

*Mirko Canevaro, Edward M. Harris*  
The Authenticity of the Documents at  
Andocides' *On the Mysteries* 77-79 and 83-84<sup>1</sup>

*Abstract*

In 2012 M. Canevaro and E. M. Harris published an essay about the documents inserted into the text of Andocides' speech *On the Mysteries*. These included the decree of Patrocleides (Andoc. 1.74-76), the decree of Teisamenus (Andoc. 1.83-84), the so-called New Laws (Andoc. 1.85 and 87) and the Decree of Demophantus (Andoc. 1.96-98). This analysis showed that these documents were forgeries composed during a later period and inserted into the text of *On the Mysteries*. M. H. Hansen has now attempted to defend the authenticity of the documents found at Andoc. 1.74-76 and 83-84. In this essay, Canevaro and Harris show that his arguments are not convincing and provide additional evidence against the authenticity of these documents.

Nel 2012 M. Canevaro ed E. M. Harris pubblicarono un saggio sui documenti inseriti nel testo del discorso *Sui Misteri* di Andocide: il decreto di Patrocleide (Andoc. 1.74-76), il decreto di Tisameno (Andoc. 1.83-84), le cosiddette Nuove Leggi (Andoc. 1.85 e 87) e il decreto di Demofanto (Andoc. 1.96-98). L'analisi mostrava che questi documenti sono falsi composti in un periodo successivo alla composizione del discorso, e inseriti poi nel testo dell'orazione *Sui Misteri*. M. H. Hansen ha recentemente cercato di difendere l'autenticità dei documenti che si trovano in Andoc. 1.74-76 e 83-84. In questo articolo, Canevaro e Harris mostrano che le sue argomentazioni non sono convincenti e offrono nuove prove della non autenticità di questi documenti.

In 2012 we published an essay about the documents inserted into the text of Andocides' speech *On the Mysteries*.<sup>2</sup> These included the decree of Patrocleides (Andoc. 1.74-76), the decree of Teisamenus (Andoc. 1.83-84), the so-called New Laws (Andoc. 1.85 and 87) and the Decree of Demophantus (Andoc. 1.96-98). Through a careful analysis of their contents, we showed that the provisions in these laws were contradicted by the summaries of their contents

---

1 We would like to thank Alberto Esu for his assistance with the preparation of this essay, and for various feedback. We would also like to thank the three anonymous reviewers for their comments and suggestions. Mirko Canevaro also gratefully acknowledges the support of the Leverhulme Trust.

2 Canevaro and Harris 2012.

provided by Andocides, contained language and formulas that were not consistent with those found in contemporary documents preserved on stone, and had provisions that were not consistent with reliable sources for Athenian laws and legal procedures. We also showed that there was no reason in most cases to doubt the reliability of Andocides' accounts, which were corroborated on key points by reliable contemporary sources. This analysis clearly showed that these inserted documents were forgeries composed during a later period and inserted into the text of *On the Mysteries*. Our analyses and conclusions have been accepted by many scholars.<sup>3</sup> In an essay published in 2014, A. Sommerstein attempted to defend the authenticity of the document found at 96-98.<sup>4</sup> In an essay published the following year, however, Harris showed that Sommerstein's arguments are untenable and provided much additional evidence against the authenticity of the document.<sup>5</sup> Hansen has now attempted to defend the authenticity of the documents found at Andocides 1.74-76 and 83-84.<sup>6</sup> In this essay, we show that his arguments are not convincing and provide additional evidence against the authenticity of these documents.

*The decree of Patrocleides (Andoc. 1.77-9)*

In the speech *On the Mysteries*, Andocides discusses the decree of Patrocleides, enacted after the defeat of Aegospotami and the beginning of the siege of Athens by the Spartans, as one that restored civic rights to those who had lost them (Andoc. 1.74-76). This is the first argument Andocides uses to prove that the decree of Isotimides that disenfranchised him is no longer in effect. After a discussion in which Andocides lists the categories of those who had been disenfranchised, and who recovered their full status because of the decree of Patrocleides (public debtors; those who are ἄτιμοι but retain ownership of their property; ἄτιμοι by decree and partial ἄτιμοι<sup>7</sup>), Andocides adds that the Athenians voted that all these decrees should be destroyed, and then asks the secretary to read out the decree of Patrocleides. After the decree is read out, Andocides repeats his point that by this decree the Athenians re-enfranchised the disfranchised (Andoc. 1.80) and adds that, on the other hand, the decree did not restore the exiles. We include here the Greek text and the translation.

3 Luraghi 2013:51, n. 12; Joyce 2014: 37-54; Novotný 2014; D'Ajello 2014; 313; Halliwell 2015: 168 n. 25; Könczöl 2016: 37 n. 23; Pébarthe 2016: 227; Esu 2016; Mikalson 2016: 267 n. 1; Leslie Threatte *per litteras*; Denis Knoepfler in conversation.

4 Sommerstein 2014. Hansen 2015 uncritically accepts Sommerstein's arguments without observing any of the problems noted by Harris 2013/2014 [2015].

5 Harris 2013/2014 [2015]. Matthias Haake has now informed us *per litteras* that he finds the case against the authenticity of the document at Andoc. 1.96-98 overwhelming.

6 Hansen 2015 and Hansen 2016.

7 These two categories are strangely conflated. See Novotný 2014: 66-74.

[77] Ψήφισμα. Πατροκλείδης εἶπεν· ἐπειδὴ ἐψηφίσαντο Ἀθηναῖοι τὴν ἄδειαν περὶ τῶν ὀφειλόντων, ὥστε λέγειν ἐξεῖναι καὶ ἐπιψηφίζειν, ψηφίσασθαι τὸν δῆμον ταῦτα ἅπερ ὅτε ἦν τὰ Μηδικά, καὶ συνήνεγκεν Ἀθηναίους ἐπὶ τὸ ἄμεινον. Περὶ δὲ τῶν ἐπιγεγραμμένων εἰς τοὺς πράκτορας ἢ τοὺς ταμίας τῆς θεοῦ καὶ τῶν ἄλλων θεῶν ἢ τὸν βασιλέα, ἢ εἴ τις μὴ ἐξεγράφη, μέχρι τῆς ἐξελεύσεως βουλῆς ἐφ' ἧς Καλλίας ἤρχεν, [78] ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες, καὶ ὅσων εὐθυναί τινές εἰσι κατεγνωσμένοι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων ἢ τῶν παρέδρων, ἢ μήπω εἰσηγμένοι εἰς τὸ δικαστήριον γραφαί τινές εἰσι περὶ τῶν εὐθύνων, ἢ προστάξεις, ἢ ἐγγυαί τινές εἰσι κατεγνωσμένοι, εἰς τὸν αὐτὸν τοῦτον χρόνον· καὶ ὅσα ὀνόματα τῶν τετρακοσίων τινὸς ἐγγέγραπται, ἢ ἄλλο τι περὶ τῶν ἐν τῇ ὀλιγαρχίᾳ πραχθέντων ἐστὶ που γεγραμμένον· πλὴν ὅποσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων, ἢ ἐξ Ἀρείου πάγου ἢ τῶν ἐφετῶν ἢ ἐκ πρυτανείου ἢ Δελφινίου ἐδικάσθη ἢ ὑπὸ τῶν βασιλέων ἢ ἐπὶ φόνῳ τίς ἐστι φυγὴ ἢ θάνατος κατεγνώσθη ἢ σφαγεῦσιν ἢ τυράννοις· [79] τὰ δὲ ἄλλα πάντα ἐξαλεῖψαι τοὺς πράκτορας καὶ τὴν βουλὴν καὶ τὰ εἰρημένα πανταχόθεν, ὅπου τι ἔστιν ἐν τῷ δημοσίῳ, καὶ εἰ ἀντίγραφόν που ἔστι, παρέχειν τοὺς θεσμοθέτας καὶ τὰς ἄλλας ἀρχάς. Ποιεῖν δὲ ταῦτα τριῶν ἡμερῶν, ἐπειδὴν δόξη τῷ δήμῳ. Ἄδ' εἴρηται ἐξαλεῖψαι, μὴ κεκτῆσθαι ἰδίᾳ μηδενὶ ἐξεῖναι μηδὲ μνησικακῆσαι μηδέποτε· εἰ δὲ μή, ἔνοχον εἶναι τὸν παραβαίνοντα ταῦτα ἐν τοῖς αὐτοῖς ἐν οἷσπερ οἱ ἐξ Ἀρείου πάγου φεύγοντες, ὅπως ἂν ὡς πιστότατα ἔχη Ἀθηναῖοις καὶ νῦν καὶ εἰς τὸν λοιπὸν χρόνον.

Patrocleides made the motion. Since the Athenians have voted immunity about (public) debtors so that it is permitted to speak and submit (proposals about them) to a vote, the people have voted the same measures which were in force during the Persian Wars and which proved beneficial to the Athenians for their better interests. Regarding those who have been registered with the *praktors* or with the Treasurers of the Goddess and the Other Gods or with the *Basileus*, or if he was not removed (i.e. his name was not removed), before the Council left office during the archonship of Callias, all who were without rights or debtors and those whose audits (of their terms of office) have been decided in the Auditors' office by the *Euthynoi* and their assessors or whose public charges arising from their audits have not yet been brought to the court or their specific limitations of rights or pledges of personal security have been judged at the same time; and all the names of anyone of the Four Hundred whose names have been recorded or any other act done during the oligarchy has been recorded anywhere except for the names of all those who did not remain here or were judged by the Areopagus or the Ephetai or by the Prytaneion or by the Delphinion or by the *Basileis* or who have been condemned to exile or death on a charge of murder or (?) for massacre or (?) for tyranny. The *praktors* and the Council are to delete all the other names anywhere in accordance with the aforesaid wherever they are publicly exposed and if there is a copy anywhere, and the Thesmothetai and the other officials are to produce them. They are to do this within three days after the people decides. It is not permitted for anyone to acquire privately those documents which it has been proposed to delete nor at any time to recall harm done in the past. If one does not, he who violates

these regulations is to be subject to the same penalties as those who are in exile (by a sentence) of the Areopagus so that there is as much trust as possible for the Athenians both now and in the future.

In most analyses of documents included in the Attic orators, the correct methodology to follow is to attempt to reconstruct from the summary of the orator (and from other sources) the contents of the document, and then compare this information with the document itself.<sup>8</sup> In his response to our arguments about the decree of Patrocleides, Hansen implies (at Re (4)) that this methodology is inadequate in this case, because the list of ἄτιμοι provided by Andocides and that found in the document are fundamentally different: the first is a list, concocted by Andocides, of categories of ἄτιμοι that are re-enfranchised as an effect of the decree of Patrocleides, while the second is a list of ‘the documents that must be destroyed in consequence of the amnesty’.<sup>9</sup> But, even if we accept Hansen’s reading of the two lists, Andocides, before and after his list of ἄτιμοι, still provides some very clear information about the contents of the decree of Patrocleides. At 76 he states that ‘You voted that all these decrees should be destroyed, both the documents themselves and any copy that existed anywhere’, which is confirmed in the summary of Andocides’ arguments at 103 (καὶ στήλας ἀνείλετε καὶ νόμους ἀκύρους ἐποιήσατε καὶ τὰ ψηφίσματα ἐξηλείψατε). This is what the list in the document is really about, according to Hansen.<sup>10</sup> But, at 73, Andocides states also that ‘[a]fter the navy was destroyed and the siege began, you had a discussion about unity. It was decided by you to enfranchise the disfranchised, and Patrocleides proposed the decree’. The Greek makes it clear that the words of Andocides here are very close to those of the decree itself, as Andocides uses the very words typical of the formulas of Athenian decrees: ἔδοξεν ὑμῖν (which is equivalent to ἔδοξεν τῶι δήμῳ, the standard enactment formula in decrees, e.g. ἔδοξεν τῶι δήμῳ in *IG II<sup>2</sup> 28* l. 2) and εἶπε [...] Πατροκλειδῆς (the standard formula for the proposer of a decree, e.g. Πολίαγρος εἶπεν in *IG II<sup>2</sup> 28* ll. 3-4). So what is it that Andocides, reproducing the words of the decree itself, states that Patrocleides proposed and the *demos* resolved? It was resolved by the *demos* that τοὺς ἀτίμους ἐπιτίμους ποιῆσαι. That these were the key words of the decree is confirmed again by Andocides right after the decree is read out, at 80, where he states that ‘by this decree you enfranchised the disfranchised’ (κατὰ μὲν τὸ ψηφισμα τοῦτὶ τοὺς ἀτίμους ἐπιτίμους ἐποιήσατε), and again at 103 when he summarises his own arguments (τοῦτο δὲ οὗς ἀτίμους ὄντας ἐπιτίμους ἐποιήσατε). And that this was the key provision of the decree is confirmed also by two independent sources,

8 For a full justification of this methodology see Canevaro 2013: 27-36 and Canevaro-Harris 2012: 98-100.

9 Hansen 2015: 887-8, restating the point made in Hansen 1976: 89.

10 At 80 he also states that all exiles were expressly excluded from the amnesty, a general exception that is never stated in the document (see point 13 below).

Xen. *Hell.* 2.2.11, who reports (consistently with Andocides) that after Ae-gospotami the Athenians τοὺς ἀτίμους ἐπιτίμους ποιήσαντες, and Lys. 25.27. There should be no doubt that this is what the decree of Patrocleides did, and that these words were included in his decree. Yet the document does not include these words at all. Their absence is decisive evidence against the authenticity of the document, and Hansen has no answer to this objection.<sup>11</sup>

There is more: the inserted document does not only fail to state *verbatim* that the Athenians τοὺς ἀτίμους ἐπιτίμους ποιῆσαι. Because the core of the document, according to Hansen, does not enact the amnesty, but lists the physical documents that are 'to be destroyed as in consequence of the amnesty', the document fails to state that the disenfranchised be re-enfranchised at all – the document fails to implement what all sources agree was the main aim of Patrocleides' decree. Hansen's response to this problem (at Re (4)) is to claim that 'the only description of (the amnesty) is that it is identical with the amnesty of 490'.<sup>12</sup> According to Hansen, therefore, the key provision of the decree, the very provision that granted the amnesty, was expressed with the words: ψηφίσασθαι τὸν δῆμον ταῦτά ἄπερ ὅτε ἦν τὰ Μηδικά, καὶ συνήνεγκεν ἸΑθηναίους ἐπὶ τὸ ἄμεινον. Apparently, no further specification was needed to indicate which one among the hundreds of enactments at the time of the Persian Wars the Athenians were to replicate, its topic, its provisions. A momentous amnesty that reinstated the rights of all ἄτιμοι at a moment of intense crisis for the Athenian state was enacted through a vague reference to something approved by the Athenians at the time of Persian Wars over eighty years before, without even specifying what provision exactly they were to replicate. This is, incidentally, what we described in our previous article as an 'implausible hypothesis',<sup>13</sup> not the possibility that a decree may dedicate its largest section to listing specific practical arrangements for the implementation of its main provisions, or further arrangements to be made as a consequence of its main provisions. This is widely attested, but as long as the main provision, explaining what the decree does, is actually stated in the decree.<sup>14</sup> This is in fact the case with the (alleged) parallel that Hansen cites at Re (4): the Athenian Grain

11 By his own argument, the only mention of ἄτιμοι and ὀφείλοντες in the document has nothing to do with this key provision, because it is found in the list of physical documents, as a specification of ἐπιγεγραμμένων (see point 13 below).

12 Hansen 2015: 888, citing Hansen 1976: 89. Hansen makes this statement because he correctly understands that ἐπειδὴ ἐψηφίσαντο ἸΑθηναῖοι τὴν ἄδειαν περὶ τῶν ὀφειλόντων, ὥστε λέγειν ἐξεῖναι καὶ ἐπιψηφίζειν does not indicate what is actually enacted in the decree, only that the preliminary condition of obtaining ἄδεια to discuss matters relating to ἄτιμοι has been fulfilled (see below points 1 and 13). He forgets about this when he claims that this clause excluded the exiles from the amnesty (see below point 13).

13 Canevaro-Harris 2012: 103.

14 This is the case, for instance, in the decree for the Sacred Orgas (*IG* II<sup>3</sup> 1 292), which states the general principles in the initial provisions and then instructs the officials and the Council about the implementation of these provisions. The same is true, to give a relevant extra-Athenian example, of the amnesty decree of Mytilene (*SEG* 36.170 = *RO* 85B).

Tax Law of 374/3 (*SEG* 48.96).<sup>15</sup> But it is unclear to us how this could provide a parallel for the arrangement in the document. In this law the topic is expressed clearly at the outset (ll. 3-4): νόμος περὶ τῆς δωδεκάτης τοῦ σίτου τῶν νήσων. The purpose that the *demoi* may have grain available (ll. 5-8), which is cited by Hansen, is expressed with an ὅπως clause, and is not an actual provision (let alone the key provision), just a clause expressing the aim of the law. This is followed by a clear statement of what the law does (ll. 6-8) – its main provision – as the first of the provisions listed: τὴν δωδεκάτην πωλεῖν τὴν ἐν Λήμνῳ καὶ Ἰμβρῳ καὶ Σκύρῳ καὶ τὴν πεντηκοστὴν σίτου (‘sell the tax of one twelfth at Lemnos, Imbros, and Scyros, and the tax of one fiftieth, in grain’). The statement of what the law does is exceedingly clear. Then, after this main provision, the remainder of the law lists a series of detailed provisions for its implementation (ll. 8-61), and there are practical arrangements about transport, storage and the selling of the grain. The document at *Andoc.* 1.77-79 is very different: the statement of what the law does (which we know from *Andocides*, *Xenophon* and *Lysias* involved the mention of the ἄτιμοι being re-enfranchised) is entirely missing, replaced by a vague reference to what the Athenians did at the time of the Persian Wars, and followed by a confused list of documents that are to be destroyed as a consequence of an amnesty, which remains unexpressed. Such indeterminacy about the actual contents of the *psephisma*, and the lack of elements to help to identify the older decree that served as model, has no parallel in the *corpus* of decrees on stone. When a decree refers to a previous decree, the name of the original proposer is normally mentioned to identify the relevant decree (e.g. *IG* I<sup>3</sup> 1453 G l. 10: τὸ πρότερον ψήφισμα ὃ Κλέαρχ[ος εἶπεν]), or we find a precise dating formula (e.g. *IG* I<sup>3</sup> 46 ll. 19-20, κατὰ τὰς χτυγγραφὰς ἡ[ἰ] ἐπὶ ..... πρό]το γραμματεῦντος).<sup>16</sup>

These major problems, together with several others discussed in the following pages, show that the document cannot be considered an authentic Athenian decree. We now proceed to answer Hansen’s objections to our points in the original numbered order, except for point 4, for which our reply to his objections can be found in the general discussion above.

1) We noted that the document, at 77, in referring to the ἄδεια granted by the Assembly to discuss matters pertaining to the ἄτιμοι in accordance with the law on ἄδεια (quoted at *Dem.* 24.45-7)<sup>17</sup>, has only περὶ τῶν ὀφειλόντων, but lacks a mention of the ἄτιμοι, which are central both to the law on ἄδεια and to the actual decree of *Patrocleides* – *Andocides* states repeatedly that it makes τοὺς ἄτιμους ἐπιτίμους (see above). *Sauppe* saw the problem, postulated a corrup-

15 For this law see *Stroud* (1998) and the contributions of *Harris* (1999), *Faraguna* (1999), *Jakab* (2007), *Moreno* (2003), *Magnetto*, *Erdas*, *Carusi* (2010).

16 We owe this observation to one of the anonymous reviewers, whom we thank.

17 See *Canevaro* 2013: 127-31 on the law and the document at *Dem.* 24.45.



tion, and inserted the words τῶν ἀτίμων καὶ between περί and τῶν ὀφειλόντων. Hansen supports this emendation as a way to remove the problem. But it is methodologically unsound to postulate a corruption wherever the document does not make sense, and then use the emended text to argue that the document can be considered authentic.<sup>18</sup> Hansen claims that ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες at 78 supports Sauppe's emendation. But, according to his own reconstruction of the meaning of the document,<sup>19</sup> that section provides a list of the physical records that must be destroyed as a result of the amnesty stipulated in the decree; its task is not to specify what the decree stipulated, and least of all what the preliminary ἄδεια had allowed to discuss.

We cannot extrapolate from that list (which includes several other categories, see below) what kind of textual corruption must have occurred in the first part of the document. The hypothesis of textual corruption, of course, remains a possible explanation for the problem, but only if the document can be shown to be genuine on other grounds. As it stands, the wording ἐπειδὴ ἐψηφίσαντο Ἰθναῖοι τὴν ἄδειαν περὶ τῶν ὀφειλόντων provides evidence against the authenticity of the document.

It is also worth noting that the two extant inscriptions (*IG I<sup>3</sup> 52* and *370*) which provide evidence for the use of *adeia* refer to the Athenians voting *adeia* in the Assembly as *demos*, and not as Ἰθναῖοι, consistently with motion and enactment formulas in Athenian decrees more generally (see below). In *IG I<sup>3</sup> 370* ll. 15, 28, 30, 33, 63-4 we find (three times, and two more times restored) φσεφισαμένο τῷ δέμο τὴν ἄδειαν, and this is consistent with *IG I<sup>3</sup> 52 B* l. 16, where the possibility of *adeia* in derogation to an entrenchment clause is set up with the phrase ἐὰν μὲ τ]ὴν ἄδειαν φσεφ[ίεται] ὁ δέμος.<sup>20</sup>

2) We observed that in decrees of the late fifth and early fourth centuries explanation clauses introduced by ἐπειδὴ are then followed by motion formulas 'with an infinitive indicating the proposal of the speaker and the decision of the Assembly' and that ψηφίσασθαι τὸν δῆμον, with the accusative τὸν δῆμον as the subject of the aorist infinitive ψηφίσασθαι, is unparalleled in Athenian decrees (and specifically in motion formulas). We should have added that motion formulas in most cases have δεδόχθαι (e.g. *IG I<sup>3</sup> 127* l. 12, of the same year as the decree of Patrocleides), and in some cases ἐψηφίσθαι (e.g. *IG II<sup>2</sup> 1* l. 52), but always in the perfect infinitive, and always followed by the dative (τῷ δήμῳ, τῇ βολῆι, or occasionally Ἰθναῖοις).<sup>21</sup> The accusative τὸν δῆμον (or

18 See Canevaro 2013: 27-36 for an extensive discussion of the methodological principles that should underpin the analysis of the documents.

19 Hansen 2015: 887-8; cf. Hansen 1976: 89. Hansen's reading of the list in the document is endorsed by Boegehold 1990.

20 We owe this observation to Alberto Esu.

21 Hansen 2015: 886 lists a few examples of this construction (*IG II<sup>2</sup> 133* ll. 9-12, 235 ll. 7-14, 360 ll. 28-32, cf. 47 ll. 24-25), as if they were evidence that the formula found in the docu-

τὴν βουλήν, or τοὺς Ἀθηναίους) as the subject of the middle aorist infinitive of ψηφίζω or δοκέω is unparalleled in motion formulas. Hansen observes that ‘[e]ven for Athens we have so few documents preserved on stone that arguments from silence based on terminology and idioms carry little weight’. First, we are not talking of random idiom or terminology, but of the most regular and widespread formulas to appear in Athenian decrees, the motion formulas. Such formulas are in fact so regular that Rhodes, by studying carefully the recurrence of a defined and recurrent set of small variations, has been able to predict the route through which the particular decrees were enacted!<sup>22</sup> Second, the dataset in this case is in fact quite sizeable: Lambert has counted for the fourth century over eight hundred Athenian decrees preserved on stone – hardly ‘so few documents’.<sup>23</sup> The usual formula is in fact attested in its two main variants in an inscription from the same year as the decree of Patrocleides (*IG I<sup>3</sup> 127 = IG II<sup>2</sup> 1*). The grammatical structure of motion formulas is invariably the same, and incompatible with the document, and this is a fact that cannot be dismissed.<sup>24</sup>

Hansen further mentions the case of the laws passed by the νομοθέται as an example of irregular and variable formulas, which should advise against any generalization. He observes that ‘[u]ntil 1974 the only attested formula was δεδόχθαι τοῖς νομοθέταις: *IG II<sup>2</sup> 140.7–8, 244.6 [IG II<sup>3</sup> 1 429], IG II<sup>3</sup> 320.6, 447.7, SEG LII 104, Agora I 7495 (unpublished)*. But in the new law on approvers of silver coinage the enactment formula is ἔδοξε τοῖς νομοθέταις (R&O 25), and in the law taxing Lemnos, Imbros, and Scyros there is neither an enactment nor a motion formula (R&O 26)’. But he is comparing apples and oranges. δεδόχθαι τοῖς νομοθέταις is a motion formula, and is fully consistent with all the extant motion formulas found in Athenian inscriptions: perfect infinitive followed by the dative of the body that enacted the measure. ἔδοξε τοῖς νομοθέταις is an enactment formula, an entirely different kind of formula, and is fully consistent with the vast majority of enactment formulas found in Athenian inscriptions: aorist indicative followed by the dative of the enacting body (e.g. ἔδοξεν τῇ βουλῇ καὶ τῷ δήμῳ, *IG I<sup>3</sup> 127 l. 5*). *Pace* Hansen, we would certainly not extrapolate from an enactment formula the grammatical structure to be expected in a motion formula. And, likewise, the absence of either formulas in RO 26 is irrelevant: both formulas are occasionally absent also from decrees, but when they do appear, their grammatical constructions are invari-

---

ment is plausible, but the grammatical structure is entirely different, and all these examples match the standard construction. He also mentions a few examples of ὁ δῆμος ἐψηφίσατο (*IG II<sup>2</sup> 1 l. 44, 1627b l. 244 and 272, 1628d ll. 462, 493, 1629d l. 725*), but none of these examples is a motion formula – the point is that all motions formulas show a consistent grammatical structure from the late fifth century onwards (none is attested in the earlier fifth century), and this is incompatible with the wording of the document.

22 Rhodes 1972: 64–78 and Rhodes with Lewis 1997: 18–27.

23 Lambert 2005: 130 n. 31.

24 Note that the earliest motion formulas to appear in the late fifth century are fully consistent with those attested throughout the fourth.



ably consistent and recognizable, and the document is at odds with the structure found in motion formulas. To sum up, the point stands, and the problem with the motion formula is serious, because this is one of the most consistent formulas in Athenian decrees. All the evidence shows that the construction in the document is unacceptable.

3) We noted that Andoc. 1.107 is the only evidence we have for an amnesty that re-enfranchised the ἄτιμοι at the time of the Persian Wars (to which the document refers at 77), and that this passage talks about an amnesty for ἄτιμοι and exiles, before the battle of Marathon. We also noted that the only measures passed before the battle of Marathon that we know of and that could resemble the amnesty discussed by Andocides (Paus. 1.32.3; 7.15.7; 10.20.2) are in fact very different – they have to do with freeing slaves. We ventured that it is likely that Andocides fabricated this episode to find a prestigious precedent for the amnesties he was discussing, and a forger unwittingly included it in the document, without realizing the problems. Hansen responds that ‘what we can infer is that Andokides probably believed that there was an amnesty before Marathon (Andoc. 1.107), and, at least, he believed that many, perhaps most of the jurors would share his view. We do not have to invent a naive forger. Patrokleides was probably among those who believed that there had been an amnesty in 490, and a majority of the Athenians may have shared this view when they passed the decree’. He adds that ‘the Athenians themselves were notoriously ignorant of many aspects of their own constitutional history’. Thus, according to Hansen, it is irrelevant whether such an amnesty at the time of the Persian Wars existed, as long as Patrokleides and the Athenians thought it existed. The problem with this explanation is that the amnesty at the time of the Persian Wars is not just a random reference in the document, vaguely recalling a precedent for what was being enacted. What is being enacted is described through this very reference: the Athenians vote the same measures which were in force during the Persian Wars, and these measures are not even made manifest in the document. Hansen himself states that ‘the only description of (the amnesty) is that it is identical with the amnesty of 490’.<sup>25</sup> We have discussed the problems with this contention above (pp. 12-13). Here we must remark that not only does Hansen ask us to believe that Patrokleides proposed and the Athenians enacted a momentous amnesty without actually stating in the decree what they were enacting; they enacted it by ordering the application of the (unnamed) provisions of an old decree that did not actually exist, or that anyway they had not consulted and only

25 Hansen 2015: 888, citing Hansen 1976: 89. Hansen makes this statement because he correctly understands that ἐπειδὴ ἐψηφίσαντο Ἀθηναῖοι τὴν ἄδειαν περὶ τῶν ὀφειλόντων, ὥστε λέγειν ἐξεῖναι καὶ ἐπιψηφίζειν does not indicate what is actually enacted in the decree, only that the preliminary condition of obtaining ἄδεια to discuss matters relating to ἄτιμοι has been fulfilled (see points 1 and 13). He forgets about this when he claims that this clause excluded the exiles from the amnesty (see below point 13).

vaguely remembered it had been enacted. Hansen's explanation causes more problems than it solves.

5) We noted that ἐπιγεγραμμένων at 77, as found in the *paradosis*, is never the word used in Attic documents to describe those debtors whose names have been inscribed in public records. The verb is invariably ἐγγράφειν, which is attested also in the official name of the crime of falsely inscribing a person's name in the list of public debtors (ψευδεγγραφή, see Harp. s.v.; and this is why Emperius emended the text in ἐγγεγραμμένων). Hansen accepts our point, but claims that ἐπιγεγραμμένων must be a corruption because 'ἐπιγεγραμμένος εἰς designating a person [...] is not Greek at all', and therefore it is unlikely to be the choice of a forger. First of all, it is misleading to imply that the construction found in the document is ἐπιγράφειν εἰς referring to the registering of something (here someone) in a public record – the preposition is of course due to the fact that the register itself is here understood, and εἰς introduces the officials to whom one goes for the registration, who hold the relevant registers (τοὺς πράκτορας ἢ τοὺς ταμίας τῆς θεοῦ καὶ τῶν ἄλλων θεῶν ἢ τὸν βασιλέα). Second, and more important, it is not true that 'ἐπιγεγραμμένος εἰς designating a person [...] is not Greek at all'. ἐπιγράφω is a verb normally used in Greek to indicate the inscribing or writing of something upon a record of some sort. As such, it can be employed of the registration of a person, as shown e.g. by Isae. 6.36, where the accused register themselves as guardians of the sons of Euctemon (ἐπιγράψαντες σφᾶς αὐτοῦς ἐπιτρόπους; cf. Dem. 43.15: κύριον ἐπιγραψάμενος τὸν ἀδελφὸν τὸν ἑαυτοῦ). Likewise at Thuc. 5.4.2 the Leontines πολίτας τε ἐπεγράψαντο πολλοὺς. By analogy, if I can ἐπιγράφειν, in the active, a person in a public record, then one can be inscribed, in the passive, in that same record. And this is in fact what we find at Aeschin. 1.188: τοιοῦτων ῥητόρων ἐπὶ τὰς τοῦ δήμου γνώμας ἐπιγραφομένων. Likewise at [Dem.] 59.43 we find συκοφάντης τῶν [...] ἐπιγραφομένων ταῖς ἀλλοτρίαις γνώμαις. In these examples, ἐπιγραφομένων is used in precisely the same way – in a participle passive referring to the persons inscribed - as ἐπιγεγραμμένων in the document, for exactly the same act – recording one's name in a public record. Thus, it is not true that the use of ἐπιγράφειν that we find in the document is not Greek. It is perfectly good Greek. It is just clumsy in the context and inaccurate because it refers to the specific official act of registering a public debtor in a public record – in that case, the verb in Attic official language is invariably ἐγγράφειν. The point stands.

6) We noted that the document refers to lists of public debtors (individuals disfranchised because of their debts to the state) kept by the *praktōres* and by the *basileus*, but the evidence from Classical Athens shows that there was only

one official list of public debtors, which was kept on the Acropolis,<sup>26</sup> and there is no evidence for lists kept by the *praktors* or by the *basileus*. Hansen contests that there is evidence for such lists, and for other similar lists, but the evidence he adduces is generally inconclusive, and in some cases actually refers to the one list on the Acropolis.

He first cites a fourth-century law (*SEG* 30.61 ll. 27-33) that 'instructs the *basileus* together with one of the *praktors* and a *grammateus* to register fines imposed during the Mysteries'.<sup>27</sup> This law (now *IEleus*. 138 ll. 29-38), dated by Clinton tentatively to the period between 367/6 and 348/7, does not make any such statements in the lines cited by Hansen, which deal with *menusis* and then move to discussing the appointment and tasks of the *epimeletai*, who are in charge, together with the *basileus*, of the orderly running of the festival. The law then gives the *epimeletai* the power to inflict fines up to a certain amount (there is a lacuna which hides the amount), and prescribes that any offence against the festival that requires a higher fine should be passed on to the Heliaia. Ll. 34-5 state: 'The *basileus* is to have one of the *praktors* and the secretary, starting on the first (of Boedromion) until the assembly of initiates is dissolved, and they (the *praktor* and the secretary) are to record the fines which the *basileus* or any of the *epimeletai* impose' (trans. Clinton). Fines are therefore to be recorded, and those against whom they are inflicted become public debtors until they pay, but the procedure described is the same as for any public debt, and the text does not state that the *basileus*, the *praktor* and the *grammateus* must record these fines on specific lists attached to their respective offices, and most importantly it does not mention separate lists of public debtors (disfranchised because of their debts). When, in the episode narrated at Dem. 58.19, Theocrines was sentenced to 500 drachmas following a *dike aphaireseos* and did not pay them,<sup>28</sup> his status as public debtor as a result of the fine was meant to be recorded on the Acropolis, not in a specific register of the polemarch that had instructed the case. The status of public debtor was sanctioned by the inscription of the name of the debtor on the list of the Acropolis.

Likewise, *IG* I<sup>3</sup> 84 ll. 22-5, a law of 418/7 about the leasing the sanctuary of Neleus does not instruct the *basileus* to keep a separate list of public debtors resulting from the defaults on the leases. It just instructs him to keep a record of the leases, and to add and delete entries as the lessees contract leases and pay their fees. None of the lessees is a public debtor (in the formal sense, and disfranchised as a result). If one defaults, then the normal procedure would be followed: the *basileus* would report the name of the defaulter to the *praktors*,<sup>29</sup> who would record it on the list of public debtors on the Acropolis. This is the

26 See e.g. Harp. s.v. ψευδεγγραφή, Dem. 58.19.

27 See Clinton 1980 for a full commentary of this law.

28 On this procedure see Paoli 1976: 435-59.

29 For the *praktors* see Ant. 6.49; *IG* I<sup>3</sup> 59 (ca. 430), fr. e, ll. 47-8; *IG* II<sup>2</sup> 45 (378/7), l. 7; *Agora* 15.56A, l. 34.

same procedure described for the *basileus* at [Arist.] *Ath. Pol.* 47.4, which also deals with leases.<sup>30</sup> The same procedure is attested for the *poletai*, who kept records of leases of public properties, but passed on to the *praktōres* the names of the defaulters, who were added to the list on the Acropolis and became public debtors. The evidence shows that the *praktōres* were in fact in charge of recording the names of individuals that had formally acquired the status of public debtors (disfranchised as a result of their debts) on the list of the Acropolis, and not on a separate list of their own, as the document suggest.

Dem. 25.28 also fails to support Hansen's contention that the *praktōres* kept a separate list of disfranchised public debtors. Hansen reports that, according to the text, the fines that caused Aristogeiton's loss of rights 'had been recorded both by the *thesmothetai* and by the *praktōres*'. The text does seem to suggest the existence of two ἐγγραφαί, one held by the *praktōres* and one by the *thesmothetai*, but two lines earlier it states that the debts were in fact recorded 'next to the goddess', that is, in the register on the Acropolis. Harp. s.v. ψευδεγγραφή confirms that the ἐγγραφή was kept on a board next to the temple of the goddess (ἐν τῇ σανίδι παρὰ τῆ θεᾶ κεκλιμένη). The contradictory allusion to an ἐγγραφή of the *thesmothetai*, never attested in any other source, is one of the many pieces of evidence that show that the speech is a Hellenistic forgery.<sup>31</sup> Hansen also adduces *IG II<sup>2</sup> 45 ll. 7-9* as evidence in support of the existence of further lists of public debtors, but this fragmentary inscription only states that the Council was somehow involved in the activities of the *praktōres* concerning public debtors, without stating that the Council kept a separate list, or that the list of the *praktōres* was different from that kept on the Acropolis.

The only relevant evidence discussed by Hansen comes from the naval inventories of the *epimeletai ton neorion* (especially *IG II<sup>2</sup> 1617* and *1622*), which record, among several other items, outstanding naval debts by trierarchs.<sup>32</sup> There is no doubt that these inventories did report outstanding debts, and that they are not identical with the list on the Acropolis. But, first, the *epimeletai ton neorion* are in fact not listed by the document. Second, Hansen fails to note one key issue: it seems clear from the sources (and from Dem. 47 in particular) that Athenian citizens did not lose their rights as a result of such debts – the records were used to allow subsequent trierarchs to recover the equipment, and to shame the debtors into paying, but given the pressure on finding enough trierarchs for the fleet, and the relatively small number of the potential trierarchs, it would have been unthinkable to disenfranchise all trierarchs that incurred a debt during their service, making them therefore unavailable to further service as trierarchs until they paid their debt, in particular because, as stated at Dem. 20.19, these

30 See Rhodes 1972: 150-1.

31 See Sealey 1993: 230-41 and Harris 2018, refuting in detail Hansen 1976: 144-52.

32 On these inventories see Gabrielsen 1989; 1993; 1994: 13-15; Liddel 2007: 188-91.

individuals tended to be trierarchs repeatedly and very often.<sup>33</sup> This is made very clear in Dem. 47, where not only the outstanding debts of Theophemus do not disfranchise him, but the trierarch is able to seize Theophemus' property in order to repay his debt only after the Council had enacted a decree authorizing him to do it (Dem. 47.34). Because these debts were a special kind of public debts and did not cause any loss of rights, they were recorded not by the *praktōres* on the Acropolis, but by the *epimeletai ton neorion* in their inventories. And, accordingly, these debts, and the registers that recorded them, would have been irrelevant to any amnesty whose aim was to make the ἄτιμοι ἐπίτιμοι.

To sum up, the evidence adduced by Hansen to show that there were in Athens multiple official lists of disfranchised public debtors, in addition to the one on the Acropolis, is inconclusive. The list of the Acropolis was obviously not the only list in which sums due and payments made were recorded,<sup>34</sup> but only one list, the one on the Acropolis, recorded formally the public debtors, namely those that had lost, because of outstanding debts, their citizen rights. And these are the individuals that the decree of Patrocleides is meant to be concerned with, not all those who owed money to the state in some capacity. It is notable that the one list that is most relevant to the document, because it formalises the disfranchised status of public debtors, is not mentioned in the document. The point stands.

7) We noted that it is difficult to make sense of the expression ἢ εἴ τις μὴ ἐξεγράφη. Hansen agrees with MacDowell (who in turn follows Makkink)<sup>35</sup> and reads ἢ εἴ τις μὴ ἐξεγράφη in the sense that 'any debtors whose names have for any reason not been copied on to the lists just mentioned shall still have the benefit of the amnesty'. He does not deal with the problem for this interpretation highlighted already by Edwards:<sup>36</sup> the main verb that governs this list is ἐξελεῖναι (at 79), which means 'to erase'. It is hard to see how something that has not been inscribed could be erased. But this is even more problematic in light of Hansen's interpretation of the passage, as he reads the entire section as dedicated exclusively to listing the actual documents that need to be destroyed as a result of the amnesty,<sup>37</sup> nothing to do with detailing the scope of the amnesty itself. If Hansen's interpretation is correct and the section is only about physical records, then the expression ἢ εἴ τις μὴ ἐξεγράφη cannot be read as a

33 See Canevaro 2016b: 47-63 for the trierarchical system, with previous bibliography.

34 See e.g. the decree of Callias (*IG I<sup>3</sup> 52*), l. 11-12: ζετέσαντες τὰ τε πινάκια καὶ τὰ γραμματεῖα καὶ ἐὰμ π[ο ἄλ]λοθι εἶ γεγραμμένα.

35 Makkink 1932: 217-18; MacDowell 1962: 115.

36 Edwards 1995: 177.

37 Hansen 2015: 887-8; cf. Hansen 1976: 89.

reference to names of debtors that have not been inscribed anywhere. Hansen contradicts himself.<sup>38</sup>

8) Hansen agrees that the expression μέχρι τῆς ἐξελεύσεως βουλῆς ἐφ' ἧς Καλλίας ἦρχεν at 77 is without exact parallel in Athenian inscriptions, but brings *IG I<sup>3</sup> 84* as evidence of cognate expressions: πρὶν ἢ ἐχσιέναι τένδε τὲν βολέν at ll. 9-10, and ἐπὶ τεῶν βολεῶν τεῶν εἰσιόσεσ at 31-2. These examples are far from perfect parallels – in the second case the verb is different and the expression does not indicate a deadline; in the first the construction is different. But the expression found in the document is not ungrammatical, and although we quickly observed the lack of parallels for what one would expect to be a formula, that was not the main point we made.

We pointed out that the expression is redundant because, as of 407/6, the bouleutic year and the festival year had become coextensive, and therefore the term of office for both the Council and the *archon eponymos* ended on the same day.<sup>39</sup> As an alternative to this view, Hansen refers to a remark made by Lambert, after the publication of our article, that a new study by Morgan casts doubt on the identification of 407/6 as the year in which the bouleutic year and the festival year became coextensive. Morgan suggests that the shift to a coterminous bouleutic and festival year occurred with the re-establishment of democracy, perhaps in 404/3 or 403/2.<sup>40</sup> Hansen concludes that '[n]o matter which of the two dates one prefers, there is nothing suspicious about dating the turn of the year according to the bouleutic calendar'. But Hansen fails to see that the expression does not in fact date the turn of the year according to the bouleutic calendar. It mentions the end of the Council, but dates that Council by the *archon eponymos* of 406/5, Callias, and therefore according to the festival year. There is nothing that dates the Council specifically (the first secretary, normally used to identify a bouleutic year, is not indicated), only the name of the *archon eponymos*. Because of this, the expression appears to imply that the bouleutic year and the festival year are in fact coterminous, and therefore, *pace* Hansen, is incompatible with Morgan's reconstruction. If we reject Morgan's reconstruction and hold that the bouleutic and the festival year were coterminous after 407/6, then the expression is, as we pointed out, redundant: it superfluously mentions the Council without providing the name of the first secretary (the standard identification of a bouleutic year), and then proceeds to date the

38 Hansen 2015: 890 n. 17 notes that his position on this has changed since Hansen 1976: 90 n. 31. In his previous contribution, Hansen had to reject MacDowell's reading because it is inconsistent with his interpretation of the document. Now he accepts MacDowell's reading as a way to dispose of our objection, but ignores the contradiction with his own interpretation, which he still holds to be correct.

39 See Meritt 1964: 201, 212; Rhodes 1972: 224; not in 406/5, as stated by Hansen 2015: 891.

40 Lambert 2014: 3 n. 5; see now Lambert 2016: 9-10 for a statement of Morgan's views on the calendar of these years.



Council by the *archon eponymos*, the mention of whom was enough – it was in fact standard – for identifying the year, without any need to mention the Council. If the secretary of the Council had been mentioned, then we could have argued for the possibility of a double dating (at a time before the bouleutic year and the festival year were coterminous) to avoid confusion about the term of a prytany towards the end of the year.<sup>41</sup> But because the secretary of the Council is not indicated, the mention of the Council is entirely redundant.

We also noted that the document, with this expression, excludes from the amnesty all those who became public debtors after the end of the archonship of Callias (406/5), whereas Andocides indicates that there were no exceptions to the amnesty. Hansen does not respond to this point.<sup>42</sup>

9) We pointed out that the expression ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες creates two separate categories, those who have lost their rights and public debtors, whereas the evidence shows that the latter were a subcategory of the former.<sup>43</sup> Hansen correctly observes that some sources do in fact make the same distinction as the document. He cites five examples ([Dem.] 25.30, Dem. 58.45, [Arist.] *Ath. Pol.* 63.3, Hyp. fr. 33 Sauppe = fr. 29 Jensen, Pl. *Resp.* 555d ).<sup>44</sup> These sources do not show that the two terms were actually conceptualized as different categories, but three of these passages (together with Dem. 24.45) do show that they could be used together to indicate the category of the ἄτιμοι in its entirety.<sup>45</sup> However, in our discussion we also noted more at length that the positioning of the two terms is problematic in the particular grammatical context in which we find them in the document. To make our thinking clearer, the clause is introduced by ὅσοι, which makes it a specification (which narrows the scope) of the previous categories expressed with *περὶ τῶν ἐπιγεγραμμένων* etc. In fact, all the categories listed at 78 and at the beginning of 79 seem to be, grammatically, specifications of *περὶ τῶν ἐπιγεγραμμένων*, and the phrasing wavers between the order that names and individuals need to be erased, and the order that particular documents should be erased (cf. ὅσων εὐθυναί τινές

41 Along the lines of what Matthaïou suggests now for *IG I<sup>3</sup>* 85.

42 This problem was noted also by MacDowell 1962: 114, 115-16.

43 See e.g. Andoc. 1.73, 92-3; Lys. 22.34; 25.11; Dem. 22.34; 24.201; 37.24; 43.58; 59.1, 6; Isoc. 12.10; Plut. *Phoc.* 26.

44 He follows here his discussion in Hansen 1976: 67-8.

45 In Dem. 25.30 the distinction is not in fact between the category of ἄτιμοι and that of ὀφείλοντες, but rather between ὀφείλοντες τῷ δημοσίῳ and καθάπαξ ἄτιμοι. As Hansen (1976: 68) himself explained, this distinction is between those who are temporarily ἄτιμοι because of their debt, and will remain so only until they pay it back, and those who are ἄτιμοι once and for all, that is permanently (καθάπαξ). These are both subcategories of the more general category of the ἄτιμοι – the distinction therefore is not between ἄτιμοι and ὀφείλοντες as different categories, and the passage does not confirm that such a distinction, as we find it in the document, existed. Pl. *Resp.* 555d is also irrelevant, as it refers to oligarchies, and it is not clear that the public debtors mentioned side-by-side with the ἄτιμοι suffer the same legal consequences as they did in Athens.

εἰσι [...] ἢ προστάξεις, ἢ ἐγγύαι τινές εἰσι κατεγνωσμένοι on the one hand, ὄσα ὀνόματα [...] πλὴν ὅποσα on the other). The document seems therefore to suggest that, among those that are registered in the various records of public debtors listed so far (all, therefore, by right, public debtors),<sup>46</sup> only those that are ἄτιμοι or ὀφείλοντες should be erased (and then, all those about whom there are εὐθυναί etc.). But if they are inscribed in lists of public debtors (περὶ τῶν ἐπιγεγραμμένων), then *a fortiori* they are all public debtors, and therefore the following distinction between ἄτιμοι and ὀφείλοντες is out of place. It does not make any sense to isolate ἄτιμοι or public debtors among those that are listed among the public debtors. The grammatical structure of the document is here clumsy and creates problems with its meaning. Hansen does not comment on these issues and on the logical and grammatical problems with the document.

10) On the basis of the wording of two inscriptions, one of 325/5 (*IG II<sup>2</sup> 1629* ll. 233–242) and one (restored) of ca. 430 (*IG I<sup>3</sup> 133* ll. 18–19), Hansen holds that the expression ὄσων εὐθυναί τινές εἰσι κατεγνωσμένοι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων is not problematic. He accepts that the expression implies that the εὐθυνοὶ and the πάρεδροι could pass final and binding judgement and inflict penalties on their own, and that this contradicts what we find in [Arist.] *Ath. Pol.* 48.4–5, which states explicitly that the εὐθυνοὶ at the second stage of the procedure had to pass on the relevant cases to a lawcourt, and could not pass judgement on their own. But, on the basis of the two inscriptions, Hansen argues that ‘[t]he procedures of *euthynai* of *archai* and other officials seem to have been substantially changed in connection with the restoration of the democracy in 403’, and that ‘the *euthynoi* and their *paredroi* did in fact possess judicial powers in the fifth century and sometimes in the fourth century too’.<sup>47</sup>

It is necessary to discuss this issue in detail. First of all, we need to explain more fully why the expression in the document implies that the εὐθυνοὶ and the πάρεδροι have the power to pass judgement and inflict a penalty on their own. It has been observed that καταγινώσκω must not refer to a final conviction, but could also refer to the result of an investigation, to the assessment of the εὐθυνοῦς and to the decision to pass the charge on to a lawcourt.<sup>48</sup> This is in fact the use we find at [Arist.] *Ath. Pol.* 48.4–5 – the passage describes the duties of εὐθυνοὶ and πάρεδροι, and the procedure of the εὐθυναί: anyone who wishes can produce a charge against any magistrate who has rendered his accounts in the last three days, writing in a tablet his own name, that of the defendant, the offence of which he is accused, and the penalty suggested.

46 On these lists see point 6.

47 Hansen here follows Piérart 1971.

48 Boegehold 1990: 153 n. 8, citing Rhodes 1981: 563–4. Cf. MacDowell 1962: 116. On the uses of καταγινώσκω see Canevaro-Harris 2012: 106.

The εὔθυνος receives the charge, reads it and, εἰ μὲν καταγνῶ, delivers it to the deme judges (if it is a private charge) or to the θεσμοθέται (if it is a public charge).<sup>49</sup> Because the effect of the act of καταγινώσκω by the εὔθυνος is to have the charge judged in a proper trial, which can result in an actual conviction or not, it is clear that εἰ μὲν καταγνῶ does not imply here a conviction or the inflicting of a penalty, but rather the assessment that the charge is solid enough to be accepted and passed on.

The verb καταγινώσκω used in this sense makes perfect sense as a reference to the task of the εὔθυνοι, but the same expression, when used in the passive and applied to the context of the document, runs into serious problems. In the document, the subject of εἰσι κατεγνωσμένοι is εὔθυναί, which can be read either as the procedure or, with Hansen, as the documents recording the results of such procedures (because the passage has to do with the destruction of physical documents). For the destruction of such documents (recording εὔθυναί) to have anything to do with the amnesty prescribed in the decree of Patrocleides, they need to record actual penalties (ἄτιμία or a fine that, if left unpaid, would result in the status of public debtor), the cancellation of which would reinstate the full-citizen status of the magistrates so convicted. But if καταγινώσκω is used here in the same sense as in the *Ath. Pol.*, then these documents are records of the εὔθυνοι's preliminary decisions to pass a charge on to a lawcourt and do not record any actual penalties with effects on the status of certain individuals, only the penalties proposed by whoever brought the charges.<sup>50</sup> They have nothing to do with the status of ἄτιμοι and ὀφείλοντες (which is determined by the later decision of the lawcourts). One possible explanation for the need to destroy these records would be to read the expression as a reference to those cases of εὔθυναί that had been transmitted by the εὔθυνοι to a lawcourt but had not yet been judged – the amnesty would block them, preventing anyone from becoming disfranchised following the trial in court. The problem with this interpretation is that, according to Hansen's reading,<sup>51</sup> such cases are dealt with in the following clause of the document: ἢ μήπω εἰσηγμένα εἰς τὸ δικαστήριον

49 Hansen 2015: 892 claims that a further difference between the εὔθυναί as described in the document and in *IG II<sup>2</sup> 1629 ll. 233–242* and the εὔθυναί as found at [Arist.] *Ath. Pol.* 48.4–5 is the role of the πάρεδροι, who pass the verdict with the εὔθυνος in the document and in the inscriptions, but do not in the *Ath. Pol.* In fact, the passage of the *Ath. Pol.* mentions the πάρεδροι repeatedly as assisting the εὔθυνοι in all their tasks, so their involvement also in the preliminary verdict is understood in the passage.

50 They would in fact probably be, as one anonymous reviewer notes, the original written accusations by whomever brought to the εὔθυνοι the charges against the magistrates, but these written accusations are qualified in the document by the word κατεγνωσμένοι – if we understand this according to the meaning that the verb has in [Arist.] *Ath. Pol.* 48.4–5, then these accusations have been upheld by the εὔθυνοι and passed for trial to a lawcourt. Thus, it does not make any difference whether we understand these εὔθυναί as the initial charges, or as the provisional convictions of the εὔθυνοι. The two interpretations are ultimately equivalent and run into identical problems, detailed here and below.

51 Hansen 2015: 892–3.

γραφαί τινές εἰσι περὶ τῶν εὐθυνῶν. This clause, introduced by the conjunction ἤ, identifies a separate category, and therefore the two clauses cannot refer to the same cases. The only solution is to read εὐθυναί τινές εἰσι κατεγνωσμένα in the stronger sense of final decisions, with penalties and all, made directly ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων. This contradicts what we know from the account of the *Ath. Pol.* and, as we stated in our article, shows that document is not an authentic decree.

Hansen, in his reply, accepts that the expression in the document implies that the εὐθυνοὶ and the πάρεδροι have the power to make final convictions and assign penalties, but claims that two inscriptions show that such judicial powers were indeed among the εὐθυνοὶ's prerogatives. He claims that what the *Ath. Pol.* reports refers to the 320s, and that we cannot assume that the procedures were the same in the fifth century. In fact, of the two inscriptions he quotes, the only one which is not heavily restored, *IG II<sup>2</sup> 1629*, is from 325/4, so the time-frame of the procedures it refers to is exactly the same as that of the *Ath. Pol.* Hansen quotes the text (ll. 233-42), and concludes that 'there is no reference to a final hearing before a *dikasterion*' and that, therefore, 'the decree of 325/4 indicates that occasionally the judicial powers of the *euthynoi* and *paredroi* were upheld'.

Hansen supports this reading with a reference in the notes to a recent contribution by Scafuro, the most extensive and detailed discussion of the evidence for εὐθυναί in inscriptions.<sup>52</sup> But, in fact, Scafuro comes to the opposite conclusion. Following the suggestion of an article by Piérart,<sup>53</sup> she examines all occurrences in inscriptions of εὐθύνεσθαι (and of ὀφείλειν used of penalties for magistrates) as evidence of the involvement of εὐθυνοὶ and of penalties meant to be inflicted at the εὐθυναί. She wonders: 'Does the *euthynos* hear the case, give a verdict, and exact penalty on the spot? [...] Does the case rest on his own judgement – or does he send the case to court – in the first instance or on appeal?'.<sup>54</sup> To answer these questions, Scafuro, like Hansen, turns to *IG II<sup>2</sup> 1629* ll. 233–242 and *IG I<sup>3</sup> 133* ll. 18-1, which she reads, with their 10,000 drachmas penalties for magistrates and the mention of εὐθυνοὶ and πάρεδροι, as examples of the same kind of provisions normally expressed with εὐθύνεσθαι. She notes that the wording of these texts 'helps and confounds':

ἐὰν δέ τις μὴ ποιήσει οἷς ἕκαστα προστέτακται, ἢ ἄρχων ἢ ιδιώτης, κατὰ τὸδε τὸ ψήφισμα, ὀφειλέτω ὁ μὴ ποιήσας μυρίας δραχμὰς ἱερὰς τῆι Ἀθηνᾶι, καὶ ὁ εὐθυνος καὶ οἱ πάρεδροι ἐπάναγκες αὐτῶν καταγιγνοσκόντων ἢ αὐτοὶ ὀφειλόντων (*IG II<sup>2</sup> 1629* ll. 233–242; *IG I<sup>3</sup> 133* ll. 18-1 is restored on the basis of this text).

52 Scafuro 2014.

53 Piérart 1971.

54 Scafuro 2014: 319-20.

While Hansen reads this as an unequivocal reference to the judicial powers of the εὔθυνοι and the πάρεδροι, Scafuro concludes: 'Procedure is opaque: the texts do not tell us whether *euthynoi* and *paredroi* give the final verdict on these cases or whether they remit them to court, along with the statutory penalties. Surely the latter'. The text does not make completely explicit whether καταγιγνοσκόντων is used to indicate final verdict or the decision to pass the case on to a lawcourt. But because the verb is the same as we find at [Arist.] *Ath. Pol.* 48.4-5 to describe the εὔθυνοι procedure, used in the same context and of the same officials, we should read it (as proposed by Scafuro) in the same way: the εὔθυνοι and the πάρεδροι, when such a charge is brought forward, must compulsorily (ἐπάναγκες) make the decision to pass it on to a lawcourt.<sup>55</sup> Otherwise, it is not clear what kind of judicial powers may be implied by the injunction that ὁ εὔθυνος καὶ οἱ πάρεδροι should compulsorily (ἐπάναγκες) convict the magistrates or be punished themselves.<sup>56</sup> Surely whoever is given judicial powers is given the power, when a charge is brought to him, to make a decision on the merits, and is not compelled to convict. And moreover, the power of a magistrate to inflict *ex officio* fines as high as 10,000 drachmas is unparalleled in Athens.<sup>57</sup> The fact that the inscriptions do not mention the final hearing before a lawcourt is not evidence that no such final hearing was contemplated. εὔθυνοι procedures were governed by specific laws and were well known to all Athenians. The meaning of the expression ὁ εὔθυνος καὶ οἱ πάρεδροι ἐπάναγκες αὐτῶν καταγιγνοσκόντων must have been clear to all, given the general rules of εὔθυνοι and the normal prerogatives of the εὔθυνοι and the πάρεδροι – these prerogatives did not include summary judicial powers.

To sum up, the clause ὅσων εὔθυναί τινές εἰσι κατεγνωσμένα ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὔθύνων καὶ τῶν παρέδρων must be read as a reference to summary judicial powers of the εὔθυνοι and the πάρεδροι. This contradicts the evidence of [Arist.] *Ath. Pol.* 48.4-5, which shows that they had no such powers. *IG II<sup>2</sup>* 1629 ll. 233–242 and *IG I<sup>3</sup>* 133 ll. 18-21, far from being evidence that they had such powers, are consistent with the account of the *Ath. Pol.* The fact that the document is not consistent with this information, but contradicted by it, is compelling evidence against its authenticity.

11) We noted that the phrase προστάξεις ἢ ἐγγύαι τινές εἰσι κατεγνωσμένα contains an unparalleled use of the verb καταγιγνώσκω. The subject of εἰσι

55 See also *IG I<sup>3</sup>* 133, which mentions εὔθυνοι and πάρεδροι at ll. 18-19, and then proceeds to mention a δικαστήριον at l. 21 and δίκαι at l. 22. The text is lacunose, but it suggests that the actions of the εὔθυνοι resulted in legal actions in the lawcourts.

56 Note that καταγιγνώσκω with the genitive of the person (here αὐτῶν, the magistrates of above) means 'to give a judgement against someone', see Canevaro-Harris 2012: 106.

57 See Harris 2013: 28-44 for the penalties that magistrates could inflict *ex officio*, and Scafuro 2014: 318-24 for the amounts of penalty mentioned in the inscriptions involving the εὔθυνοι.

κατεγνωσμένοι, grammatically, can identify, first, the charge brought – neither προστάξεις nor ἐγγύαι can be identified as charges; second, the person against whom a verdict is pronounced – neither προστάξεις nor ἐγγύαι can be identified as persons; third, the person who is judged guilty of a crime – once again, neither προστάξεις nor ἐγγύαι can be identified as persons; fourth, the penalty given against someone in judgement (e.g. Antiph. 5.70). We observed that ‘ne [o] might argue that the word προστάξεις refers to specific restrictions which might be imposed as a punishment, but the word ἐγγύαι refers to contracts of personal security, not to a crime or a punishment’.

Hansen counters that ‘[i]n this case, however, the ἐγγύαι refer to guarantors for a person who had not paid what he owed to the treasury. Consequently, they were sentenced to pay on behalf of the original debtor and became themselves ὀφείλοντες τῷ δημοσίῳ if they did not comply with the verdict. So in this case the ἐγγύαι become a penalty’. Hansen provides no parallels, and his reading is not consistent with acceptable Greek usage. First, ἐγγύη is not used in Greek sources to indicate the guarantor; it is used to indicate the pledge, the agreement, the security itself (e.g. Aesch. *Eum.* 898; Antiph. 2.2.13; Dem. 33.10; 53.27). Second, ἐγγύη, conceptually, logically and practically, cannot be used to indicate a penalty, and therefore cannot be the object of καταγιγνώσκω, or the subject of its passive. ἐγγύη is a voluntary contract of personal security, entered freely by an individual, and cannot be inflicted upon someone by a court or a magistrate. The contract comes with the obligation to pay the debt if the debtor defaults, but the ἐγγυητής incurs the obligation as a result of the contract – this is not imposed upon someone as the result of a judgement (which is the meaning of εἰσι κατεγνωσμένοι). The term is never used to indicate a penalty because its meaning is completely incompatible with such a use. Hansen’s attempt to defend the usage in the document is unacceptable.

In our previous treatment, we conceded that προστάξεις, unlike ἐγγύαι, could be read as a penalty consisting in the partial limitation of one’s citizen rights,<sup>58</sup> and therefore be appropriate as the subject of εἰσι κατεγνωσμένοι.<sup>59</sup> A thorough study of the usage of term published in 2014 by Novotný has proven us wrong on this point, and provided additional evidence against the authenticity of the document. Novotný shown that πρόσταξις means ‘order’, ‘command’, and is used by Andocides at 75-6 to refer to such ‘orders’ and ‘commands’, given in specific decrees, that imposed various degrees of ἀτιμία on particular individuals.<sup>60</sup> Novotný observes that even if we follow the standard interpretation, the mention of προστάξεις with εἰσι κατεγνωσμένοι does not make any sense in the document. If, with Hansen and Boegehold, we read this passage as concerned

58 We agreed in this with many scholars, most notably MacDowell 1962: 116; Harrison 1971: 176 with n. 3; Piérart 1971: 535-536; Hansen 1976: 85.

59 Boegehold 1990: 156 suggests, following Hansen’s interpretation of the passage, that the terms here refer to the physical objects on which these penalties were recorded.

60 Novotný 2014.



with various categories of physical documents that had to do with ἄτιμοι and public debtors, then '[s]ince citizens could incur partial ἀτιμία in different ways, it was impossible to include them all in one type of procedure or document. Partial disfranchisement of soldiers mentioned at §75 was imposed by decree; there was no judicial hearing justifying the use of the verb καταγιγνώσκω. What is worse, the expression is not suitable even in the case of frivolous prosecutors. When they failed, the judicial decision was primarily passed in favour of the defendant. The document recording the judgement, the name of litigants and the number of votes could hardly be called πρόσταξις κατεγνωσμένη'.<sup>61</sup> These are decisive arguments that show that the use of προστάξεις in the document is unacceptable, and provide further evidence against its authenticity.

12) Hansen disposes of the problems with the expression ὅσα ὀνόματα τῶν τετρακοσίων τινὸς ἐγγέγραπται at 78, observed also by Reiske and MacDowell,<sup>62</sup> by claiming that the expression is a *constructio ad sensum*, and offering a passage from the scholia to Hermogenes' περὶ στάσεων as a parallel: τὸ δὲ καταλείπεσθαι τοῖς μετὰ ταῦτα γενησομένοις ἀνθρώποις ὑπομνήματα λαιδορίαν περιέχοντά τινος τῶν πολιτῶν ἐδυσχέρανεν, διὸ τὰ ὀνόματα λέγειν ἐκώλυσεν (IV 840 Walz). First, such an explanation, to be acceptable, would require examples of comparable *constructiones ad sensum* found in Athenian official language, and not in much later commentaries to Hermogenes. Hansen provides none. Second, the commentary to Hermogenes quoted by Hansen is not a compelling parallel, because there is no real *constructio ad sensum* there: τινος τῶν πολιτῶν and τὰ ὀνόματα are here found in two different coordinated clauses, with no direct syntactical link (of the kind that we find in the document with ὅσα ὀνόματα τῶν τετρακοσίων τινὸς). Sopatrus is explaining in the commentary why the lawgiver forbade making *ad hominem* slander in comedy: he found it disagreeable to leave down to posterity slander specifically addressed to someone among the citizens (τινος τῶν πολιτῶν), and for this reason he prevented comedians from naming names. The prohibition is a general one about mentioning people by name, whereas the motivation focuses on the specific hypothetical citizen whose slander may end up going down to posterity. The singular and the plural serve here different and perfectly grammatical purposes, whereas in the document they cause a grammatical *non sequitur*. The point stands.

13) Hansen reads ὅποσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων, a category of persons excluded at 78 from the provisions of the document, as a reference to records of those who were exiled and therefore excluded from the

61 Novotný 2014: 78. Wachsmuth 1846: 200 n. 39, Blass 1880 and Droysen 1873: 16 also considered the use of προστάξεις in the document unacceptable.

62 MacDowell 1962: 116.

amnesty of 405 (as Andocides indicates at 80). Hansen admits that '[s]trictly speaking, it is superfluous in a decree about *atimoi* and *opheilonτες* to refer to documents recording the names of exiles. But just in case, it might be a good idea to spell out that such documents are not to be destroyed'. Even if we were to accept that the decree could contain an entirely irrelevant provision 'just in case', two problems remain. The first is the fact that the expression τῶν μὴ ἐνθάδε μεινάντων is without parallels as a reference to exiles. Hansen does not comment on this issue.

Second, and more important, if, with Hansen, we take this expression (and the following mention of the homicide courts, see below) as a reference exclusively to physical records that contain the names of exiles, and not as a provision that details the scope of the amnesty itself,<sup>63</sup> then the document fails to state anywhere that exiles are excluded from the amnesty. Yet Andocides explicitly states at 80 that the decree excluded the exiles. Hansen holds in his response that the document does in fact state, at 77 and at 78, that exiles are not included: at 77 with the (amended) reference to <ἄτιμοι> and ὀφείλοντες, and at 78 with ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες (see points 1 and 9 above). In fact, neither passage can perform this function within the context of the document.

At 77, even if we accepted the emendation, the mention of <ἄτιμοι> and ὀφείλοντες does not appear within a statement of the actual measures enacted by the current decree. It appears within a reference to the preliminary vote of ἄδεια that gave the Assembly permission to discuss issues concerning <ἄτιμοι> and ὀφείλοντες, from which discussion the decree of Patrocleides emerged. It does not specify what the current decree is about, only what the previous vote on ἄδεια was about.<sup>64</sup> Therefore, it cannot mark the limits of the amnesty – even a decree that explicitly granted amnesty to ἄτιμοι, ὀφείλοντες and exiles would need a preliminary vote of ἄδεια, because such a vote is required by the law whenever matters pertaining to ἄτιμοι and ὀφείλοντες are to be discussed. But the vote does not imply that the following discussion must pertain only to ἄτιμοι and ὀφείλοντες, to the exclusion of exiles and other categories. The following clause of the document, which should define the contours of the amnesty enacted by the decree of Patrocleides, is limited to an obscure reference to what was voted in 490 (see above) and fails to exclude the exiles from the amnesty (and according to what Andocides says at 107, this alleged amnesty of 490 did in fact include the exiles).

As for ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες at 78, this expression cannot mark the limits of the amnesty to exclude the exiles, because it is found in a section of the document that, according to Hansen's own reconstruction,<sup>65</sup> deals only with physical records to be destroyed as an effect of the amnesty, not with the scope

63 Hansen 2015: 887-8, 893-4; cf. Hansen 1976: 89.

64 According to the law on ἄδεια, see point 1 with references on this law.

65 Hansen 2015: 887-8; cf. Hansen 1976: 89.

of the amnesty itself. Hansen states this repeatedly (and correctly), but here he claims that this is the expression that mark the scope of the amnesty, contradicting himself and undermining his arguments.

It is clear then that the exception marked by the expression *ὅποσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων* creates insurmountable problems to the logical structure of the document, which clearly indicates the hand of a clumsy forger.

14) We noted several problems, logical and grammatical, with the following section of the document:

πλὴν ὅποσα (viz. ὀνόματα) ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων ἢ ἐξ Ἀρείου πάγου ἢ τῶν ἐφετῶν ἢ ἐκ πρυτανείου ἢ ελφινίου ἐδικάσθη ὑπὸ τῶν βασιλέων, ἢ ἐπὶ φόρῳ τίς ἐστι φυγὴ ἢ θάνατος κατεγνώσθη ἢ σφαγεῦσιν ἢ τυράννοις...

Hansen cannot deny that this section presents several serious problems, and observes that 'the text of the passage in Andokides is indeed corrupt and has been variously emended by editors and commentators' and later, in the conclusion, states that 'in my opinion the only truly problematic part of Patrokleides' decree is the section about the homicide courts, as modeled on the Solonian amnesty of 594. It is unquestionably corrupt and difficult to understand'.<sup>66</sup> He therefore does not try to defend this part of the document, but attempts to dismiss the consequences that its various problems have for the overall authenticity of the document by arguing that the Solonian eighth *nomos* of the thirteenth *axon* quoted by Plut. *Sol.* 19.4, the Solonian amnesty law on which the person who composed the document drew in drafting this section (but introducing several errors), is also slightly problematic.

First, the alleged issues with the Solonian law, which, according to Hansen, does not testify to a careful arrangement, are rather dubious. His criticism centres on the fact that in the Solonian law *ἐξ Ἀρείου πάγου*, *ἐκ πρυτανείου* and *ὑπὸ τῶν βασιλέων* refer to particular courts, whereas *ἐκ τῶν ἐφετῶν* refers to particular judges. To Hansen, this is somehow unsatisfactory. Yet the fact remains (as we pointed out in our article) that, with the mention of these courts and of the *ephetai*, the law of Solon includes all the homicide courts, without leaving any out (those that are not listed were courts in which the *ephetai* were the judges, and therefore are included in the expression *ἐκ τῶν ἐφετῶν*), and without reduplicating any. Conversely, in the document, the mention of the Delphinion is superfluous, as the Delphinion is already included with the mention of the *ephetai* (who judged in the Delphinion). On the other hand, if the

66 Hansen 2015: 894, 897.

document was meant to list all the courts individually, then it is unclear why it fails to mention the Palladion and the Phreatto.

Hansen also contests that, in Solon's law, 'ἐκ ἐφετῶν is a use of ἐκ in the sense of ὑπό occasionally found in Homer, tragedy, and Herodotos, but in Attic prose ἐκ is not used synonymously with ὑπό'. But this Solonian law dates from the sixth century BCE, and the Attic language found in Attic inscriptions does not conform to fourth century Attic prose. In fact, it is closer to Homer and to the archaizing language of tragedy (cf. *IG I<sup>3</sup> 104*). The same construction is in fact found also in the document in Andocides, where the preposition ἐξ, before Ἀρείου πάγου, holds both Ἀρείου πάγου (which is, for Hansen, the correct usage) and τῶν ἐφετῶν (which according to Hansen should be held by ὑπό). If Hansen is right and this is not standard usage in Classical Attic prose, then this is evidence against the authenticity of the document in Andocides, which is supposedly to be dated to the late fifth century, far more than against the Solonian law, which is a sixth-century text. Hansen ends up providing a further argument against authenticity. The same is true of another of his observations: Hansen questions the inclusion in the Solonian law of the Prytaneion, which dealt with death caused by an animal, an inanimate object or an unknown person, among the exceptions to an amnesty, because such cases would be irrelevant to an amnesty. But the Prytaneion is included also in the document in Andocides – if Hansen believes its inclusion in an amnesty to be problematic, then it must be problematic also in the document, and this must be considered further grounds against its authenticity.

Finally, and more important, it is unclear to us why pointing out these alleged issues with the Solonian amnesty law should make the extremely serious grammatical and logical problems in the document any less decisive for assessing its authenticity. It is impossible to make any sense of the passage without extensive and arbitrary emendations. The problems with the passage are strong evidence against the authenticity of the document.

15) We observed that the following section of the document orders the destruction of any copy of the records previously listed, and does not mention any decrees, whereas Andocides at 76 expressly states that decrees were to be destroyed. Hansen comments that 'Canevaro and Harris hold that Andocides is right and that the forger got it wrong'. In fact, we simply observe that Andocides explicitly mentions *psephismata*, and these should be mentioned in the document. Hansen quotes 103, which he believes 'has a more comprehensive and correct description of these documents': τοῦτο δὲ οὓς ἀτίμους ὄντας ἐπιτίμους ἐποιήσατε, ὧν ἔνεκα καὶ στήλας ἀνείλετε καὶ νόμους ἀκύρους ἐποιήσατε καὶ τὰ ψηφίσματα ἐξηλείψατε. But this passage also mentions *psephismata* (and *nomoi!*), confirming that these were also listed as documents to be destroyed in the decree of Patrocleides. They are not mentioned in the document, which is

further evidence against its reliability and authenticity.<sup>67</sup> Moreover, the passage mentions only *στήλας*, *νόμους* and *ψηφίσματα*, and none of these categories can be read to include, for instance, the list of public debtors on the Acropolis, which was on a board (*ἐν τῇ σανίδι*), not on a stele, a law or a decree (Harp. s.v. *ψευδεγγραφή*).

To sum up, Hansen's attempt to explain away the problems in the document that purports to preserve the decree of Patrocleides is unsuccessful. The problems we identified are real and cannot be dismissed. Their cumulative weight proves that the document is not an authentic Athenian decree, but a later forgery based on the reading of a variety of sources, but marred by misunderstandings and fabrications, which was later inserted in the text.

#### *The decree of Teisamenus (Andoc. 1.83-4)*

Hansen starts his reply with a discussion of Andocides' narrative of events after the restoration of the democracy in 403/2 (Andoc. 1.82). It is important to have the entire text and a translation in front of us because Hansen's discussion misrepresents the contents of the passage.

ἐπειδὴ δὲ βουλὴν τε ἀπεκληρώσατε νομοθέτας τε εἴλεσθε, εὐρίσκοντες τῶν νόμων τῶν τε Σόλωνος καὶ τῶν Δράκοντος πολλοὺς ὄντας οἷς πολλοὶ τῶν πολιτῶν ἔνοχοι ἦσαν τῶν πρότερον ἔνεκα γινομένων. ἐκκλησίαν ποιήσαντες ἐβουλευσασθε περὶ αὐτῶν, καὶ ἐψηφίσασθε, δοκιμάσαντες πάντας τοὺς νόμους, εἴτ' ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἂν δοκιμασθῶσι.

Reiske εὐρίσκοντες; MS εὔρισκον

Translation: After you selected by lot the Council and elected *nomothetai*, you found (or 'they found') that there were many laws of Solon and Draco under which many citizens were liable to prosecution for earlier events. Holding a meeting of the Assembly, you had a discussion about these matters and voted to examine all the laws and then to write up in the stoa any laws that were approved.

Hansen summarizes the passage in the following way: 'you had the council selected by lot; you elected the *nomothetai*; having summoned a meeting of the Assembly, you decreed after an examination of all the laws to publish in the

67 Note that, in the formulation of the document, *προστάξεις* cannot refer to decrees, because it is qualified by *εἰσι κατεγνωσμένα*, and there was no judicial hearing about partial *ἀτιμία* imposed by decree (see point 11 with Novotný 2014: 78).

*stoa* all the laws that had been approved'.<sup>68</sup> Hansen's paraphrase is deceptive because it suppresses the syntactic connection between the participle in the nominative plural *δοκιμάσαντες* referring to the procedure of examining the law and the verb 'you decreed' (*ἐψηφίσασθε*).

Hansen then attempts to determine: 'Who are the persons to whom Andokides refers?' He canvasses several possibilities. He notes that they could be the judges who heard the case or citizens at an earlier meeting of the Assembly. He also claims that the subject of the verb could be 'the *nomothetai* who had passed a law' or 'the members of the *boule*'. We can rule out the last two possibilities. First, litigants in court never address the *nomothetai*, and the passages cited by Hansen to prove that they might do not support his claim.<sup>69</sup> Second, the word *νομοθέτας* in the phrase *νομοθέτας τε εἴλεσθε* is the object of the verb *εἴλεσθε* and cannot therefore be identical with the subject of the verb *ἀπεκλήρωσατε*. If it were, we would have the *nomothetai* electing the *nomothetai*, a manifest absurdity. We can also rule out the possibility that the members of the Council are the subjects of these verbs in the second person plural for similar reasons. First, the word *βουλὴν* in the phrase *βουλὴν τε ἀπεκλήρωσατε* is the object of the verb and cannot therefore be identical with the subject of the verb *ἀπεκλήρωσατε*. Second, if the members of the Council were the subjects of the verb, this would mean that the members of the Council selected the members of the Council, another manifest absurdity.

Because Hansen claims that the subject of these verbs could be some other body than the people meeting in the Assembly, Hansen next claims: 'It is not clear from Andokides' account, to whom and by whom the inspection of the laws was entrusted and by whom they would be approved and published'. Hansen asserts that 'the logical subject of *δοκιμάσαντες* does not have to be the *demos*, it may be the *boule* in cooperation with the *nomothetai*'.<sup>70</sup> *Pace* Hansen, by the laws of syntax as well as the laws of logic, the subject of the participle *δοκιμάσαντες*, which is nominative plural, must be the subject of the verb *ψηφίσασθε*, which is clearly the *demos* because it is also the same group that holds the meeting of the Assembly (*ἐκκλησίαν ποιήσαντες*) and holds elections (*εἴλεσθε*). In fact, the participles (*ποιήσαντες*, *δοκιμάσαντες*) cannot refer to the *boule* because, as we saw above, the previous sentence clearly distin-

68 Hansen 2016: 35-6.

69 Hansen 2016: 36 n. 7 cites three passages in which he appears to allege that the subject of a verb in the second person plural could be the *nomothetai*. The first is Dem. 20.94, but the only verb in the second person plural in this passage refers to the judges hearing the case, not the *nomothetai*, see Canevaro 2016a: 46-8. There is a reference to 'each of you who read the law' but this must refer to the average Athenian who had the opportunity to read proposals for laws posted at the monument of the Eponymous Heroes. See Dem. 24.25 with Canevaro 2013: 85-6. The second is Dem. 42.18, but the subject of the verb in this passage is *dikastai*, not *nomothetai*. The third is Isae. 4.17, but the second person plural here also refers to the judges hearing the case.

70 Hansen 2016: 36.



guishes between the subject of the verb ἀπεκληρώσατε (implicitly the people) and the object of the verb βουλήν and because the *boule* does not hold meetings of the Assembly. Moreover, the verb in symbouleutic and forensic oratory is addressed either to the judges hearing to the case or to the citizens of Athens voting in the Assembly.<sup>71</sup> Next, we know from Xenophon (*Hell.* 2.4.42) that the decision to which Andocides refers in previous sentence, the decision to follow the laws of Solon and Draco (τέως δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς), was taken in the Assembly and not by any other body. Finally, we also know from Lysias (30.28-29) that the decision to write up the laws (ἀναγράψαι) was taken by the Assembly, which elected the *anagrapheis* whose duty it was to perform this task. All the evidence in this section clearly indicates that the election of the *nomothetai* and the decision to examine the laws (δοκιμάσαντες) and to have the laws approved by this procedure inscribed (ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἄν δοκιμασθῶσι) were taken in the Assembly.

This analysis of Andoc. 1.82 is supported by a later section in the speech, which Hansen does not discuss. Andocides (1.89) states that ‘you decided to examine the laws and after examining them, to have them inscribed’ (ὅπου οὖν ἔδοξεν ὑμῖν μὲν τοὺς νόμους, δοκιμάσαντας δὲ ἀναγράψαι).<sup>72</sup> This passage uses the standard formula for a decision of the Assembly (ἔδοξεν). This passage explicitly states that the Assembly performed the task itself and did not assign it to another body.<sup>73</sup> This account of the procedure is confirmed by the prescript of the decree of the Assembly calling for the publication of Draco’s homicide law (*IG I<sup>3</sup> 104*). In our essay in we stated that ‘the inscription reveals that the *anagrapheis* had the laws inscribed on *stelai* and placed in front of the stoa only on orders of the Assembly, which indicates that they approved the text to be inscribed’.<sup>74</sup> Hansen distinguishes between the procedure of examining and approving the laws and the procedure of having the approved laws inscribed.

71 See Dem. 3.4, 5; 4.41, 46; 6.31; 7.22, 26; 13.15, 33 (twice); 18.33, 250; 19.6, 51, 54, 59, 86, 87, 123, 125, 161, 181, 267; 20.54, 55, 60, 167, 209; 21.212; 23.172, 177; 28.18, 23; 32.22, 23; 34.47; 36.1; 39.37, 39; 42.30; 43.6, 84; 44.7; 46.4; 47.3; 50.4, 6, 8; 53.24; 55.33; 57.32, 44; 58.70; 59. 108.

72 For the phrase ἔδοξεν ὑμῖν referring to a vote of the Assembly see for example, Dem. 21.178. See also above p. 12. J. L. Shear 2011: 173, 175-176, 230-231 (cf. 232) follows a *scholion* on Aeschin. 1.39, which states that ‘when they had overthrown the *patrios polit-eia*, they damaged (ἐλυμήναντο) the laws of both Drakon and Solon’ and that ‘when the *demos* had recovered its freedom, twenty citizens were appointed to search out and write up (ζητήσοντες καὶ ἀναγράφοντες) the laws that had been destroyed. And they decreed that they propose new laws in the place of the destroyed ones in the archonship of Eukleides, who was the first archon after the Thirty’. She claims that this *scholion* ‘corroborates the evidence provided by Andokides and Lysias 30’. Actually, the evidence of Andocides and Lysias contradicts the information in the *scholion* by stating that the new laws contained new provisions and were not enacted to replace laws destroyed by the Thirty.

73 For the Assembly delegating tasks to the Council see Harris 2016: 79.

74 Canevaro-Harris 2012: 112.

Andocides (1.82) states explicitly that the Assembly both examined and approved the laws and voted to have the laws that were approved inscribed. Hansen admits: ‘That the Assembly ordered the republication is explicitly stated’ but notes that the inscription does not state that the Assembly ‘approved the text to be inscribed’.<sup>75</sup> What the text omits is irrelevant; the important point is that the inscription confirms Andocides’ account by indicating that the Assembly ordered the republication, which contradicts Hansen’s analysis of Andoc. 1.82 (an implication that Hansen does not see). But the other part of the account is confirmed by a speech of Lysias (30.19) delivered at the trial of Nicomachus, one of the *anagrapheis*. The speaker clearly states that the laws inscribed by the *anagrapheis* were those voted by the Assembly. There is no contradiction between the two sources, and the inscription confirms one important part of Andocides’ account and the speech of Lysias the other key part. *Pace* Hansen there is no reason to doubt that Andocides indicates that it was the Assembly that undertook the process of examining the laws and voted the decision to have the *anagrapheis* inscribe the laws it approved because this view of his account is confirmed by two independent sources.

Andocides’ account therefore describes two procedures. First, the election of *nomothetai* to promulgate new laws. These are the laws discussed in Andoc. 1.85-89. Second, the procedure of examining and approving the laws of Draco and Solon, which were submitted to the Assembly, which ordered the *anagrapheis* to write up the laws that were approved.

After analyzing Andocides’ account, the next step is to examine Hansen’s account of the text of the document inserted into the text of Andocides 1.83-84. We need to have a complete text of the entire document when examining Hansen’s points.

ἔδοξε τῷ δήμῳ. Τεισαμενὸς εἶπε· πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σολωνος, καὶ μέτροις καὶ σταθμοῖς, χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ. ὀπόσων δ’ ἂν προσδέοι, οἶδε ἡρημένοι νομοθέται ὑπὸ τῆς βουλῆς ἀναγράφοντες ἐν σανίσιν ἐκτιθέντων πρὸς τοὺς ἐπωνύμους, σκοπεῖν τῷ βουλομένῳ, καὶ παραδιδόντων ταῖς ἀρχαῖς ἐν τῷ μηνί. τοὺς δὲ παραδιδόμενους νόμους δοκιμασάτω πρότερον ἢ βουλή καὶ οἱ νομοθέται οἱ πεντακόσιοι, οὓς οἱ δημόται εἴλοντο, ἐπειδὴν ὁμωμόκωσιν; ἐξεῖναι δὲ καὶ ἰδιώτῃ τῷ βουλομένῳ, εἰσιόντι εἰς τὴν βουλήν συμβουλευεῖν ὅ τι ἀγαθὸν ἔχη περὶ τῶν νόμων. ἐπειδὴν δὲ τεθῶσιν οἱ νόμοι, ἐπιμελείσθω ἢ βουλή ἢ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται. τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγγράφησαν, σκοπεῖν τῷ βουλομένῳ.

Resolution of the People, on the proposal of Teisamenus. The Athenians shall conduct their public affairs in the traditional manner, and they shall employ

<sup>75</sup> Hansen 2016: 37.

the laws of Solon and his weights and measures, and they shall employ also the ordinances (*thesmoi*) of Dracon, which we employed in former time. Such additions as are needed shall be inscribed on boards by the following *Nomothetai*, elected by the Council, and shall be exhibited in front of the tribal heroes for all to see and handed over to the magistrates during this month. The laws which are handed over shall be examined first by the Council and the five hundred *Nomothetai* elected by the members of demes, after they have taken the oath. Also any individual who wishes shall be permitted to come before the Council and make any good suggestion he can about the laws. After the laws are passed, the Council of the Areopagus shall supervise (the enforcement of) the laws, so that the magistrates may follow the laws which are in force. Those of the laws which are ratified shall be inscribed on the wall, where they were inscribed previously, for all to see.

Hansen notes that we state that the document 'does not mention any examination of the law of Draco and Solon but orders that the Athenians use their laws, which they used in the past' (113). This is at odds with Andocides' account in the previous section.<sup>76</sup> Hansen claims that 'the main part of the documents prescribes a complicated procedure for amending and revising the old laws' and thus does not contradict Andocides and Lysias. In point of fact, this is not true. The document calls for the *nomothetai* to write up ὅπως δ' ἂν προσδέη.<sup>77</sup> The antecedent of the relative pronoun in the genitive plural must be the noun in the plural νόμους, which is found below in the phrase τοὺς παραδιδόμενους νόμους. The provision makes a clear distinction between the laws that were in effect in the past (θεσμοῖς οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ) and will remain in effect and any additional laws that may be necessary.<sup>78</sup> Hansen ignores the force of the prefix προσ- in the verb προσδέη, which clearly indicates that this clause refers to 'additional laws', that is, laws in addition to the laws already in effect.<sup>79</sup> The document therefore makes the same distinction between the laws of Draco and Solon already in effect and new additional laws, which is found in Andocides.

76 Canevaro-Harris 2012: 113; Hansen 2016: 37-8. Whoever forged the document clearly based this phrase on the statement at 81 (τέως δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς), but did not notice how the Assembly later changed its policy.

77 The manuscripts give προσδέει, which is potential optative: 'however many they could need'. This was emended by Bekker to προσδέη which is the normal subjunctive one would expect to find in an indefinite relative clause. Once more, the resort to emendation is methodologically flawed because it assumes that the text is authentic and does not allow for the possibility that the use of the incorrect mood is another indication that the document is not genuine.

78 For the use of this verb to indicate the need for an additional law see Dem. 24.14 (νόμου δ' οὐδ' ὅτιοῦν οὐδενὸς δήπου προσδέει), a passage not noted by Hansen.

79 See LSJ s.v. προσδέομαι: 'to be in need of, be in want of *besides*' (our emphasis). Note that Hansen alters his translation to 'what there is still need of', but this is inaccurate because it mistranslates the relative pronoun ὅπως, which is not neuter genitive singular, but genitive masculine plural.

The inserted document does refer to a procedure of examination and approval (δοκιμασάτω), but it is for these additional laws. This stands in direct contradiction to Andocides' account, which calls for the examination and approval of the laws of Solon and Draco already in effect. The conflict between Andocides' account (which is corroborated by the prescript of *IG I<sup>3</sup> 104* and the evidence from *Lys. 30*) and the document is clear and cannot be removed by Hansen's attempt to misrepresent the contents of the text of the document. We might add that the contradiction between the two goes further: as we noted above, the examination and approval of the laws is carried out by the Assembly; in the document, however, the examination and approval of the new laws is carried out by the Council and five hundred *nomothetai*. This contradiction provides an unassailable argument against the document's authenticity.

Hansen then discusses the *nomothetai* mentioned in Andocides' account and in the inserted document. Hansen notes that the document mentions two boards of *nomothetai*, one elected by the Council, the other of five hundred elected by the demesmen, which cooperates with the Council in the task of examining the additional laws.<sup>80</sup> As we noted in our essay,<sup>81</sup> there is a serious contradiction between Andocides' account and the inserted document: the former mentions one board of *nomothetai* elected by the Assembly (νομοθέτας τε εἴλεσθε), the latter mentions two boards of *nomothetai*. Hansen however believes that 'Andocides' vague expression at 82 might refer to either board of *nomothetai* or to both'. How one single word could refer to two different boards, each one selected in a different way and assigned a different task, Hansen does not explain. Hansen then considers the possibility that the *nomothetai* mentioned by Andocides at 82 might refer to just one of the boards mentioned in the document, which certainly makes more sense. He then asserts: '[i]f it refers to just one of the boards, it must be the one elected by the *boule*' on the grounds that this board 'was a commission of inquiry, not a decision-making board like the 500 *nomothetai* elected by the *demotai*'. This leads Hansen to claim that 'the second-person plural refers to the *boule*, not to the Assembly as inferred by Canevaro and Harris'.<sup>82</sup> Here again Hansen's argument depends on selective quotation. As we noted above, one needs to look at the entire phrase: βουλήν τε ἀπεκληρώσατε νομοθέτας τε εἴλεσθε. If the second person plural in εἴλεσθε addresses the members of the Council (as Hansen asserts that it does), then the second person plural in βουλήν [...] ἀπεκληρώσατε must also address the members of the Council, which would lead to the absurdity of the Council selecting itself by lot. It is not surprising that Hansen omits the preceding words because they show that his interpretation of the verb εἴλεσθε is impossible. As we showed above, the second person plurals obviously address the people

---

80 Hansen 2016: 38.

81 Canevaro-Harris 2012: 114.

82 Hansen 2016: 39.

in the Assembly because in the next phrase they are said to hold a meeting of the Assembly (ἐκκλησίαν ποιήσαντες ἐβουλεύσασθε). Hansen's attempt to remove the contradiction between Andocides' account and the contents of the document fails. The contradiction therefore remains, more evidence against the document's authenticity.

Hansen then moves on to the three major differences between Andocides' account and the contents of the document that we identified.<sup>83</sup> First, he quotes our point that 'Andocides states that the laws of Draco and Solon were to be examined and only those approved by the Assembly were to be inscribed, which implies that some might be rejected. The document omits this process and asserts that the laws of Draco and Solon, which the Athenians followed in the past, are to be in force'.<sup>84</sup> Hansen agrees with this but claims that the inserted text allows for changes in the existing laws ('Yes, but not unchanged'). Hansen then claims that the 'decree prescribes that whatever things there still is need of (ὅποσων δ' ἂν προσδέη) will have to be investigated by the *boule* and the *nomothetai* elected by the *boule* and announced publicly on tablets set up before the *eponymoi*'. This statement misrepresents the Greek in the text of the document. Hansen's translation 'what there is still need of'<sup>85</sup> is inaccurate because it mistranslates the relative pronoun ὅποσων, which is not genitive neuter singular, but genitive masculine plural and has as its antecedent the noun 'laws'. As we noted above (p. 37), the clause must refer to 'additional laws that are needed', which are in contrast to the laws already in force. The following clause makes it clear that the subject here is new laws (τοὺς παραδιδόμενους νόμους), not changes to old laws, which the Athenians are supposed to obey without alteration. The clause cannot refer to changes made in the existing laws. If it did, it would contradict the first clause of the decree.

Hansen then notes that if only new laws 'in the strict sense are investigated and published, they cannot be inscribed where they had been inscribed before'. This is a good point, but it does not show that Hansen's interpretation is correct, but rather that the document is a forgery because its provisions contradict each other and make no sense.<sup>86</sup> Hansen here provides an additional argument against the authenticity of the document.

Hansen next criticises us and other scholars for not taking into account the idea that 'Teisamenos' decree *prescribes* the procedures to be applied in connection with the revision and republication of Athenian laws. Three years later Andocides *describes* the procedures as actually employed. Differences between the document and Andocides' account may be due to modifications or unex-

---

83 Hansen 2016: 39-40.

84 Canevaro-Harris 2012: 114.

85 Hansen 2016: 39, 40.

86 Hansen 2016: 40 cites the view of Clinton 1982: 31-2, but Clinton fails to note that the form of the relative pronoun ὅποσων rules out his interpretation of the clause.

pected effects of what Teisamenos had prescribed'.<sup>87</sup> But Andocides does not claim to *describe* what took place three years later, but states what took place immediately after the restoration of the democracy (ἐπειδὴ δ' ἐπανήλθετε ἐκ Πειραιῶς), in other words, what the Assembly *prescribed* in its decisions at this time, that is, 403/2 BCE. Andocides lists at 82 a series of decisions taken by the Assembly, not what happened after those decisions. In section 85 after the inserted document, however, Andocides recounts that the procedures prescribed in this period were in fact carried out in accordance with the orders of the Assembly: the laws were examined, and those approved were inscribed and placed in the *stoa* (ἐδοκιμάσθησαν μὲν οὖν οἱ νόμοι, ᾧ ἄνδρες, κατὰ τὸ ψήφισμα τουτί, τοὺς δὲ κυρωθέντας ἀνέγραψαν εἰς τὴ στοάν). There is no discrepancy between what was prescribed and what actually happened as Hansen claims; the verbal parallels between 82 and 85 make this abundantly clear (δοκιμάσαντες πάντας τοὺς νόμους = ἐδοκιμάσθησαν μὲν οὖν οἱ νόμοι; ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἳ ἂν δοκιμασθῶσι = τοὺς δὲ κυρωθέντας ἀνέγραψαν ἐς τὴν στοάν). In other words, Andocides' account gives both what the Assembly prescribed and describes what happened in accordance with that decree (κατὰ τὸ ψήφισμα τουτί). By not mentioning what Andocides states at 85, Hansen gives an inaccurate account of what the orator explicitly states and implies about the relationship between the orders of the Assembly and subsequent events. His claim that there was a gap between what was prescribed in 403 and what happened later is directly contradicted by Andocides, whom we have no reason to doubt on this score.

Furthermore, if what the Assembly prescribed in its decree was not the same as what actually later took place, why does Andocides have the decree read out to prove the truth of his version of events? If Hansen is correct, Andocides gave an account of what happened, then had the clerk read out a document with provisions that were at variance with what actually happened. Unless we are prepared to think that Andocides wanted to have the clerk read out documents that would undermine his account, we should more naturally infer that the document Andocides called on the clerk to read out was intended to corroborate his account of the Assembly's decisions after the restoration of the democracy and their strict implementation in the following years. That is what his language at 85 clearly implies: what took place in the period after the restoration of the democracy was in accord with what the Assembly prescribed, not different from what it ordered. Because there are major differences between Andocides' account, which is corroborated by independent sources, and the contents of the document, which is at odds with other sources, we should therefore conclude that this is compelling evidence against the document's authenticity.

In Andocides' account, only the laws approved by the Assembly are to be inscribed and placed in the *stoa*, that is, the *stoa* of the *basileus*. In the docu-

---

87 Hansen 2016: 40-1.



ment, the laws are to be written on the wall (the document does not indicate the location of this wall). Hansen claims that 'Teisamenos in the document and Andokides in his account refer to different publications: Teisamenos to a preliminary publication on the wall, (τοιχον) of the law as they are being approved, Andokides to the final publication of the corpus of laws in the Stoa Basileios'.<sup>88</sup> He then speculates that the wall may have been in the *stoa* of the *basileus*.<sup>89</sup> The problem with this is that the inserted document explicitly states that the inscription of the laws on the wall is to take place 'after the laws have been enacted' (ἐπειδὴν δὲ τεθῶσιν οἱ νόμοι), as the subordinating conjunction ἐπειδὴν makes clear, and not during the process of legislation as Hansen claims. Once more, Hansen builds his argument on selective quotation. Once we place the relevant phrase in context, it is obvious that Hansen's interpretation is impossible.

Hansen next returns to the appointment of the *nomothetai* and our statement: 'Andocides says that the Assembly elected *nomothetai*, who appear to have made proposals for new laws, which were ratified by the Assembly. The document mentions two boards of *nomothetai*, but neither is elected by the Assembly, and the laws proposed and examined by these two boards are not submitted to the Assembly for approval'.<sup>90</sup> Hansen replies that 'neither is there explicit reference to the Assembly in Andocides'.<sup>91</sup> As we pointed out above, however, Andocides clearly addresses the Athenians in 82, and these must be the Athenians who met in the Assembly because they held a meeting of the Assembly (ἐκκλησίαν ποιήσαντες). Moreover, Andocides at 89 clearly indicates that this decision was taken by the Athenians in the Assembly. *Pace* Hansen, Andocides is clearly referring to the Athenians meeting in the Assembly.

Hansen then returns to the point he made earlier in his essay, namely, that the *nomothetai* Andocides refers to at 82 are the board of *nomothetai* appointed by the Council. Here he claims that this board 'was a commission of inquiry that had to find and/or propose laws; it was not a decision-making board'.<sup>92</sup> But the task of finding the laws was not entrusted to this board. As the decree about inscribing Draco's homicide law reveals, that task was entrusted to the *anagrapheis* working in conjunction with the secretary of the Council (*IG I*<sup>3</sup>

88 Hansen 2016: 42.

89 J. L. Shear 2011: 95 assumes that the document at Andocides 1.83-84 is genuine and claims that the wall mentioned in the document 'describes the screen construction created by the inscriptions and the columns in the two annexes' of the Stoa Basileios constructed after 403/2 BCE. But it is hard to square this statement with the text of the document, which calls for the laws to be written 'on the wall' and not on stelai. J. L. Shear 2011: 239-247 also follows Fingarette 1971 and uses the decree of Teisamenus to claim that after the Thirty some of the stelai containing the laws approved by the Assembly were placed on a ledge along the back wall of the Stoa Basileios. But there is no evidence, apart from the document itself, for this reconstruction.

90 Canevaro-Harris 2012: 114.

91 Hansen 2016: 42-3.

92 Hansen 2016: 42.

104, ll. 4-8; cf. *Lys. 30 passim*). Pace Hansen, neither Andocides nor the inserted document states that the *nomothetai* were to ‘find [...] the laws’. The *nomothetai*, as the subsequent narrative at 85-89 suggests, were responsible for proposing the new laws about not enforcing an unwritten law, about the status of laws and decrees, about the validity of arbitrations and legal decisions, and about prosecutions for actions before the archonship of Eucleides. These laws were then approved by the people in the Assembly (85: ἐθέμεθα). Although Andocides does not explicitly describe the procedure for the new laws, it is clear from his account that the *nomothetai* proposed the new laws, and the Assembly approved them.

Hansen however thinks that the *nomothetai* ‘apparently during their investigation (i.e. of the laws) had found that many citizens would be liable to punishment if the old laws were ratified without change and therefore must be amended to avoid conflict with the general amnesty issued in 403 and repeated in 401’.<sup>93</sup> This makes little sense. To enforce the amnesty enacted in 403 BCE, all that was necessary was to make it impossible for anyone to bring a legal action for something that took place before 403 BCE. There was no need to change the laws to avoid a clash with the amnesty.<sup>94</sup>

Hansen appears to charge us with inconsistency because we ‘throughout the article base’ our ‘interpretation on the view that Andokides’ account is reliable and can be trusted’ yet in one place state that Andocides’ explanation is tendentious. This seriously misrepresents our approach. We accept the statements of Andocides that can be corroborated by other sources such as Lysias and the inscription about Draco’s homicide law. One must also distinguish between statements of fact and explanations of the facts presented by an orator. One can accept a statement of fact as reliable without accepting the orator’s explanation of that fact. We did not accept Andocides’ explanation for the examination of the laws because it clashed with other evidence.<sup>95</sup>

Hansen then turns to the clauses about the inscribing of the laws.<sup>96</sup> Hansen reviews the expressions used for the publication of laws and decrees, but does not deal with the evidence that we cited to show that the laws approved by the Assembly as part of the revision or any other laws and decrees were not written on a wall. First, Hansen ignores the evidence of *IG I<sup>3</sup> 104*, ll. 5-8. This inscription shows that the laws were to be placed on stelai and placed in front of the

93 Hansen 2016: 43. His argument appears to assume that the manuscript reading εὔρισκον is correct and that the subject must be the *nomothetai*, but Reiske’s emendation εὔρισκοντες (which only adds three letters) is clearly correct given the absence of a clear subject for the finite verb and the following participles, which are obviously parallel to it. This would make the people the subject of the participle. Hansen does not discuss the textual issues.

94 On the amnesty see Joyce 2014; 2015, refuting in detail Carawan 2013.

95 For the method of evaluating statements in the Attic orators see Harris 1995: 1-16. For the reliability of the statements of the orators about laws and decrees see Canevaro 2013: 27-36.

96 Hansen 2016: 43-5.

*stoa*. The two expressions of Andocides (1.82, 85) are therefore loose paraphrases of the formula found in the inscription, which is the standard procedure for inscribing laws and decrees. He also ignores the fact that in the fourth century the laws of Draco were found on a stele (Dem. 47.71). And Lysias (30.21) states that the laws included after the revision were written on *stelai*. Hansen does not deal with this point.

Starting with Dow, thirteen fragments have been attributed to what has been called 'Nicomachus' Lawcode' but nothing compels us to accept this attribution.<sup>97</sup> None of the fragments contains a prescript like the one found for the republication of Draco's homicide law, and they could be attributed to calendars or financial records that have nothing to do with the revision of the laws between 410 and 400 BCE. This is not the place however to enter into this controversy. Let us assume for the sake of argument that the fragments can be connected with the laws republished by the *anagrapheis* at the end of the fifth century. If they were inscribed on a wall as the inserted document states, we would then expect the thickness of the stones to be the same as the thickness of the walls preserved in the *stoa* of the *basileus*. But they are not. According to Lambert in his most recent publication of the fragments, fragment 1 is 0.119 meter thick; fragment 2 is 0.144 meter thick; fragment 3 is 0.120 meter thick; fragments 4 and 5 are unpublished; fragment 6 is 0.062 meter thick; fragment 7 'a few centimeters' thick; fragment 8 is 0.094 meter thick; fragment 9 is 0.092-3 meter thick; fragment 10 is 0.052 meter thick; fragment 11 is 0.006 meter thick; fragment 13 0.016 meter thick.<sup>98</sup> Gawlinski has recently published another fragment, which she connects with the revision of the lawcode.<sup>99</sup> The thickness of the stone is 11.6 cm. If these were all part of one wall, one would expect them all to be the same thickness, but they are not.<sup>100</sup>

On the other hand, in his preliminary report of the excavations of the *stoa* of the *basileus*, Shear reported that the building contained an 'eastern façade of eight Doric columns between antae'. The thickness of the walls on the other sides of the *stoa* are 0.535 meters, much thicker than any of the fragments attributed to the revision of the laws placed in the *stoa*.<sup>101</sup> This means that if we follow Hansen and connect the fragments republished by Lambert and the frag-

97 Dow 1960. For a summary of earlier work on these fragments and a new edition see Lambert 2002.

98 Lambert 2002 *passim*.

99 Gawlinski 2007.

100 Cf. Lambert 2002: 355-7: 'Dow's attribution of the surviving fragments to two, or perhaps three, walls, while possible, is questionable. Of the published fragments with both faces preserved only two have the same thickness'. Note however that Lambert does not compare the thicknesses of these stones with that of the walls of the *stoa* of the *basileus*. We cited this at Canevaro and Harris 2012: 116 n. 97, but it is overlooked by Hansen.

101 T. L. Shear 1971: 243-55. We were able to confirm this information in a conversation with Professor Shear at Athens on 27 July 2016. He informed us that the lower courses of the wall are even thicker.

ment published by Gawlinski, none of the fragments can have been inscribed on one of the walls of the *stoa*. This directly contradicts the statement of the inserted document. We would also expect to find some writing on the preserved walls of the *stoa* of the *basileus*, but in his preliminary report of the building, Shear found no evidence for this.

On the other hand, Shear reports that ‘the intercolumniations are fully occupied by long rectangular slots suitable for the insertion of great marble stelai, and the base for a similar stele was installed between the south anta of the old *stoa* and its first column. The unusually large size of the stelai, as indicated by the cuttings, suggests that documents of extreme importance were displayed there. Similar inscribed marble stelai were also erected in the north annex, though here the arrangement was somewhat different’.<sup>102</sup> The archaeological evidence therefore confirms the evidence of the prescript to Draco’s homicide law (*IG I<sup>3</sup> 104 ll. 7-8*), the evidence of the Demosthenic speech *Against Evergus and Mnesibulus* (Dem. 47.71), and the evidence of the speech *Against Nicomachus* (Lys. 30.21), all of which indicate that the laws published after the revision were inscribed on stelai, not on a wall. Hansen does not take any of this evidence into account. As we observed in our essay, another point not addressed by Hansen, Athenian documents never instruct officials to write a law or a decree on a wall.<sup>103</sup> This is unparalleled in Athenian documents and is compelling evidence against the authenticity of the inserted document. In sum, there is no evidence confirming the statement found in the inserted document that the laws were to be inscribed on a wall. *Pace* Hansen, all the evidence contradicts this statement, compelling proof that the document is not authentic.

Another point against the authenticity of the document is that in the prescript to Draco’s law of homicide and in the speech *Against Nicomachus* (Lys.30.) the task of writing up the laws after they are approved is given to the *anagrapheis*. These officials are not mentioned in the inserted document. In the inserted document, the *nomothetai* elected by the Council are to write up proposals on boards and place them on wooden boards in front of the Eponymous Heroes (*ἀναγράφοντες ἐν σανίσιν ἐκτιθέντων πρὸς τοὺς ἐπωνύμους*).<sup>104</sup> Later the inserted document says that after the laws are ratified, the Council of the Areopagus is to ensure that officials follow the laws in effect, but nothing is said about the final publication of ratified laws. This is a significant omission. Andocides says that the Assembly ordered that the ratified laws were to be inscribed and that they later were inscribed, information confirmed by the prescript to Draco’s homicide law and Lysias’ speech *Against Nicomachus*, which indicates that the Assembly ordered the *anagrapheis* to do this. On the other

102 T. L. Shear 1971: 251, cf. 255.

103 For the publication formulas of Athenian laws and decrees see Henry 2002 and Liddel 2003.

104 The person who forged the document probably based this phrase on a similar one found at Dem. 24.25. On *sanides* see Sickinger 1999: 40, 56, 68-9, 74, 81-2.

hand, the inserted document contains no publication formula and never mentions the *anagrapheis*. This omission is more evidence against the authenticity of the inserted document.

Finally, Hansen replies to six points we made about phrases in the inserted document. We respond to these points in order.

1) We noted that the inserted document does not contain a normal prescript and cited several examples from this period. Hansen replies that 'when a decree is quoted in another document, the prescript is normally cut down to, e.g., the name of the proposer'. But this evidence is irrelevant; the inserted document purports to be the decree itself, not a portion of the decree quoted in another document. Our point stands.

2) Hansen then summarizes our second point in the following way: 'It is true that – apart from oaths – when the Athenians refer to themselves in a decree they do not use the first but the third person plural'. This misrepresents our point. We actually wrote: 'in the first clause of the inserted document we find the first-person plural form ἐχρώμεθα. Decrees and laws from the fifth and fourth centuries B.C.E. always use third-person forms, never first-person forms. The only exception is for oaths (e.g. *IG* i<sup>3</sup> 40, lines 4-16, 21-32), but this document does not contain an oath'. Our point did not pertain to the ways in which the Athenians referred to themselves (as Hansen claims), but to the forms of the verbs found in official Athenian documents. Our point stands.

3) We noted that the term *demotai* never occurs in laws and decrees passed by the *polis*. Hansen claims that the use of this term can be explained on the assumption that 'the election in the 139 demes of 500 *nomothetai* may have been the only occasion on which the members of the demes were asked to elect representatives to a legislative committee at the *polis* level'. This point depends on the assumption that the *nomothetai* could have been elected by the demes. But the account given by Andocides clearly indicates that the Athenians elected the *nomothetai* appointed in this period in the Assembly, not in the demes (see above pp. 34-35). Furthermore, the election of representatives by the demes to a committee at the *polis* level is completely without parallel in the history of Athenian political institutions during the Classical period.<sup>105</sup> Hansen's point is therefore based on an untenable assumption, which in turn is without parallel in Athenian history. Our point stands.

4) We noted that the standard formula used in instructions for officials to perform a task immediately is ἀντίκα μάλα, but the inserted document uses the expression ἐν τῷδε τῷ μηνί. Hansen cites several passages as parallels to

---

105 For the role of the demes in the selection of members of the Council see Rhodes 1972: 8-12. One would like to know how such an election of the *nomothetai* taking place in 139 demes would have worked and how many representatives would have been selected. Hansen does not explain.

this expression, but they do not support his argument because they are not true parallels. Instead of being found in expressions giving orders to officials, they are found in rules about bringing a case to court within a certain period (*IG I<sup>3</sup>* 41 l. 90-91; 96 l. 10; *IG I<sup>3</sup>* 105 l. 39 appears to be similar) or orders to individuals about founding a colony (*IG I<sup>3</sup>* 46 ll. 32-33; *IG I<sup>3</sup>* 47b ll. 7-8 appears to be similar). Our point stands.

5) We noted that the mention of Solon's weights and measures in the inserted document makes no sense in this context. Hansen claims that '[a] law about resuming the minting of silver may have been discussed'. This point is irrelevant: the inserted document does not mention the minting of silver coins, but the use of weights and measures, which would have provided weight standards for coins, a very different issue. The numismatic evidence shows that there was continuity in the weight standards used for Athenian coins both before and after 404/403 BCE, which would indicate that there was nothing to discuss.<sup>106</sup> As we wrote before, Andocides says that the Athenians discussed two matters in 403/2, the examination of the laws and the appointment of *nomothetai* to formulate new laws. The topic of weights and measures was not included in the discussion and was not relevant to these matters. The presence of this irrelevant topic in the inserted document is more evidence against its authenticity.

6) We noted that the inserted document called for laws to be inscribed on a wall, but the evidence shows that all laws inscribed during this period were inscribed on stelai. We address this point above and do not need to analyse here again the evidence contradicting Hansen's reply to our point.

To these points about the content and the style of the inserted document, we can add more evidence. The document contains the phrase *ιδιώτη τῶ βουλομένῳ*. One finds the phrase *ὁ βουλόμενος* or *τῶ βουλομένῳ* in legal contexts in both documentary prose and in the Attic Orators, but one never finds these expressions with the noun *ιδιώτης* added.<sup>107</sup> The fact that the inserted document contains an expression that is inconsistent with standard documentary language provides an additional reason to reject its authenticity. The document also contains the expression *οἶδε ἡρημένοι νομοθέται*, but in Attic documents the demonstrative *οἶδε* is always followed by a list of names (*IG I<sup>3</sup>* 1147 ll. I.2ff.; 1162 ll. I.2, I/II45, II 50; 1460 ll. 3ff.; *IG II<sup>2</sup>* 41 ll. 16ff., 22ff.; 43 ll. 75ff.). Here is another case where the language and formulas of the inserted document depart from those found in contemporary laws and decrees.

<sup>106</sup> See Kraay 1976: 63-77.

<sup>107</sup> *IG I<sup>3</sup>* 34 ll. 33-35; 41 l. 61 (very fragmentary); 63 ll. 12-13; 64 ll. 5-7; 84 ll. 26-27; 236 l. 13; 1453G l. 16; *IG II<sup>2</sup>* 43 ll. 42-44; 463 l. 30; *IG II<sup>3</sup>* 292 ll. 14-15, 22, 41; 337 ll. 23-24; 429 l. 40; *Agora XVI* 56 (= *IEleus.* 138) ll. 25 and 28; Dem. 21.45; 24.18 (*σκοπεῖν τῶ βουλομένῳ*); [Dem.] 59.90.



None of Hansen's attempts to defend the authenticity of the document at 82-83 is ultimately successful, and the evidence against the authenticity of the document is overwhelming.

### Bibliography

- Boegehold, B. (1990). 'Andokides and the Decree of Patrokleides', *Historia* 39: 149–162.
- Canevaro, M. (2013). *The Documents in the Attic Orators: Laws and Decrees in the Public Speeches of the Demosthenic Corpus*. Oxford.
- Canevaro (2016a), 'The Procedure of Demosthenes' *Against Leptines*: How to Repeal (and Replace) and existing law?', *JHS* 136: 39-58.
- Canevaro (2016b), *Demostene, Contro Leptine. Introduzione, traduzione e commento storico*. Berlin.
- Canevaro, M., and Harris, E. M. (2012). 'The Documents in Andokides' *On the Mysteries*', *CQ* 62: 98-129.
- Carawan, E. (2013), *The Athenian Amnesty and Reconstructing the Law*. Oxford.
- Clinton, K. (1980). 'A Law in the City Eleusinion Concerning the Mysteries.' *Hesperia* 49: 258-88.
- Clinton, K. (1982). 'The Nature of the Late Fifth-Century Revision of the Athenian Law Code', *Hesperia* Suppl. 19: 27-37.
- D'Ajello, L. F. T. (2014). 'Atenas em disputa: sobre como os oligarcas formaram os democratas - de 411 a 403 os oligarcas moldam sua oposição', *Nearco* 7/1: 300-23.
- Dow, S. (1960). 'The Athenian calendar of sacrifices', *Historia* 9: 292-3.
- Droysen, J. (1873). *De Demophanti Patroclidis Tisameni populiscitis quae inserta sunt Andocidis orationi ΠΕΠΙ ΜΥΣΤΗΡΙΩΝ*. Berlin.
- Edwards, M. 1995, *Greek Orators, IV: Andokides*, Warminster.
- Esu, A. (2016), Review of M. H. Hansen, *Political Obligation in Ancient Greece and in the Modern World*, Copenhagen 2015, *CR* 66: 478-80.
- Faraguna, M. (1999). 'Intorno alla nuova legge ateniese sulla tassazione del grano', *Dike* 2: 63-97.
- Fingarette, A. (1971). 'A New Look at the Wall of Nikomakhos', *Hesperia* 40: 330-335.
- Gawlinski, L. (2007). 'The Athenian Calendar of Sacrifices. A New Fragment from the Athenian Agora', *Hesperia* 76: 37-55.
- Halliwell, S. (2015). *Aristophanes - Clouds, Women at the Thesmophoria, Frogs: A Verse Translation, with Introduction and Notes*. Oxford.
- Hansen, M. H. (1976). *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes: A Study in the Athenian Administration of Justice in the 4th Century BC*. Odense.
- Hansen, M. H. (2015). 'Is Patrokleides' Decree (Andoc. 1.77-79) a Genuine Document?', *GRBS* 55: 884-901.
- Hansen, M. H. (2016). 'Is Teisamenos' Decree (Andoc. 1.83-84) a Genuine Document?', *GRBS* 56: 34-48.
- Harris, E. M. (1995), *Aeschines and Athenian Politics*. Oxford and New York.
- Harris, E. M. (1999). 'Notes on the New Grain-Tax Law', *ZPE* 126: 123-8.

- Harris, E. M. (2013). *The Rule of Law in Action in Democratic Athens*. Oxford.
- Harris, E. M. (2013-2014 [2015]). 'The Document at Andocides 1.96-98', *Tekmeria* 12: 121- 153.
- Harris, E. M. (2016). "From Democracy to the Rule of Law? Constitutional Change in Athens during the Fifth and Fourth Centuries B.C.E." in C. Tiersche, ed. *Die Athenische Demokratie im 4. Jahrhundert: Zwischen Modernisierung und Tradition*. (Stuttgart 2016): 73-87.
- Harris, E. M. (2018). *Demosthenes. Speeches* 23-26. Austin, TX.
- Harrison, A. R. W. (1971). *The Law of Athens*. Vol. 2: *Procedure*. Oxford.
- Henry, A. S. (2002). 'The Attic state secretariat and provision for publication and erecting decrees', *Hesperia* 71: 91-118.
- Jakab, E. (2007). 'SEG XLVIII 96: Steuergesetz oder Frachtvertrag?', in E. Cantarella (ed.), *Symposion 2005*. Wien, 105-21.
- Joyce, C. J. (2014). 'Μη μνησικακεῖν and "All the Laws" (Andocides *On the Mysteries* 81-2): A Reply to E. Carawan', *Antichthon* 48: 1-14.
- Joyce, C. J. (2015). 'Oaths (ὄρκοι), Covenants (συνθήκαι) and Laws (νόμοι) in the Athenian Reconciliation Agreement of 403 BC', *Antichthon* 49: 24-49.
- Kraay, C. 1976. *Archaic and Classical Greek Coins*. London.
- Könczöl M. (2016). *Törvéyszéki retorika, jogászi érvelés*. Budapest.
- Lambert, S. L. (2002). 'The Sacrificial Calendar of Athens', *ABSA* 97: 353-99.
- Lambert, S. D. (2005). 'Athenian State Laws and Decrees 362/1-322/1: II Religious Regulations', *ZPE* 154: 120-59.
- Lambert, S. D. (2014). 'Accounts of Payments from the Treasury of Athena in 410-407? BC (IG I3 375 and 377)', *AIO Papers* 4.
- Lambert, S. D. (2016). 'The Last Erechtheion Building Accounts', *AIO Papers* 7.
- Liddel, P. (2003). 'The Places of Publication of Athenian State Decrees from the 5th Century to the 3<sup>rd</sup> Century AD', *ZPE* 143: 79-93.
- Luraghi, N. (2013). 'To Die Like a Tyrant', in N. Luraghi (ed.), *The Splendors and Miseries of Ruling Alone: Encounters with Monarchy from Archaic Greece to the Hellenistic Mediterranean*. Stuttgart: 49-71.
- MacDowell, D. M. (1962). *Andocides. On the Mysteries*. Oxford.
- Magnetto, A., Erdas, D. and Carusi, C. (eds.) (2010). *Nuove ricerche sulla legge granaria ateniese del 374/3 a.C.* Pisa.
- Makkink, A. D. J. (1932). *Andokides' Eerste Rede*, Amsterdam.
- Meritt, B. D. (1964). 'Athenian Calendar Problems', *TAPhA* 95 (1964), 204-212.
- Mikalson, J. (2016). *Approbation and Authority in Athenian Religion*. Leiden.
- Moreno, A. (2003). 'Athenian Bread-Baskets: the Grain-Tax Law of 374/3 B.C. Re-Interpreted', *ZPE* 145: 97-106.
- Novotný, M. (2014). 'Andocides on ATIMIA and the term ΠΙΠΟΣΤΑΞΙΣ', *Eirene* 50: 61-88.
- Paoli, U. E. (1976). 'La difesa del possesso in diritto attico' in U.E. Paoli (ed.) *Altri studi di diritto greco e romano*. Milano: 435-459.
- Pébarthe, C. (2016). 'New assessment on trade and politics in 4<sup>th</sup> century B.C.E. Athens', in C. Tiersch (ed.). *Die Athenische Demokratie im 4. Jahrhundert: zwischen Modernisierung und Tradition*. Stuttgart: 223-32.
- Piérart, M. (1971). 'Les EYΘΥΝΟΙ athéniens', *AC* 40: 526-73.

- Rhodes, P. J. (1972). *The Athenian Boule*. Oxford.
- Rhodes, P. J. (1981). *A Commentary on the Aristotelian Athenaion Politeia*. Oxford.
- Rhodes, P. J. with Lewis D. M. (1997), *The Decrees of the Greek City States*. Oxford.
- Scafuro, S. (2014). 'Patterns of Penalty in Fifth Century Attic Decrees', in A. P. Matthaiou and R.-K. Pitt (eds.), ΑΘΗΝΑΙ Ν ΕΠΙΣΚΟΠΙΟΣ. *Studies in Honour of Harold B. Mattingly*. Athens: 299-326.
- Sealey, R. (1993). *Demosthenes and His Time*. Oxford.
- Shear, T. L. (1971). 'The Athenian Agora: Excavations of 1970', *Hesperia* 40: 241-79.
- Shear, J. L. (2011). *Polis and Revolution: Responding to Oligarchy*. Cambridge.
- Sickinger, J.P. (1999). *Public Records and Archives in Classical Athens*. Chapel Hill, NC.
- Sommerstein, A. H. 2014. 'The Authenticity of the Demophantus Decree,' *CQ* 64.1: 49-57.
- Stroud, R. S. (1998). *The Athenian Grain-Tax Law of 374/3 BC*. Princeton.
- Wachsmuth, W. (1846). *Hellenische Alterthumskunde*, II, Halle, 2<sup>nd</sup> ed.