The Authenticity of the Law about *Nomothesia* inserted in Demosthenes *Against Timokrates* 20–23

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Perhaps the most important but also the most controversial of the documents inserted in Demosthenes’ speech *Against Timokrates* (353 B.C.) is the law that purports to regulate the annual vote in the *ekklesia* about revision of the Athenian corpus of laws (24.20–23), conventionally referred to as “the review law.”¹ Is this document genuine as most contemporary scholars have believed?² Or is it a forgery as recently argued by Mirko Canevaro?³ I still believe that the document is authentic, but before I take issue with Canevaro’s specific analysis of the document in its context I shall discuss the method he applies.

¹ The term was coined by D. M. MacDowell, “Law-Making at Athens in the Fourth Century B.C.,” *JHS* 95 (1975) 62–74.

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Canevaro’s method for testing authenticity

Canevaro’s analysis of the documents inserted in the Against Timokrates forms part of his book about all the documents inserted in the public speeches of the Demosthenic corpus, viz. the documents in On the Crown (Dem. 18), Against Meidias (21), Against Aristokrates (23), Against Timokrates (24), and Against Neaira (59). A feature shared by these speeches is that in the medieval manuscripts the text is broken up into units of 100 lines, each of ca. 34–38 letters, roughly the equivalent of a Homeric hexameter, in Greek a στίχος. After each unit of 100 stichoi a letter, Α, Β, Γ, Δ, etc., marks the beginning of the next unit.⁴ At the end of the speech the total number of lines is indicated in Attic acrophonic numerals. For the speech Against Timokrates the number is XX = 2000 lines.⁵ The purpose of the stichometric letters and the totals in acrophonic numerals was presumably to allow the buyer of a literary work to check that the text he bought was the complete version.⁶ The stichometric letters are preserved in the medieval manuscripts but probably go back to an edition of Demosthenes’ speeches edited in Athens after his death in 322 by a person who had access to his personal files, and Canevaro (327) surmises that Demosthenes’ nephew Demochares of Leukonoe is the obvious candidate for such an undertaking. Canevaro argues that the stichometric edition of the text of Demosthenes must be the first overall edition of the corpus, and—undoubtedly inspired by the nineteenth-century German scholars who started and for long dominated stichometric studies—he has adopted Urexemplar as a convenient term for this “first edition” of the Demosthenic corpus.⁷

The stichometric marks have been studied by philologists and editors of Demosthenes’ speeches since the mid-nineteenth

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⁴ Canevaro 10.
⁵ Canevaro 20.
These studies show that some of the documents inserted in the speeches are included in the stichometric count, but others are not, so that the number of stichoi between two letters comes to more than 100, thus showing that these documents must have been inserted later than the stichometric letters, which in all our manuscripts occur at the same place. Canevaro (13) has conducted computer-aided calculations of the stichometry which corroborate in refined form the results of earlier less precise investigations: the investigations demonstrate that the documents in Demosthenes’ public speeches form a spectrum ranging from those in On the Crown to those in Against Aristokrates. Not a single one of the documents in On the Crown had been included in the Urexemplar; they are all later additions, whereas all the documents in Against Aristokrates either indisputably or very likely were part of the Urexemplar. The documents in the speech Against Timokrates fall between these two extremes. Some were unquestionably part of the Urexemplar, others were not, and in some cases it is impossible to decide whether or not these documents were in the Urexemplar.9

Next, an examination of the language and contents of the documents shows that all the documents in On the Crown are late forgeries.10 In this context it suffices to mention just one piece of information. In all the documents the name of the archon which dates the document is always wrong. In a few cases it is the name of a person who was archon in a different year, in most cases it is the name of a person who was not an archon in any year at all. Conversely, according to Canevaro,
the language and contents of the documents recorded in Against Aristokrates indicate that all the documents are authentic. Passages quoted from the Athenian homicide law are—in so far as they can be checked—identical with the passages in the homicide law published on stone in 409/8 (IG I 104) and with Demosthenes’ paraphrase when he comments on the law. Canevaro argues that the same pattern applies to the documents in Against Timokrates. The language and contents of the documents that can be traced back to the Urexemplar corroborate that they are genuine, whereas an examination of the form and substance of the documents that were not included in the Urexemplar reveals that they are late forgeries.

Canevaro applies three methodological principles by which the correlation between authenticity and inclusion in the Urexemplar can be established, and conversely the correlation between forgery and exclusion from the Urexemplar.

First, one must compare the text of a document with the orator’s paraphrases and comments which in most cases both precede and follow the document. Such an investigation shows that the documents are often inconsistent with the orator’s paraphrases, and which should we believe? Canevaro takes into account that the Athenian orators sometimes misinterpret the laws read out to the jurors, and he provides examples of misrepresentation of the contents of a law. Also, the evidence shows that the orator sometimes quotes selectively or in the paraphrase adds details that are not in the law. But Canevaro finds that, on the whole, an orator’s paraphrase of a document is more reliable than the text of the document itself, in particular if the paraphrase occurs close to the document, and he concludes (32): “It has been established that the documents should not contradict the information found in their close paraphrases, and should contain all the features and provisions there summarized.”

Second, problems found in the documents must not be removed by

11 Canevaro 37–76.
12 Canevaro 27–34.
13 Canevaro 30, discussing the discrepancy between Dem. 20.18, 26, 27 and IG I 141.29–36.
14 Canevaro 30 with n.63.
means of transpositions, emendations, and deletions. Major problems with the text of a document 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.\textsuperscript{15}

Third, “documents should conform to the language, style and conventions of Classical Athenian inscriptions of the same type … 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” (34–35).

The first principle is well presented and in most cases cautiously applied, in fact more so than in an article about the documents in Andokides \textit{On the Mysteries}.\textsuperscript{16} But in Canevaro’s book too, whenever the orator’s paraphrase is inconsistent with the document, the a priori view is: trust the paraphrase and reject the document as a forgery. The second principle is sound and applies of course to the orator’s text as well as to the inserted documents. In the relevant section of the Timokrates speech (17–38) there are no serious problems with the text that require transposition, emendation, or deletion.\textsuperscript{17} The third principle is in my opinion problematical.

\textit{Agreement in language and terminology between documents and inscriptions}

Canevaro has tested whether legal and constitutional terms and idioms found in the inserted documents are attested in Attic inscriptions, and in particular in inscriptions of the Clas-

\textsuperscript{15} Canevaro 34. But in Timokrates’ law (§39–40 and 71)—which was in the \textit{Urexemplar}—Canevaro accepts two emendations: the transposition of δεκάτης (116–117) and the emendation of a demotic by preferring ἐγ Μυρρινούττης to the MSS. Μυρρινούσιος (120).


\textsuperscript{17} But emendations and transpositions have of course been proposed, in particular by nineteenth-century editors and philologists, and Canevaro too sometimes accepts emendations, see n.15 above.
sical period. If such terms and idioms are unparalleled in the epigraphical evidence he takes it to be an indication that the document cannot be genuine but is a forgery. Analysing the document at Dem. 24.20–23 he adduces the argument four times against its authenticity, questioning ἐπειδὰν εὐξῆται ὁ κήρυξ and ἐπιχειροτονίαν ποιεῖν at 20,18 τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν at 21,19 and συναπολογοσημένους at 23.20

In my opinion, to insist on having parallels in contemporary Attic inscriptions or in any Attic inscription is a dangerous method to use in this case, because the epigraphical evidence at our disposal is both restricted and biased. We have a plethora of honorary decrees and many treaties,21 whereas very few nomoi are preserved on stone,22 and the few we have mostly regulate a specific matter such as approvers of silver coins, transportation and storage of public grain from the klerouchies to Athens, repairs on the walls of Piraeus, regulation of the Panathenaia.23 The law of 337/6 against subverting the democracy is the only epigraphically preserved example of a constitutional law passed by the nomothetai (GHI 79). There is no proper parallel at all for the laws on legislation found in Against Timokrates 20–23 and 33. The closest we get to a law about the workings of the political institutions is the fragmentary fifth-century law regulating the powers of the council of five hundred vis-à-vis the Assembly (IG I3 105).

A parallel investigation illustrates the shortcomings of the method. In the symbouleutic and forensic speeches (excluding the inserted documents) we have preserved a great variety of legal and constitutional terms and idioms. Many of these terms

18 Canevaro 97, on ἐπιχειροτονία; see 451 ff. and n.58 below.
19 Canevaro 99, see 467 below.
20 Canevaro 101–102, see 473–474 below.
22 Acknowledged by Canavaro at 332.
23 Rhodes-Osborne, GHI 25, 26, IG II2 244, 447.
and idioms are unattested in Athenian inscriptions. But in this case we cannot infer that the lack of parallels in the inscriptions casts serious doubt on the authenticity of the speeches. Here in alphabetical order is a list of some of the legal terms attested in the orators but without any parallel in Attic inscriptions:

αἰκεία, ἀκούσιος, ἀνδραποδίζειν, ἀντιγραφὴ, ἀντωµόσια, ἀπώφασις, ἀπροβούλευτος, βάσανος, βούλευσις, δεκασιός, δεσίως, ἑξακισχίλιοι, ἐπωβελία, ἐφήγεισθαι, ἰκετηρία, κακηγορία, καταχειροτονία, κλοπή, λιπτάξιον, λογογράφος, παραγραφή, παράστασις, προβολή, προεισφορά, πρόκλησις, πρόσκλησις, προστάτης, συκοφάντης, ὕβρις, ὑπωµόσια, φανερὰ/ἀφανὴς οὐσία, ψευδοµαρτυρία. I do not doubt that probably twice as many legal and constitutional terms not attested in the inscriptions can be identified. Each of these terms can be investigated in detail. In this context I shall adduce two examples.

A law about reprieve for atimoi and opheilontes is read out to the jurors at 24.45. It stipulates that no proposal about reprieve can be debated unless a quorum of 6000 Athenians in a secret vote have given their permission (ἀδεια). Canevaro’s sticho-

24 In the sense of counter-plea.
25 Attested in inscriptions of the Roman period, IG II² 1051a.18.
26 In the sense of inquiry by torture.
27 Used in inscriptions, e.g., in the sense of chains of a four-wheeled wagon (IG II² 1425.383), but never in a document in the sense of imprisonment, which is the common meaning in documents in the orators.
28 See n.58 below.
29 The verb προσκαλεῖσθαι is attested in inscriptions.
30 In the sense of being prostates of a metic.
31 The verb ὑβρίζειν is attested in a thiasos decree of the second century A.D. (IG II² 1368). The only epigraphical attestation of ὕβρις is in the epigram celebrating the Athenian victory over Boiotia and Chalkis in ca. 506 B.C. (Meiggs-Lewis, GHI 15).
32 For formulae found in the speeches and in the inserted documents but unattested in Attic inscriptions, see for example πρόσθεν τῶν ἐπωνύµων or ἐπιχειροτονίαν διδόναι; cf. n.58 below.
metric investigation shows that this document was part of the *Urexemplar*. In language and content it is almost identical with Demosthenes’ paraphrase of the law at 46, and Canevaro accepts the law as a genuine document. Looking for parallels in Attic inscriptions we find three attestations of κρύβδην ψῆφι-ζεσθαι, but not a single one of the number of voters. The numeral ἑξακισχίλιοι is unattested in Attic inscriptions. Following Canevaro (132) I accept the document as genuine, but I note that we have accepted a document as authentic although there is no parallel in Attic inscriptions for one of the key terms in the law.

My other example is the decree passed on Hekatombaion 11 about having a session of nomothetai on the following day to hear and vote on Timokrates’ bill about the dioikesis of the Panathenaia (§28). That decree was not part of the *Urexemplar*, and for a number of reasons Canevaro (112) rejects the document as a late forgery. One of his objections concerns the word αὔριον in the expression καθίσαι νομοθέτας αὔριον: ‘αὔριον, to mean ‘tomorrow’, is never found by itself in official language. Out of 177 entries the word is used 174 times after ἐς (or ἐς), and three times in the expression ἡ αὔριον ἡμέρα’ (110). But from Demosthenes’ comment on the *psephisma*, αὐτὸς ἐγραψεν αὔριον νομοθετεῖν, it follows that ”αὔριον by itself” was in the decree which the grammateus had just read out to the jurors, and that must have been the authentic decree, not a forged document inserted much later. Must we then emend αὔριον in Demosthenes’ comment? That would be in conflict with Canevaro’s second methodological principle.

*The document at Dem. 24.20–23 (the review law)*

After this general introduction about the scope and purpose of Canevaro’s book and the method he applies, I return to the

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33 Canevaro 127.
34 *IG II²* 1141.6, decree of a phyle (376/5); 1183.18, decree of a deme (post 340); 1237.82, decree of a phratria (396/5).
35 Canevaro 105.

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law on nomothesia, quoted and discussed in Against Timokrates 17–32. Demosthenes has the law read out to the jurors at 20–23, and both before (at 17–19) and after (at 24–32) he paraphrases and comments on what the law prescribes and how Timokrates has disregarded all the requirements. Is the document in our manuscripts identical with the law which Demosthenes asked the secretary to read out? Or was it composed much later by “a skilful forger, one who knew the Attic orators and possibly had access to a lexicon or a commentary”? That is what Canevaro argues, in what now is the most thorough in-depth analysis of the relation between the document and Demosthenes’ comments and between the document and what we know from other sources about legislation by nomothetai in fourth-century Athens.

Canevaro’s treatment is in two parts: the first part (80–84) is introduced with a Forschungsbericht followed by a brief survey of what can be learned from the epigraphically attested Athenian laws passed by nomothetai. Then comes an analysis of the document compared with what Demosthenes says at 17–19 and 24–32 about nomothesia and in particular about the Assembly’s role in the initial phase of the procedure that leads to appointment of panels of nomothetai who make the authoritative decisions about the revision of the law code. The second part (94–102) is a discussion of the document inserted at 20–23. According to Canevaro, “a closer analysis of the features of the document confirms that it cannot be an authentic Athenian statute” (96).

The law on nomothesia

First I shall reconstruct the nomothesia procedure as prescribed in the document inserted at 20–23. On the eleventh day of the first prytany, in the Assembly (ἐν τῷ δήµῳ) after the herald has said the prayers there shall be a vote by show of hands about the Athenian law code (ἐπιχειροτονία τῶν νόµων). The laws (nomoi) are subdivided into four sections: laws concerning

36 Canevaro 102, cf. 332.
37 For recent treatments see n.2 above.
the boule, common laws, laws concerning the nine archontes, and laws concerning the other archai. For each section the epicheirotonia is conducted as a series of votes. First the people are asked to vote whether or not the bouleutic laws in force are sufficient.\(^{38}\) If a majority decides that the laws in force are sufficient, the Assembly moves on to a similar vote about the second section of laws; but if the people vote that the bouleutic laws in force are not sufficient, there must after the general vote have been a debate, in which objectionable individual laws within the section can be identified and attacked by some citizens but defended by others. In consequence of the debate a vote is taken on each of the disputed laws, and each is either approved as satisfactory or voted down,\(^{39}\) which entails that it will be referred to a session of nomothetai who make the final decision.\(^{40}\) When the nomoi concerning the boule have been debated and voted on, the three other sections of the law code, one by one, are treated in the same way.

We do not know how many laws were questioned and how many of these were provisionally rejected as insufficient when the vote was taken: in some years perhaps not a single one, in others several. Let us suppose that in a given year four nomoi altogether have been debated of which two are rejected when the vote is taken but two upheld as valid. For the laws that are approved that is the end of the matter, and in the law about the epicheirotonia ton nomon all further steps focus on the two laws rejected in the second round of the epicheirotonia.\(^{41}\) At this ekklesia

\(^{38}\) The alternatives are transposed in Demosthenes' paraphrase at 25.

\(^{39}\) ἐὰν δὲ τίνες τῶν νόμων τῶν κεκτενὸν ἀποχειροτονηθῶσιν τοὺς πρωτάνεις ἐφ᾽ ἃν ἑν ἡ ἐπιχειροτονία γένηται ποιεῖν περὶ τῶν ἀποχειροτονηθέντων τὴν τελευταίαν τῶν τριῶν ἐκκλησίαν (21).

\(^{40}\) τοὺς δὲ προέδρους οἱ ἐν τυγχάνονσι προεδρεύοντες ἐν ταύτῃ τῇ ἐκκλησίᾳ χρηστίζειν ἐπάνωγες πρῶτον μετὰ τὰ ἱερὰ περὶ τῶν νομοθετῶν.

\(^{41}\) But that does not prevent a citizen from bringing a graphe nomon me epitedeion thionai later in the year against any law in force, see §§33 and 37, or the thesmothetai from having two conflicting laws about the same matter examined and one of them rejected (see 457 below).
the demos also elects advocates who before the nomothetai are to defend the laws in force which have been provisionally rejected by the Assembly and submitted to the nomothetai for a final decision about approval or repeal. After the first ekklesia, any Athenian can propose an alternative to laws rejected in the epicheirion. All alternative bills must be posted before the eponymous and read out to the people in the following ekklesiae. The presumption is that the citizen(s) who raised the matter in the ekklesia and succeeded in persuading the demos to reject a law will propose—or perhaps even be obliged to propose—an alternative, but in the law that is not stated as a requirement. Conversely, since any Athenian can propose an alternative to a rejected law, several different alternatives to a rejected law can be proposed. In the case that one or more nomoi have been rejected in the first ekklesia, the prytaneis must place the rejected laws on the agenda of the third and last meeting of the Assembly held in the first prytany, and accordingly the proedroi of that meeting must provide for a debate about nomothetai to take place immediately after the sacred matters, and decide about which sessions there will have to be, how the nomothetai can be paid, and when the sessions will be held. The law

42 Not mentioned in the document, but referred to by Demosthenes (25) as the purpose of having the bills published before the eponymous: προσέταξαν (οἱ νόμοι) τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους πρόσθεν τῶν ἐπονυμών, ἵν’ ὁ βουλομένος σκέψηται, κἂν ἀσύμφορον ὑμῖν κατίδῃ τι, φράσῃ καὶ κατὰ σχολὴν ἀντείπῃ. Cf. 36.

43 καθεζόμενον γάρ τῶν νομοθετῶν, περὶ μὲν τούτων, τῆς διοικήσεως καὶ τῶν Παναθηναίων, οὔτε χείρων’ οὔτε βελτίω νόμον οὐδὲν εἰσήνεγκεν οὐδείς (29).

44 τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν (21); τὴν τρίτην ἐκκλησίαν (25). See 467 ff. below.

45 πρῶτον μετὰ τὰ ἱερά, see 463–464 below.

46 τοὺς δὲ νομοθέτας εἶναι ἐκ τῶν ὁμοφονῶν τῶν ἡλιαστικῶν ὄρκων (21); τοὺς δὲ νομοθέτας εἶναι ἕκατον καὶ χιλίους ἐκ τῶν ὁμοφονῶν (27). Both documents are rejected by Canevaro (§20–23 at 80–102, §27 at 104–113) as late forgeries, but that the nomothetai were jurors is stated at Dem. 20.92–93. His argument is: the nomothetai prescribed by the old law (οὶ πρότερον νομοθέται) = jurors (ἐν τοῖς ὁμοφονοῖς) = the dikastai (παρ’ ὑμῖν παρ’ οἵσπερ

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also lays down that the *nomothetai* are to be selected from among those who have sworn the heliastic oath.\textsuperscript{48}

In this description I have omitted §22, a long section that prescribes sanctions against the *prytaneis* and the *proedroi* if they do not discharge their duties imposed by this law and against the *thesmothetai* if they do not see that these sanctions are duly imposed. Nothing in this section arouses Canevaro’s suspicion that the law is a late forgery, and similar sanctions against *proedroi* and *prytaneis* are attested in Classical inscriptions.\textsuperscript{49}

**Demosthenes’ paraphrase of the law**

In sections 17–19 and 24–32 Demosthenes paraphrases and interprets the law about *nomothesia*. Is his account consistent with the inserted document? Or are there inconsistences which show that the document is not the law read out to the jurors in 353 but a late forgery?\textsuperscript{50}

At 17–19 Demosthenes charges Timokrates (1) with having

\[καὶ τὰλλὰ κυροῦται\]. Demosthenes’ complaint is that Leptines has not had his law passed by the *dikastai* as he should have done according to the old law. The correct statement “Both *dikastai* and *nomothetai* are *omomokotes*” is twisted by Demosthenes into the erroneous statement “The *dikastai* are *nomothetai* since both boards are *omomokotes*” (Hansen, *GRBS* 26 [1985] 364).

\[At \\
\text{Aeschin. 3.39 τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαιν ἐγκλήσιον ἑπιγράφαντας νομοθέταις,} \]

preferring the MS. reading *νομοθέταις* to Dobree’s emendation *νομοθέταις*, Piérart (in *La codification* 235) infers that sessions of *nomothetai* were special sessions of the Assembly. Rhodes, *CQ* 53 (2003) 126, counters this part of Piérart’s argument by pointing out that it is a good idea to keep the MS. reading, but it does not change the meaning of the expression: “the accusative here could well be (just as Dobree’s dative has been thought to be) a way of saying ‘putting *nomothetai* on the agenda’, and there is no reason to think that it must mean ‘labelling it (sc. an assembly of) *nomothetai*’.”

\[περὶ τῶν νομοθετῶν, καθ’ ὡστε καθεδοῦνται, καὶ περὶ τοῦ ἀργυρίου, ὑπὸ-θεν τοῖς νομοθέταις ἔσται (21).\]

\[\text{It is worth noting that to have the *nomothetai* appointed from among the panel of citizens who had taken the heliastic oath is here described as a duty incumbent on the *prytaneis* presiding over the third *ekklesia*. Had there originally been an alternative?}\]


*\textit{A Commentary on the Aristotelian Athenaios Politeia} (Oxford 1981) 675.*
disregarded the time limits for nomothesia imposed by the law,\(^{50}\) (2) with not having posted his bill before the eponymoi,\(^{51}\) (3) with having disregarded the principle that a nomos must apply to all citizens, not to named individuals,\(^{52}\) and (4) with not having got opposing laws rescinded.\(^{53}\) In the document: (re 1) the time limits are prescribed at 21 and 23; (re 2) the duty to have a bill posted before the eponymoi is imposed at 23; (re 3) the principle that a law must be general and not ad hominem is not mentioned in the document and does not belong in a law about the legislative procedure; the law is read out to the jurors at 59 and discussed by Demosthenes at 59–60;\(^{54}\) (re 4) the requirement to have opposing laws rescinded is not mentioned in the law at 20–23, but in the law read out at 33\(^{55}\) and in Demosthenes’ paraphrase of that law at 34. (1) and (2) testify to consistency between the document and Demosthenes’ paraphrase. (4) is confirmed by the following law (33) on nomothesia.\(^{56}\) (3) deserves a further comment, duly stated by Canevaro when he comments on Demosthenes’ interpretation of the law at 59–60:\(^{57}\) 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 in mind—namely, Androtion, Glau- cetes, 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

\(^{50}\) §18, repeated at 25, 26, 29, 32, 48.
\(^{51}\) Repeated at 25, 26, 36.
\(^{52}\) Repeated at 59–60, 74, 159, 188.
\(^{54}\) Canevaro 145–150.
\(^{55}\) ἕτερον τιθέντι ὅνθ᾽ ὅτου ἀν λύῃ.
\(^{56}\) Canevaro 90–94, 102–104.
\(^{57}\) Canevaro 148, referring to M. H. Hansen, "Did the Athenian Ecclesia Legislate after 403/2 b.c.?" *GRBS* 20 (1979) 28–29.
out, specific categories, on the condition that their application is general.

As Canevaro says, Demosthenes’ argument is flawed, which shows that he can misinterpret a law when it suits his own purposes.

In his comments at 24–26 after the law has been read out to the jurors, Demosthenes repeats the charges that Timokrates has not had his bill posted before the eponymoi and that he did not respect the time limits imposed by the law. Here the two charges are connected: by not publishing his bill in advance Timokrates prevented the citizens from preparing an opposition to the bill, probably at the third meeting of the ekklesia when nomothetai were once again on the agenda, but presumably also at the second meeting. The key issue in this part of Demosthenes’ paraphrase is his interpretation of the epicheirotonia conducted by the people at the first ekklesia of the year.

Epicheirotonia

The procedure of epicheirotonia is described both in the document and by Demosthenes in his paraphrase. The document lays down ἐπιχειροτονίαν ποιεῖν τῶν νόμων, πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εἶτα οἱ κεῖνται τοῖς

58 By contrast with the terms διαχειροτονία and διαχειροτονεῖν which are well attested in inscriptions, neither ἐπιχειροτονία nor ἐπιχειροτονεῖν is attested in Attic inscriptions of the Classical period. In inscriptions after ca. 300 B.C. there are two attestations, one of them restored. SEG XXI 528.3 is a decree passed by some orgeones that 10 (?) persons be elected (ἐπιχειροτονῆσαι δέκα ἄνδρας) to take care of some offerings. SEG XLI 51.9 is a decree concerning ephebes which prescribes an ἐπιχειροτονίαν τῶν δήμων τῶν πρ[– –], cf. Canevaro 137. Thus, in inscriptions there is no proper parallel to the forms of epicheirotonia attested in our fourth-century literary sources and documents, see 443 ff. above and 458 ff. below. Note that διαχειροτονία/-εῖν (attested in both literary and epigraphical sources) and ἐπιχειροτονία/-εῖν (attested in literary sources only) are often used synonymously, as at Dem. 24.25–26. In this context both denote a show of hands in which the people have a choice between two options instead of voting yes or no to a proposal.

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ἐννέα άρχουσιν, εἴτε τῶν ἄλλων άρχῶν (21). Demosthenes refers at 26 to τῆς ἐκκλησίας ἐν ἧ τοὺς νόμους ἐπεχειροτονήσετε. Both the document and Demosthenes specify the ἐπι- cheirotonía as a diacheirotonía, i.e. a choice between two options. Demosthenes uses the term, the document distinguishes between the first and the second phase of a cheirotonía. The text of the document is ἡ δὲ χειροτονία ἔστω ἡ προτέρα, ὅτω δοκοῦσιν ἄρκειν οἱ νόμοι οἱ βουλευτικοί, ἡ δὲ υστέρα, ὅτι μὴ δοκοῦσιν, “The first show of hands shall be for whom the bouleutic laws seem to suffice, the second for whom they do not.” Demosthenes’ paraphrase is ἐφ ύμῖν ἐποίησαν (οἱ νόμοι) διαχειροτονίαν, πότερον εἰσοιστέος ἐστί νόμος καινός ἢ δοκοῦσιν ἄρκειν οἱ κείμενοι, “The laws entrusted you with a diacheirotonía whether a new law must be introduced or whether the laws in force suffice.”

Do the two different formulations match one another or are they essentially different? In both accounts one option is to keep the laws unchanged. According to the document, the other option is that the laws in force are insufficient, which implies that at least one law must be revised or a new law introduced. According to Demosthenes, it is that a new law must be introduced. Furthermore, the sequence of the two parts of the diacherotonía is reversed. The reason for Demosthenes’ use of the singular νόμος καινός as well as for giving priority to this part of the diacheirotonía is presumably that he adapts his paraphrase of the law to the present case, the law proposed and carried by Timokrates, and it is only in his account of what happened after the ekklesia held on Hekatombaion 11 that he switches to the plural and states that several bills can be posted before the eponymoi.

On the basis of Demosthenes’ use of the plural Canevaro interprets πότερον εἰσοιστέος ἐστί νόμος καινός as a permission to propose new laws. But the verbal adjective in -τέος is a

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59 On the infinitive ποιεῖν and on the four categories of laws see 464 ff. below.
60 Canevaro 86: “That the preliminary vote must have been a general
much stronger expression; it denotes necessity, and the meaning is “whether a new law must be introduced.” To vote for that view is the same as a vote of no confidence: the code of laws is not satisfactory. Canevaro argues that the preliminary vote, if positive, would allow to propose laws in general. He might as well have argued that the preliminary vote, if negative, would allow to propose laws in general. The ancient Greeks’ view on laws and legislation was that stable laws were best and the fewer changes of law, the better, cf. Demosthenes’ story later in the speech (139–143) about the Lokrians, who in more than two hundred years had changed just one law, and his devastating criticism in the Leptines speech (20.91–92) of how the many badly drafted new laws have led to contradictions between several of the laws in force. That view lies behind the document’s sequence of the two votes in the *diachirion*: ἡ δὲ χειροτονία ἔστω ἡ πρώτα, ὅτῳ δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί, ἡ δ’ ύστερα, ὅτῳ μὴ δοκοῦσιν. In Demosthenes’ paraphrase the emphasis is on the question whether a new law is necessary, in the document it is on whether the laws in force suffice. But basically the two sources agree on what the *epicheirotonia* is about.

Canevaro argues that there is nothing in Demosthenes’ description of what happened to support the view that, at the *ekklesia* held on Hekatombaion 11, an obligatory item on the agenda was a vote about the entire code of laws, a vote of confidence or no confidence in the laws in force. The crucial vote, allowing, if positive, to propose laws in general, is clear from the clause τοῖς βουλομένοις ἐσφέρειν ἐκτιθέναι τοὺς νόμους … the preliminary vote, if positive, would have allowed several proposals to be made, and was, therefore, a general invitation to submit proposals”; 89: “The obvious reading of ἐν ὧ τοὺς νόμους ἐπεχειροτονήσατε at §26 is therefore ‘at which you voted on the laws’ [plural], meaning ‘on whether laws can be proposed’”; 96: “The procedure described by Demosthenes is one for enacting new laws … Demosthenes describes a preliminary vote to allow new proposals [plural] to be made.”

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62 89: “This need have nothing to do with a vote of approval of the ‘code’
passage is Demosthenes’ description of the *epicheirotonia* (26): τῆς ἐκκλησίας, ἐν ὑπὸ τῶν νόμων ἐπεχειροτονήσατε, ὀσὺς ἐνδεκάτη τοῦ ἐκκτομβαϊόνος μηνός. According to Canevaro, “the obvious reading of ἐν ὑπὸ τῶν νόμων ἐπεχειροτονήσατε at §26 is therefore ‘at which you voted on the laws’ (plural), meaning ‘on whether laws can be proposed’” (89). But here τῶν νόμων must be all laws, viz. οἱ κείμενοι, not just laws in general; furthermore Canevaro argues persuasively (87–88) that the basic meaning of the verb ἐπιχειροτονεῖν is “to put to the vote.” That is undoubtedly the meaning here and the proper translation is: “in which you put the laws (i.e. all laws) to the vote.” That is confirmed by Demosthenes’ own description of the *diacheirotonia*, at 25: the alternative to voting that a new law must be passed is that the laws in force appear to be sufficient: δοκοῦσιν ἄρκειν οἱ κείμενοι (sc. νόμοι). The same formulation appears in the document: ὡς δοκοῦσιν άρκειν οἱ νόμοι οἱ βουλευτικοί. I can see no reason to deny that if a majority votes for that, it amounts to a vote of confidence.

So the *epicheirotonia*—held in this case on Hekatombaion 11— was a *diacheirotonia* about all laws. But was it an obligatory item on the agenda for this *ekklesia*? or a vote held whenever the Athenians had to legislate on any matter? Later in the speech (48) Demosthenes tells the jurors what Timokrates ought to have done: he should have approached the boule which then would have placed the matter on the agenda of the next meeting of the Assembly = the first *ekklesia* held in the year 353/2.63

Here the debate on the issue would have been opened with an *epicheirotonia*,64 and if the demos voted that a new law must be...
passed, Timokrates should have addressed the *demos*; the debate would have ended with another vote, and if a majority of the people had been persuaded by Timokrates,\textsuperscript{65} he could have proceeded with his proposal and posted his bill before the *eponymoi* (25). Then there would be a new debate about *nomothetai* in the third *ekklesia*,\textsuperscript{56} whereafter his bill would have been referred to a panel of *nomothetai*. What happened was that neither Timokrates nor anybody else had approached the *boule* about a new law concerning the Panathenaia to be debated at the *ekklesia*.\textsuperscript{67} The *epicheirotonia* on Hekatombaion 11 cannot have been held in consequence of Timokrates’ wish to have the law on the Panathenaia changed, and the presumption is that it was an obligatory item on the agenda for the first meeting of the year, and that Timokrates made use of the opportunity to propose his law when the *demos* in the *epicheirotonia* had voted that the laws in force did not suffice and that a new law was needed. We cannot of course preclude the possibility that the *epicheirotonia* was caused by a proposal about a completely different matter, duly submitted in advance to the *boule* by another citizen, and that it was this proposal that led to the *epicheirotonia*, but I am inclined here to apply Occam’s razor.

According to Canevaro, an annual obligatory vote on the corpus of laws is in conflict both with the epigraphical evidence and with Demosthenes’ account:\textsuperscript{68}

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.

\textsuperscript{65} εἰ πᾶσιν Ἀθηναίοις ἐδόκει (48).

\textsuperscript{66} καὶ τότε τῶν χρόνων ἀναμείναντα τῶν ἐκ τῶν νόμων (48).

\textsuperscript{67} 29; quoted n.43 above.

\textsuperscript{68} Canevaro 90; cf. 94, and 84 n.31, “*IG II3* 445 is enacted on Skirophorion 8, *IG II3* 320 in the ninth prytany, *IG II3* 140 in the fifth, the seventh, or the tenth prytany.”
dence, which shows that one could initiate the nomothesia procedure at any time of the year.

But for Demosthenes there was no reason in this context to mention that the epicheirotonia about the laws conducted on Hekatombaion 11 was an annual and obligatory diacheirotonia.69 On that occasion Timokrates constitutionally addressed the demos in connection with the epicheirotonia and argued that it was necessary to have a new law about the Panathenaia. Demosthenes would not waste time on the constitutional aspects of Timokrates’ behaviour, but focus on the unconstitutional, viz., the subsequentipsephism, the neglect of the time limits and all the other requirements prescribed by the law about nomothesia whereby he succeeded in having the matter referred to a panel of nomothetai convened on the following day to hear and vote on his proposal to amend the law on the Panathenaia. As for the epigraphic evidence, Canevaro is right that the preserved nomoi show that the nomothetai passed laws as late as the ninth and tenth prytanies; but the provision about an obligatory epicheirotonia ton nomon on Hekatombaion 11 was not the only part of the law about nomothesia read out at 20–2370 and not the only law about nomothesia.71 Also, in my opinion it is unlikely that every proposal for a law had to be initiated with an epicheirotonia about whether the laws in force were sufficient or a new law was needed (see §21 and 25).

The next issue to discuss is when and how often did an epicheirotonia take place? The epigraphic evidence “shows that one could initiate the nomothesia procedure at any time of the year,”72 and “A preliminary vote in the Assembly, at any point

69 For a defence of the view that it was an annual and obligatory epicheirotonia see 458 below.
70 The law read out at 33 may have been part of the same law, see Canevaro 91.
71 E.g. the law at Aeschin. 3.38–40 (to be discussed in my future article about the authenticity of the document at Dem. 24.33).
72 Canevaro 90. Rhodes believes that during the first decades of the fourth century nomothesia was limited to the procedure begun on Hekatom-
of the year, had to be held in order to allow new laws to be proposed (Dem. 24.25). Yes, but there is no evidence that the preliminary vote taken by the demos had to be an epicheirotonia on whether a new law was needed or the laws in force were sufficient. If that had been the case, any bill could have been stopped immediately the first time it was presented to the Assembly even before it could be debated, namely if the demos in the preliminary epicheirotonia had voted that the laws in force were sufficient. Our sources show that a bill was read out to the people repeatedly, and was debated in the ekklesia, and the vote which the demos had to take about every proposal for a new law is unlikely to have been an epicheirotonia; it was probably like that taken at the third ekklesia held in Hekatombaion about appointing nomothetai to hear the case and decide the issue. Also, Demosthenes’ explanation to the jurors of how an epicheirotonia was conducted (25) makes more sense if it was a procedure used once or twice every year and not a standard procedure repeated whenever a new law was proposed. If that had been the case, the jurors might have found Demosthenes’ explanation superfluous.

Another law about nomothesia supports the view that the epicheirotonia about the code of laws conducted on Hekatombaion 11 was a specific event. In the speech Against Ktesipho Aischines paraphrases a law that requires the thesmothetai to keep an eye on the laws of Athens: if they find invalid laws in the corpus, or inconsistent laws, or more than one law on the same point, the relevant laws are to be put before the people, who will set up a board of nomothetai to settle the matter. This inspection of the corpus of laws must be undertaken once every year. The prytaneis are requested to summon an ekklesia where nomothetai are an obligatory item on the agenda, and, as in the ekklesia held on Hekatombaion 11, the procedure is introduced by a diacheiro-

\[\text{CQ 35 (1985) 57, L’educazione giuridica 5.2 (1987) 17, 19.}\]
\[\text{Canevaro 94.}\]
\[\text{Dem. 24.25, 36; Dem. 20.94; Aeschin. 3.39; Din. 1.42.}\]

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To have an annual inspection of the laws in force in order to eliminate invalid laws and conflicting laws is parallel to having an annual inspection of the laws in order to decide whether new laws are needed.

My conclusion is that the *epicheirotonia* about the laws—i.e. whether a new law must be introduced or the laws in force were sufficient—was an annual event and not the first step whenever a proposal for a new law was on the agenda of the assembly.

*Three types of epicheirotonia*

In connection with an analysis of the *epicheirotonia* about the laws we must study other forms of *epicheirotonia* practised by the Athenians. In the *ekklesia* the Athenians conducted three kinds of *epicheirotonia*: one about ostracism, one about suspension of magistrates, and one about their corpus of laws. Of the first two:

The *ἐπιχειροτονία* about ostracism took place at the *ekklesia kyria* held in the sixth prytany. It was a general vote whether or not to have an *ὀστρακοφορία* that year, and apparently, if the *demos* voted to have an ostracism, no further steps were taken during that meeting of the Assembly. As far as we know there was no naming of candidates at the meeting, and when the *ostrakophoria* was held any Athenian could inscribe his *ostrakon* with the name of any other Athenian.

The *ἐπιχειροτονία* τῶν ἀρχῶν took place every prytany at the *ekklesia* kyria. It was a general vote whether or not the *archai* were performing their duties to the people’s satisfaction. A general vote of no confidence was followed by a second round in which any citizen could

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76 A fourth form took place in connection with the *dokimasia* of the nine archontes (Arist. *Ath.Pol.* 55.4). It was conducted in the *boule*, not in the *ekklesia*, and is not relevant in this context.

77 Arist. *Ath.Pol.* 43.5: ἐπὶ δὲ τῆς ἐκτῆς πρωταρχείας πρὸς τοὺς εἰρήμενοις καὶ περὶ τῆς ὀστρακοφορίας ἐπιχειροτονίαν δίδομεν εἴ δοκεῖ ποιῆν ἥ μή.

charge any magistrate or board of magistrates with misconduct in office. In each case a new vote of confidence was taken and a vote of no confidence resulted in suspension of the magistrate or the board of magistrates in question,\(^7^9\) whereafter the case was referred to a *dikasterion.\(^8^0\) If the magistrate was acquitted by the court he was re-instated in his former position;\(^8^1\) if he was convicted the penalty he incurred could be anything from a minor fine to capital punishment (Dem. 23.167).

Was the ἐπιχειροτονία τῶν νόμων conducted like the ἐπιχειροτονία about an ostrakophoria, or like an ἐπιχειροτονία τῶν ἀρχῶν?\(^\) 

According to Canevaro the proper parallel is the *epicheirotonia about ostracism.\(^8^2\) He emphasises repeatedly that the *epicheirotonia is a preliminary and general vote about the laws.\(^8^3\) There is no second round in which particular laws can be singled out and exposed to a specific vote of confidence which, if negative, will entail that the law in question will be referred to a session of *nomothetai who will decide whether the nomos be vindicated or, alternatively, stricken from the corpus of Athenian laws and replaced with an alternative law.

The document inserted at 20–23, on the other hand, lays

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\(^7^9\) Dem. 58.27: οὐ μόνον αὐτὸς ἀπεχειροτονήθη τῶν ἐπιχειροτονιῶν οὖσῶν, ἀλλὰ καὶ τὴν ἀρχὴν ἅπασαν ἐποίησεν.

\(^8^0\) Arist. *Ath.* Pol. 61.2: ἐπιχειροτονία δ’ αὐτῶν (the strategoi) ἐστι κατὰ τὴν πρυτανείαν ἐκάστην, εἰ δοκοῦσιν καλῶς ἀρχεῖν. κἂν τινα ἀπεχειροτονήσωμεν, κρίνουσιν ἐν τῷ δικαστηρίῳ, κἂν μὲν ἄλλο, τιμώσιν ὡς τι χρὴ παθεῖν ἢ ἀποτεῖσαι, ἂν δ’ ἀποφύγῃ, πάλιν ἀρχεῖ.

\(^8^1\) Dem. 58.27: καὶ πάλιν ἀπέδοτε τοὺς στεφάνους αὐτοῖς.

\(^8^2\) Canevaro 89 (quoted n.60 above), adding “Basically the same concept (in a different context) is expressed at [Arist.] *Ath.* Pol. 43.5 with περὶ τῆς ὀστρακοφορίας ἐπιχειροτονίαν διδόασιν, εἰ δοκεῖ ποιεῖν ἢ μὴ … This meaning is found in our sources only in connection with the ἐπιχειροτονία τῶν ἀρχῶν, and even in that case it is subordinated to the primary, generic meaning of ‘putting the conduct of the magistrates to the vote’. Here again Demosthenes refers only to a preliminary vote about whether to allow proposals of new laws.”

\(^8^3\) Canevaro 86, 89, 94.
down a procedure that resembles the *epicheirotonia ton archon*. The law prescribes that if some laws have been voted down during the first *ekklesia* held on Hekatombaion 11, the third *ekklesia* of the first prytany will be devoted to a debate and decision on these laws. It is also apparent that, according to this law, only laws rejected at the first *ekklesia* can be referred to the *nomothetai*.  

After my analysis of the *epicheirotonia* I return to Demosthenes’ comments at 24–31 on the law read out at 20–23 and Timokrates’ unconstitutional behaviour on Hekatombaion 11–12. At the *ekklesia* held on the eleventh day of the first prytany = Hekatombaion 11 when the *epicheirotonia* took place, the people voted that the laws in force were not sufficient and that a new law must be passed. Thereafter Timokrates addressed the Assembly and argued that the law (or laws) about the Panathenaia were insufficient and he persuaded the people that the administration of the coming Panathenaia demanded an immediate change of the law(s). If we accept the document at 20–23 as authentic, that debate must have been followed by a further *cheirotonia* resulting in an *apocheirotonia* of the law—or one of the laws—about the Panathenaia. In his account of what happened Demosthenes has no complaint about the debate that followed the *epicheirotonia*, and no mention at all of any *cheirotonia* after the debate, probably, if we accept the document as genuine, because both were constitutional elements of the

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84 §21, quoted n.39 above.
85 τῆς ἐκκλησίας ἐν ᾗ τοὺς νόμους ἐπεχειροτονήσατε, οὕσης ἐνδεκάτη τοῦ ἑκατομβαίων μηνός (26).
86 §25: inference from ἓν χειροτονήσητε εἰσφέρειν.
87 ἐπὶ τῆ τῶν Παναθηναίων προφάσει (26); ἵν’ ὡς κάλλιστα γένοιτο τι τῶν περὶ τὴν ἑορτὴν (28); περὶ μὲν τούτων, τῆς διοικήσεως καὶ τῶν Παναθηναίων ὀὔτε χείρον’ ὀὔτε βελτίω νόμον οὐδέν’ εἰσήνεγκεν οὐδεὶς (29).
88 ἐὰν δὲ τινες τῶν νόμων τῶν κειμένων ἄποχειροτονηθῶσι (21). See 447 above.
Thereafter Timokrates or one of his associates proposed and carried a *psephisma* that a session of *nomothetai* be held on the following day, in spite of the fact that Hekatombaion 12 was an annual festival day devoted to the Kronia and no meeting of the *boule* could normally be held because of the festival. Nevertheless a session of the *nomothetai* took place on Hekatombaion 12, and here Timokrates proposed and carried his law. Demosthenes (26) focuses on the decree passed in the *ekklesia* on Hekatombaion 11 and the law passed by the *nomothetai* on Hekatombaion 12, both described as breaches both of the law about celebration of the Kronia and the law about *nomothesia*.

At 27–32 Demosthenes quotes and comments on Epikrates’ *psephisma* to have a session of *nomothetai* on Hekatombaion 12, where Timokrates proposed and carried his bill, allegedly a revision of a law about the Panathenaia, but in fact a bill allowing most debtors to the treasury to avoid imprisonment by providing guarantors for the debt. The *psephisma* is read out at 27 and most of Demosthenes’ paraphrase and comments at 28–32 concern the *psephisma*, not the *nomos* quoted at 20–23. Canevaro argues that the *psephisma* must be a late forgery.

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89 I agree with Canevaro 85: Demosthenes is “likely to have selected only those provisions relevant to his case and placed them in an order determined by the sequence of his arguments.”

80 §27; αὔριον, see 445 above.

81 Mikalson, The Sacred and Civil Calendar 203. Canevaro 111 seems to believe that Hekatombaion 12 was a monthly festival day.

82 ὄντων Κρονίων καὶ διὰ ταύτʼ ἀφειµένης τῆς βουλῆς (26, cf. 29, 31, 32, 47).

83 δωδεκάτη τὸν νόµον εἰσήνεγκεν, εὐθὺς τῇ ὑστεραιᾳ … διαπραξάµενος μετὰ τῶν ὕµιν ἐπιβουλευόµενων καθέξεσθαι νοµοθέτας διὰ ψηφίσµατος (26).

84 θὸδολοµαὶ δʼ ὕµιν τὸ ψήφισµα ἀυτʼ ἀναγινώσκει τὸ νικήσαν (27).

85 Timokrates’ law on debtors is read out at 39–40 and 71 and analysed by Canevaro 113–121. It was inserted in the *Urexemplar* of the speech and—with reservations—Canevaro accepts it as a genuine document.

86 Canevaro 104–113, following Piérart, in La codification 245–250.
may be right, but there are problems (cf. 445); and in any case whether or not the decree is authentic does not affect the authenticity of the document at 20–23.

Canevaro concludes this section of his analysis by pointing out four major differences between the document and Demosthenes which together with a detailed analysis of the text inserted at 20–23 show that the document “cannot be an authentic Athenian statute” (96). In my opinion, his four points are not a precise summary of what the sources say. I quote the entire passage, adding in angle-brackets what is missing according to my reading of the text:

There are major differences between the document and Demosthenes’ accounts in this speech [Against Timokrates] and in the Against Leptines. (1) The procedure described by Demosthenes is one for enacting new laws <or accepting the laws as they are>, whereas the document provides for an annual vote of approval <or disapproval> of the entire ‘code’ of laws and <in the latter case> for the rejection of some <that then must be replaced by revised versions or new laws>. (2) Demosthenes describes a preliminary vote to allow new proposals (plural) to be made <and does not mention that the vote was taken section by section>, whereas the document describes a vote of approval for <or disapproval of> the existing laws section by section. (3) The document sets this vote of approval <or disapproval> 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.” <There is no mention of the other laws about nomothesia which laid down the procedures for having laws changed or added later in the year>. 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, <has nothing to say about when the synegoroi were elected but may imply> that they were appointed later after the proposals for new laws had been presented.

On the arguments that the document is a late forgery

In the second part of the chapter Canevaro presents his case
against the authenticity of the document in eight numbered sections; I address each of the issues in the same order.

(1) “The expression ‘after the herald has said the prayers’ (ἐπειδὰν εὐξηταὶ ὁ κῆρυξ) 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” (97). Yes, and there is in fact no mention at all in classical inscriptions of the rituals performed before the opening of the session. They are, on the other hand, described in several literary sources of which the most important in this context is Aeschin. 1.23: ἐπειδὰν τὸ καθάρσιον περιενεχθῇ καὶ ὁ κῆρυξ τὰς πατρίους εὐχὰς εὐξηταί, προχειροτονεῖν κελεύει τοὺς προέδρους περὶ ἱερῶν τῶν πατρίων καὶ κῆρυξί καὶ πρεσβείαις καὶ ὁσίων. This passage testifies to the distinction between the rituals (τὸ καθάρσιον, τὰς πατρίους εὐχὰς, and ἡ ἁρά) and the sacred matters (ἱερὰν τῶν πατρίων), which were the first to be voted on in the prochireotonía, followed by the prochireotonía about matters concerning heralds, ambassadors, and secular business. Following Harris, Canevaro argues that “the customary expression, in Athens and elsewhere, was μετὰ τὰ ἱερά, “after the sacrifices” (97). According to Harris we must distinguish between τὰ ἱερὰ with the article (referring to the sacrifices at the opening of the ekklesia) and ἱερά without the article (referring to the sacred matters on the agenda). But the distinction breaks down in the face of IG II² 74.9: [πρώτωι μ]ἠθ’ ἱερά.  

97 The ekklesia was opened with a purification. A piglet was killed and its corpse was carried round the circumference of the auditorium by officials called peristiarchoi. Then the herald read out a prayer (Aeschin. 1.23; Din. 2.14; Ar. Thesm. 295 ff.) and a curse (Dem. 23.97; Din. 2.16; Ar. Thesm. 335 ff.).

98 Cf. Canevaro 213: “All meetings of the Assembly began with a discussion of religious matters (Aeschin. 1.23; [Arist.,] Ath. Pol. 43.6).”


100 M. H. Hansen, The Athenian Ecclesia II (Copenhagen 1989) 184–185. For non-Athenian examples see IG IX.2 1230.25, XII.9 220.16, 898.6.
interpretation of μετὰ τὰ ιερὰ is also disproved by the frequent occurrence in Hellenistic documents of μετὰ τὰ ιερὰ καὶ τὰ βασιλικά: the juxtaposition strongly indicates that τὰ ιερὰ refers to sacred business, not to sacrifices.

(2) In the phrase ἐπιχειροτονίαν ποιεῖν τῶν νόμων (20) there is no subject for the infinitive ποιεῖν, whereas in Demosthenes’ paraphrase of the law, ἐφ’ ὑμῖν ἐποίησαν διαχειροτονίαν (25), the subject is indisputably οἱ νόμοι, cf. προστάττουσιν and φράζουσι in 24. Canevaro argues that “the forger took it from this context and misunderstood it” (97). But two fourth-century Athenian laws are in fact opened with an imperative-infinitive without a subject. In the law on approvers of silver coinage the principal provision is τὸ ἀργύριον δέχεσθαι τὸ Ἀττικὸν, and in the law taxing Lemnos, Imbros, and Scyros it is τὴν δωδέκατην πωλεῖν τὴν ἐν Λήμνω καὶ Ἰμβρῶι καὶ Σκύρῳ καὶ τὴν πεντακοστὴν σίτο. So it is perfectly possible that Demosthenes’ paraphrase of the law on nomothesia is a reflection of the document inserted in the text.

(3) Canevaro (98–99) has three objections to the description of the epicheitotonia and its subdivision into four separate votes, each about a category of laws.

“First, the grammar of the clause does not work: the clause ἐπιχειροτονίαν ποιεῖν τῶν νόμων requires a genitive of category, and περὶ τῶν βουλευτικῶν (‘make a vote of confirmation about the laws about the bouleutic [sc. laws]’) as it stands does not make any sense.” I cannot find fault with having an objective genitive (τῶν νόμων) specified by a prepositional group where the genitive is governed by περί, nor do I find it impossible to have περὶ governing the following genitive τῶν κοινῶν.

101 E.g. IG XII.6 95.32–33, transl. M. Austin, The Hellenistic World from Alexander to the Roman Conquest (Cambridge 2006) no. 155, “after religious matters and matters concerning the kings.” Accordingly, I uphold the traditional interpretation of μετὰ τὰ ιερὰ advocated by Peter Rhodes, A Commentary 529.

102 Rhodes-Osborne, GHI 25.3 and 26.6–7.

103 Schöll’s deletion of περὶ is unnecessary and has not been accepted by any of the editors of Dem. 24.
I admit however that it is odd—but not impossible—to have the naked genitive τῶν ἄλλων ἄρχων instead of τῶν ἄλλως ἄρχαίς (agreeing with οἱ κεῖναι τοῖς ἐννέα ἄρχουσιν) or περὶ τῶν ἄλλων ἄρχων (agreeing with περὶ τῶν βουλευτικῶν).

Second, "the document spells out the procedure of approval, but stops with the ‘common laws’ and does not say anything about the two last categories.” But the law states that the epi-chirotian of the laws in the second category is like the first (ἐίτω τῶν κοινῶν κατὰ ταῦτα). The person(s) who drew up the law found it superfluous to repeat that for the two last categories.

Third, “later in the document we read that, ἐὰν δὲ τινς τῶν νόμων τῶν κειμένων ἀποχειροτονηθῶσι (‘if some existing laws are rejected’), a later Assembly must discuss the appointment of the nomothetai περὶ τῶν ἀποχειροτονηθέντων.” On this issue I refer to the discussion at 446–449 above.

In this context Canevaro takes issue with the more general question whether the procedural or the substantive aspect of the laws was the essential one for the Athenians. He refers to an important article by Harris who persuasively emphasised the substantive aspect of Athenian laws against a number of scholars (including myself) who have stressed the procedural aspect and underestimated the substantive. Harris also argued (14 n.28) that the document (24.20–23) groups the laws by the parts of the Athenian polis (the Council, public laws, the nine archons, other magistrates), not by procedures. That is basically correct. The Athenians had a law about βλάβη, another about αἰκία, a third about ὕβρις, they did not have a law about the δίκη βλάβης, another about the δίκη αἰκίας,

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and a third about the γραφὴ ὑβρεως (Dem. 21.35). The only law in which the type of action to be used is the essential criterion is the εἰσαγγελτικὸς νόµος.  

But I take the subdivision of laws according to the magistrate responsible for having a matter brought before the Assembly or a dikasterion or the nomothetai to be a procedural criterion, and also point out that “since each magistrate had, up to a point, a competence determined on a material basis, the formal division of the laws did correspond roughly with a material order; thus family and inheritance laws all came under the archon, much of the law about religion came under the king archon, and the polemarch must have had the whole law relating to metics and other non-Athenians.”

The grouping of laws according to the magistrate responsible for the matter in question is emphasised in two passages in forensic speeches, Hypereides For Euxenippos (3.5–6) and Demosthenes Against Lakritos (35.37–38.), both cited and discussed by Harris. Even more importantly: it is the principle applied in the second part of the Aristotelian Athenation Politeia.

(4) “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 ... The rule therefore makes no sense” (99). The document does lay down the procedure for approval in this particular case; but many important details are left unmentioned. They were regulated in other laws, hence the reference to οἱ νόµοι οἱ κειµένοι. Let me refer to just one such detail. At some time between 403/2 and 379/8 the presidency of the Assembly was changed. Instead of the prytanes a board of nine proedroi headed by an epistates became responsible for putting all motions to the vote and for assessing


110 Which, however, is not mentioned by Harris.
all the cheirotoniai. Did the nine proedroi have to agree about the outcome of the vote? Or was the decision left to a majority of five or six? We do not know, but that would be one detail that was regulated in oi keimenvon nomoi and did not have to be repeated in the law about the ἐπιχειροτονία τῶν νόμων. The reference to the laws in force ensured that the law about epicheirotonia ton nomon did not involve other innovations than those actually mentioned in the law.

(5) According to the document, the debate over the laws rejected in the ekklesia held on the eleventh day of the first prytany was scheduled for the last of the three ekklesiai (τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν), i.e. the last of the three ekklesiai held during the first prytany (20–21). In his paraphrase of the law (25) Demosthenes says that the laws scheduled the third ekklesia as the meeting in which to debate the appointment of nomothetai: τὴν τρίτην ἀπέδειξαν (οἱ νόμοι) ἐκκλησίαν, καὶ οὔτ’ ἐν ταύτῃ τιθέναι δεδώκασιν, ἀλλὰ σκέψασθαι καθ’ ὅτι τούς νομοθέτας καθιεῖτε. Apparently, there is no disagreement between the document and Demosthenes’ paraphrase of the law the secretary had read out to the jurors. But problems tower up when we compare the references to the third ekklesia at 21 and 25 with what we know from the Aristotelian Ath.Pol. 43.3, viz., that the Athenians every prytany summoned four ekklesiai, not three. Consequently the last ekklesia of the first prytany must be the fourth and not the third.

Following Schöll, Canevaro argues that “in Athenian inscriptions εἰς τὴν πρώτην ἐκκλησίαν always refers to the following Assembly (e.g. IG II² 103.14) and therefore τὴν τρίτην … ἐκκλησίαν must refer to the third Assembly after the first one,” i.e. the fourth. Such an interpretation—based on the analogy with εἰς τὴν πρώτην ἐκκλησίαν—would make sense if Demosthenes had said τὴν τρίτην ἀπέδειξαν ἐκκλησίαν μετ’ ἐκείνην or ἀπ’ ἐκεῖνης. As the text stands, Demosthenes

111 Hansen, The Athenian Democracy 140–141
112 Canevaro 99, cf. 100 “the third Assembly” after the original one.”
refers to the third *ekklesia* of the first prytany. There is nothing in the Greek to support Canevaro’s addendum “after the first one.” If nevertheless, for the sake of argument, we accept that Demosthenes at 25 refers to the third *ekklesia* “after the first one” we can just as well assume that in the document at 21 the reference is to “the last of the three following *ekklesiae*.” So concerning “the third *ekklesia*” there is no discrepancy between the document at 21 and the paraphrase at 25. But a passage from the speech Against Leptines is adduced by Canevaro as an additional argument in support of the view that the *ekklesia* cannot be the third (and last) of the first prytany: “at Dem. 20.94 we read that the bills had to be read many times (πολ-λάκις) in the Assembly. One could not call one meeting of the Assembly, or even two ‘many times’. It would require at least three meetings” (100). No matter whether it is the third\(^\text{115}\) or the fourth\(^\text{116}\) *ekklesia* of the year in which *nomothesia* is once more on the agenda of the Assembly, it is in any case the last held in the first prytany. Consequently the sessions of *nomothetai* must take place during the second or perhaps a following prytany, which means that bills could be read out to the *demos* not only at the second and the third *ekklesia* of the first prytany, but also on some or perhaps all the *ekklesiae* held during the second prytany until the scheduled meetings of the *nomothetai* could take place.

But what about the document’s statement that the third meeting was the last one, i.e., the last *ekklesia* of the prytany? That is indisputably in conflict with the four ordinary meetings per prytany described at *Ath.Pol.* 43.3. The date of the *Ath.Pol.*


\(^\text{115}\) My interpretation of Demosthenes 21 and 25.

\(^\text{116}\) Canevaro’s interpretation of 25, rejecting 21 as a late forgery.
is ca. 330, but, like most historians, Canevaro believes that the regulation to have four obligatory meetings of the Assembly per prytany goes a long way back and in any case was in force in 353/2 when Against Timokrates was written. But apart from Dem. 24.21 and 25 we have only two sources that shed light on the number of ekklesiai held in a prytany: (a) In 431 Perikles avoided summoning an ekklesia during the period when the Peloponnesian army invaded Attica. That would have been unconstitutional if the Aristotelian system had been in operation. (b) In Demosthenes 18–19 and Aischines 2–3 we hear about—probably—all the ekklesiai held during the eighth prytany of 347/6, when the Athenians negotiated and concluded peace with Philip. There can be no doubt that by then the Athenians must have held four ordinary ekklesiai as described in the Athenaios Politia. The sources, as we have them, indicate the following reconstruction of the number of ekklesiai. In the fifth century the Athenians had only ten fixed assembly meetings a year, i.e. an ekklesia kyria in each prytany, and in addition called extra meetings ad libitum. At some point in the early fourth century and in any case before 353/2 the number of ekklesiai was fixed at three per prytany; but three ekklesiai per prytany =

117 Rhodes, A Commentary 56.
118 Canevaro 99–100; see Rhodes, A Commentary 521.
119 Thuc. 2.22.1; see J. Christensen and M. H. Hansen, “What is Syllagos at Thukydides 2.22.1?” in The Athenian Ecclesia II 195–211.
121 M. H. Hansen and F. Mitchel, “The Number of Ecclesiai in Fourth-Century Athens,” SymbOslo 59 (1984) 13–19; republished with addenda in The Athenian Ecclesia II 167–175, at 174. D. M. Lewis addressed the problem in “M. H. Hansen and the Athenian Ecclesia,” unpublished paper read at The Norman Baynes Annual Meeting of UK Ancient Historians on 25 September 1984. He agrees with Mitchel and me on the interpretation of Dem. 24.21 and 25: both passages show that in the first prytany, only three ekklesiai were convened, not four. He objects, however, that it is unwarranted to generalise and assume, as we do, that only three ekklesiai were held...
thirty per year were probably too few and the number was raised to four per prytany = forty per year. That reform must have taken place before 347/6 when the Aristotelian system had been introduced.

(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.” It is true that no decree (or law) is dated by the festival calendar before 341/0. But the date given at the beginning and at the end of the document is not the date of the law. It is in the first and the last provision. Before ἐπὶ δὲ τῆς πρώτης πρυτανείας the law had a prescript irrelevant in this context and therefore left out in the document read out by the grammaeus. That prescript included information about the date of the law: in which year it was passed, in which prytany and (sometimes) on which day of the prytany.

in all ten prytanies. Hekatombaion was, according to Lewis, a month with extraordinarily many festival days, and thus the first prytany was probably exceptional by having only three ekklesiai instead of four. But the number of festival days in Hekatombaion was above average only if the Panathenaia included all the days from the 23rd to the 29th and 30th, cf. Mikalson, *The Sacred and Civil Calendar* 34. Admittedly, there are few attestations of ekklesiai held in Hekatombaion, cf. Hansen, *The Athenian Ecclesia* (Copenhagen 1983) 136 n.4, and so far no meetings on Hekatombaion 29 or 30 are attested; but it would be strange to have fewer meetings than usual during the first prytany of the year in which extra business, e.g. nomothesia, had to be transacted.


123 Or, rather, as indicated by δὲ, the first of the provisions read out by the grammaeus. In addition to the prescript there may have been one or more initial provisions that have been omitted.

124 Nomoi are less meticulous than psephismata about recording dates. In some cases information about the prytany is left out (e.g. in Rhodes-Osborne, *GHI* 25), in others information about the day of the prytany (e.g.
Within a decree, however, even before 341/0 it was unproblematic to refer to an *ekklesia* by the festival calendar date. One example is the meetings held in 347/6 about the peace to be concluded with Philip of Macedon. In Demosthenes’ decree about these meetings they are to be held on the 18th and 19th of Elaphebolion 347/6, cf. Aeschin. 2.61: παρανάγνωθι δή μοι καὶ τὸ τοῦ Δημοσθένους ψήφισμα, ἐν ὦ κελεύει τοὺς πρυτάνεις μετὰ τὰ Διονύσια τὰ ἐν ἀστεί καὶ τὴν ἐν Διονύσου ἐκκλησίαν προγράψαι δύο ἐκκλησίας, τὴν μὲν τῇ ὑγδόῃ ἐπὶ δέκα, τὴν δὲ τῇ ἐνάτῃ ἐπὶ δέκα. But why the change from the bouleutic calendar at 20 to the festival at 23? Well, the first provision comes immediately after the prescript (left out in the document at 20–23) and repeats the official date. The evidence we possess suggests that in any year after the reform of the bouleutic calendar towards the end of the fifth century the first *ekklesia* of the year was held on the eleventh of Hekatombaion = the eleventh day of the first prytany.125 The citizen who proposed and carried the law may have wanted to stress the coincidence between the bouleutic and the festival calendar and therefore at the end of the law gave the now equivalent and better known festival calendar date.126

(7) Taking the *epicheirotonia* on ostracism to be the proper parallel to the *epicheirotonia* of the laws, Canevaro assumes that

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126 Hansen, *AJP* 114 (1993) 109: “The festival calendar was the one with which every citizen was familiar, whereas the bouleutic calendar was an innovation, created either in 507 or in 461,” reformed in the late fifth century, (see previous note), and “used exclusively for the running of the boule and the *ekklesia*. Thus whereas everyone would have an idea of when it was the 16th of Pyanopsion, nobody (except the *prytaneis* themselves) would offhand recognize the 33rd day of the 3rd prytany.” Cf. Mikalson, *The Sacred and Civil Calendar* 74.
after the general *epicheirotonia* had taken place at the first *ekklesia* and the majority had voted for having a new law instead of accepting the laws as they were, any citizen could come forward and propose an alternative *nomos* to any law. He had after the *ekklesia* to post his alternative law before the *eponymoi* and, probably, to hand it over to the authorities so that it could be read out to the people by the *grammateus* at the subsequent *ekklesiai*. Therefore the provision that the people elect five advocates to defend the laws in force could not have taken place at the first *ekklesia* as stated in the last provision of document before it was known which alternative laws had been proposed. It must have taken place at the third subsequent *ekklesia*,127 i.e. at the fourth and final *ekklesia* held in the first prytany.

But the document shows that the proper parallel is the *epicheirotonia ton archon*. The general *epicheirotonia* was followed by a debate on individual *nomoi* put forward for revision, and in each case a vote was taken on this individual law. As soon as this second round had been completed it would be known precisely which *nomoi* the *demos* had provisionally rejected. I can imagine that in some years there was not a single law to refer to the *nomothetai*, in others there might have been several; and since only *nomoi* rejected in the first *ekklesia* could be referred to the *nomothetai*, it made good sense already in the first *ekklesia* to elect the five advocates who before the *nomothetai* would have to defend the rejected *nomoi*.

(8) “Demosthenes at §36 calls the advocates of the law συνηγόρους. At Dem. 20.146 he calls them σύνδικοι. Both these terms are attested in contemporary Athenian inscriptions. Instead, the participle συναπολογησόμενους or any other form of the verb συναπολογεῖσθαι 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” (101–102). Apart from the occurrence at Dem. 24.23, the verb *synapologeisthai* is attested

127 Canevaro 93.
eleven times in literary texts,\textsuperscript{128} six in fourth-century Athenian forensic speeches,\textsuperscript{129} three in late sources,\textsuperscript{130} and twice in scholia on the Timokrates speech.\textsuperscript{131} The participle is used synonymously with \textit{synegoros} about advocates speaking for the defendant.\textsuperscript{132} The verb is invariably used in a juridic context, and in particular the two occurrences in Hypereides’ speech \textit{For Lykophron} indicate that, like \textit{synegoros}, it was a technical term. It is true that it is unattested in Attic inscriptions, but so are dozens of other words which are attested as legal terms in literary sources, and unquestionably were used in Athenian laws.

These are Canevaro’s specific objections to the authenticity of the document at §20–23. Further objections are raised against the authenticity of Epikrates’ \textit{psephisma} at §27 about having a session of \textit{nomothetai} on Hekatombaion 12. They have no bearing on the issue whether the law at §20–23 is a genuine document or a late forgery (see 462 above).

\textit{Conclusion}

In my opinion, there are no serious discrepancies between the document at §20–23 and Demosthenes’ paraphrase at §17–19 and 24–31 of the law he has asked to have read out to the jurors, only in some cases a change of emphasis. The information provided by the document is not self-contradictory and not in conflict with what we know from other sources about \textit{nomothesia} at Athens in the age of Demosthenes.\textsuperscript{133} There is no

\textsuperscript{128} The texts included in \textit{TLG}.
\textsuperscript{129} Dem. 24.157, 159, 25.56; Hyp. 2.10, fr.3.15–16; Lycurg. 1.138.
\textsuperscript{130} Dion. Hal. \textit{Ant.Rom.} 7.54.3; Lib. \textit{Decl} 49.1.5, \textit{Prog}. 13.1.18.
\textsuperscript{131} \textit{Ad} 24.66 and 319.
\textsuperscript{132} L. Rubinstein, \textit{Litigation and Cooperation} (Stuttgart 2000) 44.
\textsuperscript{133} The only controversial piece of information is the one about the third meeting of the Assembly, but the problem whether it was the third meeting of the first prytany or the third meeting after the first pertains both to the document (20) and to Demosthenes’ paraphrase (25) and is therefore of no consequence for the issue whether the document is genuine or a forgery, see 467 ff. above.
reason to emend the text of the document, and an investigation of agreements or disagreements in terminology and style between the document and epigraphically attested nomoi is inconclusive, because we do not have other constitutional nomoi preserved on stone. Canevaro acknowledges that “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” (102), and later he states that the person who “composed the document at Dem. 24.20–23, 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” (332).

One problem remains: the document at 20–23 was not part of the Urexemplar and to accept it as a genuine nomos goes against Canevaro’s principle applied to all the public speeches of the Demosthenic corpus, that all documents found in the Urexemplar are genuine, whereas all that were not part of it are late forgeries. That is an issue I shall address in a separate study of Dem. 24.33.

My conclusion is that I disagree with Canevaro about the authenticity of the document at 20–23. But in spite of my disagreement I would like to add that Canevaro’s book is a highly professional and valuable contribution to the debate. It will be required reading for all who study Athenian law and political institutions and indispensable for all who investigate the history and origin of the Demosthenic corpus.134

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