetable, which must be respected. Then he provides very detailed evidence that Timocrates did not follow the procedure, and concludes that the way he presented his new law is illegal. Now, if the procedure included a compulsory vote by secret ballot with a *quorum* of six thousand, we can be sure that Demosthenes would have mentioned it and charged Timocrates with a further breach of the law. Yet no mention of such a rule appears at any point in the speech. It is clear that the text of the manuscripts cannot be accepted as a genuine Athenian statute.

The text of the manuscripts, however, is not the version of this document scholars have usually commented on. Petit, followed uncritically by all modern editors (Butcher, Sykutris, Navarre and Orsini, Dilts), added ἐὰν μὴ before ψηφισαμένων to make the text of this document consistent with Andoc. 1.87. With this emendation the provision states that no law *ad personam* can be enacted if it does not address all the Athenian citizens, unless so voted by secret ballot with a *quorum* of six thousand. The rest of this chapter will be concerned with showing that this solution is as unacceptable as the *paradosis*.⁴⁶³

The first point to make concerns the use to which Demosthenes puts the law. His argument goes like this: the statute clearly states that a law must be valid for all the Athenians; since the law of Timocrates has been drafted with some specific individuals

⁴⁶³ The following section of the chapter partly reproduces, partly extends and supplements the discussion of Andoc. 1.87 that I have provided in Canevaro - Harris 2012 (forthcoming).

in mind, namely Androtion, Glaucetes and Melanopus, the law should be illegal; even if the real aim of Timocrates is overlooked, the very wording of its law contrasts with the statute, as tax-farmers, lessees, and their sureties are explicitly excluded from its range of action. The argument is clearly flawed: the fact that a law must address all the Athenians does not mean that laws cannot regulate, or single out, specific categories, on the condition that their application is general.⁴⁶⁴ In this particular case, the law of Timocrates does not name any individual, and addresses all the Athenians, in that everyone would be excluded from its range of action if he found himself in the position of tax-farmer, lessee or surety for these categories. This interpretation of the provision must be correct; otherwise laws regulating particular offices would be illegal,⁴⁶⁵ as would the law granting to *emporoi* and *naukleroi* the right to bring *dikai emporikai* (Dem. 32.1, 33.1), and the law stating that the archon must take care of orphans and *epikleroi* (Dem.43.75), since all these laws address particular categories.

Demosthenes was conscious of the weakness of his argument, and accordingly focused on one particular provision of his law, the one stating that a law must be valid for all the Athenians. The law of Timocrates in fact did not mention any individual, and therefore he chooses not to insist on that line of argument, mentioning it just through a *praeteritio* (δι' οὓς μὲν τοίνυν οὗτος εἰσέφερεν, ὑμεῖς οὐδὲν ἐμοῦ χειρόν γινώσκετε: ἄνευ δὲ τούτων αὐτὸς ὁμολόγησεν...). Now, this argument, which is already weak, would be completely undermined if the clerk had just read out a provision stating that a law not addressing all the Athenians can be passed if voted by secret ballot with a *quorum* of six thousand. The rationale given for the statute, that ὥσπερ γὰρ τῆς ἄλλης πολιτείας ἴσον μέτεστιν ἑκάστῳ, οὕτω καὶ τούτων (i.e. of the laws) ἴσον μετέχειν ἑκάστον ἀξιοῖ, would be blatant nonsense after the clerk has read out such a

⁴⁶⁴ Cf. Hansen 1979: 28-9.

⁴⁶⁵ Dem. 21.32-3 explicitly distinguishes between offices and the men who hold them.

provision. The only remark Demosthenes would be able to make would be that the law of Timocrates had not been ratified by six thousand Athenians. There is no trace of such a remark in the speech.

Some provisional conclusions can be drawn from this analysis of the orator's argument: first, if the provision about the *quorum* of six thousand voting by secret ballot ever existed, it was unlikely to be in the text the clerk read out to the judges.⁴⁶⁶ Also, since similar arguments are often used in the orators, we should assume that this provision was generally unknown to the judges. Even if this was the case, such arguments would still be utterly vulnerable: the opponent could easily ask the clerk to read out the whole statute, and thus expose the argument as misleading.

My next points concern the (lack of) rationale behind such a provision, when compared with what we know about Athenian legislation, and the (lack of) evidence for its existence. This version of the provision is in fact vulnerable to the same objections as the *paradosis* version: 1) again, where was such a *quorum* required? Not by the *nomothetai*, because we should imagine a body of *nomothetai* larger than the Assembly. Yet the Assembly is not in charge of enacting laws in the fourth century: the *nomothetai* are. 2) Rhodes⁴⁶⁷ also notes that, whether the distinction between laws and decrees was theoretical or pragmatic, a decision concerning an individual is invariably passed in Athenian practice through a decree, and not a law.⁴⁶⁸ 3) As I have already noted, the two parallels for a *quorum* of six thousand voting by secret ballot are very precise about the stage of the procedure at which this *quorum* is needed. The text of our law instead, also

⁴⁶⁶ Cf. Wayte 1882: 137.

⁴⁶⁷ Rhodes 1984: 59; 1991: 97-8.

⁴⁶⁸ Rhodes therefore supposes that this provision was enacted when this distinction was not yet rooted in the Athenian practice, and quickly became dead letter. This hypothesis however is vulnerable to the same objections I have raised above about the possibility that the clerk did not read it out, and the judges did not know it. Moreover, such a solution would be necessary only if we knew from an independent source that the statute in this form is reliable. Otherwise, this reconstruction is hardly the most economical.

in this version, does not tell whether the vote by secret ballot with the *quorum* of six thousand is supposed to be an authorization to deliberate or a ratification of the norm.

Hansen on the other hand notes that in three cases we read honorary decrees for individuals submitted to the *nomothetai* for further ratification, and claims that these decrees are evidence for the procedure witnessed by this version of the provision.⁴⁶⁹ The reason for the submission to the *nomothetai* is that the funding of the measure would require a modification of the *merismos* that, being a law, cannot be modified by decree. This sort of law, according to Hansen, would be a case of νόμος ἐπ' ἀνδρῶν. Yet the bill of the *nomothetai* ought not to refer to any individual, just to a modification, as noted by Rhodes. Hansen on the other hand claims that at least in one case the bill of the *nomothetai* must have encompassed a reference to the individual. The case of νόμος ἐπ' ἀνδρῶν mentioned by Hansen (*IG* II² 222) is dubious. He claims that since the *nomothetai* have to ratify an annual pension for Peisitheides, their decision, that is that the *apodektai* allocate yearly a certain amount of money to the treasurer for the purpose of this pension, must have included the name of the honorand in order to be identifiable. I cannot see why. According to the decree, a certain amount of money ought to be paid daily to Peisitheides by the treasurer. The *nomothetai* have simply to ratify that the additional amount of money needed must be given to the treasurer yearly.⁴⁷⁰ The point is simply to provide the *tamias* with enough money in his budget to comply with the orders of the Assembly. There is no need to identify the money. The modification of the *merismos* is sufficient to account for the ratification by the *nomothetai* and no mention

⁴⁶⁹ Hansen 1979-80: 90-9; 1979: 39-43; 1985: 360-2. The three decrees are *IG* II² 222 ll. 41-46; 330 ll. 15-23; VII 4254 = *SIG*³ 298 ll. 35-41.

⁴⁷⁰ *IG* II² 222 ll. 44-6: τὸν ταμίαν τοῦ δήμου [τὸν ἀεὶ τ]αμ[ι]εύοντα διδόναι Πεισι[ι]θείδῃ δραχμὴν τῆς ἡμέρας ἓκ τῶν κατὰ ψηφίσματα ἀναλισκομένων [τῶι δήμῳ]· ἐν δὲ τοῖς νομοθέται[ς] τ[οὺς] προέδρου[ς] οἳ ἂν προεδρεύωσιν [καὶ τὸν ἐπ[ι]στάτην προσνομοθετῆ[σαι] τὸ ἀργύριον τ[ο]ῦτο μερίζειν τ[οὺς] ἀποδ[έ]κτας τῶι ταμίᾳ τοῦ δήμου εἰς τὸν ἐνιαυτὸν ἑκάστον. ὁ δὲ τ[α]μίας ἀπ[ο]δοτῶ Πει[σι]θείδει κατὰ [τὴν] πρυτανείαν ἐκάστην.

of any *quorum* of six thousand is found in the decree; there is therefore no need to see here a case of νόμος ἐπ' ἀνδρῶν.

To sum up, the many problems with this provision, in both its versions, and the absence of any mention of it anywhere else, both in literary sources and, as we have seen, in inscriptions, point to its inauthenticity.⁴⁷¹ The mention in the orators of this practice is always found in connection with procedures, *adeia* and naturalization, concerned with a named individual. It is not surprising that a forger, well versed in the orators but unaware of the technicalities of Athenian legislation, inferred that the same practice must have been used in the case of a νόμος ἐπ' ἀνδρῶν.

Thus, this document was probably reconstructed by a forger on the basis of information found in the orators. The stichometry does not allow us to tell whether it was in the *Urexemplar* of the speech but, given the general reliability of the stichometric documents analysed to this point, it is safer to believe that at least the last provision, but probably the whole document, was inserted much later.

⁴⁷¹ The last clause has been expunged by Schäfer, Lipsius, Taylor, Dindorf. The document has also been considered a forgery by Wayte 1882: 137, and more recently by Lepri Sorge 1979: 316.

4.10 Dem. 24.63: another law of Timocrates

NOMOS

Τιμοκράτης εἶπεν· ὅποσοι Ἀθηναίων κατ' εἰσαγγελίαν ἐκ τῆς βουλῆς ἢ νῦν εἰσιν ἐν τῷ δεσμωτηρίῳ ἢ τὸ λοιπὸν κατατεθῶσι, καὶ μὴ παραδοθῇ ἢ κατάγνωσις αὐτῶν τοῖς θεσμοθέταις ὑπὸ τοῦ γραμματέως τοῦ κατὰ πρυτανείαν κατὰ τὸν εἰσαγγελτικὸν νόμον, δεδόχθαι τοῖς νομοθέταις εἰσάγειν τοὺς ἑνδεκα εἰς τὸ δικαστήριον ἐντὸς τριάκονθ' ἡμερῶν ἀφ' ἧς ἂν παραλάβωσιν, ἐὰν μὴ τι δημοσίᾳ κωλύῃ, ἐὰν δὲ μὴ, ὅταν πρῶτον οἶόν τ' ᾖ. κατηγορεῖν δ' Ἀθηναίων τὸν βουλόμενον οἷς ἕξεστιν. ἐὰν δ' ἄλῳ, τιμάτῳ ἢ ἡλιαία περὶ αὐτοῦ ὃ τι ἂν δοκῇ ἄξιός εἶναι παθεῖν ἢ ἀποτεῖσαι. ἐὰν δ' ἀργυρίου τιμηθῇ, δεδέσθω τέως ἂν ἐκτείσῃ ὃ τι ἂν αὐτοῦ καταγνωσθῇ.

ἢ ἀποτεῖσαι. ἐὰν δ' ἀργυρίου τιμηθῇ, δεδέσθω τέως ἂν ἐκτείσῃ ὃ τι ἂν αὐτοῦ καταγνωσθῇ
P.Oxy.4.701

δεδόχθαι τοῖς νομοθέταις SP⁷⁰ : δεδόχθαι τοῖς θεσμοθέταις AFY | εἰσαγαγεῖν A | ἐντὸς ante
τριάκονθ' SFYP : om. A P.Oxy.4.701 (si spatium respexeris) cf. Dem.21.47 | κωλύσῃ F | ἢ ante
ἡλιαία om. YP^a | τέως FYP P.Oxy.4.701 : τε ἕως S : τε ἕως A (cf. § 64 τέως FYP P.Oxy.4.701 : τε
ὥς S : τε ἕως A)

Moved by Timocrates: as many Athenians as are now or will in the future be put in prison by an *eisangelia* in the Council, and whose preliminary verdicts of guilty have not been passed by the secretary of the Prytany to the *thesmothetai* according to the law on *eisangeliai*, it shall be resolved by the *nomothetai* that the Eleven bring them into court within thirty days from the day on which they receive them into custody, unless some public business prevents them, and if so, as soon as possible. Anyone among the qualified Athenians who wishes so shall be the prosecutor. If the culprit is

condemned, the Heliaia shall give him the punishment, pecuniary or otherwise, that they think fit. If he is condemned to pay a fine, he shall stay in prison until he has paid what he has been condemned to.

It is impossible to calculate on the basis of the stichometry whether this document was part of the *Urexemplar* of the speech or not. It is reported consistently by all the medieval manuscripts, and a papyrus from the end of the 2nd century or the beginning of the 3rd, *P.Oxy.* 4.701, is evidence of its existence in at least part of the tradition at that stage of transmission. It is preceded in the speech by a document (§ 59) that cannot, as we have seen, be considered genuine, and whose last section at least has been forged later. The next document at § 71 is a perfect (except for a detail) replica of a section of the law of Timocrates already quoted at § 39-40. Both are stichometric documents whose text is almost totally consistent with the paraphrases provided by the orator through the speech. Our document here on the other hand, which purports to report another law previously passed by Timocrates, cannot have been drawn from the context, since Demosthenes in his paraphrase mentions only one short clause from it. Its assessment must therefore be based on the comparison of its contents with other information concerning *eisangelia*, and its language must be checked against contemporary Athenian inscriptions.

After the reading of the document by the clerk Demosthenes at § 64 encourages the judges to pay careful attention and then asks the secretary to read again the last passage of the law (λέγ' αὐτοῖς αὐτὸ τοῦτο πάλιν). A further document reporting only the few words of the same law ἐὰν δ' ἀργυρίου τιμηθῇ, δεδέσθω τέως ἂν ἐκτείσῃ follows in the speech, and afterwards the orator asks the judges: 'is it possible for a man to enact two more contradictory provisions than these: that convicted malefactors shall be kept in prison until they have paid their fines, and that these same malefactors may

present sureties, and not be imprisoned?')(ἔστιν οὖν ὅπως ἂν ἐναντιώτερά τις δύο θείη τοῦ δεδέσθαι, τέως ἂν ἐκτείσωσι, τοὺς ἀλόντας, καὶ τοῦ καθιστάναι τοὺς αὐτοὺς τούτους ἐγγυητάς, ἀλλὰ μὴ δεῖν;). Timocrates has therefore contradicted himself by passing two laws prescribing in one case that malefactors must stay in jail until they pay their debts, and in the other that they can avoid prison by providing sureties. This line of argument is undoubtedly relevant. Even more than the fact that Timocrates has failed to repeal a statute that conflicts with his law, the judges must have found it striking that the conflicting statute has been recently enacted by Timocrates himself.⁴⁷²

The document in this form seems to be an amendment to the *nomos eisangeltikos*, aiming to limit the period for which someone can be held in prison awaiting trial following a provisional decision of the Council. This is not the place to discuss the procedure of *eisangelia*, and the (slightly) different interpretations offered by Hansen and Rhodes, based on their different understanding of the main focus of Athenian laws (procedural or substantive).⁴⁷³ It will suffice to follow the ancient sources and isolate an *eisangelia* to the Council for magistrates guilty of misconduct in office. The existence of such a procedure is clearly attested by *Ath.Pol.* 45.2: κρίνει δὲ τὰς ἀρχὰς ἡ βουλὴ τὰς πλείστας, καὶ μάλισθ' ὅσαι χρήματα διαχειρίζουσιν: οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ιδιώταις εἰσαγγέλλειν ἣν ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις: ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον, ἐὰν αὐτῶν ἡ βουλὴ καταγνῶ. The Council is in charge of judging the conduct of the officials, yet their judgment is not definitive: the convicted official can appeal to the people's court. Moreover, any Athenian can indict an official for misconduct in front of the Council, and again the official has the right to appeal against

⁴⁷² MacDowell 2009: 189-90 considers this the best argument exploited by Demosthenes in the legal section of the speech.

⁴⁷³ Cf. Hansen 1975: 21-8; Rhodes 1979: 106-14; Hansen 1979-80: 93-5.

the verdict to the people's court. Further details concerning the phase of the procedure held in the Council are provided by Dem. 47.42-3: γενομένης τοίνυν τῆς κρίσεως τῷ Θεοφῆμῳ ἐν τῇ βουλῇ κατὰ τὴν εἰσαγγελίαν ἣν ἐγὼ εἰσήγγειλα, καὶ ἀποδοθέντος λόγου ἑκατέρῳ, καὶ κρύβδην διαψηφισαμένων τῶν βουλευτῶν, ἐάλω ἐν τῷ βουλευτηρίῳ καὶ ἔδοξεν ἀδικεῖν. καὶ ἐπειδὴ ἐν τῷ διαχειροτονεῖν ἦν ἡ βουλὴ πότερα δικαστηρίῳ παραδοίη ἢ ζημώσκει ταῖς πεντακοσίαις, ὅσου ἦν κυρία κατὰ τὸν νόμον... συνεχώρησα ὥστε τῷ Θεοφῆμῳ πέντε καὶ εἴκοσι δραχμῶν προστιμηθῆναι. The speaker starts an *eisangelia* to the Council following Theophemus' refusal to hand over some trierarchic equipment. The Council hears both parties and passes a verdict of guilty. Afterwards the Council votes again on the matter of whether to impose on Theophemus a fine no greater than 500 drachmas or to pass on the case to the people's court. They choose eventually to impose a fine of 25 drachmas, and the case is closed. If they had chosen to inflict a more serious penalty, then the case would have been judged by the people's court, and, according to the previously quoted passage of the *Ath.Pol.*, the same would have happened if the convicted official chose to appeal against the fine. *Ath.Pol.* 59.4 makes clear that, in case of more serious penalties, or of appeals to the people's court, the *thesmothetai* are in charge of bringing the trial to court following the provisional verdicts (καταγνώσεις) of the Council: εἰσάγουσιν δὲ καὶ τὰς δοκιμασίας ταῖς ἀρχαῖς ἀπάσαις, καὶ τοὺς ἀπεψηφισμένους ὑπὸ τῶν δημοτῶν, καὶ τὰς καταγνώσεις τὰς ἐκ τῆς βουλῆς.

Timocrates' law, if authentic, would define the rights of those provisionally convicted and imprisoned by the Council. That the Council had the power to imprison an individual is clearly attested by Demosthenes at § 144 of this speech, where he paraphrases a passage of the bouleutic oath: οὐδὲ δῆσω Ἀθηναίων οὐδένα, ὃς ἂν ἐγγυητὰς τρεῖς καθιστῇ τὸ αὐτὸ τέλος τελοῦντας, πλὴν ἐάν τις ἐπὶ προδοσίᾳ τῆς πόλεως ἢ ἐπὶ καταλύσει τοῦ δήμου συνιὼν ἄλῳ, ἢ τέλος πριάμενος ἢ

ἐγγυησάμενος ἢ ἐκλέγων μὴ καταβάλλῃ. The Council had the power to imprison individuals, unless they presented three sureties from the same census class, and in spite of their sureties when the charge was one of treason, of attempting to overthrow democracy, or when any tax farmer, his sureties or collector were in default. Moreover, the use of imprisonment in Athens as a precautionary measure is widely attested, and Antiphon's speech *On the Murder of Herodes* provides clear evidence.⁴⁷⁴ The document here deals with those who have been imprisoned by the Council as a precautionary measure, and are awaiting trial. To avoid endless imprisonment due to delay, it prescribes that in case the secretary κατὰ πρυτανείαν fails to pass on the provisional verdict (ἡ κατάγνωσις) of the Council to the *thesmothetai*, as prescribed in the *nomos eisangeltikos*, the Eleven, responsible for the prisons (*Ath.Pol.* 52.1), shall take the prisoner to trial in thirty days, unless some serious business prevents them from doing so. The document then allows any Athenian to be the accuser, and gives the *Heliaia* the power to decide the punishment. The provision allowing any qualified Athenian to be the prosecutor is necessary since the *eisangeltic* procedure could be activated in many different ways: it could start because an individual presented an *eisangelia*, but also as a result of the *apocheirotonia* of an official at the *kyria* Assembly of every month,⁴⁷⁵ or perhaps at a debate in the Assembly invited by the Council after a catastrophe,⁴⁷⁶ or simply in the course of a debate, if the offence was relevant to that debate, or even as a result of the Council's supervisory work.⁴⁷⁷ In some of these cases the prosecutor at the trial would obviously be the same person who presented the *eisangelia* in the first place, but in some other cases there would not be any obvious prosecutor. The document ends with the provision that if the punishment is a fine, the convicted criminal must be re-

⁴⁷⁴ Cf. Rhodes 1981: 580; Hunter 1997: 301-7 and 316.

⁴⁷⁵ Hansen 1975: 41-4 discusses many such cases and concludes that 'an *apocheirotonia* of a magistrate was normally the first step towards an *eisangelia*.' The same opinion is expressed by Harrison 1971: 59 and Rhodes 1979: 110 n. 69.

⁴⁷⁶ Rhodes 1979: 110.

⁴⁷⁷ Cf. Hansen 1975: 31-3.

imprisoned until he pays it. This is the provision that Demosthenes wants the secretary to repeat, in order to stress the fact that Timocrates with his new law is contradicting a law he himself enacted.

As is clear from this reconstruction, the document does not conflict with any other account of the procedure of *eisangelia*, and its provisions are in no way contradictory. In fact, it supplements our understanding of *eisangelia* by covering a blind spot in the procedure as we know it: the passage from the provisional verdict of the Council to the people's court. If authentic, Timocrates' law would be a sensible and humane provision: in Rhodes' words, a *habeas corpus* law.⁴⁷⁸ Of course the fact that the document would represent a sensible provision does not alone guarantee its authenticity. However the choice of two particular technical terms points to this hypothesis. First, the provisional verdict of the Council is called *κατάγνωσις*, which is used in this sense as a technical term in *Ath.Pol.* 59.4 (καὶ τὰς καταγνώσεις τὰς ἐκ τῆς βουλῆς). *Ath.Pol.* 45.2 consistently states that ἡ βουλή καταγνῶ. More importantly, in the document the *κατάγνωσις* must be transmitted to the *thesmothetai* ὑπὸ τοῦ γραμματέως τοῦ κατὰ πρυτανείαν. This official is called in inscriptions *γραμματεὺς κατὰ πρυτανείαν* only after 363/2, whereas earlier the name is invariably *γραμματεὺς τῆς βουλῆς*.⁴⁷⁹ Another document in this speech (§ 42), which purports to be a statute of the late 5th century, the law of Diocles, rightly uses *γραμματεὺς τῆς βουλῆς*. That document was part of the *Urexemplar*. If we assume this documents is a forgery, we must also assume that a later forger was not only aware of this small change in terminology, which is unattested in the literary sources and can be appreciated only with a careful analysis of the inscriptions, but also correctly dated these two laws.

⁴⁷⁸ Rhodes 1979: 107.

⁴⁷⁹ Cf. Rhodes 1972: 134-8 and above pp. 179.

Nothing in the document contradicts this impression of careful wording. In fact, the language is remarkably consistent with that of inscriptions: the first clause expresses the range of application of the measure with ὅποσοι Ἀθηναίων κατ' εἰσαγγελίαν ἐκ τῆς βουλῆς ἣ νῦν εἰσιν ἐν τῷ δεσμοτηρίῳ... ὅποσοι is well attested in Athenian inscriptions as an alternative to εἰάν τις (cf. *IG* II² 1237 ll. 13-5 Ἱεροκλῆς εἶπε· ὅποσοι μήπω διεδικάσθησαν κατὰ τὸν νόμον τὸν Δημοτιωνιδῶν, διαδικάσαι... and *IG* II² 98 ll. 9-11; *IG* II² 141 ll. 30-4; *IG* II² 1128 ll. 36-7). The expression κατ' εἰσαγγελίαν is attested in *Agora* 19 *Poletai* P26 ll. 456-9 (οὐ]χ ὑπακούσαντος Φιλοκράτος εἰς [τὴν κρίσιν] κατὰ τὴν εἰσαγγελίαν ἣν εἰσήγγει[λεν αὐτὸν Ὑπερείδης), and the mention of the Council in connection with an *eisangelia* is found in *IG* II² 1631 ll. 398-401 (εἶναι δὲ καὶ εἰσαγγελίαν αὐτῶν εἰς τὴν βουλήν). τὸ λοιπὸν moreover is very typical of Athenian official language, with the meaning 'in the future'.⁴⁸⁰

The motion formula δεδόχθαι τοῖς νομοθέταις is directly followed by an infinitive (εἰσάγειν τοὺς ἑνδεκα), instead of being isolated at the beginning of the statute (or decree) as usual (cf. Eukrates' law *Agora* 16 73 ll. 6-7: δεδόχθαι τοῖς νομοθέταις· εἰάν τις ἐπαναστῇ τῷ δήμῳ...). Although this is unusual, it is not unattested: *IG* II² 244 ll. 6-7, a law (δεδόχθαι τοῖς νομοθέταις τοὺς μὲν ἀρχι[τέκτονας τοὺς παρὰ τῆς πόλειως μισθοφοροῦντας καὶ ἄλλον τὸν βουλόμενον εἰσενεγκεῖν συγγρα]φὰς συγγράψαντας καθ' ἕκαστον τῶν ἔργων), shows the same structure with the infinitive, and many decrees confirm it (e.g. *IG* II² 109 ll. 22-5; *IG* II² 11 ll. 9-11).

As for the clause introduced by ὅποσοι preceding the motion formula, we do not find a precise parallel, but drawing any conclusion from this would be risky; such a structure is meant to define a general category and to introduce a norm generally valid for the whole category. Such a norm would necessarily be a law. Yet our epigraphic

⁴⁸⁰ See Harris 2006: 435-7.

evidence for laws is very scanty,⁴⁸¹ and the only comparable case is, again, Eukrates' law (*Agora* 16 73). Its wording, δεδόχθαι τοῖς νομοθέταις· ἐάν τις ἐπαναστήι τῷ δήμῳ ἐπὶ τυραννίδι... cannot be considered the only possible one. In fact, we have in decrees many parallels for such a structure, but also many cases in which the motion formula is embedded in the course of the phrase. In honorary decrees for example we often find the enactment formula preceded by an ἐπειδὴ clause and followed by an infinitive (cf. *IG* II² 336 ll. 5-15 ἐπειδὴ Ἡρακλείδης Σαλαμίνιος διατελεῖ φιλοτιμούμενος πρὸς τὸν δῆμον τὸν Ἀθηναίων [...] δεδόχθαι τῷ δήμῳ ἐπαινέσαι Ἡρακλείδην Χαρκλείδου Σαλαμίνιον καὶ στεφανῶσαι χρυσῷ στεφάνῳ and *IG* II² 112 ll. a12-16; *IG* II² 223 ll. a4-6; *IG* II² 448 ll. 7-12;). Parallels are also structures like ὅπως ἂν ἡ ἀγορὰ ἢ ἐ[μ] Πειραιε[ῖ] κ[α]τασ[κε]υασθ[εῖ] [...] δεδό[χ]θαι τῷ δήμῳ τοὺς ἀγορανό[μ]ους τοὺς ἐμ Π[ε]ραιεῖ ἐπ[ι]μ[ε]ληθῇ[ν] α[ι] ἀπάντων τούτων in *IG* II² 380 ll. 8-14 (cf. also *IG* II² 407 ll. 7-11; *IG* II² 487 ll. 10-4; *IG* II² 505 ll. 41-59).

The expression τριάκονθ' ἡμερῶν ἀφ' ἧς ἂν παραλάβωσιν is confirmed by *IG* I³ 55 l. 7 (πέ]ντε ἡμερῶν ἀφ' ἧς ἂν),⁴⁸² and so is ὅταν πρῶτον οἶόν τ' ἦ by *IG* II² 120 l. 26 (ὅτ[α]ν οἶόν τε ἦ).⁴⁸³

The final section of the statute is perfectly consistent with the epigraphical evidence. The provision κατηγορεῖν δ' Ἀθηναίων τὸν βουλόμενον οἷς ἔξεστιν is very typical (cf. *Agora* 16.56 ll. 24-5 Ἀθηνα][ίω]ν τῷ β[ο]λομένῳ οἷς ἔξεστι and *SEG* 21.493 l. 30 τῷ βουλομένῳ οἷς ἔξεστι; 22.114 l. 10; 26.72 ll. 32-6). So is the next sentence: ἐὰν δ' ἄλῳ, τιμάτω ἡ ἡλιαία περὶ αὐτοῦ ὅ τι ἂν δοκῇ ἄξιος εἶναι παθεῖν ἢ ἀποτεῖσαι. The expression ἐὰν δ' ἄλῳ is attested in a law (*SEG* 26.72 l. 35: ἐὰν δὲ ἄλῳι), and the following formula is often found in contexts similar to the present one

⁴⁸¹ See above p. 122 n. 281.

⁴⁸² For the use of timelines in Athenian official documents cf. above pp. 179.

⁴⁸³ Cf. also *IG* II² 654 ll. 56-7: ὅταν πρῶτον οἶόν] τ' ἦ.

(cf. *Agora* 16.56 ll. 33 ἐ[πιθέσθω δὲ ἡ] Ἡλιαία ὅτι ἄν δοκῇ ἄξιος εἶναι παθὲν ἢ ἀποτεῖσ[αι; SEG 32.81 ll. 4-6 προστιμάτω δὲ [α][ὕτωι ἢ ἡλιαία ὅτου ἄ]ν δ[οκῇ]ι ἄξιος εἶναι ἀπ[ο][τεῖσαι; SEG 31.6 ll. 50-1 τιμάτω δὲ τὸ] δικαστέριον ὅτι ἄγ χ[ρῆ]ι παθὲν ἐ ἀ[ποτεῖσαι; *IG I*³ 34 ll. 40-1; *IG I*³ 68 ll. 50-2).

The final sentence ἐὰν δ' ἀργυρίου τιμηθῇ, δεδέσθω τέως ἂν ἐκτείσῃ ὅ τι ἂν αὐτοῦ καταγνωσθῇ is partially (until ἐκτείσῃ) repeated word for word in the small document that follows the main one, and is confirmed by the orator's account. Moreover, it presents no syntactical problems, and its structures are attested in inscriptions (cf. e.g. *IG II*² 43 l. 61 ἐὰν] δὲ θανάτω τιμηθῇ; SEG 32.81 l. 6 καὶ δεδέσθ[ω ἕως] ἂ[ν] ἐκτείσει).⁴⁸⁴ The only grammatical problem here is τέως ἂν. This is never found in Athenian inscriptions, where the form is invariably ἕως ἂν. τέως ἂν is also found in the following small document, and in the orator's account. However, these three occurrences are far from sure: in the document τέως is found in FYP and *P.Oxy.* 4.701, but S has τε ἕως, and A τε ἕως. In both the occurrences at § 64 τέως is found again in FYP and *P.Oxy.* 4.701, yet S has τε ὥς and A τε ἕως. The form appears in this speech also at § 81 in the text, and at § 104 in a spurious document, and in both cases the tradition is not consistent. The same happens in Dem. 19.326, 21.15, 56.14 and *Exordia* 21.4. It is clear from this account that the medieval copyists tampered a lot with these forms, sometimes changing the Demosthenic text from one form, τέως ἂν, to the more common ἕως ἂν, and sometimes, probably, doing the opposite for consistency's sake. This is likely to be the case here. At any rate, it is impossible to choose between the two forms on textual grounds, and therefore no argument for or against the authenticity can be drawn from this detail.

⁴⁸⁴ Cf. also *IG II*² 218 l. 32; 222 l. 36; 233 l. 12; 237 l. 24; 411 l. 13; 435 l. 11; 1196 l. a11; *IG I*³ 61 l. 55; 149 l. 15

To sum up, the document presents a sensible provision whose contents are consistent with the extant accounts of the procedure of *eisangelia*. Its language is consistent with that of contemporary inscriptions and no detail betrays a later origin. Moreover, some technical terms employed with propriety speak against the hypothesis of a later, non-Athenian forger. Therefore the document should be considered authentic, and likely to have been part of the original edition of the speech on which the stichometry was first noted.

4.11 Dem. 24.105: law on theft, maltreatment of parents and desertion

NOMOI ΚΛΟΠΗΣ, ΚΑΚΩΣΕΩΣ ΓΟΝΕΩΝ, ΑΣΤΡΑΤΕΙΑΣ

Ὅτι ἂν τις ἀπολέσῃ, ἐὰν μὲν αὐτὸ λάβῃ, τὴν διπλασίαν καταδικάζειν, ἐὰν δὲ μή, τὴν δεκαπλασίαν πρὸς τοῖς ἐπαιτίοις. δεδέσθαι δ' ἐν τῇ ποδοκάκῃ τὸν πόδα πένθ' ἡμέρας καὶ νύκτας ἴσας, ἐὰν προστιμήσῃ ἢ ἡλιαία. προστιμᾶσθαι δὲ τὸν βουλόμενον, ὅταν περὶ τοῦ τιμήματος ᾖ.

Ἐὰν δέ τις ἀπαχθῇ, τῶν γονέων κακώσεως ἐαλωκὼς ἢ ἀστρατείας ἢ προειρημένον αὐτῷ τῶν νόμων εἴργεσθαι, εἰσιὼν ὅποι μὴ χρή, δησάντων αὐτὸν οἱ ἑνδεκα καὶ εἰσαγόντων εἰς τὴν ἡλιαίαν, κατηγορεῖτω δὲ ὁ βουλόμενος οἷς ἔξεστιν. ἐὰν δ' ἄλῃ, τιμάτω ἢ ἡλιαία ὅτι χρή παθεῖν αὐτὸν ἢ ἀποτεῖσαι. ἐὰν δ' ἀργυρίου τιμηθῇ, δεδέσθω τέως ἂν ἐκτείσῃ.

δεδέσθαι - ἢ ἡλιαία Lys.10.16 | ποδοκάκῃ Harp. s.v π 76 Keaney | Ἐὰν δέ - ἐαλωκὼς Sud. s.v. ἄλω (α 1371) Adler - ἀστρατείας AB 123.11

NOMOS A | ΑΣΤΡΑΤΙΑΣ F | αὐτὸ λάβῃ codd. : ἀπολάβῃ Bernard | δεκαπλασίαν codd. : διπλασίαν Heraldus | ποδοκάκῃ S | ἡμέρας δέκα τὸν πόδα (καὶ νύκτας ἴσας om.) Lys. | ἐπαχθῇ Sud. | γενεῶν S | ἀστρατείας F^a | προειρημένων SYP | τῶν νόμων εἴργεσθαι codd. : τῶν νομίμων εἴργεσθαι Salmasius | εἴργασθαι A^a | ὅποι χρή (μὴ om.) A | εἰσαγόντων AP : εἰσαγόντων αὐτὸν SFY | ἀποτεῖσαι et ἐκτείσῃ Blass : ἀποτίσαι et ἐκτίσῃ codd.

LAWS ON THEFT, MALTREATMENTS OF PARENTS, DESERTION

Whatever one should lose, if he recovers it, the punishment shall be twice the value, but if he does not, ten times the value in addition to the *epaitiois* (?). He shall be tied in the *podokakke* by the foot for five days and five nights, if the Heliaia imposes this additional penalty. Whoever wants shall impose this additional penalty when the penalty is discussed.

If someone is subjected to *apagoge* for entering where he is not allowed, despite having been convicted of mistreating the parents or of not reporting for duty or despite his exclusion from customary places having been proclaimed (?), the Eleven shall imprison him and bring him before the Heliaia. Anyone among the qualified Athenians who wishes so shall be the prosecutor. If the culprit is condemned, the Heliaia shall give him the punishment, pecuniary or otherwise, that they think fit. If he is condemned to pay a fine, he shall stay in prison until he has paid what he has been condemned to.

The stichometry indicates that this document was not present in the *Urexemplar* of the speech. The word ποδοκάκη on the other hand is found in Harpocration with a reference to this speech (*s.v.* π 76 Keaney). Since this word does not appear anywhere else in the speech, late 2nd century, the probable date of composition of the *Lexicon of the Ten Orators*, must be considered the *terminus ante quem* for the insertion of this document.

The context of this document is the discussion of the reasons why the law of Timocrates is harmful for the city. The speaker has previously shown that Timocrates enacted this law without following the proper procedure, and that his statute contradicts many existing laws. Now he is concerned with demonstrating that its effects would be harmful for the community. At § 102 he summarizes the last section of the speech: the law does not allow courts to impose additional penalties, gives impunity to those who have committed crimes against the public, undermines the campaigns in defence of the city and destroys its financial administration. In addition to this, it helps criminals, parent abusers and deserters. In the next paragraph (§ 103) the speaker develops this argument. He attributes the laws that he is about to discuss to Solon, and then claims that the ancient lawgiver was a legislator who had nothing in common with Timocrates.

In fact, he ordered that a thief, if the assessed penalty for him is not death, can receive the additional penalty of imprisonment (προστιμάν αὐτῷ δεσμόν). Solon also prescribed that if someone convicted for mistreating his parents enters the *agora*, he shall be imprisoned. The same is true for those who after a conviction for desertion behave as if they were in possession of their full rights. Timocrates instead grants all of them impunity by allowing them to provide sureties and thus avoid imprisonment. At § 104 Demosthenes asks the clerk to read out these laws (ἀνάγνωθι δὲ καὶ τούτους τοὺς νόμους). The plural seems to refer to a law for each category discussed in the previous paragraph, and we would expect a law about thieves, one about those who abuse their parents and one about deserters. Our document includes only two statutes, one about thieves and the second about those who abuse their parents and deserters together. My treatment will follow this arrangement, and I will discuss first the section of the document purporting to be the law on theft and then the second section.

At § 103 Demosthenes states that thieves, if they have not received the death penalty, can be condemned to the additional punishment of imprisonment. At § 108 begins a long summary of the legal arguments of the speech. Our section is summarized at § 113-5. This summary happens to provide more details about the law on theft quoted in our section than does the section itself.⁴⁸⁵ Demosthenes again claims that Timocrates as a lawgiver does not resemble Solon at all. Solon did not help wrongdoers. Instead he ordered that if someone steals goods for more than 50 drachmas in daytime, there shall be *apagoge* to the Eleven. If someone steals goods for any value at night, anyone may kill him, wound him in the pursuit or employ the *apagoge* to the Eleven. When a thief is subject to *apagoge*, the penalty is always death. The penalty is also death for those who have stolen something worth more than ten drachmas from the Lyceum, the Academy,

⁴⁸⁵ In general about Athenian legislation on theft *cf.* Cohen 1983 with the correctives of MacDowell's review (1984) and Harris 2006: 373-90.

the Cynosarges, some gymnasium or the harbours. This description fits very well with, and expands, what we know about the procedure of *apagoge* against *kakourgoi*. *Ath.Pol.* 52.1 explains that 'the Eleven punish with death those who are arrested as thieves (*kleptas*), enslavers (*andrapodistas*) and robbers (*lopodutas*) if they confess, while if they dispute the charge, they bring them before the court. If they are acquitted, the Eleven release them, and, if not, execute them.' The condition for employing *apagoge* was that the *kakourgos* was caught ἐπ' αὐτοφώρῳ ('when guilt is obvious').⁴⁸⁶ An alternative, rather shadowy procedure to be employed in the same cases was *ephegesis*, which differed for *apogoge* only in that the prosecutor himself did not arrest the wrongdoer, but had the Eleven arrest him.⁴⁸⁷ Demosthenes seems to overlook it here.

Demosthenes continues by stating that if someone is convicted instead in a *dike klopēs*, he shall have to pay twice the assessed value of the stolen goods (διπλάσιον ἀποτεῖσαι τὸ τιμηθέν) and the judges shall be able to inflict the additional penalty of five days and nights of imprisonment, so that everyone will see that he has been imprisoned. Demosthenes then explains the rationale of this provision: a thief cannot get away with his crime by simply refunding the value of the object he has stolen, otherwise stealing would be all in all a good deal. Thus Solon provided that he had to pay twice as much, and because of the imprisonment live the rest of his life in shame. Timocrates instead enacted a law that allows the thief to pay back the simple value of the stolen goods and get away without any additional punishment.⁴⁸⁸

From these two summaries the law about theft quoted at § 105 seems to have included at least a section on the kinds of theft prosecuted through *apagoge* and whose

⁴⁸⁶ Isae. 4.28; Dem. 14.81; Aeschin. 1.91; Poll. 8.49; Phot. s.v. ἑνδεκα. For the meaning of the expression ἐπ' αὐτοφώρῳ cf. Harris 2006: 373-90.

⁴⁸⁷ Dem. 22.25-7 with Carey 2004 for the correct understanding of the passage. Cf. Hansen 1976: 24 for the procedure.

⁴⁸⁸ The descriptions of the *dike klopēs* are consistent and must be accurate. This does not mean however that Demosthenes' legal argument here works. The law of Timocrates dealt with the additional penalty of imprisonment only for public debtors, whereas a thief had to return the money to his victim, not to the state. The law of Timocrates would not have applied to thieves. As usual, Demosthenes' reports of the provisions of the laws read out are accurate, but their interpretation is not necessarily convincing.

punishment was death (at § 103 the very short summary begins with a reference to the cases in which penalty is death) and a section on the *dike klopēs*,⁴⁸⁹ a private procedure by which the thief had to refund twice the value of the goods stolen and could receive the additional penalty of five nights and five days of imprisonment.

The inserted document is not consistent with this description. In particular it does not include any section concerned with theft prosecuted through *apagoge*. It could be that Demosthenes is here giving a more extensive account, and the quoted law was abbreviated so that it included only the procedure that could result in imprisonment, that is the *dike klopēs*. It is also possible, and more likely since the document has been inserted later, that the editor chose to insert only the section of the law concerned with imprisonment. However, it is implausible that a later editor who had access to the original law decided to insert only a small portion of it, neglecting to mention the provisions that Demosthenes discusses extensively.

Another discrepancy is that Demosthenes asserts that the main punishment in a *dike klopēs* is διπλάσιον ἀποτεῖσαι τὸ τιμηθέν, whereas the document provides that 'whatever one should lose, if he recovers it, the punishment shall be twice the value, but if he does not, ten times the value in addition to the *epaitiois*.' First, there is no mention of such a distinction in Demosthenes' summary (nor in any other ancient source). Second, even the phrase stating that 'the punishment shall be twice the value' seems mistaken. Demosthenes at § 115 explains the expression διπλάσιον ἀποτεῖσαι τὸ τιμηθέν stating that Solon did not accept that one could get away with theft by returning only what he stole, but he had to pay twice as much (ἀλλὰ ταῦτα μὲν διπλάσια καταθεῖναι). Timocrates instead provided that he had to return the simple value, and not the double (ἀλλ' ὅπως ἀπλᾶ μὲν, ἃ δεῖ διπλάσια, καταθήσουσιν

⁴⁸⁹ No sign here of the shadowy *graphe klopēs*, mentioned only at Dem. 22.27. Cohen 1983: 45-9 argues that this procedure was available only against those who stole public property. MacDowell 1984 is not convinced, and believes in a wider range of application. There is no decisive evidence about this procedure, and a clear understanding of it is not necessary for the sake of my argument.

παρεσκέυασε). This makes it clear that the penalty was to return twice the value of the stolen goods, and not twice their value in addition to the stolen goods themselves. The document instead provides that if the goods are recovered (simple value) the punishment shall be twice their value, that is, in addition to the goods themselves. This contradicts Demosthenes' wording.

Third, the words 'ten times the value in addition to the *epaitiois*' also present problems: a penalty for theft of ten times the value of the stolen goods is unknown to the sources. Demosthenes at § 114 clearly states that the penalty was double the value. His statement is confirmed by Aulus Gellius (9.18): 'Solon sua lege in fures non (ut antea Draco) mortis, sed dupli poena vindicandum existimavit.'⁴⁹⁰ This passage must derive from an independent source, and not from Demosthenes, since Gellius asserts that under Solon's law death was no longer a viable punishment for theft, whereas Demosthenes lists in his passage plenty of cases of theft for which the penalty was death. Heraldus, the old commentator on Petit's *Leges Atticae* proposed to emend δεκαπλασίαν to διπλασίαν, and this emendation has become the *vulgata*.⁴⁹¹ However, since the manuscripts are all consistent in reporting the reading δεκαπλασίαν,⁴⁹² such an emendation would *de facto* correct the text into authenticity. It is methodologically sounder to accept the *paradosis* as it stands, and either to explain δεκαπλασίαν or to consider it evidence of clumsy forgery. Cohen has tried to defend the plausibility of a penalty of ten times the value of the stolen goods by pointing out that Demosthenes himself at § 112 contemplates such a penalty for thieves. However that passage refers to magistrates convicted for theft or embezzlement at their *euthynai*. That in such cases the *logistai* could inflict this penalty is confirmed by *Ath.Pol.* 54.2, but this has nothing to

⁴⁹⁰ Paying double the value of the goods stolen is the penalty for *furtum nec manifestum* also in Roman law. Cf. Gai. *Inst.* 3.190; Gell. *NA* 11.18.15.

⁴⁹¹ Cf. Harrison 1971: 166 n. 5; MacDowell 1978: 148; Saunders 1990: 75; Harris 2006: 380. The recent edition by Dilts accepts the emendation. Cf. Pelloso 2008: 108-9 nn. 219-20 for previous bibliography on δεκαπλασίαν.

⁴⁹² Cf. also Moneti 2001: 101 and Pelloso 2008: 108.

do with actual thieves that stole private property and can hardly be used as evidence that such a penalty was contemplated when the stolen goods were not recovered.⁴⁹³ The penalties for magistrates were obviously different and more severe. This passage, rather than a confirmation of the δεκαπλασίαν penalty, is more likely to have been misinterpreted by a forger as referring to the *dike klopēs*, and be therefore his source for the δεκαπλασίαν fine.

The *paradosis* must be accepted as it stands and speaks against the authenticity of the document. Yet even if we accept the emendation, the text still conflicts with Demosthenes' account. It would in fact provide that in case the stolen goods are not recovered the thief must pay twice their value πρὸς τοῖς ἐπαιτίοις. The meaning of this expression is unclear. Poll. 8.22-3 explains it as referring to the additional penalties. The penalty of paying twice the value of the stolen goods would be inflicted in addition to the further penalties, namely, according to the document, confinement in the stocks.⁴⁹⁴ This reading makes no sense. What is the point in inflicting the main punishment (payment of twice the value of the stolen goods) in addition to (that is, after: πρὸς) a penalty which has not been imposed yet, and perhaps will not be, since it is only optional?⁴⁹⁵ It makes much better sense to accept Reiske's explanation of the expression: 'praeter simplum valorem eius rei, quam quis furto avertisse accusatur'.⁴⁹⁶ However, if we accept this explanation, we encounter the same difficulty as with the penalty for stealing goods later recovered: the payment of twice the value is imposed in addition to the payment of the value of the goods themselves. The thief must in fact pay thrice as much as he has stolen instead of twice as much as clearly stated by

⁴⁹³ Pace Cohen 1982: 62-4 and Pelloso 2008: 108-9 n. 220. The other evidence adduced, Plat. *Leg.* 914b is hardly relevant.

⁴⁹⁴ This is the interpretation of Wayte 1882: 173.

⁴⁹⁵ Cf. for further reasons to reject Pollux's view Moneti 2001: 102.

⁴⁹⁶ Reiske 1822: 344, endorsed by Lipsius 1905-15: 441 n. 79; Harrison 1968: 166 and recently by Moneti 2001: 102 and Pelloso 2008: 109 n. 221.

Demosthenes at § 115. The conflict with Demosthenes' words is impossible to eliminate.

Another suspect feature of the first sentence of the document is that ἐπαίτια is never found in Attic inscriptions, nor is the adjective ἐπαίτιος with any of its meanings.⁴⁹⁷ Moreover the verb λαμβάνω is never found in Classical sources with the meaning 'to recover'. The proper verb would be ἀπολαμβάνω.⁴⁹⁸ The sentence as it stands can hardly have been part of an authentic Athenian statute.

The next sentence, δεδέσθαι δ' ἐν τῇ ποδοκάκῃ τὸν πόδα πένθ' ἡμέρας καὶ νύκτας ἴσας, ἐὰν προστιμήσῃ ἡ ἡλιαία ('He shall be tied in the *podokakke* by one foot for five days and five nights, if the *Heliaia* imposes this additional penalty') seems to be confirmed by Lys. 10.16, which quotes some sentences of ancient laws of Solon to point out the use and the meaning of archaic words. The first of these quotations runs like this: δεδέσθαι δ' ἐν τῇ ποδοκάκῃ ἡμέρας δέκα τὸν πόδα, ἐὰν μὴ προστιμήσῃ ἡ ἡλιαία. Lysias explains that ἐν τῇ ποδοκάκῃ means ἐν τῷ ξύλῳ ('in the stocks'). In this passage the number 10 has been customarily emended to 5,⁴⁹⁹ and the μὴ athetized⁵⁰⁰ to make it consistent with our document. However, as correctly observed by Carey in his recent edition of the speech,⁵⁰¹ *eandem legem esse non necesse*. Carey still athetizes μὴ, but Todd has rightly pointed out that the provision makes perfect sense with it: 'the point would presumably be to make the *podokakke* the minimum penalty unless the court imposed anything further'.⁵⁰² Moreover, in Lys.10.17, a couple of lines later a law on theft is introduced with the words λέγε ἕτερον νόμον

⁴⁹⁷ In legal prose the adjective is found only once (Lys. 7.39) with the meaning 'unpleasant' or 'blameworthy', and therefore its use in this passage has nothing to do with the meaning it carries in our document. See Todd 2007: 539.

⁴⁹⁸ Bernard has in fact emended αὐτὸ λάβῃ in ἀπολάβῃ, but this is methodologically unacceptable.

⁴⁹⁹ First by Taylor 1739: 177.

⁵⁰⁰ First by Auger 1783: 212.

⁵⁰¹ Carey 2007: 93. See already Hillgruber 1988: 26, 66-8.

⁵⁰² Todd 2007: 680.

('read another law'). This suggests that the sentence just quoted does not come from a law on theft.⁵⁰³

Thus there is no reason for identifying the two texts. The text in Lys. 10.16 does not seem to come from a law on theft,⁵⁰⁴ and the provisions of the two texts are different: one provides that thieves can receive the additional penalty of confinement in the stocks for five days, whereas the other provides that for some unknown category of criminals the minimum punishment is ten days in the stocks. The mention of Solon as the author of the law on theft at Dem. 24.103 and the provision summarized at § 114 according to which imprisonment (or confinement) can be imposed on a thief as an additional penalty, so that everybody sees that he has been imprisoned (or confined; δεσμὸν τῷ κλέπτῃ, πένθ' ἡμέρας καὶ νύκτας ἴσας, ὅπως ὁρῶεν ἅπαντες αὐτὸν δεδεμένον) can have prompted a forger to believe that Demosthenes is here in fact commenting on the law quoted at Lys. 10.16, which provides for confinement in the stocks. One should also note that at Dem. 24.146 the orator quotes and comments on a provision stating that if one is subject to *endeixis* and *apagoge* the Eleven shall confine him in the stocks (τὸν δ' ἐνδειχθέντα ἢ ἀπαχθέντα δησάντων οἱ ἑνδεκα ἐν τῷ ξύλῳ). The mention of the Eleven and of the procedure of *apagoge*, as in the summary of the law on theft at § 113-114, convinced the forger that Demosthenes is referring to the same law, and the expression ἐν τῷ ξύλῳ, the same used by Lysias to translate ἐν τῇ ποδοκάκκῃ, must have reinforced his idea that the law quoted here was the one discussed at Lys. 10.16. So there is no reason to believe that whoever composed (or inserted) this document had access to any independent source. The imperfect correspondance with Lysias' discussion does not prove the authenticity of the document.

⁵⁰³ Hillgruber 1988: 66. Todd 2007: 680 rebuts this argument claiming that in Athens laws were organized by procedure and magistrate, and not by substance, and therefore these might be two different laws on theft, but see Harris, 'Substance vs. Procedure in Athenian Law' forthcoming in *DIKE*.

⁵⁰⁴ In Pergamum slaves that used springwater in forbidden ways without informing their owner were given ten days in the stocks (δεδέσθω ἐν τῷ ξύλῳ ἡμέρας δέκα: *OGI* 483.177 f. = *SEG* 13.521.190 f.).

It is more likely to be the source of a forger. In fact, since Lysias makes it clear that the expression ἐν τῇ ποδοκάκῃ was not understood in the fourth century, we would expect that, if it was actually found in the law, Demosthenes would have explained it. The fact that Demosthenes fails to do so is circumstantial evidence against the authenticity of the document.⁵⁰⁵

The last sentence of the first law of the document does not make any sense. It provides that 'whoever wants shall impose this additional penalty when the penalty is discussed' (προστιμᾶσθαι δὲ τὸν βουλόμενον, ὅταν περὶ τοῦ τιμήματος ᾖ). The previous sentence stated that the Heliaia must impose the additional penalty. The only way to make sense of this sentence is to interpret προστιμᾶσθαι as 'propose the additional penalty'.⁵⁰⁶ This is not in itself impossible,⁵⁰⁷ but using the same verb twice in quick succession with two different meanings is 'a very confused mode of expression'.⁵⁰⁸ But even if we accept this interpretation, the provision is still unacceptable. In Attic law courts, when the penalty was not fixed by law, it was the accuser and the defendant who proposed the penalties at the *timesis*, not ὁ βουλόμενος. In fact, there is no evidence whatsoever that anyone except the accuser and the defendant could propose the

⁵⁰⁵ Hillgruber 1988: 66-9 considers this law a forgery and notes that Demosthenes at § 114 seems to refer to imprisonment, and not to confinement in the stocks. Todd 2007: 679-80 counters that the final clause ὅπως ὁρῶεν ἅπαντες αὐτὸν δεδεμένον points to stocks in an outside location, where everyone can see the prisoner, rather than to prison. Thus also Ruschenbusch 1968: 13 and MacDowell 1978: 257. I am dubious about this inference: at § 115 Demosthenes makes this statement clearer by saying that a thief, having been imprisoned (or confined), would live the rest of his life in shame (δεθέντα δὲ πρὸς τούτῳ τῷ τιμήματι ἐν αἰσχύνῃ ζῆν ἤδη τὸν ἄλλον βίον). The element of shame and deep humiliation was present in the penalty of imprisonment as well, and is attested by many sources (Antiph. 5.18; Dem. 24.87, 125; cf. Dem. *Ep.* 2.17). Plut. *Phoc.* 36.1-2 shows that often the procession to the prisons after the arrest amounted to a proper spectacle, and the prisoner was sometimes submitted to abuse (cf. Hunter 1997: 318-9 for an insightful analysis of the social effects of imprisonment). Thus, there is hardly any need for a reference to confinement in the stocks to explain this passage. It is more likely that Demosthenes is simply referring to prison, as he does throughout the speech. The forger misunderstood these passages.

⁵⁰⁶ Cf. Wayte 1882: 172, who however concludes that the expression is unacceptable.

⁵⁰⁷ This use is not attested for the compound προστιμάω, but is found with τιμάω (e.g. Pl. *Ap.* 36b; *Grg.* 486b; Dem. 25.74).

⁵⁰⁸ Wayte 1882: 172.

penalty.⁵⁰⁹ More importantly, this is a *dike klopes*, not a *graphe*, and therefore it is not ὁ βουλόμενος that brings the charge, but the victim.⁵¹⁰

The first section of this document therefore does not present any piece of information which could not be easily drawn from some passage in the orators. It presents on the other hand linguistic forms which are unparalleled in Athenian inscriptions. Finally its provisions are inconsistent with other sources about Athenian law. It cannot therefore be an authentic Athenian statute.

The rest of the law read out by the secretary at § 105, or better, the other law(s) to be read out, should be concerned with parent abusers and deserters. As we have seen, at § 103, just before the laws are read out, and therefore where the speaker is more likely to be trustworthy, Demosthenes mentions only three categories: thieves, convicted parent abusers (τις ἄλούς τῆς κακώσεως τῶν γονέων) and convicted deserters (ἀστρατείας τις ὄφλη). We have already dealt with the crime of theft. As for the other two categories, according to Demosthenes, if a convicted parent abuser enters the *agora*, or if a convicted military shirker behaves as though he were still in possession of full citizenship rights, Solon prescribed that he must be imprisoned. Comparison with passages from Andocides' *On the Mysteries* and Ps.-Aristotle's *Constitution of the Athenians* will provide us with better understanding of Demosthenes' argument.

Andocides (1.74) lists different categories of *atimoi* and mentions among others those who leave their place in battle (ὅπόσοι λίποιεν τὴν τάξιν), the deserters (ἢ ἀστρατείας) and the cowards (ἢ δειλίας), together with parent abusers (ἢ τοὺς γονέας κακῶς ποιοῖεν) as *atimoi* deprived of their personal citizenship rights, but retaining their property (οὗτοι πάντες ἄτιμοι ἦσαν τὰ σώματα, τὰ δὲ χρήματα εἶχον). It is clear therefore that the punishment for these crimes was loss of rights. Lys. 14.5 also

⁵⁰⁹ Cf. Harrison 1968: 80-2; MacDowell 1978: 254-8.

⁵¹⁰ Cf. e.g. MacDowell 1978: 57-61.

informs us that λιποτάξιον and δειλία were listed together with deserters (ὅποσοι ἂν μὴ παρῶσιν ἐν τῇ πεζῇ στρατιᾷ; Lys. 14.7 ἀστρατείας) in the same law. Aeschin. 3.175-6 lists the same three categories as part of the same law and adds that people convicted of these offences could not enter the *agora*, the temples or wear a crown. These are some of the consequences of *atimia*, so the passage confirms Andocides' statement that these categories were *atimoi*.⁵¹¹ Aeschin. 1.28 also states that *atimia* is the punishment for parent abusers.

Here Demosthenes lists specific categories of *atimoi* to make his account more vivid, but in fact he refers to imprisonment as the punishment for *atimoi* who violate the conditions of their *atimia*. This punishment is described in detail in *Ath.Pol.* 63.3: if someone serves as a judge while being a state debtor or an *atimos*, he is subject to *endeixis* and tried. If convicted, the judges decide what penalty he must pay, and if the penalty is a fine, he must be imprisoned until the fine is paid.

Demosthenes claims that *atimoi* that violate the conditions of *atimia* must be imprisoned and does not mention that this occurs as the result of a failure to pay a fine. However this only shows that he is providing a quick and simplified account of the procedure described at *Ath.Pol.* 63.3,⁵¹² not that he is referring to imprisonment at another stage of procedure,⁵¹³ or twisting the letter of the law.⁵¹⁴ Demosthenes' point

⁵¹¹ Cf. MacDowell 1963: 111-3.

⁵¹² Cf. Rhodes 1981: 703.

⁵¹³ Scafuro 2005: 59 states that 'the reference to imprisonment in c. 103 is so elliptical, and follows so briskly upon the offense, that it is difficult to view the imprisonment as the result of an inability to pay a fine imposed by a court after a trial that is not mentioned, rather than as immediate and custodial imprisonment before the trial takes place.' Scafuro therefore claims, first, that Demosthenes here refers to 'custodial imprisonment before the trial' rather than to imprisonment on failure to pay a fine and, second, she concludes that 'Demosthenes' aim once again appears to be a sensational depiction of the consequences of Timocrates' law'. It is certainly possible that Demosthenes here is deliberately 'elliptic' to give the impression that Timocrates' law has a very wide application. However, custodial (or rather precautionary) imprisonment is never mentioned, and if it were, it would be completely out of place, since Timocrates' law deals with imprisonment for state debtors, not with precautionary imprisonment. It is difficult to argue, without a specific mention of precautionary imprisonment, that Demosthenes would here be alluding to a kind of imprisonment that does not fit his argument and ignoring the kind of imprisonment that perfectly does.

⁵¹⁴ Mirhady 2005: 71 rightly notes that Demosthenes summarizes this law as if the punishment for *atimoi* trespassing was simply imprisonment, and 'does not dwell on the fact that imprisonment could be

here is that imprisonment is an additional penalty for such serious categories of criminals, and Timocrates with his law allows them to present sureties and thus avoid prison. His argument works because imprisonment in this case is a penalty added on top of a fine, otherwise it would not make any sense. Demosthenes' account is, as it must be for his argument's sake, consistent with the other sources about penalties for *atimoi* violating the conditions of their *atimia*.

Other passages of the speech do not contradict this reconstruction; indeed they often confirm it. At § 102 Demosthenes states that Timocrates' law helps malefactors (τοῖς κακούργοις), parricides (τοῖς πατράλοιας) and deserters (τοῖς ἀστρατεύτοις). Demosthenes wants to convey the impression that Timocrates' law has a wide range of applications, and that it helps very serious criminals. Therefore, thieves become generic *kakourgoi* and parent abusers become parricides. It must be noted however that in our sources thieves are the category of wrongdoers most often identified as *kakourgoi*, and the two terms are often used as synonyms.⁵¹⁵ So Demosthenes is here probably stretching the letter of the law, but his list is still consistent with § 103.⁵¹⁶ Similar lists recur often in the speech. At § 107, still in the vicinity of the quotation of the law, Demosthenes claims that Timocrates should be ashamed, since he subverts the laws that protect old age and favours thieves, wrongdoers (τοὺς κακούργους) and deserters (τοὺς ἀστρατεύτους) more than his fatherland. Again, there is no need here to read τοὺς κακούργους as a further category. It is just a specification of the previous category: the thieves. At § 119, in the summary of the previous section of the speech,

contingent on failure to pay a fine'. However, this is in my opinion understood, rather than ignored; after all, Timocrates' law was about state debtors imprisoned on failure to pay their debt. Again why should Demosthenes twist the meaning of a law that perfectly supports his argument as it stands?

⁵¹⁵ Cf. Hansen 1976: 47 with Antiph. 5.9; Dem. 23.26; Xen. *Hell.*1.7.22.

⁵¹⁶ Scafuro 2005: 58 claims that at § 102 'the misrepresentations are obvious', since *patroloiai* and *astrateuoi* are punished with *atimia*, not with imprisonment. Demosthenes is here introducing the topic of the new law without entering into detail about the provisions. In the next paragraph he will be more precise and explain that imprisonment is the penalty for convicted *patroloiai* and *astrateuoi* trespassing. I cannot see here any misrepresentation. Timocrates' law, allowing convicted *patroloiai* and *astrateuoi* who trespass to avoid imprisonment, in fact helps these categories (καὶ τοῖς πατράλοιας καὶ τοῖς ἀστρατεύτοις βοηθοῦντα τέθηκε τὸν νόμον).

Demosthenes again mentions the three categories, and gives two terms for each: the thieves become also temple-robbers (τοῖς κλέπταις, τοῖς ἱεροσύλοις), the parent abusers are called parricides, and therefore become murderers (τοῖς πατραλοΐαις, τοῖς ἀνδροφόνοις), the deserters leave their place during the battle (τοῖς ἀστρατεύτοις, τοῖς λιποῦσι τὰς τάξεις). With some amplification, Demosthenes still sticks to the three categories of § 103.⁵¹⁷ We should not expect in the law further categories of temple robbers, murderers and deserters.

Some of these categories are also anticipated at § 60: Demosthenes claims that traitors to the commonwealth and parent abusers are far worse than tax farmers, excluded by Timocrates from the benefits of his law. He seems to add the category of those that have unclean hands (οἱ μὴ καθαρὰς τὰς χεῖρας ἔχοντες), and finishes with εἰσιόντες δ' εἰς τὴν ἀγορὰν, 'and enter the *agora*', which can refer either to the last category or to all of them. This passage poses many problems: first, what does εἰσιόντες δ' εἰς τὴν ἀγορὰν refer to? Since the punishment for parent abusers was *atimia* and not imprisonment, it is safer to conclude that the specification refers to all categories: imprisonment, consistently with the other passages and with external evidence, is an additional penalty for trespassers.⁵¹⁸ Second, who are οἱ μὴ καθαρὰς τὰς χεῖρας ἔχοντες? Scafuro assumes that this must refer to men accused of killing, bringing Ant. 5.11 as evidence. However, she notes that Ant. 5.82 and Andoc. 1.95 show that killers who have not been charged were described in the same way. Moreover, Dem. 23.72-3, 37.59 and 36.22 imply that someone convicted of *akousios phonos* and exiled is polluted until the family of the killed person pardons him.⁵¹⁹ Scafuro argues therefore that the allusion is here to homicide, and killers are another category to be expected in the laws quoted at § 105. Mirhady on the other hand observes

⁵¹⁷ This is rightly stressed by Mirhady 2005: 72-73.

⁵¹⁸ This is also the conclusion drawn by Scafuro 2005: 57-8.

⁵¹⁹ Scafuro 2005: 58.

that parent abusers elsewhere are called parricides, and at § 119 even become ἀνδροφόνοι. The list at § 60 is connected in asyndeton, and there is no way to know what is apposition of a previously mentioned category and what is a new category. Those with unclean hands might just be an amplification of the previously mentioned parent abusers. Mirhady concludes therefore that it is far from clear whether Demosthenes is here adding another category, killers, or not. He might just be amplifying the crimes of deserters and parent abusers calling them 'traitors' and 'murderers'. The third problem is: how relevant is this passage for the laws quoted at § 105? However we interpret the list, the categories are not the same as in the summaries of the laws (thieves are missing), and the list appears long before the laws we are concerned with are even mentioned. Demosthenes is here picking random categories of serious criminals who can take advantage of Timocrates' law to contrast them with defaulting tax farmers, who cannot, to show that the law of Timocrates is unfair. Whatever the interpretation of the passage, it can hardly tell us anything about the laws quoted at § 105.

To sum up, the second (and a third) section of the document quoted should be concerned with two separate categories: parent abusers and deserters. It should state that, if convicted parent abusers or deserters transgress the conditions of their *atimia*, they must be tried and, if their penalty is a fine, they must be imprisoned until the fine is paid. The document on the other hand states that if someone is arrested by *apagoge* (ἀπαχθῆ) for entering where he is not allowed, since he is a convicted parent abuser (τῶν γονέων κακώσεως ἐαλωκώς), deserter (ἢ ἀστρατείας) ἢ προειρημένον αὐτῷ τῶν νόμων εἰργεσθαι (that is, a murderer), 'the Eleven shall imprison him and bring him before the Heliaia'.

The first problem with this wording is caused by the verb ἀπαχθῆ. This verb clearly refers to the procedure of *apagoge*.⁵²⁰ However, in all our sources the procedure used against *atimoi* that violate the conditions of their *atimia* is invariably *endeixis*.⁵²¹ Hansen argues that the document as we have it might report just the second part of the law, and the *apagoge* might be the effect of an *endeixis* previously mentioned. However, this explains *ignotum per ignotius*. Moreover, if the law began with a provision allowing *endeixis* against certain categories, then there would be no reason to repeat the categories again in the section preserved.⁵²² *Apagoge* against *atimoi* is unparalleled in our sources, and its presence here speaks against the authenticity of the document.

The second problematic expression is ἡ προειρημένον αὐτῷ τῶν νόμων εἰργεσθαι. This expression has been traditionally interpreted as referring to accused killers subject to public proclamation and excluded from customary places.⁵²³ The reason for this identification is the almost *verbatim* correspondence of this expression with Ant. 6.34, 35, 40. The same expression refers to killers in Pl. *Leg.* 871a and 873b, in Dem. 23.42 and in *Ath.Pol.* 57.3. In all these passages νόμων is replaced by νόμμων, and has been therefore emended accordingly in our document by Salmasius. The only other case in which the expression occurs, again with reference to accused killers, with νόμων is Lyc. 1.65.⁵²⁴

⁵²⁰ Cf. e.g. Antiph. 5.85, Isae. 4.28, Dem. 23.80, 24.146, 209. For a full treatment of the procedure see Hansen 1976.

⁵²¹ For reference see Hansen 1976: 94-5 nn. 2-3. MacDowell 1990: 280 and 1985: 73-4 has argued that Dem. 21.59-61 might be another case of *apagoge* against *atimoi*. However the language used there (ἡψατο; ἐξαγαγεῖν οὐδὲ κωλύσαι; ἐπιαβόμενον τῇ χειρὶ) is never used for *apagoge*. Cf. Scafuro 2005: 55 n. 11.

⁵²² I rework here an argument formulated for different purposes in Gagarin 1979: 317 n. 49. See also Scafuro 2005: 56, who argues that a participle ('If someone [having first been denounced] is arrested...') would solve this problem but observes that if this is the case, why would the transcriber of the law have elided it? In any case, as I have argued in the introduction, emending the text is acceptable only if the law can be deemed authentic on different grounds.

⁵²³ Cf. MacDowell 1963: 26-7; Hansen 1976: 99-100; Gagarin 1979: 315-6; Hansen 1981: 17-21; Scafuro 2005; Phillips 2008: 129-30 n. 60.

⁵²⁴ Stephanus corrected it in νόμμων.

Whether the expression is acceptable with νόμων or not, its presence here causes many problems. First, as we have seen, killers are never mentioned in the summaries and allusions to the law throughout the speech, and should not be here. Second, *apagoge* against killers is described at Dem. 23.80 and the two accounts are heavily inconsistent: Dem. 23.80 states that if an *androphonos* is caught in the sanctuaries or in the *agora* he can be arrested and imprisoned. Once arrested, he shall not suffer any harm, but if he is convicted at the trial the penalty is death. If the accuser fails to get a fifth of the votes, he is to pay a penalty of 1000 drachmas. The procedure described here is an *agon atimetos* whereas our document prescribes an *agon timetos*. Moreover, the procedure laid down here is alternative to a *dike phonou* whereas our document's procedure is only an interruption of the *dike phonou* started with the *prorrhesis*. Furthermore, the document, purportedly the origin of Dem. 23.80's account, does not mention any 1000 drachmas penalty.⁵²⁵ Hansen has tried to eliminate these problems by arguing that the two procedures are different. The *androphonos* of Dem. 23.80 would be only the suspected homicide, and the procedure there described is available only before the *prorrhesis*. After the *prorrhesis* the correct procedure would be the one laid down in the document.⁵²⁶ There is no evidence, nor any clue in the text, that restricts the application of the law summarized at Dem. 23.80 to suspected homicides. This is no more than guesswork. But even if we accept Hansen's guess, the relationship between this law and the one in our document is not straightforward; Hansen himself points out that if an unintentional killer trespasses before a proclamation is done, he must be punished with death, but if he trespasses after the proclamation, he could be punished

⁵²⁵ Gagarin 1979: 313-22 argues that the differences between the document and Dem.23.80 are superficial and the two procedures might be the same, but see Hansen 1981: 17-21 and Scafuro 2005: 52-6.

⁵²⁶ Hansen 1976: 99-100; 1981: 17-21.

with a fine and eventually sentenced in the Palladion to exile.⁵²⁷ It is difficult to account for such a contradiction.

Mirhady has tried to defend the document arguing that its wording need not necessarily refer to homicides.⁵²⁸ It might refer to *atimoi* in general and thus *prorrhesis* might be used also for the *atimoi* by 'requirement' (*prostaxis*) listed at Andoc. 1.76.⁵²⁹ This is explaining *ignotum per ignotius*, and against this hypothesis speaks the fact that *prorrhesis* is never mentioned in our sources for any crime other than homicide. Likewise, εἰργεσθαι τῶν νόμων (or νομίμων) is never used for generic *atimoi* or outside the context of homicide charges.⁵³⁰ The expression ἢ προειρημένον αὐτῷ τῶν νόμων εἰργεσθαι must be interpreted as referring to homicides and is therefore out of place here. Moreover, the provisions for trespassing homicides found in this document conflict with the other sources about *apagoge* of homicides.

The next clause in the document, εἰσιὼν ὅποι μὴ χορή, is inconsistent with the epigraphical sources. For the expression 'it is not allowed', Attic inscriptions (and inscriptions in general) always use the expression μὴ ἐξεῖναι and μὴ χορή is never found.⁵³¹

The remaining part of the document seems to reproduce almost *verbatim* the final section of the document at § 63 of this speech, and therefore its wording does not present any problem, since that document is likely to be authentic. However, some of the provisions are appropriate for that document, but inappropriate here. In particular the mention of precautionary imprisonment is absent from the orator's account of the law. This is not conclusive evidence that it could not have been part of the law, but it is

⁵²⁷ Hansen 1976: 101 and Scafuro 2005: 56.

⁵²⁸ Mirhady 2005: 74.

⁵²⁹ Cf. MacDowell 1962: 106-13; Hansen 1976: 82-6; Canevaro - Harris 2012.

⁵³⁰ In Ar. *Vesp.* 467 the chorus accuses Bdelycleon: 'τῶν νόμων ἡμᾶς ἀπείργεις ὧν ἔθηκεν ἡ πόλις'. The expression here means that Bdelycleon denies the chorus the right to sit as judges (Sommerstein 1983: 185), and has nothing to do with *atimia*.

⁵³¹ Cf e.g. *IG* II² 28 l. 11, 43 l. 36, 97 l. 12, 141 l. 33.

suspect. More importantly, the document states that κατηγορεῖται δὲ ὁ βουλόμενος οἷς ἔξεστιν. This provision was necessary in the document at § 63, since the topic there is *eisangelia* and such a procedure could be activated in many different ways, sometimes following an *apochirotomia* of a magistrate in the Assembly or as a result of the supervisory work of the Council.⁵³² In such cases there was no obvious prosecutor for the trial before the judges. In the context of *apagoge* however such a provision is completely out of place. The sources clearly show that full responsibility of the prosecution lay with whoever carried out the arrest in the first place,⁵³³ and therefore 'anyone among the qualified Athenians who wishes so' most definitely could not 'be the prosecutor'. This provision is likely to have been copied by a forger, together with the entire last section of the document, from the document at § 63. The forger did not realize that some of the provisions he copied were out of place here.

To sum up, the second part of the document, as the section about theft, is inconsistent with the orator's account and with external sources about the procedures involved. Moreover some of the formulas are inconsistent with the wording of contemporary Athenian laws and decrees in inscriptions. The document therefore cannot report authentic Athenian statutes.

⁵³² Cf. above pp. 218-9.

⁵³³ Cf. for full discussion of the sources Hansen 1976: 13-17.

4.12 Dem. 24.149-151: the Heliastic Oath

[149] ΟΡΚΟΣ ΗΛΙΑΣΤΩΝ

ψηφιοῦμαι κατὰ τοὺς νόμους καὶ τὰ ψηφίσματα τοῦ δήμου τοῦ Ἀθηναίων
καὶ τῆς βουλῆς τῶν πεντακοσίων. καὶ τύραννον οὐ ψηφιοῦμαι εἶναι οὐδ'
ὀλιγαρχίαν· οὐδ' ἐάν τις καταλύῃ τὸν δῆμον τὸν Ἀθηναίων ἢ λέγῃ ἢ
ἐπιψηφίζῃ παρὰ ταῦτα, οὐ πείσομαι· οὐδὲ τῶν χρεῶν τῶν ἰδίων ἀποκοπὰς
οὐδὲ γῆς ἀναδασμὸν τῆς Ἀθηναίων οὐδ' οἰκιῶν· οὐδὲ τοὺς φεύγοντας
κατάξω, οὐδὲ ὧν θάνατος κατέγνωσται, οὐδὲ τοὺς μένοντας ἐξελῶ παρὰ
τοὺς νόμους τοὺς κειμένους καὶ τὰ ψηφίσματα τοῦ δήμου τοῦ Ἀθηναίων καὶ
τῆς βουλῆς οὔτ' αὐτὸς ἐγὼ οὔτ' ἄλλον οὐδένα ἐάσω. [150] οὐδ' ἀρχὴν
καταστήσω ὥστ' ἄρχειν ὑπεύθυνον ὄντα ἐτέρας ἀρχῆς, καὶ τῶν ἐννέα
ἀρχόντων καὶ τοῦ ἱερομνήμονος καὶ ὅσοι μετὰ τῶν ἐννέα ἀρχόντων
κυαμεύονται ταύτῃ τῇ ἡμέρᾳ, καὶ κήρυκος καὶ πρεσβείας καὶ συνέδρων· οὐδὲ
δὶς τὴν αὐτὴν ἀρχὴν τὸν αὐτὸν ἄνδρα, οὐδὲ δύο ἀρχὰς ἄρξαι τὸν αὐτὸν ἐν
τῷ αὐτῷ ἐνιαυτῷ. οὐδὲ δῶρα δέξομαι τῆς ἡλιάσεως ἔνεκα οὔτ' αὐτὸς ἐγὼ
οὔτ' ἄλλος ἐμοὶ οὔτ' ἄλλη εἰδότος ἐμοῦ, οὔτε τέχνῃ οὔτε μηχανῇ οὐδεμιᾷ.
[151] καὶ γέγονα οὐκ ἔλαττον ἢ τριάκοντα ἔτη. καὶ ἀκροάσομαι τοῦ τε
κατηγόρου καὶ τοῦ ἀπολογουμένου ὁμοίως ἀμφοῖν, καὶ διαψηφιοῦμαι περὶ
αὐτοῦ οὐ ἂν ἢ δῶξιν ἢ. ἐπόμεναι Δία, Ποσειδῶ, Δήμητρα, καὶ ἐπαρᾶσθαι
ἐξώλειαν ἑαυτῷ καὶ οἰκίᾳ τῇ ἑαυτοῦ, εἴ τι τούτων παραβαίνοι, εὐορκοῦντι δὲ
πολλὰ κάγαθα εἶναι.

ο]υδένα - ἐννέ[α P.Oxy.2.233

1 lemma om. S | 2 καὶ <κατὰ> F | τοῦ Ἀθηναίων SAYP : τῶν Ἀθηναίων F | 4 τὸν Ἀθηναίων SP^c
: τῶν Ἀθηναίων AFYP^a | 5 οἰκειῶν S^aA^a | 6 μὲν ὄντας S | 7 τοῦ Ἀθηναίων SFYP : τῶν
Ἀθηναίων A | 8 οὐδ' codd. : οὔτ' F | ἀρχὴν codd. : ἀρχεῖν Y | 9-10 τοῦ ἱερομνήμονος codd. : τὸν

ἱερομνήμονα Weil | 10 ὅσοι S : ὅσαι AFYP | ταύτη τῇ ἡμέρᾳ codd. : τῇ αὐτῇ ἡμέρᾳ Reiske Blass
 | 11 κήρυκος codd. : κήρυκα Weil | 13 ἄλλῃ A^a | 14 τε om. S | 15 ἀπολογεσομένου F |
 διαψηφιοῦμαι codd. : ἀεὶ ψηφιοῦμαι Cobet Weil | περὶ αὐτοῦ ὧν corr. Max Fränkel coll.
 Aeschin.1.154 | ἂν AFYP : ἐὰν S | 16 ἢ ἢ δίδωξις AFYP sed cf. Dem.45.50 | ἐπομύναι corr. Bekker
 : ἐπόμνυμαι SAYP^a : ἐπόμνυμι S⁷⁰ P^c : ὁμνυμι F | ποσειδῶνα S | δῆμητραν A^a | αὐτῷ F | 17
 παραβαίνομι A | πολλὰ codd. : καλὰ S

[149] HELIASTIC OATH

I shall cast my vote according to the laws and the decrees of the Athenian people and
 of the Council of the Five Hundred. And I shall not vote for the establishment of a
 tyrant or an oligarchy; nor, if anyone subverts the democracy of the Athenians or
 speaks or makes proposals against the previously mentioned laws and decrees, shall I
 listen to him; nor [shall I vote for] the cancellation of private debts, or the
 redistribution of the land or houses of the Athenians; I shall not restore the exiles, nor
 those on whom a sentence of death was passed, nor shall I expel, in contravention of
 the existing laws and decrees of the Athenian people and of the Council, those who
 are resident here, nor shall I allow anyone else to do so. [150] I shall not put
 someone who is still subject to audit for another magistracy in charge of an office,
 that is the offices of the Nine Archons, that of Ieromnemon, those that are chosen by
 lot on this day with the Nine Archons, that of herald, those of members of an
 Embassy, those of delegates to the Congress of the League; nor shall I appoint the
 same person to the same office twice, nor shall the same person hold two offices in
 the same year. I shall not take bribes in person because of my judicial role, nor shall
 any other man or woman do so for me with my knowledge, by any device or trick
 whatsoever. [151] And I am not less than thirty years old. And I will give hearing to
 the accuser and the defendant alike, and I shall give my judgement strictly on what
 the prosecution is concerned with. [The judge] shall swear (?) by Zeus, Poseidon and

Demeter, and invoke utter destruction upon himself and his house if he transgresses any provision of this oath, whereas if he keeps his oath, may prosperity come to him.

The stichometry shows that this document cannot have been part of the *Urexemplar* of the speech. It must have been added later. *P.Oxy.* 2.233, which dates from the 3rd century AD, provides a *terminus ante quem* for its insertion. The *scholia* also comment on the document, which proves that it was known at least from the 3rd century AD.

The context of the quotation pertains to the refutation of one of Timocrates' expected arguments. He will quote, Demosthenes claims, the clause 'nor shall I imprison anyone of the Athenians' to prove that his law is fair and consistent with other Athenian statutes. This clause however, according to Demosthenes, is not part of any law; it comes instead from the oath of the Council. The orator explains that such a clause in the Council's oath is perfectly sensible, and Solon wrote it there to stop politicians from putting free Athenians in prison. Yet this clause is significantly absent from the oath sworn by the judges. The lawcourts have indeed the power to imprison an Athenian, and those who are convicted must abide by their decisions. To prove his point Demosthenes then asks the *grammateus* to read out the oath of the Heliasts (or of the judges, according to manuscript S).

The Heliastic oath is repeatedly mentioned, alluded to, and sometimes quoted in the Attic orators.⁵³⁴ In fact, appealing to the judges' duty to fulfill their oath is one of the most widespread strategies employed in Attic oratory, and the orators often try to show that if the judges vote against them, they will be breaking their oaths. Therefore the material on which one can base a reconstruction of the actual oath is extensive. This

⁵³⁴ The oath is called Heliastic at Hyp. 4.40 and in Harp. s.v. ἡλιαστικός (α 229 Keaney). Aeschin. 3.6 has instead ἐν τῷ τῶν δικαστῶν ὅρκῳ.

task was excellently accomplished by Max Fränkel in 1878⁵³⁵ and it is not my intention to question his results. I will rather use the evidence collected by him in order to check the document against what we know was present in the oath.

The only clauses of the document that are confirmed by other sources are the first, ψηφιοῦμαι κατὰ τοὺς νόμους καὶ τὰ ψηφίσματα τοῦ δήμου τοῦ Ἀθηναίων καὶ τῆς βουλῆς τῶν πεντακοσίων, and the later καὶ ἀκροάσομαι τοῦ τε κατηγοροῦ καὶ τοῦ ἀπολογουμένου ὁμοίως ἀμφοῖν, καὶ διαψηφιοῦμαι περὶ αὐτοῦ οὗ ἂν ἡ δίωξις ᾖ. The statement that the judges shall judge according to the laws is the most widely mentioned in the orators.⁵³⁶ Aeschin. 3.6 confirms that this was the first clause of the oath: διόπερ καὶ ὁ νομοθέτης τοῦτο πρῶτον ἔταξεν ἐν τῷ τῶν δικαστῶν ὄρκῳ, 'ψηφιοῦμαι κατὰ τοὺς νόμους. Laws and decrees are mentioned together with this very wording at Dem. 19.179: ὁμωμόκατε ψηφιεῖσθαι κατὰ τοὺς νόμους καὶ τὰ ψηφίσματα τὰ τοῦ δήμου καὶ τῆς βουλῆς τῶν πεντακοσίων. The mention of the decrees is again confirmed by Hyp. Dem. 1. The clause stating that the judges shall hear both parts impartially is explicitly confirmed by five passages (Dem. 18.1 τὸν ὄρκον, ἐν ᾧ πρὸς ἅπασιν τοῖς ἄλλοις δικαίοις καὶ τοῦτο γέγραπται, τὸ ὁμοίως ἀμφοῖν ἀκροάσασθαι, 6-7; Isoc. 15.21; Aeschin. 2.1; Hyp. Lyc. fr. 1).⁵³⁷ Finally, the clause according to which the judges shall cast their vote strictly on what the prosecution is about is explicitly confirmed, with slightly different wording, at least by two passages (Aeschin. 1.154: ὑμεῖς δὲ τί ὁμωμόκατε; ὑπερ αὐτῶν ψηφιεῖσθαι ὧν ἂν ἡ δίωξις ᾖ; Dem. 45.50: δικάσειν γὰρ ὁμωμόκαθ' ὑμεῖς οὐ περὶ ὧν ἂν ὁ φεύγων ἀξιοῖ, ἀλλ'

⁵³⁵ Fränkel 1878. His reconstruction is now generally accepted. Lipsius 1905-15: 152 and Mirhady 2007 accept Fränkel's reconstruction, but with some modification.

⁵³⁶ Aeschin. 3.6, 31, 198; Andoc. 1.2; Antinph. 5.85; Dem. 18.12, 20.118, 21.42, 211, 22.43, 23.101, 24.188, 34.45, 36.26, 46.27, 58.25, 36, 59.115; Din. 1.17; Hyp. Phil. 5; Isae. 11.6; Isoc. 15.173; 19.15; Lys. 22.7. Allusions to this clause might be: Isae. 6.65; Dem. 8.2, 18.6, 22.7, 20, 23.2, 34.52, 39.41, 43.34, 52.33, 58.56; Hyp. Dem. 39; Isoc. 19.44, 46; Lycurg. 1.143; Lys. 9.19, 10.32.

⁵³⁷ Dem. 18.7, 34.1, Isoc. 15.17 and Lys. 15.1 seem to allude to this clause. The same principle, expressed in different wordings appears at Aeschin. 2.7, 3.57, Andoc. 1.6, Dem. 29.4, Lys. 19.3.

ὑπὲρ αὐτῶν ὧν ἂν ἡ δίωξις ᾖ) and implicitly by many sources.⁵³⁸ Of course, these passages do not necessarily confirm the authenticity of the document. In fact, they could easily have been the source used by a forger.

Against the authenticity of the document clearly speaks the absence of two clauses stating that, when there is no law on a particular matter, the judges shall judge with their best judgement. The presence of the statement that the judges shall vote with their best judgement (γνώμη τῇ δικαιοτάτῃ) is assured by the *verbatim* quotation of the clause at Dem. 23.96, 39.40-1, 20.118, Arist. *Pol.* 1287a26.⁵³⁹ The clause stating that the best judgement must be used when there are no liable laws is attested at Dem. 39.40 (ἀλλὰ μὴν ὧν γ' ἂν μὴ ὦσι νόμοι, γνώμη τῇ δικαιοτάτῃ δικάσειν ὁμωμόκατε) and 20.118 (περὶ ὧν ἂν νόμοι μὴ ὦσι, γνώμη τῇ δικαιοτάτῃ κρινεῖν) and is confirmed by Poll. 8.122.⁵⁴⁰ The absence of these clauses strongly speaks against the authenticity of the document and guarantees that its text is, at least, corrupted.

Andoc. 1.91 also reports a short section of the oath sworn by the judges: καὶ οὐ μνησικακήσω, οὐδὲ ἄλλῳ πείσομαι. This clause is absent from the document. Such a provision obviously dates from the democratic restoration of 404 BCE, and Drerup has argued that it lost its importance after, at the most, one generation, and then was

⁵³⁸ Aeschin. 1.170, 175-6, 179; Dem. 18.56; Hyp. *Eux.* 31. The same principle is often expressed with very different wordings: cf. Lycurg. 1.13, Dem. 22.43, 44.14, [Arist.] *Ath. Pol.* 67.1. The significance of this clause in Athenian lawcourts is analyzed in Rhodes 2004. The sources have ψηφιεῖσθαι instead of διαψηφιοῦμαι. Fränkel 1878: 458 considered the verb *falsch*. Cobet and Weil tried to make the document agree with the other passages by emending it in ἀεὶ ψηφιοῦμαι.

⁵³⁹ Fränkel 1878: 457 lists also Dem. 57.26 but this passage does not refer to the judges, it refers to demesmen voting in a judicial capacity. Aristot. *Rhet.* 1375a29, b16, 76a19, 1402b33 refers to the same clause, but the wording is γνώμη τῇ ἀρίστῃ. Passages like Dem. 21.94, Isoc. 19.15-6, referring to the duty of the judges to give a just verdict or to vote justly, cannot be used as evidence of this clause, *pace* Fränkel 1878: 455-7 and Mirhady 2007: 50.

⁵⁴⁰ The specification 'in matters about which there is no law' is considered part of the oath, after Fränkel 1878: 455-8, by Ott 1896: 61; Lipsius 1905-15: 151-3; Cronin 1936: 18; Bonner-Smith 1938: 152-6; Hansen 1991: 182; Scafuro 1997: 50-1. Mirhady 2007 argues on the basis of Dem. 23.96-7, 57.26 and Aristot. *Rhet.* 1375a29, b16, 76a19, 1402b33 that this clause was not part of the oath, but rather an interpretation of the orator, and the 'most just understanding' referred to matters of fact, not to matters of law. Against this interpretation see Harris 2006a. The wording as understood by Fränkel is actually found in inscriptions from other city states: cf. Gauthier-Hatzopoulos 1993: 35-41; *IG* II² 1126 ll. 2-3; *IG* XII 2.526 ll. 9-17; *SEG* 29.1130bis ll. 28-30.

dropped. This is no more than guesswork. All we know is that Andocides states that this clause was in the oath, and our document lacks it.

Moreover, the document reports this sentence: καὶ τύραννον οὐ ψηφιοῦμαι εἶναι οὐδ' ὀλιγαρχίαν· οὐδ' ἐάν τις καταλύῃ τὸν δῆμον τὸν Ἀθηναίων ἢ λέγῃ ἢ ἐπιψηφίζῃ παρὰ ταῦτα, οὐ πείσομαι. Such a sentence seems to refer to the same context as Andocides' passage, and yet, if the document is authentic, this section was not dropped. Drerup argued that such a sentence was preserved because it reminds the judges of the dangers of tyranny and oligarchy, whereas the οὐ μνησικακήσω clause does not make any sense outside that context.⁵⁴¹ Lipsius on the other hand argued that the document reports sections of the oath from different times, and the oath was never sworn in exactly this form.⁵⁴² This is hard to believe. The document was added after the classical times, as stichometry shows. Therefore, the editor who inserted it in the text, if we consider the document authentic, must have found a copy of the oath somewhere. Lipsius' hypothesis in fact postulates that this editor did not find just one copy, he found more than one, from different periods. This defies the laws of probability. If, instead, such an editor reconstructed the oath from the quotations in the orators and from some other sources, then what we have is a patchwork of more or less reliable passages, lacking key sections and integrated by the editor with guesswork where the evidence was missing. Thus, this would not be an original Athenian oath, but a later reconstruction, a forgery in all but intention.⁵⁴³

In fact, this whole section of the document, in which the judges swear not to vote for tyranny or oligarchy, not to cancel the debts nor to restore the exiles or killers etc. is more likely to originate from the orator's words right after the oath is read out by the secretary (§ 152-4). Demosthenes claims that subverting the verdicts of the tribunals

⁵⁴¹ Drerup 1898: 261, endorsed by Bonner-Smith 1938: 154-5.

⁵⁴² Lipsius 1905-15: 153.

⁵⁴³ For similar considerations see Ott 1896: 101-2.

leads to the dissolution of democracy (δήμου κατάλυσις), since the *polis* is built on its laws and decrees. Moreover, Timocrates' law leads the way toward the dissolution of the lawcourts, the restoration of the exiles and other horrible things (περὶ τῶν ἄλλων τῶν δεινοτάτων). Demosthenes then alludes to previous occasions on which democracy has been overthrown, and claims that it happened in exactly the same way. This passage does not refer to the oath just read out; it is rather Demosthenes' own argument. Yet its proximity to the quotation might have confused a forger. In fact, the document follows closely Demosthenes' argument: δήμου κατάλυσις in contravention of laws and decrees is extended, as often happens in the forgeries, by the mention of tyranny and oligarchy. Demosthenes then lists restoration of the exiles and 'other horrible things', and the document duly lists restoration of the exiles and makes explicit the 'other horrible things' with a customary list: 'I shall not restore the exiles, nor those on whom a sentence of death was passed, nor shall I expel, in contravention of the existing laws and decrees of the Athenian people and of the Council, those who are resident here'. It is not necessary to postulate any authoritative and independent source to account for this section. Misinterpretation of the orator's words is the most likely source of the document here, and accounts better for the fact that the whole section seems rather badly suited to an oath of the judges, and could belong more easily to an oath sworn in a deliberative assembly, like the Council or the *Ecclesia*.⁵⁴⁴

The next section is also problematic. The document has the judges swearing that they will not let anyone get into an office that has not yet been submitted to an audit for a previous one, nor will they let anyone get into the same office twice, or have two offices in the same year. The only way to explain such a provision is to refer it to the *dokimasia*. The judges had to handle about 700 *dokimasiai* of newly appointed magistrates at the end of each year to assess whether they were fit for office and this

⁵⁴⁴ Cf. Ott 1896: 99-100.

section of the oath would give them instructions about their task.⁵⁴⁵ However, first the criteria for the decision are not exhaustive: we know from *Ath.Pol.* 55.3 that at least the archons, presumably all the officials, had to answer for their demes and their parents' (to prove that they were citizens), had to name sanctuaries of Apollo Patroos and Zeus Herkeios that they attend, they had to state that they properly took care of their parents, that they paid their *tele* and that they had undergone military service, and they had to provide witnesses for all these facts. Why would the oath mention only some of the requirements for passing the *dokimasia*, and overlook others? Moreover, hearing *dokimasiai* was only one of the many functions the judges performed. Why does the oath mention only *dokimasiai*?⁵⁴⁶ Besides, the document lists the nine archons, the *hieromnemon*, all the other magistracies that are filled by lot ταύτῃ τῇ ἡμέρᾳ, that is 'on this day' (and also heralds, ambassadors and delegates to the Congress of the League). This would mean that most magistracies were allotted in the same day as the judges swore their Heliastic oath (on this day), but this is contradicted by the evidence: magistrates were chosen at the end of the year, after the sixth prytany, to allow enough time for the *dokimasiai* to be completed,⁵⁴⁷ whereas the judges swore their oath at the beginning of the year.⁵⁴⁸ Bekker saw this and proposed the emendation τῇ αὐτῇ ἡμέρᾳ, which changes the sense to 'those that are chosen by lot on the same day as the Nine Archons'. Even if we accept the emendation, we still have the problem that the list of magistrates is not complete. It includes archons, *hieromnemones*, all the offices filled by lot on the same day as the archons, ambassadors⁵⁴⁹ and delegates to the Congress of the League. What about the offices filled by election, like the military commanders, those

⁵⁴⁵ Cf. MacDowell 1978: 167-9; Hansen 1991: 218-20.

⁵⁴⁶ Cf. Westermann 1859: III, 3 ff.

⁵⁴⁷ Cf. Lys. 26.6 with Hansen 1991: 230-2.

⁵⁴⁸ Cf. Isoc. 15.21, 18.34 with Bonner-Smith 1938: 154, 156; MacDowell 1978: 34; Hansen 1991: 181-2; Boegehold 1995: 26.

⁵⁴⁹ It is also worth noting with Wayte 1882: 213 that πρεσβείας meaning 'the members of the embassy' between two concrete nouns 'involves great harshness'.

who looked after the training of the *ephebes*, the Commissioners of the Eleusinian Mysteries, the Superintendent of the Water and the most important financial officers? These officials are absent from the list, even though they were subject to *dokimasia* like the rest.

The next sentence in the document, οὐδὲ δῶρα δέξομαι τῆς ἡλιάσεως ἔνεκα οὔτ' αὐτὸς ἐγὼ οὔτ' ἄλλος ἐμοὶ οὔτ' ἄλλη εἰδότος ἐμοῦ, οὔτε τέχνη οὔτε μηχανῇ οὐδεμᾶ, is not found in any source about the Athenian judicial oath. An inscription of the 3rd century BCE from Kalymnos (*Tit. Calymnii* 79 ll. 30-1) has a wording very similar to that of the document. Weil used this inscription as confirmation that the document is genuine.⁵⁵⁰ However, the fact that the formula was used in the 3rd century as far as Kalymnos cannot provide any evidence that the document reports the genuine text of the Athenian Heliastic oath. The formula might well have been more usual than we assume in judicial oaths, and a later forger might have been familiar with it. The following statement καὶ γέγονα οὐκ ἔλαττον ἢ τριάκοντα ἔτη, is nonsensical in an oath, and should belong in a law. In the judicial oath it is out of place.⁵⁵¹

Another feature that clearly speaks against the authenticity of the oath is the sentence with which the judges swear by the gods: ἐπόμνυμαι Δία, Ποσειδῶ, Δήμητρα. Such a clause must certainly have been part of the oath, but the middle voice is here out of place, so that manuscripts S and P have corrections into ἐπόμνυμι. A more economical emendation is that of Bekker, who opts for the infinitive ἐπομνύναι to make the verb agree with the following ἐπαρᾶσθαι. Even if we accept this emendation, the names of the gods still contradict the external evidence. Poll. 8.122 states that the judges ὠμνυσαν δὲ ἐν Ἀρδήτην δικαστηρίῳ Ἀπόλλω πατρῶν καὶ Δήμητρα καὶ Δία βασιλέα. This information is confirmed by *Schol. Aeschin.* 1.114 (Dilts), which

⁵⁵⁰ Weil 1886: 139.

⁵⁵¹ Cf. Westermann 1959: III, 7, Ott 1896: 101.

also gives an authoritative source for this piece of information: Deinarchus. *Lex. Seg.* s.v. ἥλιος also confirms these gods, naming Zeus, Demeter and Helios (presumably Apollo again, since the two gods were identified from the Hellenistic age).⁵⁵² Indirect confirmation of this comes also from Dem. 52.9, where the speaker chooses to swear that he is not lying to the judges by Zeus, Apollo and Demeter.⁵⁵³

To sum up, this document lacks key clauses that we know from independent evidence were part of the Heliastic oath. Moreover some of its sections are inappropriate in a judicial oath and some features are demonstrably incorrect. Besides, no piece of information in the document requires postulating an independent source. The document was later inserted in the speech, and was at best a clumsy reconstruction from the orators' allusions to the oath, at worst a forgery. In any case, it does not represent a reliable source for the Heliastic oath.

⁵⁵² Helios was often identified with Apollo (*cf.* Burkert 1985: 120). The first evidence of such an identification is a fragment of Euripides' *Phaethon* (781 Nauck). When or whether they were identified in classical Athens is unclear (*cf.* Mikalson 1989: 97-8). However, the later date of the *Lex. Seg.* justifies the use of the name Helios as a synonym for Apollo.

⁵⁵³ Westermann 1959: III, 14 already noted this. *Cf.* also Fränkel 1878: 460; Wayte 1882: 212 and 215.

5. The *Against Neaera* (59)

The documents of the speech *Against Neaera* have been the object of some scholarly attention in the last few years. Two commentaries by Carey and Kapparis⁵⁵⁴ have devoted some space to the analysis of all the individual documents, whereas Trevett has dealt only with the witness statements.⁵⁵⁵ These scholars have considered all the laws and decrees in the speech authentic, although Kapparis has exposed seven out of thirteen witness statements as forgeries.⁵⁵⁶ Their methodology, as well as their results, has encountered some degree of criticism in the reviews of their works. Buckler in a review of Carey's commentary and Trevett's volume on Apollodorus claims that 'none of the decrees, the acts passed by the assembly, is genuine'⁵⁵⁷ and Harris in his reviews of both Carey's and Kapparis' commentaries doubts the authenticity of most documents.⁵⁵⁸ Carey himself in his review of Kapparis' commentary contests that the analysis of the documents lacks a precise methodology.⁵⁵⁹ Finally, in 2010 I have argued in an article that the naturalization decree for the Plataeans preserved at § 104 is a forgery.⁵⁶⁰

The work on the documents of this speech however started long before. In 1844 Friedrich Franke, in his review of Schelling's *De Solonis legibus apud oratores Atticos* in the *Neue Jenaische allgemeine Literatur-Zeitung*,⁵⁶¹ argued that some of the laws in this speech, in particular that at § 87, are forgeries. Westermann in 1850 exposed all the witness statements and the other evidence produced in the speech as forgeries.⁵⁶² Since these works the documents in this speech were generally believed to be forgeries every time scholars mentioned them in works concerned with more general matters. As

⁵⁵⁴ Carey 1992; Kapparis 1999.

⁵⁵⁵ Trevett 1992: 186-92.

⁵⁵⁶ Kapparis 1999: 58-60, 215-6, 221-2, 225-6, 235-6, 239-40, 262-3, 265, 276-7, 316-7, 351-3, 431-6.

⁵⁵⁷ Buckler *CJ* 90/3 (1995): 324-5.

⁵⁵⁸ Harris *CR* 44/1 (1994): 21-3; *CJ* 96/4 (2001): 439-41.

⁵⁵⁹ Carey *Phoenix* 95/1-2 (2001): 175-7.

⁵⁶⁰ Canevaro 2010. The chapter about this document is adapted from this article.

⁵⁶¹ Schelling 1842. Franke 1844: 733-45.

⁵⁶² Westermann 1850: 114-29.

examples of this attitude, one can mention Van den Es' *De iure familiarum apud Athenienses*,⁵⁶³ Mommsen' *Heortologie*,⁵⁶⁴ M. H. E. Meier's and L. Ross' *Die Deme von Attika und ihre Vertheilung unter die Phylen nach Inschriften*.⁵⁶⁵ In 1885 however Kirchner defended the authenticity of the witness statements preserved in this speech, and in 1884 and 1886 Otto Staeker and Johannes Riehemann produced two defences of the documents of this speech as a whole.⁵⁶⁶ Finally Drerup in 1898, dealing only with the witness statements, endorsed Kirchner's verdict of authenticity.⁵⁶⁷ Their approach was to produce reconstructions of the procedures or of the facts involved where the documents could fit, and to use the very fact that such reconstructions were possible as evidence of the authenticity of the documents.⁵⁶⁸

In the twentieth century the documents have generally been used as authentic. The only doubts, apart from the recent reviews I have previously mentioned, have been advanced by Parke about the oath of the *gerairai* and by Hammond, Prandi and finally MacDowell⁵⁶⁹ about the naturalization decree of the Plataeans. This last document however has been defended in a lengthy article by Kapparis, and again extensively in his commentary.⁵⁷⁰

The speech *Against Neaera* contains 21 documents: 13 witness statements, 3 laws, 1 decree, 1 oath, 2 *diallagai* and 1 *proklesis*. Only the laws and the decree fall within the scope of this work. The first two laws quoted in the speech concern marriage of

⁵⁶³ Van den Es 1864: *passim*.

⁵⁶⁴ Mommsen 1864: 358-9.

⁵⁶⁵ Meier-Ross 1846: 7, 8 n. 1.

⁵⁶⁶ Kirchner 1885: 377-86; Staeker 1884; Riehemann 1886.

⁵⁶⁷ Drerup 1898: 342-52.

⁵⁶⁸ As for the witness statements, beyond the scope of this work, the approach was and is mainly prosopographical. If the names mentioned are found elsewhere in inscriptions, the document is deemed to be authentic. Against this approach one could note that an Athenian name was composed of three parts: name, patronymic and demotic. Most of the names in the documents and in inscriptions present only name and demotic. This is hardly enough evidence to justify identifications. If I were to forge a document from South Shields (Tyne and Wear), including in it the name James from South Shields, or Mike from South Shields would certainly be a safe bet, but that would not guarantee that I mean a specific James, or Mike, from South Shields.

⁵⁶⁹ Prandi 1988: 112; Hammond 1992: 146-7; MacDowell, *CR* 35 (1985): 319.

⁵⁷⁰ Kapparis 1995 and 1999: 287-8.

Athenians with alien women and procreation of offspring. The first law at § 16 is quoted to show that marriage between an Athenian and a foreigner is forbidden, and so is the procreation of children. This is the law on which Theomnestus based his case against Neaera, and Apollodorus⁵⁷¹ is here concerned first with proving that she is a foreigner, and therefore that she is committing a crime by living as the lawful wife of Stephanus. The second law is quoted at § 52 as the base of the action taken by Phrastor against Stephanus when Stephanus betrothed to him Phano, allegedly Neaera's daughter. The law prescribed the heaviest penalties if one gave in marriage to an Athenian the daughter of an alien woman. The next law is quoted at § 87. This law is concerned with *moicheia* and is used against Phano, the alleged daughter of Neaera, who performed the sacred rites as wife of Theagenes, the archon king, despite being forbidden as, Apollodorus claims, she was caught with a seducer. The naturalization decree for the Plataeans is quoted at § 104 at the end of a long excursus about the Plataeans, whose aim is that of showing how hard it is to obtain Athenian citizenship, and consequently how shameful it is for Neaera to have usurped it.

⁵⁷¹ It is generally accepted that Apollodorus is the author of this speech. Cf. e.g. Trevett 1992: 50-76; MacDowell 2009: 99-100, 121-6.

5.1 [Dem.] 59.16: the law on marrying foreigners

NOMOS

ἐὰν δὲ ξένος ἀστῇ συνοικῇ τέχνῃ ἢ μηχανῇ ἥτινιούν, γραφέσθω πρὸς τοὺς θεσμοθέτας Ἀθηναίων ὁ βουλόμενος οἷς ἔξεστιν. ἐὰν δὲ ἀλῶ, πεπράσθω καὶ αὐτὸς καὶ ἡ οὐσία αὐτοῦ, καὶ τὸ τρίτον μέρος ἔστω τοῦ ἐλόντος. ἔστω δὲ καὶ ἐὰν ἡ ξένη τῷ ἀστῶ συνοικῇ κατὰ ταῦτά, καὶ ὁ συνοικῶν τῇ ξένῃ τῇ ἀλούσει ὀφειλέτω χιλίας δραχμάς.

ἂν R | συνοικεῖ S | οὐς ἔξεστιν R | ἀλόντος FQR | ἔστω δὲ SYRD : ὡσαύτως δὲ FQ | ὀφείλετο S

If an alien man lives together in marriage with a citizen woman by any means or device whatsoever, anyone among the qualified Athenians who wishes so shall bring a public charge against him to the *thesmothetai*. If he is convicted, he and his goods shall be sold, and one third shall go to the man who had him convicted. And this shall happen also if an alien woman lives together in marriage with a citizen man, and the man who lives with the convicted alien woman shall be fined one thousand drachmas.

This document must be a later insertion, since the stichometry shows that it was not in the *Urexemplar* of the speech. It is supposed to report the law on which the case against Neaera is built, as it is quoted at the very beginning of Apollodorus' *synegoria*, after he has claimed that Neaera is a foreigner and lives with Stephanus as his wife (§ 16). Apollodorus asks the clerk to read out the law with these words: πρῶτον μὲν οὖν τὸν νόμον ὑμῖν ἀναγνώσεται, καθ' ὃν τήν τε γραφὴν ταυτηνὶ Θεόμνηστος ἐγράψατο καὶ ὁ ἀγὼν οὗτος εἰσέρχεται εἰς ὑμᾶς ('First, the law will be read to you, according to which Theomnestos brought this public charge and because of which this

case comes before you'). At § 17 Apollodorus summarizes the provisions of the law and states that it forbids an alien woman to live in marriage with a citizen man, or a citizen woman with an alien man, or to beget children by any means or device. If one does not abide by these provisions, the law allows a public charge before the *thesmothetai*, and if there is a conviction, the alien man or woman must be sold into slavery.⁵⁷²

The document's wording is close to Apollodorus' summary and the only detail missing from the document is the provision on 'begetting children' (οὐδὲ παιδοποιεῖσθαι).⁵⁷³ However, as argued by Riehemann and more recently by Kapparis, this could also be an addition of the orator, rather than a literal quote, as Apollodorus' words at § 122 suggest (τὸ γὰρ συνοικεῖν τοῦτ' ἔστιν, ὃς ἂν παιδοποιῇται καὶ εἰσάγῃ εἰς τε τοὺς φράτερας καὶ δημότας τοὺς υἱεῖς).⁵⁷⁴ On the other hand, the document encompasses a few provisions that are absent from the orator's summary.⁵⁷⁵ It provides that the option to bring a public charge shall be open only to qualified Athenians (ὁ βουλόμενος οἷς ἔξεστιν), that not just the alien man, but also his property shall be sold if he marries a citizen woman, that one third of the proceedings from the sale shall go to the successful prosecutor, and that if a citizen man is convicted of having married an alien woman, he shall pay a fine of one thousand drachmas. None of these provisions provides conclusive grounds for or against the authenticity of the document.

⁵⁷² For an excellent discussion of this law see Kapparis 1999: 199-206. Kapparis accepts the document as authentic, but his treatment of the purpose and features of the law is mostly valid whatever one thinks about the document.

⁵⁷³ That such a provision must have been part of the law was argued by Lortzing 1863: 44.

⁵⁷⁴ Riehemann 1886: 40; Kapparis 1999: 198.

⁵⁷⁵ Carey 1992: 92 and Kapparis 1999: 198.

As for the expression ὁ βουλόμενος οἷς ἔξεστιν, this is often found in the speeches of the Attic orators and elsewhere,⁵⁷⁶ and although it is likely to be correct, a forger could have easily made a lucky guess.

The provision stating that the goods of an alien man who has married a citizen woman must be sold is neither confirmed nor refuted by any source. However, some sources show that being sold into slavery was among the penalties for those who usurped the status of citizens, and one mentions also the selling of their goods. *Ath.Pol.* 42.1 states that if someone at the registration with the deme is found not to be *eleutheros*⁵⁷⁷ he can appeal against the decision and if he loses he must be sold into slavery. Dem. 24.131, with *schol. ad locum*, and the third letter of Demosthenes (3.29) show that a *graphe xenias* was possible at any point, and if one was convicted for usurping the citizen rights he was sold into slavery. The same penalty was provided in 346/5, following the decree of Demophilus calling for a *diapsephisis*,⁵⁷⁸ for those who were rejected by their deme and lost their appeal in the lawcourt. We are told this by Libanius in his *hypothesis* of Dem. 57, and Dionysius of Halicarnassus (*Isae.* 16), in his introduction to a long quotation of a speech by Isaeus (*Isae.*12), informs us that in that context not only was the usurper sold into slavery, but his goods were also sold.⁵⁷⁹ Thus, although these sources do not prove that sale of his goods was the case also for an alien man marrying a citizen woman, they suggest that this is at least a possibility. However, this does not speak clearly either for or against the authenticity of the document. If this

⁵⁷⁶ Cf. Pl. *Plt.* 299c3; Aeschin.1.23, 32. This expression is found both in authentic documents like Dem. 24.63 (cf. above pp. 214-23) and in forged ones: Dem.21.47 (cf. Harris.*CP* 87 (1992): 77-8, *pace* MacDowell 1990: 266-7), 24.105 (cf. above pp. 224-42).

⁵⁷⁷ For the meaning of the word here see Rhodes 1981: 501-2. For some difficulties in this passage cf. also Gomme 1934: 130-40.

⁵⁷⁸ Cf. MacDowell 2009: 288-93 for the case and 298 n. 1 for the date.

⁵⁷⁹ Gomme 1934: 130-40, endorsed by MacDowell 2009: 288 n. 3, made a case for rejecting the evidence of these passages. He believed that they were influenced by the compressed account at *Ath.Pol.* 42.1, whereas in fact those who were found not to be citizens were sold into slavery only if they were proven not to be free, while the others were only relegated to metic status. However metic status is never mentioned in the sources (cf. Rhodes 1981: 502) and § 17 of this speech shows that enslavement was indeed a viable penalty for those who usurped citizen status whether they were free or not.

piece of information circulated in antiquity, it could have prompted a forger to insert the provision. To sum up, we cannot tell with any certainty whether this provision was in the law, and even if it were, it does not necessarily prove that the document is authentic.

The provision stating that one third of the outcome of the sale must go to the prosecutor is at odds with what we know about *graphai*. *Dikai* in Athens often ended with monetary compensation, but *graphai* were distinctive in that monetary penalties took the form of fines to be paid to the public treasury, and the successful prosecutor did not receive anything in return. The only public charges that involved monetary gain for the successful prosecutor were, as far as we know, *phasis* and *apographe*.⁵⁸⁰ This clause could therefore be considered an anomaly, although we cannot exclude that these particular charges were exceptions to the rule.

A small problem with the wording of the document is that in the following sentence (ἔστω δὲ καὶ ἐὰν ἡ ξένη τῷ ἀστὶ συννοικῇ κατὰ ταῦτά) the words ἔστω [...] κατὰ ταῦτά seem to imply that if an alien woman is convicted for living as lawful wife with a citizen man, her goods must be sold too, and one third of the outcome of the sale must go to the successful prosecutor.⁵⁸¹ However, women in Athens had no control over any goods, and even their dowries passed from the father to the husband without at any point being the actual possession of the wife. This sentence therefore is suspicious, but on the other hand it could just be a very compressed form of expression, not impossible to find in legal texts.

The last sentence states that if a citizen man lives with an alien woman, when she is convicted and sold into slavery he must pay one thousand drachmas. This provision seems acceptable, if not completely reasonable. Van den Es rejected the document because it does not mention the case in which the husband is tricked into marrying a

⁵⁸⁰ Cf. Harrison 1971: 78; MacDowell 1972: 57-61; Hansen 1991: 192-3. Dem. 21.45 and 24.3 state the principle that a *graphe* brought no personal advantage to the prosecutor, and the prosecutor acted for the community's sake.

⁵⁸¹ Riehemann 1886: 38-9 has convincingly argued that κατὰ ταῦτά must refer to the penalties.

foreigner (the penalties for this are established in the document at § 52).⁵⁸² In this case, he claims, the one thousand drachmas fine for the husband would be plainly unfair. This argument is not conclusive: first, the fact that a law is unfair does not prove that it did not exist; second, the specification exempting the tricked husband from the fine might have appeared in a section of the law not reported in the document.

To sum up, the differences between the document and the orator's account do not clearly speak either for or against the document. The additional provisions in the document, although sometimes at odds with what we know about Athenian legal procedures, need not be necessarily unacceptable.

The language of the document is consistent with inscriptions, with one major exception: the expression τέχνη ἢ μηχανῇ ἥτινιοῦν is never found in inscriptions or literary sources in this form. In *IG* I³ 40 ll. 22-3 we find οὔτε τέ[χ]ναι οὔτε μηχανῇ οὐδεμῶι, and the same formula, with some parts restored, is also found in *IG* I³ 39 ll. 8-9, 83 ll. 6-7, 247 ll. 5-6, *IG* II² 111 l. 63, 236 ll. 10-11, 1183 l. 9. Sometimes (e.g. *IG* II² 1289 ll. 14-5), instead of οὐδεμῶι we find μηδεμῶι, but never ἥτινιοῦν. Apollodorus' summary, consistently with the inscriptions, has οὐδεμῶι. In literary sources the same expression, either with οὐδεμῶι or μηδεμῶι, is found in Thuc. 5.18 and 47 (from which *IG* I³ 86 ll. 6-7 is restored), Pl. *Clit.* 408e9, Lys. 13.95, Dem. 24.150 (a spurious document), Theophr. fr. 97.3 (Wimmer). The only case where we find a similar expression with ἥτινιοῦν is Dem. 21.113, a document whose authenticity has been doubted.⁵⁸³ Moreover, ὅστισοῦν is never found in Athenian classical epigraphical material, and ἥτινιοῦν is only restored in one Athenian inscription from Roman times (1st century AD), *Agora* 16.337 l. 9. The expression as it stands is difficult to accept as part of a classical Athenian law.

⁵⁸² Van den Es 1864: 22.

⁵⁸³ Westermann 1844; Harris 2008: 127-8. MacDowell 1983 and 1990: 337 accepts the document as authentic.

To sum up, the document presents provisions not found in Apollodorus' summary. These features however are unverifiable, and they could be either authentic provisions belonging to this law, or created by a forger on the basis of information found in the orators and elsewhere. Our sources do not allow us a conclusive verdict. The document might be either a skillful forgery or a genuine statute found by a later editor and inserted in the speech. However, if this is the case, some degree of corruption, as shown by the word ἡτινιοῦν, is likely to have intervened before or after the document was inserted in the speech.

5.2 [Dem.] 59.52: the law about giving an alien woman in marriage to an Athenian citizen

NOMOS

[52...] ἐὰν δέ τις ἐκδῶ ξένην γυναῖκα ἀνδρὶ Ἀθηναίῳ ὥς ἐαυτῷ προσήκουσαν, ἄτιμος ἔστω, καὶ ἡ οὐσία αὐτοῦ δημοσία ἔστω, καὶ τοῦ ἐλόντος τὸ τρίτον μέρος. γραφέσθων δὲ πρὸς τοὺς θεσμοθέτας οἷς ἔξεστιν, καθάπερ τῆς ξενίας.

ἐκδιδῶ FQ

If one gives an alien woman in marriage to an Athenian man as though she were related to him, he shall be disfranchised and his goods become public property, and one third shall go to the successful prosecutor. Those who are qualified shall bring a public charge to the *thesmothetai*, as in a prosecution for being an alien.

This document, according to the stichometric calculations, was not in the *Urexemplar* of the speech and must have been inserted later. It is quoted in the speech after Apollodorus has introduced some facts about Phano, according to him Neaera's daughter, previously called Strybele. At § 49 Apollodorus claims that Neaera was once a slave, was sold twice and in Athens was treated as an alien. Apollodorus mentions the story of Phano to prove that Stephanus himself has shown Neaera to be an alien. At § 50 he claims that Neaera brought his daughter to Athens, and Stephanus gave her in marriage to an Athenian, Phrastor, as if she were his own daughter, with a dowry of thirty minae (ἐκδίδωσι Στέφανος οὕτως ὥς οὔσαν αὐτοῦ θυγατέρα ἀνδρὶ Ἀθηναίῳ Φράστορι Αἰγίλιεϊ). However (§ 51) Phano misbehaved and refused to obey her husband. Moreover Phrastor discovered that, instead of being Stephanus' daughter from an Athenian woman before he took Neaera, Phano was Neaera's daughter, and

therefore he cast her out of the house, refusing to return the dowry. Stephanus started proceedings to have Phrastor pay interest at the rate of nine obols on the dowry, or to return it. Phrastor retaliated by bringing a public charge against Stephanus to the *thesmothetai* for betrothing to him, an Athenian citizen, the daughter of an alien woman as if she were related to him (§ 52). Apollodorus then asks the secretary of the lawcourt to read out the relevant law and at § 53 says that Stephanus dropped the claim to the dowry fearing he might incur severe penalties if convicted for betrothing the daughter of an alien woman (γνοῦς δ' ὅτι κινδυνεύσει ἐξελεγχθεὶς ξένης θυγατέρα ἡγγυηκέναι καὶ ταῖς ἐσχάταις ζημίαις περιπεσεῖν).

The text of the document mostly repeats the words of the orator. The only independent details are the penalty of *atimia* (whereas the confiscation of the goods and the reward for the successful prosecutor are found also in the document at § 16) and the expression *καθάπερ τῆς ξενίας*. These details are not unacceptable: *atimia* was a very widespread punishment in Athens, and is mentioned many times in the orators (e.g. Dem. 20.156, 23.62); defining a procedure and a penalty in analogy with another statute is also an attested practice in Athenian laws (*cf.* Dem. 20.156 and 24.50). However, as both the penalty and expressions like *καθάπερ τῆς ξενίας* are attested in the orators, and since we cannot confirm that they crept into this statute from other sources, it is impossible to tell whether these are reliable pieces of information drawn from a trustworthy source or details added by a forger on the basis of other passages of the orators which are however unrelated to the present statute.

Some details in the sections of the document confirmed by Apollodorus' summary cast on the other hand doubts on the authenticity of the document. First, the document uses the verb *ἐκδίδωμι* for 'to betroth', as does Apollodorus thrice in the speech, at § 50, 69, 73. However, near the actual quotation of the law, at § 52 and 53, Apollodorus

uses twice the term ἐγγυάω. Both are technical terms,⁵⁸⁴ but the fact that the orator twice in the proximity of the law chooses ἐγγυάω suggests that this verb must have been in the law.⁵⁸⁵ Second, the first sentence of the law hardly makes any sense. The document goes like this: 'if one gives an alien woman in marriage to an Athenian man as though she were related to him, he shall be disfranchised' (ἐὰν δέ τις ἐκδῶ ξένην γυναῖκα ἀνδρὶ Ἀθηναίῳ ὥς ἐαυτῷ προσήκουσαν, ἄτιμος ἔστω). τις means 'anyone', but what is required here is rather 'any Athenian'. This might be understood, but certainly an expression like Ἀθηναίος ὢν would make the provision more sensible.⁵⁸⁶ More important, the sentence as it is in fact 'suggests that no familial relationship between a citizen and an alien was formally acknowledged by Athenian law'.⁵⁸⁷ If an Athenian has a daughter from an alien woman, the daughter would technically be an alien woman herself. And yet he would not be lying if he were to give her in marriage 'as if she were related to him' (ὥς ἐαυτῷ προσήκουσαν). She is indeed related to him.⁵⁸⁸ The concept could have been more effectively conveyed with an expression meaning 'as if she was of citizen birth'. Carey blames this wording on 'loose drafting of Athenian laws', and this is certainly a possibility. However, it is odd that the same wording is used by Apollodorus to apply to the specific story of the marriage between Phrastor and Phano, and there it makes perfect sense. Stephanus, according to Apollodorus, gave the daughter of an alien woman, Neaera, in marriage to Phrastor as if she were related to him (§ 52 Ἀθηναίῳ ὄντι ξένης θυγατέρα αὐτῷ ἐγγυῆσαι ὥς αὐτῷ προσήκουσαν), whereas she entered his household together with Neaera. The fact that the expression applies perfectly to the specific case Apollodorus is describing,

⁵⁸⁴ Cf. e.g. Hdt. 6.130.2, Dem.41.6, Isae.3.70, 8.19, 29, Men. *Dysc.* 842 for ἐγγυάω and Isae.8.8, 3.8 for ἐκδίδωμι. See Wolff 1944: 52, Harrison 1968: 1-2.

⁵⁸⁵ Pace Kapparis 1999: 198. Cf. above pp. 42-4 for the reliability of the orators' summaries, and how their wording is closer to the actual wording of the laws in their proximity.

⁵⁸⁶ Van den Es 1864: 23 and Carey 1992: 113.

⁵⁸⁷ Carey 1992: 113.

⁵⁸⁸ Cf. Wolff 1944: 70 and Harrison 1968: 26-7.

but conveys only imperfectly the meaning required in the law, suggests that a forger has drawn it from the text of the speech to the document, rather than the opposite.

Moreover the clause γραφέσθων δὲ πρὸς τοὺς θεσμοθέτας οἷς ἔξεστιν is unparalleled in Athenian inscriptions and in literary sources. The formula is always ὁ βουλόμενος οἷς ἔξεστιν.⁵⁸⁹ The version found in the document at § 16 of this speech, γραφέσθω πρὸς τοὺς θεσμοθέτας Ἀθηναίων ὁ βουλόμενος οἷς ἔξεστιν, is consistent with normal Athenian official language, and allows anyone who wishes so among the qualified Athenians to bring a public charge.

To sum up, the stichometry of the speech shows that the document is a later insertion. Although it contains details not found in the orator's summary, none of these details needs an independent source, as a forger could have drawn them from other passages in the orators. In one case, with the expression ὡς ἑαυτῷ προσήκουσαν, the document's wording follows closely the wording of the orator, and yet this expression, which makes perfect sense in the orator's account, is quite out of place in the document. In another case, with the expression γραφέσθω πρὸς τοὺς θεσμοθέτας Ἀθηναίων ὁ βουλόμενος οἷς ἔξεστιν, the document presents a formula which is unparalleled both in Athenian inscriptions and in literary sources, and which goes against what we know of Athenian legal procedures. Given these difficulties, it is safer to consider this document a later forgery.

⁵⁸⁹ Aeschin.1.23, 32; Harp. s.v. Ναυτοδίκα; *Agora* 16.56 l. 25; *SEG* 21.494 l. 30; 23.77 l. 10; 26.72 l. 34.

5.3 [Dem.] 59.87: the law on seduction

NOMOS MOIXEIAS

[87...] ἐπειδὴν δὲ ἔλῃ τὸν μοιχόν, μὴ ἐξέστω τῷ ἐλόντι συνοικεῖν τῇ γυναικί: ἐὰν δὲ συνοικῇ, ἄτιμος ἔστω. μηδὲ τῇ γυναικὶ ἐξέστω εἰσιέναι εἰς τὰ ἱερὰ τὰ δημοτελῆ, ἐφ' ἧ ἂν μοιχὸς ἀλῶ: ἐὰν δ' εἰσίῃ, νηποινεὶ πασχέτω ὃ τι ἂν πάσχη, πλὴν θανάτου.

Anecd. Bek. 140.2-3 μηδὲ τῇ - εἰς τὰ ἱερὰ ταῦτα

MOIK(EIA in ras.) S^a | δὲ om. F^a | ἱερὰ <ταῦτα> *Anecd. Bek.* 140.3 (cf. § 88) | τὰ δημοτελῆ - ἱερὰ ταῦτα (§ 88) om. SY^aR (spatio vacuo relicto) | ἂν μοιχὸς Y^c : ἐὰν μοιχὸς FQ | εἰσίῃ Y^cQ^{sl} : εἴῃ FQ

LAW OF SEDUCTION

After he catches the seducer, the man who caught him shall not be permitted to continue living with the woman. If he continues living with her in marriage he is to be disfranchised. And the woman with whom a seducer has been caught shall not be permitted to attend the public cult ceremonies. If she enters, she is to suffer whatever she suffers, except death, with impunity.⁵⁹⁰

Stichometric calculations show that this document cannot have been part of the *Urexemplar*. It must have been inserted later.

Apollodorus quotes this law at the end of the discussion about Phano, allegedly Neaera's daughter (§ 49-87). From § 72 to 84 Apollodorus tells the judges about the scandalous incident of Theogenes marrying Phano while serving as King Archon. As Basilinna, she presided over the Anthesteria festival and carried out religious duties with her husband. According to Apollodorus, the Areopagus inquired into the identity

⁵⁹⁰ The translation is from Kapparis 1999: 141.

of Phano and found out, first, that she was not Athenian and therefore could not marry an Athenian citizen, let alone carry out religious duties as the Basilinna. Second, that she had been previously married to Phrastor, whereas the law prescribes that the wife of the Archon King must not have been previously married. When the Areopagus found out, Theogenes, in order to avoid punishment, immediately divorced Phano and dismissed Stephanus (whom he had hired as his assistant).

At § 85-7 Apollodorus argues that since Phano has also been seduced, not only was she not allowed to perform religious duties as Basilinna; she was not allowed to attend the public cult ceremonies at all. Apollodorus is here referring to her affair with Epainetos, a man from Andros, after Phrastor divorced her. This affair is discussed at § 64-71, where Apollodorus' argument is however that Phano was a prostitute at that stage, and Stephanus and Neaera plotted to catch Epainetos with her in order to claim that he was an adulterer and exact money from him. We have plenty of evidence proving that the laws on *moicheia* did not apply to prostitutes,⁵⁹¹ and therefore Apollodorus' argument is here contradictory; he is, for his argument's sake, interpreting the same events in completely different directions at different points in the speech, in order to prejudice the judges against Phano and Neaera and multiply the reasons for blaming them. At any rate if, as Kapparis has convincingly argued, Phano was not actually a prostitute, the law on *moicheia* was indeed valid for her.⁵⁹²

In Apollodorus' summary (§ 85-6), the law on *moicheia* provides that a woman with whom a seducer has been caught cannot attend any of the public cult ceremonies (οὐκ ἔξεστιν αὐτῇ ἐλθεῖν εἰς οὐδὲν τῶν ἱερῶν τῶν δημοτελῶν). If she does and breaks the law, she is to suffer whatever may happen to her, except death, with impunity

⁵⁹¹ At § 21 of this speech Metaneira, a prostitute, was initiated into the Eleusinian Mysteries. At § 116 a sacrifice is performed on behalf of a courtesan. Cf. also Cooper 1995: 303-18 about Hyp. fr. 30 Blass. Prostitutes also took part in the obscure festival called Haloa. Cf. Kapparis 1999: 413-17; Parker 2005: 199-201.

⁵⁹² Kapparis 1999: 295-300.

for whoever wishes to punish her (ἐὰν δ' εἰσίσωσι καὶ παρανομῶσι, νηποινεὶ πάσχειν ὑπὸ τοῦ βουλομένου ὅ τι ἂν πάσχη, πλὴν θανάτου). The law also provides that the punishment can be inflicted by whoever happens to be there when the woman transgresses the law (καὶ ἔδωκεν ὁ νόμος τὴν τιμωρίαν ὑπὲρ αὐτῶν τῷ ἐντυχόντι). The law allows any sort of humiliation for the woman caught with the adulterer who attends the public cult ceremonies, to prevent them from being polluted.

The second part of the law is very close to Apollodorus' wording: μηδὲ τῇ γυναικὶ ἐξέστω εἰσιέναι εἰς τὰ ἱερὰ τὰ δημοτελῆ, ἐφ' ἧ ἂν μοιχὸς ἀλῶ: ἐὰν δ' εἰσίῃ, νηποινεὶ πασχέτω ὅ τι ἂν πάσχη, πλὴν θανάτου. Kapparis has used this similarity as the main evidence to deem the document authentic.⁵⁹³ There is no reason to doubt that the words of Apollodorus are close to the words of the law, and the anacolouthon in ἀπαγορεύουσιν οἱ νόμοι ταῖς γυναιξὶ μὴ εἰσιέναι εἰς τὰ ἱερὰ τὰ δημοτελῆ, ἐφ' ἧ ἂν μοιχὸς ἀλῶ (and again in ἐὰν δ' εἰσίσωσι καὶ παρανομῶσι, νηποινεὶ πάσχειν ὑπὸ τοῦ βουλομένου ὅ τι ἂν πάσχη) with the sudden change of number points in this direction. The orator changes the number every time he switches to close quotation. This certainly proves that the law spoke about the woman in the singular. However, the fact that the document too speaks about the woman in the singular is very unsafe grounds to conclude, as Kapparis does,⁵⁹⁴ that the summary quotes from the text we read in our document. A forger had access to Apollodorus' summary, could have easily drawn from it the same conclusions as we do and, accordingly, drafted the document in the singular.

On the other hand, there is in fact a difference between the summary and the document: the summary explains that a woman caught with a seducer could be punished in any way (but not with death), with impunity, *by anyone who wishes so* (ὑπὸ τοῦ

⁵⁹³ Kapparis 1999: 356-7.

⁵⁹⁴ Kapparis 1999: 356.

βουλομένου). The next sentence in the summary again stresses that the punishment can be inflicted *by anyone who happens to be there* (τῷ ἐντυχόντι). This double reference strongly suggests that an expression such as ὑπὸ τοῦ βουλομένου must have been in the law, but the document lacks it.⁵⁹⁵

Strong grounds against the authenticity of the document come from Aeschines' summary of the same law about *moicheia* at Aeschin. 1.183.⁵⁹⁶ This passage, while confirming Apollodorus' summary at § 85-6, adds many provisions and details that are absent from the document. Aeschines attributes the law to Solon and claims that he τὴν γὰρ γυναῖκα ἐφ' ἣ ἂν ἀλῶ μοιχός, οὐκ ἐὰ κοσμεῖσθαι, οὐδὲ εἰς τὰ δημοτελῆ ἱερὰ εἰσιέναι, ἵνα μὴ τὰς ἀναμαρτήτους τῶν γυναικῶν ἀναμειγνυμένη διαφθείρῃ: ἐὰν δ' εἰσὶν ἢ κοσμήται, τὸν ἐντυχόντα κελεύει καταρρηγνύναι τὰ ἱμάτια καὶ τὸν κόσμον ἀφαιρεῖσθαι καὶ τύπειν, εἰργόμενον θανάτου καὶ τοῦ ἀνάπληρον ποιῆσαι ('the woman with whom a seducer is caught, he does not permit to adorn herself, nor to attend the public cult ceremonies, in order that she should not mix with the innocent women and corrupt them. But if she does attend, or adorn herself, he tells anyone who meets her to tear off her clothes, strip off her adornment and beat her - it is forbidden to kill or mutilate her...').⁵⁹⁷ The summary uses the singular, as the law is supposed to, and Aeschines also switches from the plural to the singular ([...] περὶ τῆς τῶν γυναικῶν εὐκοσμίας. τὴν γὰρ γυναῖκα...) when he starts the proper summary. The provisions summarized by Apollodorus in his account are all confirmed. However, Aeschines' summary adds that the woman caught with an adulterer, in addition to being

⁵⁹⁵ Kapparis 1999: 355 sees this, but claims that such an expression 'was included in one of the omitted sections of the law, and it is supposed to be understood here too'. This is no more than guesswork. In fact, the previous sections of the law would have dealt with the *kyrios* of the woman catching the seducer, and with the punishment of the seducer. This was not to be inflicted ὑπὸ τοῦ βουλομένου, but by the *kyrios* himself catching him with the woman. I do not claim that such an expression could not appear anywhere in the law, but I doubt whether ὁ βουλόμενος was key enough in this law to be understood. At any rate, the double reference to this expression in Apollodorus' summary makes sure that the expression was in this section of the law.

⁵⁹⁶ This was first noticed by Franke 1844: 742.

⁵⁹⁷ Tr. from Fisher 2001: 215.

banned from the public cult ceremonies, should not adorn herself (οὐκ ἔῃ κοσμεῖσθαι). That this was in the text of the law is confirmed by the fact that the sentence stating the punishments starts with ἐὰν δ' εἰσὶν ἢ κοσμήται, naming both prohibitions with repetitiveness typical of official language. This further specification was not mentioned by Apollodorus as it was irrelevant to his point, but was nevertheless in the law. Its absence from our document speaks against its authenticity. Moreover Aeschines explains that, in case the woman attends the public cult ceremonies or adorns herself, the law allows anyone (τὸν ἐντυχόντα again, which confirms that such an expression was in the law) to tear off her clothes, strip off her adornment and beat her, but not to kill or mutilate her. This list of punishments is absent from our document, which follows instead Apollodorus' account in providing that the woman 'is to suffer whatever she suffers'. Apollodorus' seems a very abbreviated version of Aeschines' list of punishments. Apollodorus also adds that the woman cannot be killed, whereas Aeschines adds that neither can she be mutilated. The absence of these details from the document speaks, again, against its authenticity.

Kapparis has tried to justify the absence from the document of the list of punishments, as well as the absence of any mention of mutilation, by claiming that these are Aeschines' interpretations of the concise wording of the law, rather than proper provisions. This is no more than guesswork. It is as likely that Apollodorus simply summarized the provisions of the law.⁵⁹⁸ Moreover Kapparis does not take into account the prohibition on adornments for women caught with a seducer. This provision, as we have seen, is repeated twice, and must have been in the law. Otherwise one should admit that Aeschines here is not simply interpreting, but actually lying, for no reason, about the contents of the statute. Fisher, who otherwise believes with Kapparis that

⁵⁹⁸ Kapparis 1999: 355-6. Fisher 2001: 338 agrees with Kapparis.

Aeschines is here interpreting, accepts this provision as part of the law.⁵⁹⁹ He justifies its absence from the document by claiming that this provision was 'omitted as not relevant to his case by Apollodorus'. But the document, authentic or not, was not inserted in the speech by Apollodorus. Its absence from the stichometry proves that it must have been inserted much later, either after having been forged or after having been retrieved by a very conscientious editor. Apollodorus' rhetorical aims cannot have anything to do with the wording of the document. Kapparis' and Fisher's arguments are inconclusive, and at least one, more likely all of the provisions mentioned by Aeschines were part of the law. Their absence from the document speaks against its authenticity.

Another way to justify the absence of these provisions from the document is to claim that the document is just a shortened version of the original law, an excerpt. This was the position of Staeker, Lipsius and Harrison.⁶⁰⁰ This hypothesis, although not impossible, is somewhat unlikely. The stichometry proves that the document was not in the speech from the beginning, but was inserted later. Therefore the document, to be authentic, must have been retrieved by a conscientious editor from some source, such as a collection of Athenian laws. When was it excerpted? If we assume that the editor shortened the document, we must explain why such a careful editor, after making the effort to retrieve the authentic law, would excerpt its provisions to such an extent. Any detail about the obligations of a woman caught with an adulterer which is not listed by Apollodorus falls from the document. What then was the purpose of retrieving the law in the first place, if the result could have been easily drawn from Apollodorus' words? The alternative is that the editor found the law already excerpted this way. But it defies the laws of probability that an authentic and complete law transmitted autonomously in a collection of Athenian statutes ended up showing only those very features that

⁵⁹⁹ Fisher 2001: 338. Cf. also Carey 1992: 129.

⁶⁰⁰ Staeker 1884: 36; Lipsius 1905-15: 434 n. 51; Harrison 1968: 35-6 and n. 1.

Apollodorus had summarized in his speech. At any rate, as MacDowell observed about another document, 'it ought not to need saying that somebody's digest of a decree is not the authentic decree'.⁶⁰¹

A more serious argument in defence of the document is that offered by Carey in his commentary of the speech. Carey observes that the information provided by the first part of the document, namely that a man who has caught his wife with an adulterer must divorce her or be *atimos*, is not found in Apollodorus' summary, and therefore, he concludes, 'probably this document is genuine'.⁶⁰² This argument however is vulnerable to two objections. First, this is actually the only evidence that such a provision ever existed. *Moicheia* was, as has been recognized,⁶⁰³ not only an offence against marriage, but it also applied to widows and unmarried women. The person responsible for punishing the adulterer was not necessarily the husband, but whoever happened to be the *kyrios* of the woman, irrespective of whether she was married or not. The law about *moicheia* applied also if there was no husband. If this was the case, one might wonder what is the sense of such a general provision stating that 'after he catches the seducer, the man who caught him shall not be permitted to continue living with the woman'. Moreover, not a single passage in the orators or elsewhere mentions that a man who has caught a woman with a seducer has to divorce her. In fact, in Lysias' *On the killing of Eratosthenes*, where the case is about the killing of a seducer, Euphiletus never mentions nor alludes to such a provision.⁶⁰⁴ This provision might simply have been invented by a forger, and we have seen many cases of forgers' ingenuity. In fact,

⁶⁰¹ MacDowell, *CR* 35/2 (1985) 319.

⁶⁰² Carey 1992: 129.

⁶⁰³ This reconstruction of *moicheia* as applying to married women as well as unmarried was first formulated by Paoli 1950: 123-82 and endorsed by Harrison 1968: 32-6 and Dover 1974: 209. Cohen 1984 and 1991: 98-132 argued against this reconstruction for an understanding of *moicheia* as 'adultery' in the traditional, modern sense, but his arguments have been rightly rejected by Cantarella 1991: 289-96, Foxhall 1991 and Carey 1995: 407-8.

⁶⁰⁴ Cf. Todd 2007: 48 and n. 27. Cohn-Haft 1995: 3 and Fernandes 1999: 106 n. 74 want to find a reference to this law in Lys. 14.28, but the passage only states that the daughter of Alcibiades was divorced because her brother 'visited her not as a brother, but as a husband', not that he had to divorce her because of that (cf. Todd 2007: 48 n. 27).

Apollodorus quotes the statute about *moicheia* in reference to Phano, after having described the events that led to her being divorced by Theogenes. A forger could have misunderstood Apollodorus' argument and drawn the wrong conclusions, creating a provision that imposes by force of law what Theogenes decided to do independently. The second objection to Carey's argument is that, even if the provision actually existed, this would not prove that the law is authentic. Ancient readers had access to a greater number of Attic speeches than we do, and forgers drew information from many sources. A forger could have read this piece of information in a speech now lost, and used it for his document.

To sum up, the document is a later insertion and, although it does not present any feature absolutely unacceptable in an authentic Athenian statute, is slightly inconsistent with Apollodorus' summary of the law, and heavily inconsistent with Aeschines', as it lacks key provisions that must have been part of the law. The first part of the document, whether such a provision existed or not (and there are reasons to believe that it did not), does not suffice alone to prove its authenticity, and could have been invented by a forger on the basis of the previous narrative in the speech.

5.4 [Dem.] 59.104: the decree of naturalization of the Plataeans

ΨΗΦΙΣΜΑ ΠΕΡΙ ΠΛΑΤΑΙΕΩΝ

Ἴπποκράτης εἶπεν, Πλαταιέας εἶναι Ἀθηναίους, ἀπὸ τῆσδε τῆς ἡμέρας ἐντίμους καθάπερ οἱ ἄλλοι Ἀθηναῖοι, καὶ μετεῖναι αὐτοῖς ὥνπερ Ἀθηναίοις μέτεστι πάντων, καὶ ἱερῶν καὶ ὁσίων, πλὴν εἴ τις ἱερωσύνη ἢ τελετὴ ἐστὶν ἐκ γένους, μηδὲ τῶν ἐννέα ἀρχόντων, τοῖς δ' ἐκ τούτων. κατανεῖμαι δὲ τοὺς Πλαταιέας εἰς τοὺς δήμους καὶ τὰς φυλάς. ἐπειδὰν δὲ νεμηθῶσι, μὴ ἐξέστω ἔτι Ἀθηναίῳ μηδενὶ γίγνεσθαι Πλαταιέων, μὴ εὐρομένῳ παρὰ τοῦ δήμου τοῦ Ἀθηναίων.

2 ἐντίμους codd. : ἐπιτίμους Cobet at al. | καὶ om. S^a | 3 ante πλὴν Riehemann add. ἀλλὰ μὴ τῶν ἱερωσυνῶν : Carey lacunam stat. | 4 ante μηδὲ Reiske add. τούτων μὴ μετεῖναι αὐτοῖς : Osborne ἀλλὰ μὴ τῶν ἱερωσυνῶν : Carey lacunam stat. | post ἀρχόντων Reiske add. λαχεῖν vel γενέσθαι | 5 post τούτων Reiske lacunam stat. : Osborne add. ἂν ὧσιν ἐξ ἀστῆς γυναικὸς καὶ ἐγγυητῆς κατὰ τὸν νόμον

DECREE ABOUT THE PLATAEANS

Hippocrates proposed that the Plataeans be Athenian, entitled to office from this day (enfranchised) like the rest of the Athenians, that they have a share in all that the Athenians have a share in, both sacred and civil, except if some priesthood or rite comes from the membership of a *genos*, nor the nine archons, whereas their offspring do. And the Plataeans are to be distributed among the demes and tribes, and when they have been distributed, none of the Plataeans is to become an Athenian unless he gets the grant from the Athenians.

According to stichometric calculations this document cannot have been part of the *Urexemplar* of the speech, and must have been inserted at a later date. Apollodorus' aim in this section of the speech (89-92) is to show how important the Athenians consider citizenship and how difficult it is for a foreigner to receive it. He therefore recalls the relevant provisions of the current legislation about citizenship without quoting them. First, citizenship can be granted only to someone who has benefited the city of Athens. Second, the grant, after being approved, must be confirmed in a second Assembly with a *quorum* of 6000 and a vote by secret ballot. Even after the second vote, the grant is still subject to a γραφή παράνόμων. Apollodorus mentions the names of two citizens who lost their citizenship after being prosecuted on this charge. The next provision mentioned prohibits those who become citizens by decree from holding the archonship and any priesthood, but grants their offspring full rights 'if they are born from a citizen and legally betrothed woman' (§ 92).

In the next section, § 93-103, Apollodorus traces the origin of this last provision to a specific case, the grant given to the Plataeans. Citizenship was granted to them because of the many benefits they brought the Athenians. At the Battle of Marathon they were the only ones to fight with the Athenians against Datis, the general of king Darius. Later in the Persian War the Plataeans, unlike the Thebans and the other Boeotians, fought with Leonidas at Thermopylai, with the Athenians at the Artemisium and at Salamis, and eventually with all the Greeks under Pausanias at Plataea. Afterwards, when Pausanias insulted all the allies by inscribing his sole name as victor over the Persians on the Serpent Column at Delphi jointly dedicated to Apollo by the Hellenic League, the Plataeans undertook his prosecution before the Amphietyony. According to Apollodorus, this was the reason why fifty years later the Spartans attacked Plataea and eventually conquered the city. Even during the siege, the Plataeans refused to withdraw from their alliance with the Athenians. After these acts of loyalty

citizenship was granted to people who had lost everything, their belongings, their children, their wives, in order to maintain their alliance with Athens.

At § 105-6, after the secretary has read out the decree, Apollodorus summarizes its provisions: the naturalized Plataeans must first undergo scrutiny in court, man by man, and later their names must be inscribed on a pillar of marble on the Acropolis near the temple of the Goddess. No Plataean can claim citizenship by virtue of this decree at a later time. Finally, no naturalized Plataean can be chosen by lot for the office of archon, nor can he hold any priesthood, but his offspring can if born from an Athenian woman who married him according to the law.

The document is heavily inconsistent with this summary, and its provisions have often been emended to solve these disagreements. Moreover, its language is inconsistent with contemporary Athenian inscriptions.

At the beginning of the decree the statement clause (Πλαταιέας εἶναι Ἀθηναίους ἀπὸ τῆσδε τῆς ἡμέρας) is not perfectly consistent with the epigraphical evidence: in early epigraphical instances of naturalization grants the statement clause is usually followed, immediately (D2, D3, D6, D8, D10, D11, D12, D13)⁶⁰⁵ or after a very short motivation clause (D7 ἐπειδὴ ἐστ[ιν ἀνὴρ ἀγαθὸς περὶ τὸν δῆμον τ]ὸν Ἀθηναίων, D9 ἀνδραγαθίας ἐν[εκα] τῆς ἐς Ἀθηναίους), by the provision for the enrolment of the new citizen(s) in demes, tribes and phratries (D2, D3, D6, D8, D10, D11, D12, D13).⁶⁰⁶ In the only case in which a long section divides the statement clause from the enrolment clause (D5, for the Samians, 405/404 and 403/402), this happens for a very specific reason: the grant is addressed to Samians still living in Samos, and

⁶⁰⁵ The naturalization decrees are hereafter named according to the list provided by Osborne 1981-2: I, 17-18: D2=IG I³ 102; D3= IG I³ 113; D4=D5= IG I³ 127= IG II² 1; D6= IG II² 10+*Addendum* p. 665; D7= IG II² 19+*Addendum* p. 659; D8= IG II² 17+SEG 15.84+SEG 16.42; D9= IG II² 25+SEG 15.86; D10= IG II² 103; D11= IG II² 109=SEG 16.47; D12= IG II² 207; D13=*Hesperia* 13 (1944) 229 f. no. 3; D14= IG II² 226+*Addendum* p. 659+O. Walter, *Jahreshefte* 32 (1940) 1 ff.; D15= IG II² 228; D16= IG II² 237+*Addendum* p. 659; D17+ IG II² 336 I.

⁶⁰⁶ Cf. Henry 1983: 68-69.

therefore πολιτευόμενος ὅπως ἂν αὐτοὶ βόλωνται (l. 13). It is just an amendment to the main decree passed two years later which states (l. 34f) that the Samians living in Athens are to be distributed among the tribes.⁶⁰⁷

In the document, on the other hand, the statement clause is followed by two other sentences stressing the sharing of the citizenship between Athenians and Plateaeans (ll. 2-3 ἐντίμους καθάπερ οἱ ἄλλοι Ἀθηναῖοι, καὶ μετεῖναι αὐτοῖς ὥνπερ Ἀθηναίους μέτεστι πάντων, καὶ ἱερῶν καὶ ὁσίων). Luisa Prandi considers this 'abbondanza' 'poco pertinente al formulario conciso di un decreto del V secolo'.⁶⁰⁸ These two formulae moreover are both unparalleled in citizenship grants. Again the document is here at least atypical.

More strikingly, the expression ἀπὸ τῆσδε τῆς ἡμέρας finds no parallels at all in the surviving examples of naturalization grants, nor in any preserved grant of privileges to benefactors. A search through all the Attic inscriptions of the PHI database yields only three results, from completely different kinds of documents, which have nothing to do with grants of privileges, and none of them dates earlier than the middle of the IV century: *IG II² 534*=Aleshire. Ath. Asklepieion 177.IV=*SEG* 39.165 (l. 7), a record of offers to Asclepius, dates to 274-3 BCE; *IG II² 1128* (l. 27), the restatement of Athenian privileges in the import of red ochre from the *Koresioi*, dates to the middle of the 4th century; finally *IG II² 204* (l. 17),⁶⁰⁹ a decree from Eleusis concerning the sacred *orgas* (land), dates to 352/1 BCE. The expression is not intrinsically 'unattic', but the scarcity of Classical occurrences, also in literary texts,⁶¹⁰ shows that it is not typically Attic either; it is not, that is, what an Athenian would have used to mean 'from this day on', 'from now on.'

⁶⁰⁷ Cf. Osborne 1981-2: II, 25-26.

⁶⁰⁸ Prandi 1888: 114.

⁶⁰⁹ Cf. Scafuro 1999.

⁶¹⁰ This expression is unparalleled in 5th century literary texts, and very rare in 4th century ones. The only occurrences are Plat. *Lach.* 181c3, Plat. *Alc. I* 135d10 and Xen. *Cyr.* 7.4.5. None of these instances have anything to do with legal language.

The reading ἐντίμους of l. 2 ('honoured' LSJ s.v.), attested in all parts of the tradition, has been considered wrong on the grounds that the usual meaning does not fit the context. All scholars have considered the meaning 'enfranchised' to be required by the context, and this word is never found with that meaning, neither in literary texts nor in inscriptions.⁶¹¹ It has been therefore corrected by Cobet⁶¹² to ἐπιτίμους ('in possession of his rights and franchises' LSJ s.v.). However, the correction made by Cobet is still an unattested term in naturalization decrees and, although it is common in Athenian literary sources, a survey in the PHI database yields no Attic instances at all of this adjective (or the noun ἐπιτιμία) with the particular meaning of 'enfranchised.' Finally, a study of the occurrences of this word in the literary sources up to the end of the IV century shows that both before and after the date of this grant it was never employed to refer to rights bestowed upon some non-citizen, be he a metic or a foreigner. On the contrary, it was used in opposition to the term ἄτιμος in regard to citizens to indicate that they were in full possession of their full rights.⁶¹³ This emendation is therefore unacceptable, since the restored expression does not conform with Attic usage. Moreover the correction is based on the assumption that here the text needs a word with the meaning 'enfranchised.' Yet this might be wrong: in at least two cases, *IK Kyme* 4 l. 12 and 5 l. 8 (the word is restored also in *IK Kyme* 7 and 8), both citizenship decrees, one dating to mid-3rd century and the other to the beginning of the 2nd century, we find this word meaning 'entitled to office', together with the specification

⁶¹¹ The only dubious evidence for such a meaning is *IG IX, I*² 3, 718, l. 35 = *Nomima*, I, no. 43, from Chaleon in Locris, yet Meiggs and Lewis 1969 (no. 20) are probably right in preferring the meaning 'in office'.

⁶¹² Cobet 1858: 751.

⁶¹³ A survey in the TLG yields, up to the IV century, these results, and they all confirm this interpretation: *Lys.* 12.21; *Ps.-Lys.* 6.13, 44; *Ps.-Lys.* 20.19, 35; *Lys.* 25.27; *Aeschin.* 1.160; *Aeschin.* 2.88; *Dem.* 18.312; *Dem.* 21.61, 96, 99, 106; *Dem.* 24.45, 90, 103; *Dem.* 25.71, 73, 94; *Dem.* 26. 1, 11; *Andoc.* 1.73, 80, 103, 107, 109; *Lycurg.* 41; *Hyp. fr.* 27-28 (Jensen); *Dein.* 5.2. *Cf.* also *Thuc.* 5.34; *Xen. Hell.* 2.2.11; [*Arist.*] *Ath. Pol.* 39.1. The case of *Dem.* 23.44-45 is a peculiar one, and even there the meaning of ἐπίτιμος is 'not confiscated', referring to goods and not to people. A further entry is the Solonian law quoted at *Plut. Sol.* 19.3, and again the term refers to citizens previously deprived of their rights who are now restored.

εὐθύς (immediately). Our document, if we put a comma before ἀπὸ τῆσδε τῆς ἡμέρας, might have the same meaning. However these parallels are both geographically and chronologically remote, and nothing similar is found in Athens, neither in Classical nor in post-Classical times, not only in citizenship grants but also in the honorary grants preserved in stone. The word ἔντιμος appears only twice in Attic inscriptions (*SEG* 23:161 l. 29 and *IG* II² 7863 l. 9) and in both cases it means 'honored.' As for literary texts from Classical times, a search in TLG yields 117 entries, and in all cases the meaning is 'honored.'⁶¹⁴ The parallels from Kyme show that such a formula might have been felt as appropriate in a citizenship grant in later times, and in different places, and therefore be added in a forged one, but the expression as it stands does not occur in Athenian documents during the Classical period.

The next expression states the rights of the Plataeans: μετεῖναι αὐτοῖς ὄνπερ Ἀθηναίοις μέτεστι πάντων, καὶ ἱερῶν καὶ ὁσίων.⁶¹⁵ This formula is not found in any of the Athenian citizenship grants preserved in inscriptions, and does not seem to have

⁶¹⁴ *LSJ* s.v. ἔντιμος II mentions the meaning 'in office' as appropriate in one Classical place: Pl. *Resp.* 564d ἐκεῖ μὲν διὰ τὸ μὴ ἔντιμον εἶναι, ἀλλ' ἀπελαύνεσθαι τῶν ἀρχῶν. Plato is there explaining why the drones, present in both democratic and oligarchic states, are less powerful in the oligarchies. It is easy to see that the sentence works perfectly with the normal meaning 'honored', and this is how Shorey translates it: 'There, because it is not held in honor, but is kept out of office...' The evidence of five other places in the same dialogue (528b, 528c, 548a, 554b, 555c) where the word clearly means 'honored' strongly advises against reading too much into the present passage.

⁶¹⁵ About the expression *hiera kai hosia* Kapparis 1995: 395 quotes Wyse 1904: 535: 'this phrase is comprehensive enough to embrace all the rights of a citizen'. This is not the place for discussing the *vexata quaestio* of the meaning of *hiera kai hosia* (cf. in general Maffi 1982 and Connor 1988), meaning all the rights and obligations of a citizen, before the IV century. This expression never appears in naturalization grants, and the evidence for its usage in official documents is inconclusive. The ephebic oath (cf. Rhodes - Osborne 2003: 88), with these words, implies mainly the concept of 'fatherland' (cf. Connor 1988:168), and moreover the 'faint echoes' (as Rhodes - Osborne 2003: 449 define them) of the oath found by Siewert 1977 in fifth century texts do not include this expression. The expression is used by Dem. 23.40 in his comment on Draco's homicide law, but it is dubious whether the orator was here repeating the exact words of the law (cf. Connor 1988:168-169, as the inscribed version of *IG* I³ 104 does not present the formula). A more reliable source however could be the law about the *nothoi*, paraphrased at Isae. 6.47 and quoted at Dem. 43.51, even if the authenticity of this document has been questioned (cf. for bibliography Drerup 1898: 280-297, who nonetheless considers the quotation an original law). Blok 2009: 145-6, 159-62 argues for the presence of this expression even in Pericles' citizenship law. I agree that its use in official documents is not impossible, but the question is open. In any case the expression was widely used in the orators, and probably sounded familiar to any reader of Demosthenes (cf. Dem. 23.40, 65; 24.9, 11, 82, 101, 111, 112, 120, 137), so its presence in a forgery should not surprise us.

been used in Attic inscriptions for any other purpose,⁶¹⁶ neither in exactly this form nor in a similar fashion. However, it appears in a strikingly similar way in Dem. 23.65: Ἡμεῖς, ὧ ἄνδρες Ἀθηναῖοι, Χαρίδημον ἐποίησάμεθα πολίτην, καὶ διὰ τῆς δωρεῖας ταύτης μετεδώκαμεν αὐτῷ καὶ ἱερῶν καὶ ὀσίων καὶ νομίμων καὶ πάντων ὅσων περ αὐτοῖς μέτεστιν ἡμῖν ('We, Athenians, made Charidemus a citizen, and through this grant we bestowed upon him our sacred, civil and legal rights, everything we have a share in').⁶¹⁷ Yet here Demosthenes is not quoting the actual text of the grant to Charidemus, but rather describing the consequences of such a grant. This text, far from attesting the usage of this formula in Athenian naturalization grants, could possibly be a source the forger used when composing the document.

Luisa Prandi 114 regards the entire passage as 'quasi un preludio funzionale' to the following exclusion of the first generation of new citizens from the *genos*-priesthoods⁶¹⁸ and archonships. It is accordingly worth noting that in the following comment by Apollodorus (§ 106) the corresponding expression to μετεῖναι αὐτοῖς ὧνπερ Ἀθηναῖοις μέτεστι πάντων, καὶ ἱερῶν καὶ ὀσίων of the quoted document is τὸν νόμον διωρίσατο ἐν τῷ ψηφίσματι πρὸς αὐτοὺς εὐθέως ὑπὲρ τε τῆς πόλεως καὶ

⁶¹⁶ A formula similar to the one found in this passage is attested in many honorary grants (*IG* XII 3 1296 ll. 24-5; 5 716 ll. 7-8; 5 717 ll. 6-7; 5 718 ll. 8-9; Suppl. 246 ll. 4-6; 8 264 ll. 9-10; 8 267 ll. 8-9; Suppl. 355 ll. 3-4; 9 197 ll. 20-4; 9 198 ll. 12-5; 9 317 ll. 10-4; 9 239 ll. 23-5; *Eretria* XI, 127 8 ll. 13-5; *Miletus* 35 ll. 23-5; 38 ll. 30-3; 39 ll. 43-4; 61 ll. 12-5; *Magnesia* 43 ll. 28-30; *Teos* 39 l. 1; 40 ll. 13-5; *Iasos* 68 ll. 23-4; *Priene* 62 ll. 11-4; *Kolophon* 8 ll. 8-11) connected with citizenship, sympolity, proxeny, *ateleia*, *enktesis* and *isopoliteia* from some Aegean islands (Thera, Thasos, Andros, Eretria in Euboea) and from Asia Minor (mainly from Caria and Miletus). None of these decrees dates before the 4th century, and most of them date from the 3rd century on. This shows that, where such a formula was part of the official language, its range of application was wide, and not restricted to citizenship grants. Its absence in Athens from all the honorary grants, a wide sample of texts, makes clear that this was not considered an official formula there. Its use in later times, and just outside Athens, on the other hand, makes possible, but this is just speculation, that a post-Classical forger could consider Demosthenes' remark in the *Against Aristocrates* as the actual words of the decree, on the basis of his own experience of honorary grants.

⁶¹⁷ A further connection between the two passages, and one which could account further for the derivation of the clause of the document from the text of the *Against Aristocrates* is § 92 of the *Against Neaera*. There we read, with regards to the offspring of a new citizen, τοῖς δ' ἐκ τούτων μετέδωκεν ἤδη ὁ δῆμος ἀπάντων, which shows the same construction as the *Against Aristocrates*' passage and the document's one.

⁶¹⁸ Blok - Lambert 2009 point out that this definition is more correct than the traditional 'hereditary priestoods', since these priests were appointed from the members of a particular *genos*, but were not in a narrower sense hereditary.

τῶν θεῶν.⁶¹⁹ Yet it is not clear whether this sentence is supposed to quote an actual clause of the decree, or rather to recall the reason for which Apollodorus has quoted and is commenting on this particular decree. In the first case we would expect in the text of the decree an allusion to the law which provides rights and obligations to new citizens,⁶²⁰ while in the second case Apollodorus would be referring to a particular argument already employed in this section of the speech. At § 93 in fact he states that he is going to trace back the origins of the provision on naturalization of foreigners he has just mentioned at § 92. Then, after the long *excursus* about the misfortunes of the Plataeans, at § 104 he declares that the 'decrees will make the law clear for everyone.' According to Apollodorus' argument, this decree actually defines the provisions of the law.

In both cases the language, style, and formulas of the document provide grounds against authenticity. They seem rather the attempt of a later editor to paraphrase (with some misunderstanding) the summary of Apollodorus and at the same time to link its contents to other parts of Apollodorus' narrative.

These exceptions, namely the prohibition for the Plataeans on sharing *genos*-priesthoods, τελεταί and the archonship (Il. 3-5), are important differences between the document and the following summary by the orator. Apollodorus states at § 106 that the naturalized Plataeans were banned from all the priesthoods, not just from those linked with a *genos*. Because of this inconsistency and the grammatical difficulty of the sentence (πλὴν εἴ τις ἱερωσύνη ἢ τελετή ἐστὶν ἐκ γένους, μηδὲ τῶν ἐννέα ἀρχόντων, τοῖς δ' ἐκ τούτων), this part of the document has always been subject to

⁶¹⁹ 'He (the orator who proposed the decree: § 105), in the decree, defined immediately the law which applied to them in regard to the city and the gods'. Van den Es 1864: 24 rightly wrote: 'Quid ex prioribus vocabulis eliciendum sit, non difficile est dictu: illa pro re publica et pro diis, ὑπὲρ τε τῆς πόλεως καὶ τῶν θεῶν, significant, iis omnium iurum et civilium et divinorum communionem datam esse.' Hence the formula μετεῖναι [...] πάντων, καὶ ἱερῶν καὶ ὁσίων.

⁶²⁰ Cf. Dem. 20.156 for an instance of a law recalling for particular provisions another law.

many emendations, aiming at correcting both its syntax and the phrases that are inconsistent with Apollodorus' account.

On the grammatical side, Reiske posited a *lacuna* after τοῖς δ' ἐκ τούτων, which introduced an exception to the provisions previously stated, and whose ending would have vanished in the tradition. The supplement proposed by Osborne (ὅν ὥσιν ἐξ ἀστῆς γυναικὸς καὶ ἐγγυητῆς κατὰ τὸν νόμον),⁶²¹ on the grounds of the comment made by Apollodorus at § 106, might well be correct in principle,⁶²² but it is untenable on paleographical grounds. As I have already pointed out, the manuscript tradition of Demosthenes does not have a medieval archetype, and the main manuscripts have been shown to stem from different ancient editions of Demosthenes, or even better from different editions of speeches or groups of speeches. It is significant that the tradition exhibits no major variations, and is almost perfectly consistent in all the main manuscripts. It defies the laws of probability that such a corruption could originate independently in every single ancient manuscript and be then copied in the medieval manuscripts. Moreover, as Blok and Lambert have recently argued, there is no intrinsic grammatical reason to supplement the text of the document here.⁶²³ The only reason to do so is thus to make the document match the contents of Apollodorus' summary. But this is a *petitio principii*.

However, this is not the only attempt to emend this passage. Many scholars have considered the sentence as lacking both grammatically and in clarity. This is mainly due to the single μηδὲ at l. 4.⁶²⁴ The best attempt to emend the sentence is that of Reiske,⁶²⁵ based mainly on the corresponding words of Apollodorus at § 106: he alters the text after πλὴν εἴ τις ἱερωσύνη ἢ τελετή ἐστὶν ἐκ γένους in τούτων μὴ μετεῖναι αὐτοῖς

⁶²¹ '... if they are born from a citizen and legally betrothed woman'.

⁶²² Blok 2009: 166 endorses Osborne's text.

⁶²³ Blok - Lambert 2009: 104 n. 62.

⁶²⁴ Osborne 1981-2: I, D1; Kapparis 1995: 362-363.

⁶²⁵ In Schäfer 1824-1833: V, 587.

μηδὲ τῶν ἐννέα ἀρχόντων λαχεῖν (or γενέσθαι).⁶²⁶ This solution is unsatisfactory too. In the first place the structure of the sentence remains quite involved: the clause τούτων μὴ μετεῖναι αὐτοῖς merely repeats πλὴν εἴ τις ἱερωσύνη ἢ τελετὴ ἐστὶν ἐκ γένους, which is already connected to the previous μετεῖναι (l. 2), and therefore makes the sentence utterly redundant. Furthermore, the hypothesis of such a corruption is untenable for the same paleographical reasons I have already discussed.

Kapparis may be right when he claims that the problems here 'should rather be attributed to the editor who inserted this document in the text, rather than the scribes'.⁶²⁷ The problems in the text certainly occurred in the original insertion, whether it was an excerpt of the original decree or a forgery. But since, as shown before, every attempt to improve this hypothetical excerpt by filling its 'omissions' seems to produce even more elaborate versions, it is highly implausible that the problems in the document arose from clumsy excerpting.

The main clue in this direction is far from conclusive: μηδὲ stands rarely alone, but the case is not impossible. Denniston devotes two pages to instances of οὐδὲ or μηδὲ without a negative preceding.⁶²⁸ This feature is mainly typical of poetry, but it is sometimes found in prose texts as well (e.g. Thuc. 7.77.1; Hdt. 1.215.2), with a strong adversative meaning. Furthermore, the two exceptions to the single provision καὶ μετεῖναι αὐτοῖς ὧνπερ Ἀθηναίοις μέτεστι πάντων, expressed (with a strong *variatio*) in the first case by a πλὴν εἴ, and in the second by μηδὲ τῶν ἐννέα ἀρχόντων held by the previous μετεῖναι, are probably quite unusual, but nonetheless grammatically possible. The clause seems for the most part to be grammatically consistent. Its intricate style can hardly be explained by the deletion of some phrases in

⁶²⁶ '... they are not to have a share in those (i.e. the *genos*-priesthoods and rites) nor are to obtain by lot the office of the nine archons'. Kapparis 1995: 396 does not expressly reject this proposal, even if he attributes all the alterations of the text to the original editor of the document. Blok 2009: 166 accepts this correction, but Blok - Lambert 2009: 104 n. 62 rightly rejects it as unnecessary.

⁶²⁷ Kapparis 1999: 396.

⁶²⁸ Denniston 1934: 191-192.

order to produce an excerpt. The text preserved in the *paradosis* is in this sense original, and should undergo a thorough analysis as it stands.

On the grounds of the content, many scholars have tried to remove the inconsistency between Apollodorus' summary and the document by correcting its text. Apollodorus clearly states at § 106 that μὴ ἐξεῖναι αὐτῶν μηδενὶ τῶν ἐννέα ἀρχόντων λαχεῖν μηδὲ ἱερωσύνης μηδεμῶς ('the new citizens are neither allowed to take part in the archonships nor in any priesthood'). The document on the other hand claims that they are to have a share in everything the citizens do, καὶ ἱερῶν καὶ ὁσίων, πλὴν εἴ τις ἱερωσύνη ἢ τελετὴ ἐστὶν ἐκ γένους, μηδὲ τῶν ἐννέα ἀρχόντων. So they are not excluded from the priesthoods in general, just from those connected with belonging to a particular *genos*. Riehemann⁶²⁹ proposed ἀλλὰ μὴ τῶν ἱερωσυνῶν ('but not in the priesthoods') after καὶ ἱερῶν καὶ ὁσίων, reversing the sense of the following exception: the Plataeans were not to hold any priesthood, except the ones that were connected with their own *genos*. This emendation, although it reconciles the text of the decree with the comments by Apollodorus, is very radical and unlikely to be right: the Plataeans did not need any authorization to preserve their own traditions.⁶³⁰ On the other hand Osborne's proposal of moving ἀλλὰ μὴ τῶν ἱερωσυνῶν before μηδὲ (Osborne: D1)⁶³¹ is equally difficult to accept. In this case in fact the exclusion from the *genos*-priesthoods would become completely tautological, as the *genos*-priesthoods are actually part of the priesthoods in general.⁶³² It seems that every attempt to make the text completely consistent with Apollodorus' paraphrase is therefore doomed to failure. The inconsistency cannot be removed by textual surgery and is another reason to reject the authenticity of the document.

⁶²⁹ Riehemann 1886: 47.

⁶³⁰ Cf. Kapparis 1995: 362; 1999: 395.

⁶³¹ Blok 2009: 166, accepts this proposal, but Blok - Lambert 2009: 104 n. 62 reject it.

⁶³² Kapparis 1995: 362; 2009: 395. Cf. also MacDowell, *CR* 35/2 (1985) 319.

Kapparis accepts the inconsistencies and explains them as a deliberate distortion of the decree by Apollodorus. The real provisions therefore would be preserved just in the quoted document. Yet this interpretation too creates some problems. First of all, Apollodorus, when talking at § 92 about the provisions of a law on citizenship, tries to trace them back to the naturalization grant for the Plataeans, and gives exactly the same account of its limitations as in the comment on the decree, with almost the same words: 'the law expressly forbids that they should be eligible to the office of the nine archons or to hold any priesthood; but their descendants are allowed by the people to share in all civic rights, though the proviso is added: if they are born from an Athenian woman who was betrothed according to the law.'⁶³³ The reasons for such limitations provided in that passage are then perfectly consistent with the nature of the recorded provisions: new citizens are excluded from all priesthods and archonships, the actual religious authorities in Athens,⁶³⁴ 'in order to make sure that the sacrifices on behalf of the city are performed according to piety' (ὥστε δι' εὐσεβείας τὰ ἱερὰ θύεσθαι ὑπὲρ τῆς πόλεως). Moreover, limiting the exclusion to *genos*-priesthoods would have been nonsense, since this kind of office was by definition limited to members of particular *gene*.⁶³⁵ It is hard to deny that Apollodorus' account in this respect makes much better sense than the quoted document. The discrepancies here point decisively to the hypothesis of a later forgery.

The text of the document, with its involved syntax, reads like an awkward attempt to rephrase and supplement the information provided by Apollodorus while at the same time making it more precise. The priesthods in general, because of the prohibition

⁶³³ The repetition of the provision ἄν ὧσιν ἐξ ἀστῆς γυναικὸς καὶ ἐγγυητῆς κατὰ τὸν νόμον at § 92 with almost exactly the same words makes it very unlikely that this is Apollodorus' gloss, as proposed by Blok - Lambert 2009: 104 n. 62.

⁶³⁴ About the religious authorities in Athens see Garland 1984 and Parker 1996: 7-8 on the archons, and 56-66 on the role of the *gene* in Athenian religion.

⁶³⁵ See also Prandi 1988:114-115, n. 61 and Blok 2009: 166-7 n. 107. Kapparis 1995: 369 motivates the provision as addressed against Plataeans liable to *genos*-priesthoods by adoption into the relevant families. A similar contingency would have been very unlikely, and therefore it is likewise unlikely that it needed a specific provision. Cf. Blok - Lambert 2009: 104 for a similar remark.

itself, are misunderstood as those connected with *genos*, which were by definition known as closed to everyone except a few people from particular families. τελεταί are then added as a further specification (that is, as a further example of prohibition). The word in Attic Greek stands for 'ancestral rites' and is usually (although not invariably) employed in ancient texts in connection with mysteries and initiation processes, and more generally about very solemn and secret rituals.⁶³⁶ The forger here had probably in mind the *hieros gamos* of the Basilinna with Dionysos, repeatedly described by the orator (§ 74-5) as 'secret'. The orator there, in order to explain the reason for which the Basilinna must be a citizen woman who has not had intercourse with another man, uses these words: ἵνα κατὰ τὰ πάτρια θύηται τὰ ἄρρητα ἱερὰ ὑπὲρ τῆς πόλεως, καὶ τὰ νομιζόμενα γίγνηται τοῖς θεοῖς εὐσεβῶς. There is a striking resemblance with the reason for the prohibition given by the orator for first generation naturalized citizens on becoming priests and archons: ὥστε δι' εὐσεβείας τὰ ἱερὰ θύεσθαι ὑπὲρ τῆς πόλεως. It is not surprising that a forger thought of a connection between the two passages and considered it appropriate to add the τελεταί, secret rituals, to the list of prohibitions for naturalized citizens. It is clear however that the two passages refer to different rules, concerned with completely different matters.

Another difference between the clauses of the document and the account of Apollodorus concerns the prohibition on further grants of citizenship to Plataeans (Il. 6-7), after the scrutiny of the new citizens. At § 106 Apollodorus paraphrases the clause with these words: καὶ ὕστερον οὐκ ἔα γίνεσθαι Ἀθηναῖον ἐξεῖναι, ὃς ἂν μὴ νῦν γένηται καὶ δοκιμασθῇ ἐν τῷ δικαστηρίῳ ('And he does not let anyone be allowed to become Athenian subsequently, who at the time did not receive the grant and was not scrutinized in court). Kapparis argues that these words imply a total prohibition valid forever, while the text of the document more plausibly states that Plataeans are still

⁶³⁶ Cf. Harrison 1914; Waanders 1983: 156-159 for specific surveys on the meaning of the term.

enabled to become Athenian citizens if so decreed by the people of Athens (μὴ ἐξέστω ἔτι Ἀθηναίῳ μηδενὶ γίγνεσθαι Πλαταιέων, μὴ εὐρομένῳ παρὰ τοῦ δήμου τοῦ Ἀθηναίων).⁶³⁷ Kapparis is likely to be right about the improbability of a total prohibition: it should have certainly been possible for the people to enact another naturalization decree subsequently. Yet the difference is not so great. Apollodorus might well have stressed the element of prohibition for his own reasons, but his statement can still (and should) be interpreted as referring just to further naturalizations by virtue of this particular decree. This could easily have been the way in which a later editor read the statement, and the formulation in the document would be just a consistent, and somewhat redundant, rephrasing, which in addition makes explicit what in Apollodorus' account was only implicit. The reason for such a provision is obvious, and speaks for a date of the decree following the fall of Plataea and the trial, execution and enslavement of its inhabitants: after these events, every Plataean who was still alive without having been in Athens at least from the flight of the winter 428/7 (Thuc. 3.20-24) would have been suspected of treason and collaboration with the Peloponnesians.

Further differences between the document and the surrounding text speak against the document's authenticity. Some provisions occur only in Apollodorus' account and not in the document, namely the scrutiny of the Plataeans and the recording of the names of the new citizens to be set up on the Acropolis (it can be added that the document does not record the provision granting full rights to the sons of the Plataeans just if born from legally betrothed Athenian women).⁶³⁸ It is difficult to explain their absence if one considers this an authentic Athenian decree.

The name of the decree's proposer, Hippocrates, does not help us to determine whether the document is genuine or not. Hippocrates was a very common name in

⁶³⁷ Kapparis 1995: 364-366.

⁶³⁸ For the practice of inscribing state decrees on the Acropolis *cf.* Liddell 2003: 79-81.

Athens and in the ancient world,⁶³⁹ and identification of the decree's proposer with Pericles' nephew, the general elected in 426/5 and 424/3 and killed at the battle of Delion,⁶⁴⁰ would be merely an assumption. The name could easily be the product of guesswork, like the names of the eponymous archons in *On the Crown*, created in order to enhance the credibility of the text.

The most striking feature of the document and the only clause not provided by Apollodorus is the provision for the distribution of the Plataeans into the demes and the tribes (κατανεῖμαι δὲ τοὺς Πλαταιέας εἰς τοὺς δήμους καὶ τὰς φυλάς). This provision has for a long time been considered an obstacle for those who believed in the authenticity of the inserted document, 'quia ex titulis apparet, δημοποιήτοις arbitrium demos et phylas eligendi Athenis permissum fuisse. Denique nihil in decreto de phratriis praeceptum invenimus, de quibus in titulis idem, quod de phylis ac demis praecipi solet.'⁶⁴¹ A quick glance at Osborne's collection of naturalization grants seems to confirm this statement, yet two particular cases, D5 (naturalization of the Samians, 405/4 and 403/2, heavily restored) and D6 (naturalization of the heroes of Phyle, 401/0, completely restored) seems to show that in the case of mass grants the Athenians did not let the new citizens choose deme, tribe and phratry as usual.⁶⁴² On the contrary, they may have ordered a distribution carried out by the archons (D5, ll. 33-34 νῆμαι [αὐτὸς αὐτίκα μάλα τὸς ἄρχοντας ἐς τὰς φυλάς δέκαχα, but Lewis in *IG* I³ 127 and in *ML* 94 restores differently), as stated by the inserted document. Prandi considers this the only clause that preserves 'la lettera del decreto originale', and Lambert notes that 'in this respect at least, the phrasing is typical', while Osborne and Kapparis regard it as the

⁶³⁹ The *LGPN* online yields 189 entries, 50 just for Attica.

⁶⁴⁰ *PA* 7640 (specifically D); *APF* 11811 II; Develin 1983: n. 1419; *PAA* 538615.

⁶⁴¹ Riehemann 1886: 45.

⁶⁴² For the rationale for omission of the phratries from mass naturalization grants cf. Lambert 1993: 51-53.

strongest point in favour of authenticity.⁶⁴³ It must be noted however that our sample here consists of only two decrees, and the extensive restorations in both our examples should prevent us from drawing conclusions or generalizations about what was typical of mass naturalization grants, and from claiming therefore that alleged similarities speak for the authenticity of the document. In fact, D4 is completely restored, and D5 allows us to read no more than νῆμαι and φυλὰς δέκαχα. If we still want to claim that the typical formula occurs in the two decrees, we should be aware that the wording, where the inscriptions are not restored, is not in fact exactly the same: the expected verb would have been νείμαι, found in D5, instead of κατανείμαι, used in classical inscriptions mainly with reference to the allocation of seats in the theatre.⁶⁴⁴ Furthermore, the tribes are named with the specification δέκαχα, absent from our decree. Although these few discrepancies do not by themselves impugn the clause, they accord with the general impression of language inconsistent with documents from the Classical period.

Moreover, apart from the wording, one fragmentary inscription cannot provide grounds to claim that, as for the content, the document conforms to a pattern, since there is no pattern we can identify with any confidence. The hypothesis that the parallelism, if there is any, might be due to an external source which provided the editor of the inserted document with news about the methods of a (or this) mass naturalization grant cannot be completely excluded. Yet it must be observed that the extant ancient literary sources do not provide any information at all about the enrolment of new citizens in demes, tribes and phratries. The only other passage from which it would have been possible to find some evidence about the process is Lys. 23.2-3, where a certain Pancleon claims to be an Athenian citizen since he is a Plataean. The accuser consequently asks him about his deme so that he can summon him in front of the court of the tribe. This passage

⁶⁴³ Prandi 1988: 114-5; Lambert 1999: 51-2 n. 116; Osborne 1981-2: II, 13-4; Kapparis 1999: 367.

⁶⁴⁴ Cf. e.g. *IG* II² 456; *IG* II² 466; *IG* II² 500; *IG* II² 512; *IG* II² 567; *IG* II² 792.; *IG* II² 900; *Agora* 16.142.1-2, 1; 188.1; *Hesperia* 43.322.3.

names only demes and tribes, and not phratries, exactly as the document does, and does not mention whether the Plataeans, or any other naturalized foreigners, actually chose or were distributed among them.

Information from Lysias 23 has been used to argue in favour of the authenticity of the clause in the inserted document,⁶⁴⁵ but this speech could equally have been the source used by the forger who composed the document. It is possible then that for an ancient forger, trying to supplement the information provided by Apollodorus but without any epigraphic evidence available, the possibility of a distribution was as likely as the possibility that new citizens could choose their deme. A striking resemblance with a very famous (today and probably in ancient times) passage of Herodotus could be a possible explanation for the choice of the verb *κατανεῖμαι*. Hdt. 5.69 recalls that Cleisthenes *τοὺς δήμους κατένειμε ἐς τὰς φυλάς*. The meaning is here completely different, since Herodotus is talking about the distribution of the demes among the ten tribes, yet the words are exactly the same, and it is not impossible that this was the model the forger had in mind when he opted for the clause *κατανεῖμαι δὲ τοὺς Πλαταιέας εἰς τοὺς δήμους καὶ τὰς φυλάς*.

To sum up, the document contains many features of language and terminology that are inconsistent with those of similar grants of citizenship. Moreover it exhibits syntactic features hardly compatible with a decree of the 5th century BCE. The text in this form can hardly have been either the actual text of the decree or an extract from it, since corrections of its text produce even less credible versions. Furthermore, some of the provisions summarized by Apollodorus are not found in the document. This

⁶⁴⁵ Cf. Prandi 1988: 115; Kapparis 1995: 367. Actually the fact that the speaker does not mention any enquiry in any phratry list is not very relevant, since Pancleon, in order to be an Athenian citizen, had to be a member of a deme anyway. The sole membership of a phratry would not have been enough, and so, to prove that Pancleon was not an Athenian citizen (which is the purpose of the accuser), the enquiry in the deme was sufficient.

document cannot be an authentic Athenian decree. It is safer to consider it a post-classical forgery.

6. Conclusions: the origin of the documents

This study has shown that in the public speeches of Demosthenes one can find two different categories of documents. The documents of the *Against Aristocrates* and part of those of the *Against Timocrates* were included in the edition to which the stichometry refers, whereas the documents of the speeches *On the Crown*, *Against Meidias*, *Against Neaera* and part of those of the *Against Timocrates* were inserted at a later date. The two categories contain very different features: the stichometric documents usually do not contain any feature that is inconsistent with contemporary language and formulas, and their provisions are often confirmed by independent evidence. When they contain some errors, these errors can be easily explained as mechanical corruption of the text in its transmission, and their quantity and quality is coherent with the degree of corruption of the Demosthenic *corpus* as a whole. The non-stichometric documents on the other hand are always inconsistent with independent historical information, their language and terminology does not resemble that of contemporary inscriptions and the information they provide seems to derive from casual reading of the orators and (perhaps) of some other source, marred by incomprehensions and mistakes.

This work would not be complete if I did not advance some proposals for setting in time and place the origins of these separate categories of documents. The nature of these proposals will be hypothetical, but I believe that a study of the tradition of the Demosthenic *corpus* can provide some grounds for understanding the origin of these documents.

6.1 The stichometric documents

I have been referring throughout this work to the stichometric edition as a *Urexemplar*, claiming that those documents that can be reckoned inside the stichometry were already present in it. There is good reason for giving such a definition of the text on which the stichometric marks were first applied. First, the nature of the textual tradition of the Demosthenic *corpus*: scholars now agree that the *corpus* lacks a medieval archetype, and the oldest medieval exemplars of the various branches of tradition all stem from different ancient editions of individual speeches.⁶⁴⁶ The ancient papyri confirm this picture: they rarely side in their entirety with one branch against the others, and their readings seem to picture an ancient tradition even more confused than the medieval one.⁶⁴⁷ In other words, our medieval branches are likely to derive from various *corpora* recomposed at some point in late antiquity from the mess of individual speeches or groups of speeches circulating in individual rolls. These *corpora* were probably organized according to some (different) authoritative catalogues of the *corpus* as a whole.⁶⁴⁸

Therefore, whatever feature is present in all the different branches of the medieval tradition must stem from before the tradition diverged. Stichometric indications, either in the form of marginal marks or of a total of lines at the end of speeches, and sometimes in both forms, are found for some speeches in the medieval manuscripts SFYBQ. These marks, as I anticipated in the introduction, never correspond to the lines of the actual manuscript in which they are reported. They must have been copied uncritically time after time, in spite of the fact that they did not mark 100 lines of the new manuscripts. When the stichometric marginal marks are present in more than one

⁶⁴⁶ Cf. pp. 47-8. See Canfora 1974-2000: vol. 1 pp. 65-98

⁶⁴⁷ See Pasquali 1934: 281-8 and Hausman 1978-81.

⁶⁴⁸ Pasquali 1934: 277; Canfora 1974-2000: vol. I pp. 80-2, 90-95.

manuscript, they agree in pointing to the same section of the text.⁶⁴⁹ Moreover the total stichometries always refer to a text divided according to the corresponding partial marks. Therefore they all belong to the same text. Cross contamination can safely be excluded as the reason for the appearance of these marks in different branches of tradition: stichometry probably was no longer understood in Byzantine times, and the copyists often miss a few marks while copying. Moreover stichometries disappear in more recent *codices*. Therefore, the existence of consistent stichometries in different branches of the medieval tradition is evidence that the stichometry was unique in the whole tradition, and was therefore applied before the tradition diverged.⁶⁵⁰

A possible objection to these conclusions is that ancient stichometry was usually applied according to a standard line of 16 syllables, approximately 36 letters, comparable to the epic hexameter.⁶⁵¹ Therefore stichometries applied to different editions of a speech were still likely to be consistent with each other. However, a quick look at the surviving stichometries shows that this is impossible. The epic hexametric line was an approximate measure, and different stichometries show in fact different average numbers of characters per line. Among the speeches of Demosthenes, if 18, 19, 23 and 24 have an average stichometric line of 35-36 characters, the private speeches have one of 33-34, and the speech *Against Neaera* (59) one of 32. Calculations conducted with total stichometries found in some manuscripts of Herodotus for books 4, 5, 8 and 9 point to stichometric lines of 37 characters,⁶⁵² and marginal marks found in one manuscript of Isocrates' *Busiris* also result in stichometric lines of 37 characters.⁶⁵³

⁶⁴⁹ With just one exception: the marginal marks for the speech *On the False Embassy* (19) in the manuscripts FAQ are different from those in S. The total stichometry found in SFYB is consistent with the marks of S. The sections marked by S are also consistent in length with those of the other public speeches, whereas the sections of FAQ are very short, and must belong to a later individual edition of the speech. See Burger 1892: 7-8, 15.

⁶⁵⁰ This is also the opinion of MacDowell 1990: 44-6. On stichometry see above pp. 22-41 and in general Ohly 1928.

⁶⁵¹ Cf. above p. 22 n. 26 and in particular Ohly 1928: 9-12.

⁶⁵² Burger 1892: 34-42.

⁶⁵³ *Urb. gr.* 111. Cf. Fuhr 1882.

The partial stichometries of Plato's *Cratylus* and *Symposium* in the Clarke *codex* n. 39 and in the *Marcianus gr.* 185 point to average lines of respectively 35 and 34 characters.⁶⁵⁴ This evidence alone is enough to show that the fact that stichometry was applied to texts according to a particular standard does not result in exactly homogeneous lines. It is more likely that these texts were actually written in lines approximately equivalent to a hexameter. Therefore the stichometry of the speeches of Demosthenes, if applied at different times and independently to different copies, would have hardly been perfectly consistent.

This proves that the stichometry of the Demosthenic *corpus* was unique in all the ancient tradition. When was it applied? The surviving papyri show a very varied and divergent tradition of Demosthenes' speeches already in the first century BCE, and they are witnesses of their diffusion only in Egypt.⁶⁵⁵ We could expect an even more diverse tradition of these speeches if we had access to ancient manuscripts from all over the Greek-speaking world of the time. In order to account for such a tradition we need to trace its origins back to the previous centuries. Didymus confirms that the tradition of the text of Demosthenes was widespread throughout the Hellenistic period: in his commentary of the Philippics (*P.Berol.* 9780) he refers to previous commentators of Demosthenes, and discusses their results and shortcomings.⁶⁵⁶ His work also comes from the first century BCE, but sheds light on a flourishing tradition of reading and commenting on Demosthenes stemming from the previous centuries.

If the tradition was so diverse already in the Hellenistic age, when did it diverge first? An initial inference can be drawn from a passage of Dionysius of Halicarnassus (who lived between the first century BCE and the first AD): in his *De Demosthenis dictione*, 57.12-3 the rhetorician gives a total number of Demosthenes' stichoi of either

⁶⁵⁴ Ohly 1928: 77-8 and Irigoin 1998: 229-32.

⁶⁵⁵ Cf. Hausman 1978-81.

⁶⁵⁶ Cf. Gibson 2002: 26-35 on the previous commentators Didymus refers to.

50.000 or 60.000 for a *corpus* slightly bigger than the one preserved to us.⁶⁵⁷ The likely source for such information is a *pinax*, a catalogue, like that composed by Callimachus, who is known to have given the figures of the *stichoi* for the works he lists.⁶⁵⁸ He certainly listed Demosthenes' *corpus* in his *Pinakes*, and discussed the authenticity of a few speeches (fr. 443-6 Pfeiffer). We do not know whether the number reported by Dionysius is derived from Callimachus (even though at least an indirect derivation is very likely), but we can assume that, since Callimachus reported the stichometry and since the ancient stichometry of the *corpus* is unique, Callimachus' work at the *Mouseion* must be considered the *terminus ante quem* for the application of the stichometry, and therefore for the presence of the stichometric documents in the speeches.⁶⁵⁹ Accordingly, the line count was undertaken some time before Callimachus composed his *Pinakes*, on a collection already available in Alexandria in the 40s of the third century BCE.

Thus the alternatives are: the first edition of the Demosthenic *corpus* originated either in Athens, or very early in Alexandria. Ascribing the first edition of the *corpus* to Callimachus has been very fashionable.⁶⁶⁰ The fact that Callimachus included Demosthenes in his *Pinakes* is considered sufficient evidence that he undertook composing a critical text of his *corpus*. This assumption is misguided: as Pasquali and Pfeiffer have satisfactorily shown, there is no evidence whatsoever that Callimachus

⁶⁵⁷ For the speeches that Dionysius could read see Sealey 1993: 225-7.

⁶⁵⁸ Callimachus, fr. 433 Pfeiffer. See Blum 1991: 157-8.

⁶⁵⁹ In fact, the figure provided by Dionysius is in itself evidence that the stichometry was unique. Diels-Schubart 1904: XXII calculate 42000 *stichoi* for the *corpus* preserved to us, against the 50000 or 60000 mentioned by Dionysius. Yet the *corpus* used by Dionysius included at least four speeches now lost: *For the Orators*, *For Satyros*, *Against Medon*, and *Against Kritias* (see Sealey 1993: 223-5), probably more (Dion. Hal. *De Demosthenis dictione* 57.17-8 also mentions *Against the handing over of Harpalus* and an *Apology* in the Harpalic trial), and tallying up these additional speeches the figures become incredibly close.

⁶⁶⁰ This was the predominant opinion in the 19th century, and its reasons are summarized in Drerup 1899: 546-8, who criticizes Bethé 1897: 11, who advocates instead an Athenian origin. A Callimachean edition is still contemplated in Butcher-Rennie 1903-31: vol. 1 p. V and Fuhr 1914: III. More recently MacDowell 2009: 8 still attributes the first edition of the *corpus* as we know it to Callimachus.

ever edited any classical text.⁶⁶¹ In addition to this there are plenty of reasons to set the origin of the *corpus* in Athens: our collection contains many speeches that cannot be attributed to Demosthenes. For some of them our manuscripts preserve the stichometry, which means that they were already in the *corpus* discussed by Callimachus. These texts can give us some indication about the environment of the composition of this first collection.

In the case of the *demegoriai* at least two are known not to be Demosthenic: the speech *On Halonnesus* (7), in spite of its widely-attested stichometry (in manuscripts SFBY), has already been shown to be the work of Hegesippus of Sounion by Libanius, in his scholarly unexceptionable hypothesis to the speech (among other reasons, Libanius notes that 'the man who wrote this speech says that he indicted Callippus of the deme Paeania for an illegal proposal, and it is apparently not Demosthenes, but rather Hegesippus who brought said indictment against Callippus' tr. Gibson).⁶⁶² Another speech recognised by ancient scholars as non-Demosthenic is *On the treaty with Alexander* (17), about which Libanius reports an attribution to Hyperides, while *Schol.Dem.* 17.2 (Dilts) mentions the opinion, expressed by some critics, that the author was again Hegesippus. Whether or not any of these proposals is right, the speech is widely recognized as non-Demosthenic.⁶⁶³ The ancient total stichometry of this speech, expressed as usual in Attic acrophonic numerals, is preserved in *Vat. gr.* 69. The speeches 45, 46, 49, 50, 52, 53 and 59 are often attributed to Apollodorus, the son of Pasion. Friedrich Blass has been the first and most important defender of their

⁶⁶¹ Pasquali 1934: 272 and Pfeiffer 1949-53: vol. 1 fr. 443-6. Cf. also Canfora 1974-2000: vol. 1 pp. 79-80.

⁶⁶² Canfora 1974-2000: vol. 1 p. 78; Sealey 1993 : 77-8; MacDowell 2009: 343-6.

⁶⁶³ Cf. recently MacDowell 2009: 380-1. Culasso Gastaldi 1984 makes a good case for considering the speech an early Hellenistic rhetorical exercise. She argues that the author is Demochares, who composed the speech in the 280s from Demosthenes' notes. If she is right, this is further evidence of an Athenian origin of the *corpus*, and that the person responsible for it was Demochares. See below pp. 302-4.

Demosthenic authorship, but most of them are now safely ascribed to Apollodorus.⁶⁶⁴ We have an ancient stichometry for 45, 46, 49, 52, 53 and 59.

Ancient critics worked heavily on the *corpus* of Demosthenes, and some other speeches have a contested authorship: Dionysius reports that both Callimachus and the scholars in Pergamum ascribed speeches 39 and 40 to Deinarchus. He disagrees about these particular speeches, but, with Callimachus, attributes the *Against Theocrines* (58) to Deinarchus.⁶⁶⁵

Let us turn again to the case of the speech *On Halonnesus* (7), to get an idea of the time at which this particular oration was inserted into the corpus. One of the ancient arguments in defence of this speech, as far as we know from Libanius, was an allusion by Aeschines in the *Against Ctesiphon* to a subtle distinction made by Demosthenes while speaking about Halonnesus. He argued that Philip should not give Halonnesus to the Athenians, but rather give it back. Plutarch and Athenaeus confirm that Demosthenes took advantage of such a distinction, since they quote a joke about this very argument made by Antiphanes in one of his comedies (Antiphanes F 169 Kock). Indeed, this is an argument found in the preserved speech. But this correspondence, far from representing evidence of the authenticity of our speech, suggests a reason for its interpolation. Libanius argues that it is likely that both orators spoke about the same matter, and since Demosthenes' speech was lost, the editor of the collection put Hegesippus' speech in its place. This is a very good explanation for such an interpolation, and one that also gives a clue about the environment in which it could happen. In fact, the ancient sources do not contain any information about a corpus of Hegesippus' speeches, and I cannot imagine any other context for its find, and its choice

⁶⁶⁴ Trevett 1992: 50-76 in an excellent discussion ascribes all these speeches but 45 to Apollodorus. MacDowell 2009: 115-21 ascribes all these speeches to Apollodorus and makes a good case for ascribing to him also 47.

⁶⁶⁵ MacDowell 2009: 293-8 rejects the attribution to Deinarchus, but argues that the author cannot be Demosthenes. It must rather be some contemporary orator, perhaps the actual speaker.

as a substitute for the real Demosthenes' *On Halonnesus*, than Athens itself. The same is true for the speeches by Apollodorus: there is no evidence whatsoever that an Apollodoreian *corpus* had an independent tradition. The only place where such speeches could be found is Athens.⁶⁶⁶

Other texts in the *corpus* point in this direction. A very interesting case is that of the *Prooemia*. These short pieces of deliberative oratory, a few clauses apt to open a speech, are now generally considered Demosthenic, and could easily have been part of the orator's personal file, ready to be used, in the appropriate circumstances, in the Assembly.⁶⁶⁷ Again I cannot see any possible environment in which such tools, not conceived for diffusion and publication, would have been accessible and ready to be inserted in the collection, except in Athens. We have also for the *Prooemia* an ancient stichometry preserved in our medieval manuscripts.

Such texts then, the work of other politicians or Demosthenes' tools, are likely to have been inserted in the corpus in an Athenian context and therefore before the arrival of the collection in Alexandria. As shared mistakes in different medieval manuscripts help us to reconstruct their common archetype, so the presence in the collection, at the time when stichometry was applied, of texts that should not be there, helps us to single out Athens, and not Alexandria, as the birth place of the first edition of the Demosthenic *corpus*.⁶⁶⁸ The presence of these texts is also conclusive evidence that the person responsible for this first collection was not Demosthenes himself.⁶⁶⁹ Otherwise, how

⁶⁶⁶ About Athens as the context in which Apollodorus' speeches entered the Demosthenic *corpus* see also Trevett 1992: 76.

⁶⁶⁷ The authenticity of these texts has been disputed by Swoboda 1887, but is now generally accepted. See e.g. Rupprecht 1927; Goldstein 1968: 13-24; Clavaud 1974 and more recently Yunis 1996: 247-57; Worthington 2004 and 2006: 57-8; MacDowell 2009: 5-7.

⁶⁶⁸ Athens was considered the birthplace of the *corpus* first by Bethe 1897: 11. See also, among others, Gernet 1954: 12; Canfora 1974-2000: vol. 1 pp. 74-9 and 2006: 115; Clavaud 1976: 240-1; Sealey 1993: 229; Trevett 1996: 441 and 2011 (forthcoming).

⁶⁶⁹ *Pace* Sealey 1993: 229.

could we explain the presence of non-Demosthenic texts in it? Surely Demosthenes could recognize his own speeches.⁶⁷⁰

Before trying to identify more precisely the context of the first edition of the Demosthenic *corpus*, and drawing from it some conclusions about the origin of the stichometric documents, there is a further possibility that must be discussed. Some scholars, although they recognize Athens as the most likely birthplace of the *corpus*, still assume that the stichometry was applied in Alexandria, since stichometry as a system of measurement became fashionable there.⁶⁷¹ This hypothesis is uneconomical: since the stichometric edition is the archetype of the overall tradition of the *corpus*, assuming that the stichometry was first applied in Alexandria is equivalent to postulating that no edition of Demosthenes was ever copied from the original Athenian collection, except the one for the Mouseion, from which all the extant testimonies would stem. But why should we postulate two archetypes, from two different places, if the first is sufficient to account for the subsequent tradition? Also, in spite of general ideas about the importance of stichometry in Alexandria, Egyptian prose papyri with stichometric indications are very rare (whereas we have plenty of examples of stichometry applied to poetry).⁶⁷² In our medieval manuscripts we have stichometries in manuscripts of Plato, Isocrates, Herodotus and Demosthenes. The total stichometries in all these cases are expressed in Attic acrophonic numerals, which suggests an Athenian origin of the practice (if not necessarily of the stichometries).⁶⁷³ In fact Plato in his *Laws*

⁶⁷⁰ These considerations are independent from whether Demosthenes published or circulated some of his speeches during his life. At any rate, with Trevett 1996 and MacDowell 2009: 7-9 (see also Trevett 2011 forthcoming). I cannot find any convincing evidence that he did, *pace* Canfora 1974-2001: vol. 1 pp. 66-7, 69, Worthington 1991a and 1991b: 425, Tuplin 1998.

⁶⁷¹ Cf. e.g. Ohly 1928: 78, 101-3; Clavaud 1975: 247; 1976: 241.

⁶⁷² Obbink 1996: 62-3. Cf. Ohly 1928: 31-73 for a list of papyri with stichometry, 56-71 for some prose examples.

⁶⁷³ Obbink 1996: 63 suggests that stichometry in prose texts might be an Athenian practice, rather than an Alexandrian one. Total stichometries are conservatively noted in Attic acrophonic numerals down to the end of the first century BCE. See e.g. Bassi 1909 and Ohly 1924 for some examples from Herculanean papyri. For a treatment of acrophonic numerals and their use and diffusion see Tod 1911-2, 1926-7, 1936-7.

seems to allude to this practice when he prohibits erecting stone pillars for the dead that contain a eulogy more than four heroic lines long (958e). Certainly Theopompus was aware of this system of measurement, and employed it, since he boasted that he wrote more ἔπη than any other writer (*FGrH* 115 F 25). Isocrates also seems to allude to the same system when he claims that he only concerns himself with those that do not frown upon the length of his speeches, even if they extend for countless ἔπη (*Isoc.*12.136). This evidence suggests that stichometry was current in Athens as early as the beginning of the fourth century BCE.⁶⁷⁴ As I have suggested before, the slight differences between the average number of characters per stichometric line in different works, and even in different speeches of Demosthenes, point to stichometric marks applied to editions that were actually written in lines of approximately stichometric length. Egyptian papyri are rarely written according to this standard. On the other hand, the only surviving papyrus from Classical times, and from continental Greece, the Derveni papyrus, contains a prose commentary written in lines of hexametric size.⁶⁷⁵ It is difficult not to conclude that stichometry applied according to a standard hexametric line originated in Classical times, presumably in Athens (note the Attic acrophonic numerals), and was therefore current when and where the Demosthenic *corpus* was first collected. There is no need to postulate an Alexandrian stichometry, nor a second archetype of the *corpus* edited in Alexandria.

To draw some conclusions, the stichometric edition of the text of Demosthenes must be the first overall edition of the *corpus*, edited in Athens at some point between the death of the orator in 322 (otherwise it would be difficult to explain the presence of speeches by other orators) and Callimachus' work at the Mouseion in the 240s. The

⁶⁷⁴ See Ohly 1928: 92-4 for a discussion of these passages. Cf. also Kennedy 2010: 4-6 for an interesting, if controversial, hypothesis about the actual use of stichometry in Plato's dialogue.

⁶⁷⁵ Parsons in Turner-Parsons 1987: 151 n. 113 notes that the Derveni Papyrus 'shows prose written in actual hexameter-lengths - the origin of the practice?'

stichometric documents were either inserted first in this edition, or were already present in the files from which the edition was composed.

Everything beyond this is doomed to be hypothetical, but it is nevertheless worth trying to provide a more precise context for the formation of the collection, which might in turn provide some tentative answer to the question of the origin of the stichometric documents. Our survey has shown that the person responsible for the first edition of the *corpus* must have been in Athens and with access to the personal files of Demosthenes after his death, so that he could retrieve working tools like the *Prooemia* and mistakenly include among Demosthenes' works some speeches by other orators that happened to be among Demosthenes' papers.⁶⁷⁶ Such a person must have been moved by an interest in Athenian history in the age of Demosthenes, by rhetorical interests of his own, by particular political purposes that made Demosthenes relevant to him, or by personal matters (like a relation with the great orator) and possibly by all these reasons together. Demochares of Leuconoe is the obvious candidate for such an undertaking.⁶⁷⁷ He was the son of a sister of Demosthenes, and became the political heir of his uncle. In 322, when he was 33 years old, he spoke against Antipatrus' request to hand over the orators.⁶⁷⁸ His story is the story of the Demosthenic, anti-Macedonian 'party' after the death of its leader. He was a staunch opponent of the rule of Demetrius of Phalerus (317-307), led the city together with Stratocles of Diomeia for a few years under the Poliorcetes (307-304), and was exiled again for ridiculing Stratocles for his extremely servile political actions concerning the affair of Cleaenetus (Plut. *Demetr.* 24.6-11). Demochares was recalled only in 286/5, after a peace with Demetrius that assured Athens' full independence. A key figure of this age, in 280/79 he advanced a proposal

⁶⁷⁶ Wooten 2008: 170 n. 6 doubts that Demosthenes would have kept old speeches, but see MacDowell 2009: 8 n. 24.

⁶⁷⁷ His name has been proposed among others by Canfora 1974-2000: vol. 1 pp. 74-5, 2006: 115, Clauvaud 1976: 241 and Trevett 1996: 441 n. 85 and 2011 (forthcoming)

⁶⁷⁸ Marasco 1984: 25-6 doubts the reliability of this information, found in [Plut.] *X Or.* 847d, but he is over-skeptical.

for building a statue and granting the highest honours to Demosthenes.⁶⁷⁹ A similar initiative was then undertaken in 371/0 by his son Laches, to celebrate Demochares himself, who must have died at some point between the enactment of the two decrees.⁶⁸⁰

This is the period in which a democratic and a Demosthenic myth is created for the purposes of a contemporary political agenda.⁶⁸¹ Demochares as relative and possibly heir of the orator had free access to the files of his work, as the writings of Demosthenes were presumably inherited after his death. It is likely that he used their material for his own speeches, and exploited it as a mine of historical information about the period and life of the orator for his *Histories*, a work that covered the period from the age of Demosthenes to Demochares' own years, and represented a complement to his political activity, written, as Cicero reports, *non tam historico quam oratorio genere* (Cic. *Brut.* 83). It is more than likely that such a character, whose life, literary works and politics were shaped by the example of his famous uncle, undertook composing an edition of the works that he could find in Demosthenes' files. Such an edition was certainly composed out of piety, as Gernet observed, but its circulation was at the same time a political statement consistent with what we know of the life and work of Demochares.⁶⁸²

I will not try to narrow the time of composition of the first *corpus* any further. The evidence is too scanty to set it at any specific point in Demochares' life. The task was undertaken at some point after Demosthenes' death in 322 and the edition was ready before the end of the 270s when Demochares died: that is, in good time to reach Callimachus by the 240s and be described in his *Pinakes*. If this is the case the

⁶⁷⁹ About Demochares' life and political career see Marasco 1984 and Kralli 1999-2000: 153-6. For the political context of his activity see Habicht 1997: 67-97 and 124-49, Dreyer 1999: *passim* and Bayliss 2011: 94-128 and *passim*.

⁶⁸⁰ The requests for these honours are preserved in [Plut.] *X Or.* 851d-f. The documents preserved here are probably authentic, see Faraguna 2003.

⁶⁸¹ See Asmonti 2004; Cooper 2009; Bayliss 2011: 49-60.

⁶⁸² Gernet 1954: 12 might be right when he states that this edition was rather a collection of what was found 'sur place à ce moment', but mistakes and spurious speeches do not mean that the task was undertaken unprofessionally. The presence of the stichometry rather points to the hypothesis of professional copyists that produced a *corpus* ready for circulation.

stichometric documents could have been either already present in the drafts that Demochares edited for his edition, or inserted by Demochares himself. MacDowell has rightly observed that Demosthenes had no reason to insert the documents in his drafts, and in fact we know that his normal practice was not to include them.⁶⁸³ He had rather to provide separate copies for them to be read out by the secretary. One might add that since Demosthenes certainly at some point had a copy of all the documents that he discusses in his speeches, it is difficult to explain why he should include only a few of them, and not the rest. This is even more striking when it happens in a single speech, like the *Against Timocrates*: Demosthenes surely had all the documents with him when he composed the draft. Then why would he include just some of them? It is perhaps more likely that the person responsible for the inclusion of these few documents was Demochares. In this case the presence or absence of certain documents could be explained as mainly due to chance: Demochares added to the speeches those documents that he found among Demosthenes' papers, or those famous enough for an Athenian orator and politician like himself to remember by heart (this could be the case for the homicide laws included in the *Against Aristocrates*, and perhaps for the law of Diocles found at Dem. 24.42). Sometimes perhaps he looked for a particular document in the archives, or found it on a stele while walking through the *agora*. Sometimes he reconstructed a document from Demosthenes' discussion, through his own refined understanding of the workings of Athenian institutions and knowledge of Athenian official language, and these are perhaps the cases in which we find some small problems with a particular expression (like the name of a deme). Whatever was his method (or more probably his methods), his experience as an Athenian politician and litigant and his first-hand understanding of the Athenian constitution allowed him to add to Demosthenes' speeches documents that are generally reliable.

⁶⁸³ MacDowell 1990: 46.

6.2 The non-stichometric documents: a provisional hypothesis

This survey has shown that, while the documents that were part of the *Urexemplar* of the speeches are usually reliable, the documents that have been inserted at a later date are generally inconsistent with the summaries provided by Demosthenes and with evidence about the same laws, decrees and procedures found in independent sources. Moreover they often show language and formulas that are unparalleled in Athenian official documents preserved on stone, and betray a later date of composition. Throughout this work I have made the point that these documents should not be used as evidence for the laws, decrees and procedures they allegedly preserve, and I have described them as 'later forgeries'. It is worth trying to qualify this expression, providing some considerations and a hypothesis about the date and milieu of their composition. This hypothesis will be only tentative, since although its formulation is based on the documents, a careful analysis of different kinds of evidence will be needed to verify it, one that goes beyond the scope of this work.

The date of composition of the spurious documents in the speeches of the orators was a popular topic in the 19th century. Droysen limited his analysis to the documents of Demosthenes' *On the Crown* (18), suggested a rhetorical milieu, more precisely a school of rhetoric, and dated the insertions between the time of Dionysius of Halicarnassus and Cicero, who seem to be unaware of the documents (*cf.* e.g. Dion. Hal. *Ad Ammaeum*, 1.11.54-63; Cic. *De optimo genere oratorum*, 19), and that of Plutarch, who seems to use them (*cf.* e.g. Plut. *Dem.* 24.2).⁶⁸⁴ Wortmann, Schucht, Christ, Drerup, Diels and Schubart, and many other scholars extended their analysis to other documents and drew various conclusions from analysing passages in Harpocration, the *Lives of the Ten Orators*, Pollux, the *scholia* and others that seem or seem not to be aware of a particular

⁶⁸⁴ Droysen 1883: 246-53.

document, and proposed dates ranging from the 1st century BCE to the 2nd AD.⁶⁸⁵ In fact, apart from the mistakes and methodological flaws in these analyses highlighted by Treves,⁶⁸⁶ the ancient papyri show that most documents were not present in all the ancient copies of the speeches (as they are not present in every medieval manuscript), and therefore the fact that a particular author seems to be unaware of a particular document only proves that his copy of the speech belonged to a branch of the tradition where the document had never been inserted. Thus, whether or not an ancient text mentions a document is of no help in dating that document.

As for the milieu of the forgeries, scholars have dealt exclusively with the documents of the speeches *On the Crown* and *Against Timarchus*, with Wortmann arguing in an influential dissertation for an origin in Asia Minor, on the basis of alleged correspondences between language and formulas from that area (the author would be a *vir grammaticus vel rhetor* that spent some time in Athens, but was more interested in providing his students with models to copy than with reconstructing *quam accuratissime antiquitates atticas*).⁶⁸⁷ This hypothesis, later endorsed by Treves, was rejected with good arguments by Schläpfer, who conducted a careful analysis of the 'official language' in the documents of the speech *On the Crown* and remarked that most of the features Wortmann identifies as typical of Asia Minor are in fact common to most of the Greek world,⁶⁸⁸ and the forgers seem to have largely used their imagination

⁶⁸⁵ Wortmann 1877: 57-65; Schucht 1892: 27-31; Drerup 1898: 237-8; Diels-Schubart 1904: XLI.

⁶⁸⁶ Treves 1940: 141-5.

⁶⁸⁷ Wortmann 1877: 57-65.

⁶⁸⁸ Some of Wortmann's observations are simply wrong and due to scarce knowledge of the epigraphical material: e.g. he claims that δεδόχθαι τῇ βολῇ καὶ τῷ δήμῳ is typical of Asia Minor, whereas the Athenian formula is simply δεδόχθαι τῷ δήμῳ (Wortmann 1877: 18-9 and 58-9). Some observations are also incorrect: e.g. he claims that πολλὰς καὶ μεγάλας χρείας παρέσχεσθαι found in the document at Dem. 18.84 is typical of Asia Minor but unparalleled in Athens, but see *IG* II² 844 ll. 7-8, 1299 l. 52, *SEG* 45 l. 106. The word order ἐπὶ ἄρχοντος Μνησιφίλου (found at Dem. 18.29, 73, 105, 115, 118, 164, 165, 180) instead of the more Attic ἐπὶ Μνησιφίλου ἄρχοντος is not particularly typical of Asia Minor. It is in fact more widely attested in the Aegean islands (e.g. *IG* XI,2 161) and in central Greece (e.g. *CID* 2.45).

in composing the documents.⁶⁸⁹ The occasional similarities with documents from Priene or Pergamum are likely to be due to chance. On the other hand, despite the many mistakes and unparalleled formulas, the documents in these speeches are still closer to Athenian official language than to that of any other area (and this is even more true for the documents in the other speeches I have analyzed). Schläpfer concludes that the forged documents in the speech *On the Crown* must have been composed in Athens. We have seen however in the previous chapters that documents actually composed in Athens are much more consistent with Athenian official language than these forgeries are, and one would expect an Athenian with access to some, if not all, official documents to do a much better job. Moreover one does not need to postulate an Athenian origin for these documents in order to account for the Attic flavour of their language. Whoever the forgers were, and wherever they worked, their main sources for the language of the documents were the speeches themselves, and careful reading of the orators (and possibly of some other source, like commentaries and lexica), as we have seen in the analyses of the individual documents, suffices to account for the occasional correct legal details and formulas.

In fact, trying to place the composition and insertion of all the non-stichometric documents, or even of all those of a single speech, depends on the assumption that all the documents must have been composed together in one place. Yet even a summary reading of some of them shows different levels of knowledge and understanding of Athenian laws, procedures and official language, and different degrees of historical information. The documents of Demosthenes' *On the Crown* and Aeschines' *Against Timarchus* are dodgy compositions where the occasional correct detail is surrounded by incorrect historical information, incorrect formulas, procedural misunderstandings and

⁶⁸⁹ Schläpfer 1939: 220-2, 230; *pace* Treves 1940: 170-1. Wankel 1976: 79-82 does not express any opinion on this matter.

language which is inconsistent with Attic practice in the 4th century BCE. As Schläpfer has shown, nothing in the documents of the speech *On the Crown* suggests sources other than the speech itself, Aeschines' *Against Ctesiphon* and perhaps Demosthenes' *Third Philippic*, and most details are due to the forger's imagination.⁶⁹⁰ Whoever was the forger of these documents, he certainly cannot be the same person that composed the document at Dem. 24.20-3, a long document that, in spite of the mistakes that give away its spuriousness, shows a shrewd understanding of the workings of the Athenian Assembly and a remarkable knowledge of Attic official language. Its author even seems to have consulted some commentary or *lexicon* about the number of Assembly meetings during the year, and their timing. Similarly, the document at Dem. 24.104, in spite of all its problems, shows a certain awareness of the complexities of the procedures against *atimoi*, and uses an expression, προειρημένον αὐτῷ τῶν νόμων εἶργεσθαι, which is used only in regard to homicides and is found in our sources only in Ant. 6.34, 35, 40. This document has very little in common with the clumsy law at Dem. 21.94. Even inside one single speech sometimes the style of the documents is remarkably different: in the *Against Neaera* three laws whose wording is very close to that of the following summaries are followed by a decree ([Dem.] 59.104) which is hardly consistent with anything in the orator's paraphrase.

The evidence from two papyri from the 2nd century AD, *P.Haun.* 1.5 and *P.Oxy.* 42.3009, confirms that the spurious documents were composed by many different forgers, and that sometimes alternative documents circulated covering the same gap in the text of a speech.⁶⁹¹ These papyri both preserve a letter from Philip at Dem. 18.221, in a place where none of our medieval manuscripts preserve any document. This shows that alternative versions of this speech circulated in antiquity with the same documents

⁶⁹⁰ Schläpfer 1939: 74 ff. and 240-1.

⁶⁹¹ See Wankel 1975.

that are preserved in the medieval manuscripts, with more documents and without any. More interestingly, the documents preserved for the gap at Dem. 18.221 in these two papyri are not the same: one is a letter to the Boeotians, while the other is a letter to the Peloponnesians with the same prescript as the letter found at § 157 of the speech. Different forgers were in action and sometimes composed different documents for the same gaps in the text. There is no point therefore in trying to find a place where the documents originated. Yet it is possible to single out a cultural context in which they are likely to have been composed, and a date (or at least a *terminus ante quem*) for their composition.

Droysen, in his seminal work on the documents of the *Crown* speech, hypothesized that the documents might have originated in a rhetorical school, and this hypothesis has been supported by, among others, Wortman, Drerup and Schmid.⁶⁹² Now, thanks to the work of scholars like Russell, Morgan and Cribiore on ancient education and rhetorical tradition, this hypothesis can be qualified and substantiated.⁶⁹³ In the system of rhetorical education it was standard practice to compose fictitious laws and decrees to form the subject of oratorical exercises. Already among the *progymnasmata*, the preliminary exercises⁶⁹⁴ that developed the student's skills in order to get him ready for the proper *declamatio* (in greek μελέτη), one of the most advanced exercises, the so-called *nomos*, consisted of arguing for and against a law or a decree invented for the purpose by the teacher.⁶⁹⁵ The *progymnasmata* were usually more

⁶⁹² Droysen 1893: 246-53; Wortmann 1877: 57-65; Drerup 1898: 241-2; 1923: 108; Schmid 1917: 1538-40.

⁶⁹³ Russell 1983; Morgan 1998; Cribiore 2001.

⁶⁹⁴ On Greek *progymnasmata* cf. Clark 1957: 177-212; Kennedy 1983: 52-73; Webb 2001; Gibson 2004. For an English translation of all the extant ancient treatises on the topic see Kennedy 2003. Although these exercises are safely attested only from the 1st century BCE (cf. Cic. *Inv. Rhet.*, 1.27; *Rhet. Her.* 1.12) their name appears already in [*Rhet. Al.*] 28, 1436a25, and they were certainly current in the Hellenistic age. Cf. Kennedy 1983: 54-55; 2003: XI-XII; Webb 2001: 307; Frazel 2009: 23-70, especially 26-8.

⁶⁹⁵ Cf. Theon, *Prog.*, 128-130, where the text ends abruptly. For the rest of the treatment of the *nomos* cf. the Armenian version translated in Patillon-Bolognesi 1997: 99-102. The chapter is mainly concerned with arguing about laws, but at p. 102 (Patillon) Theon makes clear that the same exercise can concern decrees as well. Cf. also Aphth. *Prog.*, 46-51 Rabe; Nic. Soph., *Prog.*, 77-79. The treatise by Theon is

concerned with mythology than with historical events, yet the prevalence of mythological matters has been overrated, as Craig Gibson⁶⁹⁶ has recently shown: historical themes were already wide-spread at this stage. The topics were mainly drawn from the historians, Thucydides and Herodotus in particular, and from the orators, Demosthenes being the most popular. The *nomos* exercise, because of its very nature, and since it was the transition between the *progymnasmata* and the proper *declamationes*,⁶⁹⁷ is very likely to have presented a range of topics similar to that of the *declamationes* themselves. These more advanced compositions, practised both by students of rhetoric and by accomplished *rhetores*, consisted of deliberative and judicial speeches composed for imaginary debates and trials.⁶⁹⁸

In Roman *declamationes* usually just the *suasoriae* (the deliberative speeches) were given a historical setting, with an overwhelming preference for Greek settings. The *controversiae* by contrast were for the most part not concerned with historical events and characters, inventing fictitious legal cases based on a mixture of Greek, Roman and imaginary laws.⁶⁹⁹ In Greek declamations on the other hand this subdivision was much less stark,⁷⁰⁰ and both deliberative and judicial speeches could be set either in a fantastic Greek city which resembled Athens (cleverly named by Russell 'Sophistopolis') or in some specific time and place from the historical past of Greece. In both models, the habit of making up laws and decrees was very widespread. They could be written at the beginning of the declamation, as the law governing the dispute, or quoted by the *rhetor* as evidence on his behalf and subsequently fully explained and

usually dated to the 1st century AD, and seems therefore to be the oldest preserved, but recently Heath 2002-3 has challenged this opinion and placed the treatise in 5th century Alexandria. It would be in any case a very typical example of its genre.

⁶⁹⁶ Gibson 2004.

⁶⁹⁷ Cf. Marrou 1956: 276; Kennedy 1983: 55-56.

⁶⁹⁸ Cf. on Greek *meletai* Russel 1983, and specifically on their origin between the 4th and the 3rd century BCE pp. 1-20; Marrou 1956: 277; Cribiore 2001: 232.

⁶⁹⁹ Cf. Bonner 1949; 1977: 277-327; Clark 1957: 213-161; Kaster 2001. On the legal settings of Latin declamations cf. Lanfranchi 1938; Bonner 1949: 84-85; Sussman 1994: 13-14.

⁷⁰⁰ Cf. Russell 1983: 9-10; Cribiore 2001: 232-233.

interpreted, as Sopatros warmly advises to do in a defence of Alcibiades (*RG* 8.13.10-12).

These laws did not try, in the speeches set in Sophistopolis, to reproduce a specific legal system, and fantastic features often penetrated into the speeches set in definite historical contexts as well.⁷⁰¹ However the degrees of historical accuracy in the *rhetoires* varied. In some authors the 'concentration on the past... was shallow and trivial, no better than the superficiality of a bad historical novel or film', but sometimes, as in the case of Aelius Aristides, 'it produced a real imaginative grasp of the classical world'.⁷⁰²

Now, if we look at the historical settings usually employed in both the *progymnasmata* and the *declamationes* it is easy to see that the Peloponnesian War, the Persian wars and the age of Demosthenes were the most popular.⁷⁰³ The speeches of the ancient orators themselves were read aloud and performed in ancient school classes.⁷⁰⁴ Theon in a passage of great pedagogical interest shows the care taken to make the performances realistic: 'Above all, we shall accustom the student to fit voice and gestures to the subject of the speech. It is this that actualizes the art of the speech. We shall present and imagine with the greatest care all that concerns an orator: his actions, credibility, age, and status; the place where the speech was delivered, the subject it treats, and everything that contributes to the feeling that the speech actually concerns us as we read it aloud'.⁷⁰⁵ As a result, the gaps in the speeches of the orators were to be restored, and scholastic editions probably were increasingly filled with documents.

There is however a chronological problem. The discovery of a papyrus (*P.Oxy.* 11.1377) from the 1st century BCE reporting the document that we read at Dem. 18.167

⁷⁰¹ Russell 1983: 37-39 and 106-128 *passim*.

⁷⁰² Russell 1983: 109.

⁷⁰³ Cf. Kohl 1915; Russell 1983: 106-128; Gibson 2004: 126-128.

⁷⁰⁴ Mostly in Greek school classes, if we can believe Quint. *Inst.* 2.5. Cf. Webb 2001: 307-310.

⁷⁰⁵ Theon, *Prog.* 103 Patillon (tr. from Kennedy 2003).

gives us a *terminus ante quem* for the insertion of this, and probably most of the non-stichometric documents. The presence of a papyrus with one of our preserved documents in Oxyrhynchus in the late 1st century BCE means that a copy of the speech with this document, and presumably with all the other documents that we read in the speech, must have circulated for a while before that date (unless we want to believe that the documents in the speech *On the Crown* originated in Oxyrhynchus). Treves has also found some independent reasons to predate the insertion of these documents to the time of Philip V of Macedon.⁷⁰⁶

More generally it must be noted that all our medieval manuscripts, although they derive from different ancient editions, when they preserve non-stichometric documents in a speech, preserve the same documents, for the same sections of the text (Dem. 18 until § 187, Dem. 21 until § 169 except § 130, Dem. 24 until § 151). Since, as we have seen from the evidence of *P.Haun.* 1.5 and *P.Oxy.* 42.3009, different forgers fabricated different documents, sometimes for the same gap in the text, this uniformity in the transmitted documents of our medieval manuscripts needs to be explained. We must postulate that at some point some particular editions with documents of each of these speeches became particularly authoritative, and in time became the most widespread, to such an extent that they are the only ones represented in the medieval manuscripts. Such an edition of the speech *On the Crown* was already circulating in Oxyrhynchus in the 1st century BCE. As for the documents of the other speeches, we do not have any papyrus reporting any of them (or in fact covering any section where we could read a document) before the 2nd century AD, and those of this century and later always present the same documents that we read in the medieval manuscripts. Likewise Harpocration, the *scholia* and other indirect sources, when a document is discussed, always quote the documents that we still read, with the same text. This must mean that for all these

⁷⁰⁶ See above pp. 53 for one of these arguments and in general Treves 1940.

speeches *Zweiterexemplare*, that is archetypes of all the later manuscripts with documents, must have existed quite a while before the beginning of the 2nd century AD, in order to spread to such an extent as to override any other tradition of documents. The absence (with the isolated exception of *P.Haun.* 1.5 and *P.Oxy.* 42.3009, which must be interpreted as copies of a very old apograph) of any additional or variant document at this time must mean that the period when these forged documents were composed ended well before the beginning of the 2nd century AD, presumably by the end of the Hellenistic age, as the *terminus ante quem* provided by *P.Oxy.* 11.1377 seems to confirm.

Our main evidence for the Greek tradition of rhetorical declamations and *progymnasmata* however comes from Roman times, in particular from the Second Sophistic and later. The first instances are those of Lesboanax of Mytilene, Polemon of Laodicea, Adrian of Tyros and Lucian, followed by Aristides. Later protagonists of this tradition, which survives well into Byzantine times, are Libanius, Himerius, Choricus of Gaza and others. Quintilian and Seneca the Elder give us more information about the earlier Greek rhetorical tradition, and Seneca mentions about twenty-five rhetors from the Augustan age or earlier.⁷⁰⁷ In any case, is it at all likely that the Hellenistic insertion of our documents dates to a cultural milieu whose heyday was the time of the Second Sophistic?

Moreover, such a work on the *corpora* of the orators would suggest an environment in which their speeches were extensively studied and discussed. Demosthenic papyri however start to appear only from the 1st century BCE. Likewise, the first preserved critical evaluations of Demosthenes as an orator are found in the works of Dionysius of Halicarnassus and Cicero, and in *P.Berol.* 9780, preserving a

⁷⁰⁷ See Russell 1983: 3-9.

work of Didymus also composed in the 1st century BCE.⁷⁰⁸ This has prompted some scholars to interpret the silence about Demosthenes in our sources from the Hellenistic times as evidence of a change in stylistic taste: Demosthenes simply went out of fashion.⁷⁰⁹ To place the origin of our documents in such a cultural context, when Demosthenes was (allegedly) ignored and a proper tradition of *progymnasmata* and declamations was still to come, seems highly unlikely.

This picture of the rhetorical tradition and of Demosthenes' fortune in the Hellenistic age is however misguided. First of all, it is now widely recognized that Greek oratory did not die at Chaeronea. The context of the Hellenistic city, as well as the role of the ambassadors in the Hellenistic world provided plenty of occasions for oratory, and where oratory is alive, rhetorical education must flourish.⁷¹⁰ Moreover Quintilian (2.4.41) tells us that 'to speak on fictitious cases, in imitation of pleadings in the *forum* or in public councils, is generally allowed to have become a practice among the Greeks, about the time of Demetrius Phalereus.' Philostratus (VS 481) contrasts a first sophistic, originated with Gorgias, to a second, concerned with the poor and the rich men, war-heroes and tyrants and with those named individuals drawn from history, which was initiated by Aeschines after he went into exile to Rhodes. Both these sources therefore date the birth of historical declamations (and therefore of relevant rhetorical education) to the very beginning of the Hellenistic age. They are confirmed by two papyri from the 3rd century BCE, *P.Hibeh* 15 and *P.Berol.* 9781. Both preserve passages of historical declamations much in the style of the well-known later examples: the first advocates action against Alexander and the second purports to be Leptines' speech in

⁷⁰⁸ Demetrius' *On Style* shows a preference for Demosthenes' style, but the date of this work is debated. Kennedy 1994: 88-9 places it in the 1st century BCE, Grube 1965: 110-21 around 270 BCE. For *P.Berol.* 9780 the bibliography is extensive. See Gibson 2002 and Harding 2006 for the most recent treatments of Didymus' work.

⁷⁰⁹ Cf. e.g. Kennedy 1994: 96; Cooper 2000: 239.

⁷¹⁰ See Pernot 2005: 73-82, who summarizes the work on this topic produced by Louis Robert. See also Erskine 2007: 272-85 and Wooten 1973 about the oratory of ambassadors.

response to Dem. 20. Interestingly, both declamations deal with the age of Demosthenes, and with topics with which he had been personally concerned.

As for the fortune of Demosthenes, whatever one thinks of his influence on the speeches in Polybius spotted by Wooten,⁷¹¹ Didymus' allusions in the 1st century BCE to the shortcomings of previous commentators of Demosthenes is evidence that exegetical work on his speeches flourished in the Hellenistic period.⁷¹² His work, like all the preserved ancient commentaries on Demosthenes, shows a remarkable interest in historical, constitutional, legal and generically antiquarian matters: the fragments of Didymus in Harpocration contain discussions of 'the layout of the theatre, the shapes of classical-era drinking cups, tithing, imprisonment, architectural elements, the requirement for advance deposits in court cases, guardianship and attainment of the majority, the arrangement of olive trees in groves, and clan-sponsored wedding feasts.' *P.Stras.* 84, a 1st century AD commentary on Dem.22 that certainly relies on Hellenistic materials, discusses 'the chairmanship of governmental committees, the Periclean building program, fifth-century Athenian finance, treasury officials, the jurisdiction of the thesmothetae, and the names and duties of archons and other officials.'⁷¹³ It is easy to see that such antiquarian interest in the orators and the sort of competence that came with it (whether the information collected was reliable or not) matches perfectly the kind of skills needed to create most of the non-stichometric forged documents. In fact it is very likely that the intended readership of these works were exactly those advanced students and teachers of rhetoric and declaimers whose practices I have described in the previous paragraphs.⁷¹⁴

One of the two 3rd century BCE historical declamations mentioned above, *P.Berol.* 9781, provides an excellent example of how careful legal and antiquarian

⁷¹¹ Wooten 1974. On the methodological limitations of his approach see Kremmydas 2007: 22-3 n. 16.

⁷¹² Cf. the excellent discussion in Gibson 2002: 26-35.

⁷¹³ I am quoting here Gibson 2002: 40.

⁷¹⁴ Gibson 2002: 42-50.

information was used by teachers and rhetors to produce speeches remarkably accurate, and yet marred by errors, anachronisms and misunderstandings, quite similar therefore to our non-stichometric documents. Kremmydas has provided an excellent discussion of this text, noticing how the author is clearly 'steeped in Attic oratory' and draws from a variety of speeches, and how his language is usually accurate and reproduces successfully the technicalities of Attic oratory and official language.⁷¹⁵ The discussion at ll. 19-30 of the law on *syndikoi* is ingenious, and the defence of Leodamas' right to stand as a *syndikos* of the law of Leptines is legally sophisticated: Dem. 20.146-7 claims that since Leodamas has been in the past accuser in a *graphe paranomon* against the decree granting *ateleia* to Chabrias and lost the case, and since the law does not allow one to bring the same charge twice, Leodamas cannot legally be *syndikos* of the law of Leptines cancelling exemptions. The author of the declamation rightly retorts that being *syndikos* of a law has nothing to do with being the accuser in a previous *graphe paranomon*. In the declamation however, side-by-side with these remarkable pieces of legal understanding and historical accuracy, we find a section (ll. 119-46) discussing how inconsistent Demosthenes' position as accuser of the law of Leptines is when one considers his own trierarchic reform (Dem. 18.102-6). Yet the trial of Leptines happened in 355/4, and Demosthenes' trierarchic reform was not enacted until 340. Ps. Leptines sometimes fails to read Demosthenes' speech carefully: at ll. 110-1 he laments the risks he is running, and the penalty he will suffer if convicted. Demosthenes at Dem. 20.144 clearly states that because one year has elapsed since the enactment of the law Leptines is no longer personally liable to any punishment.⁷¹⁶

This declamation is evidence that teachers of rhetoric and rhetors from the Hellenistic age were remarkably versed in the Attic orators, were informed about

⁷¹⁵ Kremmydas 2007: 36.

⁷¹⁶ See Kremmydas 2007: *passim* for a detailed commentary of the declamation.

Athenian history and legal and constitutional matters and had access to commentaries (and *lexica*) like that of Didymus. Yet they made plenty of mistakes in their reconstruction of Athenian laws and institutions (as Didymus does too). Their skills and their shortcomings match the picture of the forgers of our documents, and like the documents, their speeches were of uneven quality.

It is time to draw some conclusions about the nature of the forged non-stichometric documents and their importance. If my reconstruction of the context of their composition is correct, these texts stand at the intersection between rhetorical fiction and antiquarianism. The purpose of their 'forgers' was probably not to deceive readers, but rather to fill gaps in very important texts. However their aim was not properly antiquarian either: they tried to produce plausible Athenian laws and decrees for educational and rhetorical, not properly scholarly purposes. An understanding of the history and the legal system of classical Athens was a means to the end of mastering the *corpora* of Attic oratory, which provided the highest models for students and rhetors of the Hellenistic age (and beyond). Gibson points out that 'historical declamation [...] pursues the truth of history by first rejecting the pursuit of historical truth. It instead envisions and constructs alternate histories.' Kremmydas has shown that in *P.Berol.* 9781, from the 3rd century BCE, historical detail and legal precision play an important part, yet 'what mattered more [...] was historical credibility, not accuracy.'⁷¹⁷ This observation can be confidently extended to our documents. Those who composed them shared skills, education and cultural environment with erudite commentators of the orators like Didymus and his predecessors, sometimes they might have been commentators themselves. Therefore they had important sources available, and possibly a larger number of speeches of the orators to read than we do. In any case, they were competent (to various degrees) and well read. Yet they were not trying to find and add

⁷¹⁷ Gibson 2004: 105; Kremmydas 2007: 28.

to the speeches the right laws or decrees.⁷¹⁸ Nor were they trying to reconstruct these documents with philological accuracy. They wanted to produce credible documents, and in most cases they succeeded. These documents are evidence of their skills, competence and imagination rather than of the laws, procedures and institutions of classical Athens.

I will conclude with a general consideration. Scholars have often lamented the lack of evidence for Hellenistic educational and rhetorical practices and for the use of the orators as models during this age.⁷¹⁹ As we have seen, we have only two Greek declamations from this period, surviving by chance in fragments of papyrus. There are no *progymnasmata* and no treatises (with the possible exception of Demetrius' *On Style*).⁷²⁰ Moreover, the absence of any evidence for the study of Demosthenes (and of the other orators) has led scholars to question his popularity at this time. At the end of the Hellenistic age however we find an established canon of ten orators and *corpora* more or less formed, as well as commentaries like that of Didymus that refer to previous scholarship. Russell has sensibly pointed out that the coincidence between later Greek rhetorical tradition 'and the Roman evidence can only be due to a common source. Greeks did not learn from Romans - least of all in rhetoric.'⁷²¹ We need not be reduced, however, to reconstructing rhetorical practices of the Hellenistic age from later material.

⁷¹⁸ This does not exclude the possibility that they might occasionally have found the right document. MacDowell 1990: 46, Scafuro 2006: 180 and others have named Craterus and other scholars who collected laws and decrees as the possible sources of the documents. Their collection of laws and decrees would have been consulted by the editors of the speeches to find the correct document to fill a gap in the text. I am inclined to believe that this must have been the case with the list of names in Andoc. 1.13, 15, 35, 47, which are confirmed by the epigraphical evidence of *IG I³ 422* (see Canevaro-Harris 2012). They must have been found in some such collection. It is interesting that a list of *demioprata* from the same inscription is preserved in the tenth book of Pollux (*passim*). Pippin in Pritchett-Pippin 1956: 318-28 has argued that Pollux's source might actually be Craterus, through the mediation of Eratosthenes and the anonymous author of the *Skeuographicon*. This might well be the case, and proves that a copy of that inscription did circulate in antiquity and was available to be read in Craterus and other sources. However it is now widely-recognized that Craterus' collection of decrees stopped at the end of 5th century, and he cannot have provided any help with most of the documents in our speeches, which date to the 4th. See e.g. Jacoby *FGrHist* 342 Komm. p. 97, Erdas 2002: 27-8 and Carawan, *BNJ* 342 'Bibliographical essay'. And in general the mistakes and flaws of our documents suggest that they are reconstructions from various sources and from the forger's imagination rather than original Athenian documents.

⁷¹⁹ Cf. e.g. Pernot 2005: 57 n. 1.; Vanderspoel 2007: 124-5; Erskine 2007: 273.

⁷²⁰ See above p. 314 n. 709 for the most important attempts at dating this work.

⁷²¹ Russell 1983: 3.

This study, I hope, has shown that Hellenistic material exists and has survived in the *corpora* of the orators themselves. Teachers and rhetors from the Hellenistic age were skilled enough to forge credible documents that have been often mistaken for authentic laws and decrees from classical Athens. Their most successful declamations might well have been good enough to be mistaken for authentic classical Athenian speeches. The *corpora* of the orators are full of spurious speeches that are still dated to classical Athens because they look, in spite of many problems, too sophisticated to be later compositions. And yet the documents show us that Hellenistic rhetors and teachers were certainly skilled enough to produce credible imitations of classical speeches. The evidence for Hellenistic rhetoric and for the study of the orators in the Hellenistic age might well be before our eyes, in the *corpora* of the Attic orators themselves.⁷²²

⁷²² A very interesting attempt is Gribble 1997, who finds models typical of later declamations, as well as mistakes and antiquarian interests that are paralleled by those we have found in the documents, in Ps.-Andocides' *Against Alcibiades*.

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