

The Authenticity of the Law about *Nomothesia* inserted in Demosthenes *Against Timokrates* 33

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AMONG THE DOCUMENTS inserted in Demosthenes' speech *Against Timokrates* two deal with *nomothesia*, the procedure used by the Athenians in the fourth century (403/2–322/1) for passing *nomoi*, i.e. general permanent rules passed by panels of *nomothetai* by contrast with *psephismata* which were individual and/or temporary regulations passed by the Assembly or the Council of Five Hundred.¹ The first document (§20–23), conventionally called “the review law,”² lays down the procedure for an annual revision of the Athenian code of laws, the second (§33), conventionally called “the repeal law,”³ regulates a procedure for having one of the laws in force annulled if it is in conflict with one or more of the other *nomoi* in the law code. Until recently most contemporary scholars believed that both these documents were genuine.⁴ They were

¹ M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes*² (London 1999) 166–175.

² D. M. MacDowell, “Law-Making at Athens in the Fourth Century B.C.,” *JHS* 95 (1975) 62–74, at 66.

³ MacDowell, *JHS* 95 (1975) 69.

⁴ See MacDowell, *JHS* 95 (1975) 62–74; M. H. Hansen, “Athenian *Nomothesia* in the Fourth Century B.C. and Demosthenes' Speech against Leptines,” *ClMed* 32 (1980) 87–104, and “Athenian *Nomothesia*,” *GRBS* 26 (1985) 345–371; P. J. Rhodes, “*Nomothesia* in Fourth-Century Athens,” *CQ* 35 (1985) 55–60, “*Nomothesia* in Classical Athens,” *L'educazione giuridica* 5.2 (1987) 5–26, at 15–20, and “Sessions of *Nomothetai* in Fourth-Century Athens,” *CQ* 53 (2003) 124–129; M. Piérart, “Qui étaient les nomothètes à

copies of the original laws, kept in the public archive (*metroon*). They were read out by the *grammateus* to the jurors who heard and passed sentence in the trial of Timokrates, and later inserted in Demosthenes' speech when it was 'published', viz. when copies of the speech were circulated, perhaps in Demosthenes' lifetime,⁵ perhaps after his death.⁶

This orthodoxy has recently been questioned by Mirko Canevaro in his seminal and important study *The Documents in the Attic Orators. Laws and Decrees in the Public Speeches of the Demosthenic Corpus* (Oxford 2013). In his chapter about the documents in the speech *Against Timokrates* he argues (80–104) that the documents that purport to be copies of the review law and the repeal law are both late forgeries inserted in the speech presumably in the first century B.C. (335). They reflect a common habit in the Hellenistic rhetorical schools: "in the system of rhetorical education it was standard practice to compose fictitious laws and decrees to form the subject of oratorical exercises ... 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" (333–334).

I am much impressed by Canevaro's study but I have to confess that I am not convinced by the arguments he adduces

l'époque de Démosthène?" in E. Lévy (ed.), *La codification des lois dans l'antiquité* (Paris 2000) 229–256; C. Kremmydas, *Commentary on Demosthenes Against Leptines* (Oxford 2012).

⁵ Ch. D. Adams, "Are the Political 'Speeches' of Demosthenes to be regarded as Political Pamphlets?" *TAPA* 43 (1912) 5–22; M. Lavency, *Aspects de la logographie judiciaire attique* (Louvain 1964) 189–194; M. H. Hansen, "Two Notes on Demosthenes' Symbolleutic Speeches," in *The Athenian Ecclesia II* (Copenhagen 1989) 283–297, at 294 with n.30; I. Worthington, "Greek Oratory, Revision of Speeches and the Problem of Historical Reliability," *ClMed* 42 (1991) 55–74; C. Tuplin, "Demosthenes' *Olynthiacs* and the Character of the Demegoric Corpus," *Historia* 47 (1998) 276–320, at 291 ff.

⁶ J. Trevett, "Did Demosthenes Publish His Deliberative Speeches?" *Hermes* 124 (1996) 425–441; D. M. MacDowell, *Demosthenes the Orator* (Oxford 2009) 7–8. See 606 ff. below.

against the authenticity of the two laws about *nomothesia* inserted in the Timokrates speech. I still believe that they are genuine fourth-century laws. I have defended the authenticity of the review law, the document inserted at 20–23.⁷ In this article I shall dispute Canevaro’s arguments in support of the view that the repeal law quoted at 33 is a late forgery.

Having quoted and debated the review law at 17–31 Demosthenes⁸ quotes and debates the repeal law at 32–38. It is perhaps another law on legislation,⁹ or perhaps another part of the law debated at 17–32.¹⁰ According to Canevaro (103), Demosthenes’ description in 32 of the law he asks to have read out at 33 and his comments on that law at 34–38 show that the document inserted at 33 is not the law he refers to:

Demosthenes, both in his adjacent summary (§§32–5)¹¹ 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

⁷ M. H. Hansen, “The Authenticity of the Law about *Nomothesia* inserted in Demosthenes *Against Timokrates* 20–23,” *GRBS* 56 (2016) 438–474; see 439–442 for the method Canevaro applies throughout his book for testing authenticity.

⁸ Demosthenes was logographer for Diodoros who acted as prosecutor and delivered the speech (hypoth. 1.1, 2.5). Like others I ascribe the arguments and the presentation of them to Demosthenes; but see K. J. Dover, *Lysias and the Corpus Lysiacum* (Berkeley/Los Angeles 1968) 161–163.

⁹ MacDowell, *JHS* 95 (1975) 69–71, and *Demosthenes* 187; Rhodes. *CQ* 35 (1985) 55.

¹⁰ Asking to have the law read out Demosthenes refers at 32 to τούτων πρῶτον τὸν νόμον. But in forensic speeches νόμος can denote anything from an entire law to a few lines, cf. Hansen, *GRBS* 26 (1985) 359. There can be no doubt that the text read out to the jurors at 33 is only part of a law. It is introduced with a δέ clause, but not a single *nomos* of which the beginning is attested is opened in this way. Thus we must assume that at least one section of the law preceded the quotation at 33, see *GRBS* 347 with n.7, to which I can now add Rhodes-Osborne, *GHI* 26. So also Canevaro 91.

¹¹ According to Canevaro 91–92 (with n.47) and 103 Demosthenes’ paraphrase of the law at 33 stops with 35, and 36–38 are not comments on the law read out at 33. I disagree. There is no reason to doubt that the provisions discussed in 36–38 were relevant for the law at 33.

read out here [at 33] 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 θεῖναι. This document [33] 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.

But that is not quite what Demosthenes says. At 32 his introduction of the law to be read out is: ἀνάγνωθι δέ μοι λαβὼν τουτονὶ πρῶτον τὸν νόμον, ὃς διαρρήδην οὐκ ἔᾶ νόμον οὐδέν' ἐναντίον εἰσφέρειν, ἐὰν δέ τις εἰσφέρει, γράφεσθαι κελεύει. And his comment at 34 is: οὐκ ἔᾶ τοῖς ὑπάρχουσι νόμοις ἐναντίον εἰσφέρειν, ἐὰν μὴ λύσῃ τὸν πρότερον κείμενον. The law to be read out is not primarily about proposing a new law, it is more specifically a ban on proposing a law that is in conflict with other laws in force, and if a person nevertheless does propose and carry¹² such a bill, the law allows¹³ to bring a public action against him. Both according to Demosthenes' comments and according to the inserted document the principal scope of the law is to avoid having conflicting laws and how to repeal a new law which conflicts with the laws in force. That is acknowledged by Canevaro (93): "Demosthenes also states that opposing laws must be repealed when enacting a new law. This provision is recalled at Dem. 24.32 and 34 as the main topic of the law read out at §33." And it is in fact the main topic of the document at 33:

¹² In the document at 33, note the aorists in the phrases ἕτερον ἀντιθῆ μὴ ἐπιτήδειον and ἐὰν τις μὴ ἐπιτήδειον θῆ νόμον. It shows that the *nomothetai* in such a case erroneously passed the bill.

¹³ γράφεσθαι κελεύει, 32. As argued by MacDowell, *Demosthenes* 46–47, ὁ νόμος κελεύει often means "the law allows" or "permits." In some contexts it does mean "the law commands" or "orders" (e.g. Dem. 26.9 and 58.21), but ἔστιν at 37 shows that here the meaning is "allows" or "permits."

τῶν δὲ νόμων τῶν κειμένων μὴ ἐξεῖναι λῦσαι μηδένα, ἐὰν μὴ ἐν νομοθέταις. τότε δ' ἐξεῖναι τῷ βουλομένῳ Ἀθηναίων λῦειν, ἕτερον τιθέντι ἀνθ' ὅτου ἂν λύη ... ἐναντίον δὲ νόμον μὴ ἐξεῖναι τιθέναι τῶν νόμων τῶν κειμένων μηδενί.

The document describes the full procedure, starting with the *nomothetai* as the competent institution if a law in force must be repealed and replaced, and proceeding to the *graphe nomon me epitedeion theinai* in case the *nomothesia* procedure fails by leading to the acceptance of a new law that is unsuitable or in conflict with a law in force. Demosthenes focuses first (32) on the *graphe nomon me epitedei on theinai* (the case to hand)—and then (36) proceeds to describe various reasons why the *nomothesia* procedure may fail (as it did in this case). Here he puts the blame on various individuals (the elected *synegoroi*, the negligence of citizens who did not study the bill published before the *eponymoi*). He carefully avoids blaming the *nomothetai*, and they are not explicitly mentioned. (Demosthenes does not want to offend his audience of whom presumably many had been among the *nomothetai* who passed Timokrates' law on Hekatombaion 12). In this situation the *graphe nomon me epitedeion theinai* is the only remedy left to avoid having conflicting laws. And here Demosthenes declares his faith in the wisdom of the many (*hoi polloi*), i.e. the *dikastai* hearing the case, not the *nomothetai* who erroneously passed Timokrates' law.

The document and Demosthenes' comments do not contradict, but rather supplement one another, and in my opinion it is unproblematic to combine what the document prescribes at 33 with Demosthenes' interpretation of it at 32 and 34–38.

According to Demosthenes (32, quoted 597 above) the law (to be read out at 33) does not allow anybody to propose a new law that is in conflict with the laws in force, unless he has had the conflicting law repealed (34, quoted 597). According to the document at 33 that is done by submitting to a session of *nomothetai* an alternative *nomos* to the law proposed to be repealed (33, quoted 598).

The emphasis is different. In Demosthenes' paraphrase it is on the ban to introduce a law that is in conflict with the laws in force. In the document it is a ban on having a law repealed by

any other institution than the *nomothetai*. But the changed emphasis does not “reverse the order of the procedure’s steps” as Canevaro holds. In both cases the procedure is to propose an alternative law to a conflicting law in force that will be repealed if the *nomothetai* vote for the proposal.

Before the session of *nomothetai*, the Assembly appoints advocates to defend the law in force (36: τοὺς συνηγόρους οὓς χειροτονεῖτε), the alternative bill must be published before the *eponymoi* (36: ἐκτιθέναι κελεύει), and the proposer must have it read out to the Assembly alongside the law in force (38: παραναγνούς).

At the session of the *nomothetai* the issue is decided by a *diacheirotomia*, and if a majority of the *nomothetai* vote that the alternative bill is “suitable” for the Athenian people (*epitedeios*) it becomes valid law (*kyrios*), 33: διαχειροτονίαν δὲ ποιεῖν τοὺς πρόεδρους 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.¹⁴

It may happen that the *synegoroi* are persuaded to keep silent,

¹⁴ The *diacheirotomia* was probably conducted as set out in Hansen, *GRBS* 26 (1985) 365–366: ὁπότερον shows that the *nomothetai* had to make a simple choice between a law in force and an alternative bill. The words ἢ οὐ are probably a reference to those who do not raise their hands in a *cheirotomia*. Accordingly, the vote was conducted in the following way: the *proedros* proclaims: “Anyone who finds that the law in force is satisfactory shall raise his hand” (of, e.g., 1000 *nomothetai* some 250 raise their hands, 750 do not). Then the *proedros* proclaims: “Anyone who finds that the bill is satisfactory shall raise his hand” (some 500 raise their hands, ca. 500 remain passive). All our evidence of voting by show of hands indicates that the number of abstentions in a *cheirotomia* was never assessed. Thus the two important figures are ca. 250 (who voted for the law in force in the first phase) versus ca. 500 (who voted for the alternative bill in the second phase), and the outcome of the *diacheirotomia* is, in this case, that the alternative bill is passed. The difference between a *cheirotomia* and a *diacheirotomia* is that in a *cheirotomia* the *proedros* asks first: “who vote for the proposal?” And second: “who vote against the proposal?” In a *diacheirotomia* he proclaims first: “who vote for proposal *a*?” and then: “who vote for proposal *b*?”

or that citizens who would have opposed the bill do not notice the earlier-published version of it, 36: τοὺς συνηγόρους, οὐς χειροτονεῖτε, δύναιτ' ἄν πείσαι τις σιωπᾶν. ἐκτιθέναι κελεύει τοῦ προειδέναι πάντα. τάχ' ἄν, εἰ τύχοι, τοὺς μὲν ἀντειπόντας ἄν εἰ [μὴ] προαίσθοντο, λάθοι, οἱ δὲ οὐδὲν προσέχοντες ἀναγνοῖεν ἄν—or, let me add, that the person who proposes the alternative law has omitted to have it published and read out to the people.

The result will be that the *nomothetai* in the *diacheirotomia* erroneously vote for the alternative bill. This step is not spelled out here but at 38 where Demosthenes emphasises that all that is precisely what has happened in connection with Timokrates' law: ταῦτα πάντα Τιμοκράτης, οὕτω καλῶς καὶ δικαίως κείμενα, ἠφάνισεν, ἐξήλειψεν, ὅσον ἦν ἐπὶ τούτῳ, καὶ νόμον εἰσήνεγκεν ἅπασιν ἐναντίον, ὡς ἔπος εἰπεῖν, τοῖς οὐδὲν, οὐ παραναγνοῦς, οὐ λύσας, οὐ δοῦς αἴρεσιν, οὐκ ἄλλο ποιήσας οὐδὲν τῶν προσηκόντων. Timokrates' bill was in conflict with so to speak all the laws in force, he did not have his bill read out (to the people in the *ekklesia* held on Hekatombaion 11) alongside the law he allegedly wanted to have repealed or changed (one of the laws about the Panathenaia), he did not have any of the laws in force repealed (by the *nomothetai*, although that was a requirement explicitly stated in the document read out at 33), and he did not provide the *nomothetai* with a choice i.e. a *diacheirotomia* between his own bill and the law in force as prescribed in the document read out at 33. (When the *nomothetai* met on 12 Hekatombaion, there was no proposal about the Panathenaia, 29, although Timokrates the day before had persuaded the *demos* in the *ekklesia*, that a new law about the financing of the Panathenaia was urgently needed, 28.)

But that is not the end of the matter. If the new alternative *nomos* is not suitable for the Athenian people and/or in conflict with other laws in force (than the one it has replaced), anyone (*hekastos*) can bring a public action (*graphesthai*, i.e. bring a *graphe nomon me epitedeion theinai*) against the person who proposed and carried the alternative *nomos*, which is now valid law. If in this trial the defendant is acquitted the *polis* stands deceived: 33, ἐὰν

δέ τις λύσας τινὰ τῶν νόμων τῶν κειμένων ἕτερον ἀντιθῆ μὴ ἐπιτήδειον τῷ δήμῳ τῷ Ἀθηναίων ἢ ἐναντίον τῶν κειμένων τῶ, τὰς γραφὰς εἶναι κατ' αὐτοῦ κατὰ τὸν νόμον ὃς κεῖται ἐάν τις μὴ ἐπιτήδειον θῆ νόμον ... 37, ἀλλὰ γράψασθαι νῆ Δί' ἕκαστον ἔστιν, ὃ κἀγὼ νυνὶ πεποίηκα. κἀνταῦθα, ἀν ἀπαλλάξῃ τις τὸν ἐπιστάντα, ἢ πόλις παρακέκρουσται. The *dikastai* are the only just and reliable bulwark of the laws, and will certainly not prefer the inferior law to the better (37): τίς οὐν μόνη φυλακὴ καὶ δικαία καὶ βέβαιος τῶν νόμων; ὑμεῖς οἱ πολλοί. οὔτε γὰρ τὸ γνῶναι καὶ δοκιμάσαι τὸ βέλτιστον ἐξελέσθαι δύναται ἂν ὑμῶν οὐδὲ εἷς, οὔτ' ἀπαλλάξας καὶ διαφθείρας πείσαι τὸν χεῖρω θέσθαι νόμον ἀντὶ τοῦ κρείττονος.

Thus, if the *dikastai* acquit the defendant, *in casu* Timokrates, that is the end of the matter. His *nomos* will remain in force. If the *dikastai* vote for the prosecutor, *in casu* Diodoros, and pass sentence upon the defendant, we must infer that Timokrates' law will be quashed.

In sum, I believe that the provisions stipulated by the law (*viz.* the document read out at 33) and Demosthenes' comments at 32 and 34–38 fit together.

In addition to his general observations on the relation between the inserted document and Demosthenes' paraphrase of it Canevaro adduces three specific arguments against the authenticity of the document: (1) The document contradicts itself. (2) The expression *διαχειροτονίαν ποιεῖν τοὺς προέδρους* is unparalleled in our sources. (3) At 32 Demosthenes asks the *grammateus* to read out a law that lays down the procedure for a *graphe nomon me epitedeion theinai*. But instead of describing the proper procedure, the document refers to a further law: τὸν νόμον ὃς κεῖται ἐάν τις μὴ ἐπιτήδειον θῆ νόμον.

Re 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*’, but in its last sentence it provides a different way to do it, through a *γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι*, which had to be heard by judges, not *nomothetai*” (103). According to my interpretation the document describes consis-

tently two successive steps in a protracted legislative procedure. (a) The replacement of a *nomos* in force by an alternative *nomos* has to be enacted by the *nomothetai*, and when passed by them it becomes *kyrios*,¹⁵ while the *nomos* it replaces is abolished. (b) In case it turns out that the alternative law passed by the *nomothetai* is in conflict with one or more of the laws in force, the legal remedy is to bring a γραφή νόμον μὴ ἐπιτήδειον θεῖναι against the proposer of the alternative [to be heard by a *dikasterion*]. If the *dikastai* vote for the defendant, the alternative *nomos* remains *kyrios*. If the *dikastai* vote for the prosecution, the consequence must be that the original law is restored, the alternative abolished and its proposer punished. There is no new session of *nomothetai*. That is explicitly admitted by Demosthenes in his comments on the law (37): κἀνταῦθα, ἂν ἀπαλλάξῃ τις τὸν ἐπιστάντα, ἢ πόλις παρακέκρουσται. Thus in this second round the *dikastai* are entitled to overrule a decision made by the *nomothetai*.

Re 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*” (104). In the literary sources there are five attestations of διαχειροτονίαν or ἐπιχειροτονίαν διδόναι with the *prytaneis* or *proedroi* as subject:¹⁶ Dem. 22.9; Aeschin. 3.39; Arist. *Ath. Pol.* 43.5, 55.4, and Dem. 24.50 (a *nomos* perhaps inserted in the *Urexemplar*).¹⁷ On the other hand, we have: ἐφ’ ὑμῖν ἐποίησαν διαχειροτονίαν οἱ νόμοι at Dem. 24.25 and καταχειροτονίαν ὁ

¹⁵ I retract my view at *GRBS* 26 (1985) 350 that the law did not become *kyrios* in the proper sense until the year had passed during which the proposer was personally responsible, cf. Canavaro 103 n.75.

¹⁶ Canavaro 97 n.57.

¹⁷ Canavaro 133.

δημος ἐποίησατο at 21.6,¹⁸ in addition to ἐπιχειροτονίαν ποιεῖν τῶν νόμων in the document at 24.20 and διαχειροτονίαν ποιεῖν τοὺς προέδρους in the document at 24.33. I am not persuaded by Canevaro's attempt to get rid of καταχειροτονίαν ὁ δημος ἐποίησατο at 21.6 and ἐποίησαν διαχειροτονίαν at 24.25; and I note that neither διαχειροτονίαν διδόναι nor διαχειροτονίαν ποιεῖν is attested in inscriptions.¹⁹

Re 3: “At §32 Demosthenes states that the law is 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. The document, on the other hand, does not lay down any procedure ... Instead of describing the proper procedure, the document refers to a further law: τὸν νόμον ὃς κεῖται ἐάν τις μὴ ἐπιτήδειον θῆ νόμον” (104). But the document at 33 is not the place to lay down the procedure for a γραφή νόμον μὴ ἐπιτήδειον θεῖναι. This law is about how only the *nomothetai* are entitled to repeal a law in force and replace it with an alternative law, whereafter it is added that if the procedure involving the *nomothetai* fails by ratifying a new *nomos* which is in conflict with one or more of the laws in force, the remedy is a public action heard by the *dikastai*, and here the document duly refers to the law that lays down the procedure for such a γραφή νόμον μὴ ἐπιτήδειον θεῖναι.

The basis of Canevaro's investigation is the stichometric analysis²⁰ which shows that some of the documents inserted in the medieval manuscripts of Demosthenes' public speeches

¹⁸ Canevaro (97 n.57) argues that this expression is not a relevant parallel: “καταχειροτονία in this case does not mean simply to vote; it means a vote of censure in a *probole*, although without legal effects (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’.”

¹⁹ See Hansen, *GRBS* 56 (2016) 451.

²⁰ Canevaro 10–27.

were included in the *Urexemplar* of the corpus, whereas others must have been inserted later. Applying his methodological principles²¹ to all the inserted documents, he finds that the documents that were included in the *Urexemplar* are probably genuine²² while the documents that are incompatible with the stichometric counts are forgeries inserted in the late Hellenistic period.²³ For some of the speeches the method works. All the documents in *On the Crown* are forgeries, none was inserted in the *Urexemplar*.²⁴ Conversely, some of the documents in *Against Aristokrates* were certainly included in the *Urexemplar*, others may have been, all are probably genuine.²⁵ In *Against Timokrates* some were included in the *Urexemplar*, some may have been, but some were not.²⁶

Regarding the documents in *On the Crown* and *Against Aristokrates*, I agree with Canevaro. But I disagree about the authenticity of the documents at Dem. 24.20–23 and 33 and uphold my former view that both documents are genuine laws. They are internally consistent, they do not contradict the information provided by Demosthenes in his summaries, or by related laws and decrees in other sources. They sometimes show language and formulas that are unattested in Athenian inscriptions, but so does Demosthenes in his comments on the documents, and epigraphically unattested terms are also found

²¹ Canevaro 27–36.

²² Canevaro 329–330: “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.”

²³ Canevaro 335.

²⁴ Canevaro 237–318.

²⁵ Canevaro 37–76.

²⁶ Hansen, *GRBS* 56 (2016) 440.

in two of three documents in *Against Timokrates* which were part of the *Urexemplar* and are accepted by Canovaro as genuine. The three documents in question are Timokrates' law (39–40 and 71), Diokles' law about when a *nomos* becomes *kyrios* (42), and the law about *adeia* for *atimoi* and *opheilontes* (45).

In Timokrates' law (39–40 and 71) Canevaro accepts the transposition of δεκάτης and the emendation of Μυρρινούσιος to ἐγ Μυρρινούτης. Both these 'anomalies' are duly discussed,²⁷ but others are not. The term δεσμός in the sense of imprisonment, used twice in the law, is found in literary sources²⁸ but is unattested in Attic documents on stone.²⁹ The adjective μισθώσιμος is never found in inscriptions, and the only proper parallels to the formula τὸς προέδρους ἐπιχειροτονεῖν³⁰ or ἐπιχειροτονίαν διδόναι³¹ are in the Aristotelian *Athenaion Politeia*.³² I agree with Canevaro that Timokrates' law is probably a genuine document, but if we apply Canevaro's methodological principles we should reject it as a forgery, or at least be highly suspicious of its authenticity.

There are problems too with the law about *atimoi* and *opheilontes* at 45. The formula ἄφεςις τοῦ ὀφλήματος is unattested in inscriptions, and so is the important numeral ἑξακισχίλιοι in

²⁷ Canevaro 116–120. At 120 he explains both problems "as minor corruptions and solved by minor emendations." The transposition of δεκάτης is a minor change, but the change of the demotic is a major emendation and is crucial for the issue whether the *proedroi* of the *nomothetai* were the same as those of the *boule*. Referring to *IG II³ 452* Rhodes believes that the *nomothetai* must have had their own *proedroi*: P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 28. I first believed that the *nomothetai* used the *proedroi* of the *boule*, see M. H. Hansen, *ZPE* 30 (1978) 156–157, but later—pointing out the problem of the demotic of the *proedros*—I accepted Rhodes' view, see *ClMed* 32 (1980) 103 n.17.

²⁸ Apart from the two attestations in Timokrates' law there are 29 occurrences in *Against Timokrates*.

²⁹ See Hansen, *GRBS* 56 (2016) 444 with n.26.

³⁰ 39 and 84 (Timokrates' law).

³¹ 50 (law on supplication, perhaps in the *Urexemplar*).

³² *Ath. Pol.* 43.4, 43.5, 55.4, and perhaps 37.1.

the formula μὴ ἔλαττον ἑξακισχιλίων οἷς ἂν δόξη κρύβδην ψηφίζομένοις.³³ It is mentioned at Dem. 59.89 in connection with ratification of citizenship decrees, but is not found in any of the numerous citizenship decrees preserved on stone.³⁴

Diokles' law at 42 is in fact the only document in the *Urexemplar* that does not offend against any of Canevaro's methodological principles.

So let us take a closer look at what we know about the *Urexemplar*. I am convinced that Canevaro is basically right about its origin and the identification of the compiler as Demosthenes' nephew Demochares: "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" (327).

The Demosthenic corpus, however, as we have it in the medieval manuscripts is based on other sources than the *Urexemplar*. A number of forged documents, for example, were added to the speech *On the Crown* and to other speeches as well. Is it unthinkable that some genuine documents were added later to the speech *Against Timokrates*?³⁵ Canevaro admits that

³³ See Hansen, *GRBS* 56 (2016) 444–445.

³⁴ See M. J. Osborne, *Naturalization in Athens* IV (Brussels 1983) 161–164.

³⁵ Canevaro (340 n.73) "does not exclude the possibility that they [the editors of Dem. 24 who later inserted the documents] might occasionally have found the right document." One example of that is the section of Drako's homicide law (*IG* I³ 104) inserted as a document in Dem. 43.57. Apart from the transposition of one section, the omission of lines 14–16, and a few minor changes, the text of the document is identical with lines 13–22 of the inscription and has been the basis for the convincing restoration of those lines. Stichometric analysis shows that the document at 43.57–58 was not part of the *Urexemplar* and must have been inserted later (Canevaro 30 n.63). In addition to the section of the homicide law the document also includes a law concerning the burial of deceased persons. The document must stem from another version of the speech than the one

the “forger” of the document at §20–23 “shows a shrewd understanding of the working of the Athenian Assembly and a remarkable knowledge of Attic official language” (332). In my opinion the “errors” Canevaro has found in the documents inserted at §20–23 and 33 are not errors but trustworthy pieces of information about Athenian laws and legislative procedures, based on either existing copies of the laws or on copies of Demosthenes’ speech that included other documents than those in the *Urexemplar*. We know next to nothing about the publication—or rather circulation—of courtroom speeches in fourth-century Athens. We can neither prove nor disprove that copies of Demosthenes’ courtroom speeches were circulated in Athens in his lifetime, and that some of the copies may have included other documents than those attested in the *Urexemplar*. In my opinion there is no reason to doubt that, in addition to Demosthenes’ own copy of the speech—probably the one used for the *Urexemplar*—at least one more copy of the speech *Against Timokrates* existed in Demosthenes’ lifetime. The *graphe nomon me epitedeon theinai* against Timokrates was brought by Diodoros,³⁶ who addressed the court with the speech written by Demosthenes.³⁷ In this case Demosthenes was neither *kategoros* nor *synegoros*, but *logographos*.³⁸ In his early years Demosthenes earned a living as teacher of rhetoric and logographer.³⁹ Canevaro (329) suggests that after the trial Demosthenes’ original was filed with his other speeches and that in preparing

used for the *Urexemplar*. The speech was written by a logographer, probably Demosthenes, and delivered by Sositheos who opposed Makartatos in a *diadikasia*. The speech was written in the late 340s when Demosthenes had established his reputation as a speechwriter and it may have been circulated in his lifetime.

³⁶ 3 and 64; hypoth. 1.1, 2.5.

³⁷ MacDowell, *Demosthenes* 185.

³⁸ For Demosthenes as *logographer* see Dem. 32.32; Aeschin. 1.94, 2.165, 3.173; Din. 1.111. For the logographer in general see Lycurg. 1.138; Lavency, *Aspects* 26–30, 41–45 and *passim*.

³⁹ MacDowell, *Demosthenes* 59–60.

the *Urexemplar* “Demochares added to the speeches those documents that he found among Demosthenes’ papers.” But what happened to Diodoros’ copy which may have included some of the documents not found in the *Urexemplar*? Diodoros probably had to pay Demosthenes for giving advice and for writing the speech.⁴⁰ In addition to the speech which Diodoros now had to rehearse, Demosthenes may have provided him with copies of the documents to be read out to the jurors. Later when Demosthenes had become a leading figure in Athens and had established his fame as an orator Diodoros may have circulated his copy either for political reasons or to recover what he had paid for the speech.⁴¹ Alternatively, Demosthenes may himself have ‘published’ the speech. I agree with MacDowell and Canavaro that Demosthenes “had no reason to insert the documents in his drafts and that the normal practice was not to include them. He had rather to provide separate copies for them to be read out by the secretary.”⁴² But if after the trial he had copies of his speeches circulated either for political or commercial reasons, he may have preferred to have the documents or at least some of them inserted.

This view can be extended to cover all the Athenian logographers. We have preserved a total of close to one hundred courtroom speeches delivered in public or private actions in the course of the period ca. 420 to 322. Of these no less than 76 were written by logographers and delivered by their clients acting as prosecutors or defendants or *synegoroi* for prosecutors or defendants. The authors of these logographic speeches are Antiphon, Isokrates, Lysias, Isaios, Demosthenes, Hypereides,

⁴⁰ Aeschin. 2.165; Din. 1.111.

⁴¹ In *Lysias and the Corpus Lysiacum* (Berkeley/Los Angeles 1968) 161–163, K. J. Dover suggested that “Demosthenes and Diodoros worked closely together and Diodoros made significant contributions to the argument and wording of both speeches.” The other speech is 22 *Against Androtion*, where Diodoros appeared as *synegoros* for the prosecutor, Euktemon.

⁴² D. M. MacDowell, *Demosthenes Against Meidias* (Oxford 1990) 46; Canavaro 328–329.

and Deinarchos. Lykourgos is known to have written speeches for others, but none is preserved. Still extant speeches written by these orators and delivered by themselves add up to fourteen, nine in private and five in public actions. There is no evidence that Andokides, Aischines, and Apollodoros acted as logographers.⁴³

The heavy preponderance of logographic speeches among the speeches we have preserved suggests that logographers had their speeches ‘published’ to a far larger extent than courtroom speeches composed and delivered by others, and apparently in the logographers’ own lifetime. According to Eusebios, Hyperides borrowed arguments and passages from Demosthenes’ speeches and vice versa.⁴⁴ And a passage in Lysias is obviously copied from an almost identical passage in Andokides’ speech *On the Mysteries*.⁴⁵ A possible but less obvious reason for the similarity is that in both cases the argument was based on a topos taken from a rhetorical handbook. Much of this is hypothetical, but in my opinion less so than Canevaro’s view that no version of *Against Timokrates* or Demosthenes’ other speeches was accessible to the public until after Demochares had produced the *Urexemplar*.

Another source which deserves to be mentioned in this context is from Plutarch and pertains to Demosthenes’ deliberative speeches. In the *Life of Demosthenes* he quotes Hermippos for the story that Demosthenes’ contemporary, the *rhetor* Aision, was asked about the difference between former and contemporary orators. He answered that one would have admired former orators’ graceful and magnificent deliberative speeches to the people and that was different from reading

⁴³ The best survey of preserved logographic speeches is L. Rubinstein, “Oratory,” in E. Boys-Stones et al. (eds.), *The Oxford Handbook of Hellenic Studies* (Oxford 2009) 505–516, at 511.

⁴⁴ Euseb. *Praep. Evang.* 10.3.14.

⁴⁵ Lys. 19.3–4; Andoc. 1.6–7. For these examples and striking similarities between Dem. 54 and Isoc. 20 see Rubinstein, in *Oxford Handbook* 508–509.

Demosthenes' well prepared and powerful speeches.⁴⁶ Hermippos has a reputation for not always being trustworthy,⁴⁷ but is he necessarily wrong?

My conclusion is that I disagree with Canevaro about the authenticity of the documents at §20-23 and 33. 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 and will be required reading for all who study Athenian law and political institutions as well as all who investigate the history and origin of the Demosthenic corpus. Unless a marble copy of one of the laws quoted in the speech turns up in future, or a papyrus fragment of *Against Timokrates* from the early Hellenistic period with the text of one of the documents, there can be no definitive answer to the question: which of the documents inserted in *Against Timokrates* are genuine and which are "late forgeries"?⁴⁸

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⁴⁶ Plut. *Dem.* 11.4 (Hermip. fr.74 Wehrli). For Aision see *LGPN* II 14c.

⁴⁷ E. Drerup, *Demosthenes im Urteile des Altertums* (Paderborn 1923) 71–72.

⁴⁸ For helpful suggestions I would like to thank Prof. Peter Rhodes and Prof. Jeremy Trevett.