

Is Patrokleides' Decree (Andoc. 1.77–79) a Genuine Document?

Mogens Herman Hansen

UNTIL A FEW YEARS AGO the prevailing view among scholars was that the laws and decrees quoted in Andokides' speech *On the Mysteries* were genuine documents read out by the secretary to the jurors who heard the case in 400 B.C.¹ But in 2012 Mirko Canevaro and Edward Harris launched an elaborate attack on the authenticity of these texts,² in particular the motions proposed and carried by Patrokleides (77–79), by Teisamenos (83–84), and by Demophantos (96–98). All three documents are rejected as late compositions by a “clumsy forger” that are based on an often poor understanding of what can be read in Andokides' speech. The article is a valuable and important contribution to a problem that has been debated for over a century,³ and Canevaro and Harris demonstrate that these documents deserve to be reconsidered more thoroughly than has been the case. In future scholars will undoubtedly split into two camps, those who follow Canevaro and Harris and those who are not persuaded or,

¹ D. M. MacDowell, *Andokides On the Mysteries* (Oxford 1962) 114.

² M. Canevaro and E. M. Harris, “The Documents in Andokides' *On the Mysteries*,” *CQ* 62 (2012) 98–129.

³ Canevaro and Harris (98 n.1) note that “the last general study of the documents inserted into the speeches of the Attic Orators is E. Drerup, ‘Über die bei den Attischen Rednern eingelegten Urkunden’, *Jahrbuch für Classische Philologie* Supplementband 24 (1898) 221–365, who showed that many are forgeries.” They might have added that Drerup on p.232 seems to accept the authenticity of all of the three major documents in *On the Mysteries*.

rather, are not persuaded about the conclusions drawn from Canevaro and Harris's perspicacious observations.

In 2014 Alan Sommerstein questioned their rejection of Demophantos' decree.⁴ In this article I will examine their reasons for rejecting Patrokleides' decree. But first I will draw attention to some of the other documents inserted into the speech. Lists of names of persons who had been denounced for profanation of the mysteries and/or mutilation of the Hermai are read out to the jurors by the secretary at 13, 15, 35, 47.⁵ Most of these persons were sentenced to death and confiscation of property, and many of the names in the lists are also mentioned by Andokides in his speech. Consequently we must consider the possibility that the lists are put together by a late forger on the basis of the names cited in the speech. In this case, however, we have an independent source. Many of these names reappear on stelai inscribed with records of sales of property confiscated from those convicted of having profaned the mysteries and/or mutilated the Hermai (*IG I³ 421–430*),⁶ and it is worth noting that five of the names are found both on the *stelai* and in the lists read out to the jurors without being mentioned anywhere by Andokides in his speech.⁷ I infer that the lists of names read out to the jurors must be genuine documents and not late forgeries.⁸ Like Demosthenes' speech *Against Aristokrates* (in which most of the inserted documents seem to be

⁴ A. H. Sommerstein, "The Authenticity of the Demophantus Decree," *CQ* 64 (2014) 49–57; cf. the Appendix, below.

⁵ At 47 the secretary's reading out of the names is interrupted by Andokides' comments on how he is related to the persons.

⁶ Cf. MacDowell, *Andokides On the Mysteries* 71–72, 75–76, 86, 96–97.

⁷ *Viz.* Eurymachos (35), Hephaistodoros (15), Kephisodoros (15), Oionias (13), and Phaidros (15).

⁸ Same conclusion in E. M. Harris, "The Plaint in Athenian Law and Legal Procedure," in M. Faraguna (ed.), *Archives and Archival Documents in Ancient Societies* (Trieste 2013) 143–162, at 159–160: "These documents appear to be genuine because they contain names not provided by the orator but confirmed by the Attic stelai."

genuine), and unlike his speech *On the Crown* (in which all documents are late forgeries), Andokides' *On the Mysteries* must be one of the speeches in which at least some of the documents are authentic. And with this in mind I intend to examine Patrokleides' decree. Canevaro and Harris present their case against the decree in fifteen numbered sections and I will address each of them in the same order.

Re (1): According to Andokides (73) the amnesty covered the ἄτιμοι of whom some were ὀφείλοντες, but in the document (77) the MS. has περὶ τῶν ὀφειλόντων without any mention of the ἄτιμοι. Sauppe emended to περὶ <τῶν ἀτίμων καὶ> τῶν ὀφειλόντων. Canevaro and Harris ask (102): “but is the error the result of textual corruption or the mistake of a clumsy forger?” In 78 the document has ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες, which supports Sauppe's emendation: see Re (9) below.

Re (2): Canevaro and Harris state that in decrees of the late fifth and early fourth centuries “a clause beginning with ἐπειδὴ is followed by an infinitive indicating the proposal of the speaker and the decision of the Assembly,” and they point out that ἐπειδὴ followed by ψηφίσασθαι τὸν δῆμον is unparalleled in Athenian decrees. Yes, but in fourth-century decrees we have attestations of ἐπειδὴ followed by ἐψηφίσθαι τῷ δήμῳ (*IG* II² 133.9–12, 235.7–14, 360.28–32, cf. 47.24–25), and we have attestations of ὁ δῆμος ἐψηφίσατο (*IG* II² 1.44, 1627b.244 and 272, 1628d.462 and 493, 1629d.725). Even for Athens we have so few documents preserved on stone that arguments from silence based on terminology and idioms carry little weight. Cf. for example the formulae of laws passed by the *nomothetai*. Until 1974 the only attested formula was δεδόχθαι τοῖς νομοθέταις: *IG* II² 140.7–8, 244.6, *IG* II³ 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). I can imagine that if these two laws had been known from a document inserted in a speech they might have been suspected by Canevaro and Harris as being forgeries.

Re (3): At 106–109 Andokides tells the jurors that the amnesty of 405 was a repetition of the amnesty issued in 490 before the battle of Marathon, which is the amnesty referred to in the first section of Patrokleides' decree: ψηφίσασθαι τὸν δῆμον ταῦτ' ἄπερ ὅτε ἦν τὰ Μηδικά (77). Canevaro and Harris (103) hold that since an amnesty before the battle of Marathon is not mentioned in any other source it “must be an invention of Andokides,” and that “the person who composed the document at 77–9 naively took this invention as a historical fact and used it when fabricating his version of the decree of Patrokleides.” But 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. Whether there really was such an amnesty we do not know, but it is perfectly possible. Our sources are so scanty that nothing can be based on an argument from silence. Moreover, the Athenians themselves were notoriously ignorant of many aspects of their own constitutional history, cf. what in 411 they did not know about Kleisthenes' reforms (Arist. *Ath. Pol.* 29.3 with Rhodes' comment).⁹

Re (4): Canevaro and Harris argue that Andokides' list of three categories of *atimoi* is incongruent with the various groups of persons listed in Patrokleides' decree. True enough, for the two lists are essentially different, as I have argued.¹⁰ Andokides lists three different types of *atimoi*. In the decree Patrokleides lists the documents that must be destroyed in consequence of the amnesty, and for Andokides' second category of *atimoi*—the καθάπαξ ἄτιμοι—there is no evidence that the sentences in

⁹ P. J. Rhodes, *Commentary on the Aristotelian Athenaiion Politeia* (Oxford 1981) 375–376.

¹⁰ M. H. Hansen, *Apagoge, Endeixis and Ephegesis* (Odense 1976) 89.

public actions imposed by the *dikasteria* were filed in the public archive¹¹ or published on stone. In such cases the verdict passed by the court was probably recorded by the magistrate who presided over the court (cf. Dem. 25.28), and in Patrokleides' decree the destruction of such verdicts is covered by the provision: καὶ τὰ εἰρημένα πανταχόθεν, ὅπου τι ἔστιν ἐν τῷ δημοσίῳ, καὶ εἰ ἀντίγραφόν που ἔστιν, παρέχειν τοὺς θεσμοθέτας καὶ τὰς ἄλλας ἀρχάς (79). The difference between Andokides' list of *atimoi* and Patrokleides' list of documents to be destroyed is, I still believe, clear from the text as it stands. I argued in 1976, followed by Boegehold in 1990,¹² that "the only description of (the amnesty) is that it is identical with the amnesty of 490" and the rest of the decree is a decision about "which documents are to be destroyed as a consequence of the amnesty."¹³ This is rejected by Canevaro and Harris as an "implausible hypothesis." See Re 15 below. As a parallel I referred to πολιτεύεσθαι κατὰ τὰ πάτρια κτλ. in Teisamenos' decree, which Canevaro and Harris (102 n.19) now reject as another forgery. So let me instead adduce the law taxing Lemnos, Imbros, and Scyros (R&O 26). It is called νόμος περὶ τῆς δωδεκάτης τοῦ σίτου τῶν νήσων (3–4), and the purpose is that the *demoi* may have grain publicly available (5–8). The rest of the law (8–61) is about the transport, storage, and selling of the grain.¹⁴

Re (5): In 77 the MS. ἐπιγεγραμμένων has been emended to ἐγγεγραμμένων, according to Canevaro and Harris "an indication that the document is not genuine." But ἐπιγεγραμμένος εἰς designating a person is not attested in Greek either in in-

¹¹ Cf. J. P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill 1999) 131–133.

¹² A. Boegehold, "Andokides and the Decree of Patrokleides," *Historia* 39 (1990) 149–162.

¹³ Hansen, *Apagoge* 89.

¹⁴ E. Jakab, "SEG XLVIII 96: Steuergesetz oder Frachtvertrag," *Symposium 2005* (Vienna 2007) 105–121; M. H. Hansen, "A Note on Agyrrhios' Grain Tax Law of 374/3 BC" in L. Mitchell and L. Rubinstein (eds.), *Greek History and Epigraphy. Essays in Honour of P. J. Rhodes* (Swansea 2009) 145–154.

scriptions or in literary texts. It is not Greek at all. Now, the person who drafted the document may have been a forger but he had a good command of the language. So ἐπιγεγραμμένων is rather an error committed by a careless copyist. For the same mistake, see Dem. 58.48, referred to by Canevaro and Harris at 103 n.28.

Re (6): There is no doubt “that there was one list of public debtors kept on the Acropolis” (104), and Canevaro and Harris reject the reference in Patrokleides’ decree to lists of state debtors kept by the *basileus* and the *praktōres*, and conclude: “Because there is no contemporary evidence of separate lists of public debtors, the errors in this passage must be the result of the forger’s misunderstanding of information found in the orators.” But a law of ca. 380–350 instructs the *basileus* together with one of the *praktōres* and a *grammateus* to register fines imposed during the Mysteries (*SEG XXX* 61.27–33). There were in fact other lists of debtors to the *polis* that would have to be deleted in consequence of the amnesty alongside the names in the list on the Akropolis. A law of 418/7 about leasing the sanctuary of Neleus instructs the *basileus* to delete the name of the contractor when he pays the rent and to inscribe the names of the next contractor and his guarantors as well as the new amount due (*IG I³* 84.22–25). If the contractor did not pay, the *basileus* probably had to report it to those who updated the list of state debtors on the Akropolis, but he would still have the name of the defaulting contractor recorded as well as the names of the guarantors from whom the outstanding amount had to be recovered, and if they did not pay they would become debtors to the treasury alongside the contractor.

Other lists of debtors were kept by the *praktōres*. In Demosthenes’ speech *Against Aristogeiton* (25.28) we are told that Aristogeiton had been barred from exercising his citizen rights by a verdict passed by three *dikasteria* (= 1500 jurors),¹⁵ which had

¹⁵ Accepting Weil’s emendation γνώσει for γνώσεσι, cf. Dem. 24.9 and Hansen, *Apagoge* 147.

been recorded both by the *thesmothetai* and by the *praktores*. Again, a law of 378/7 stipulates that the *praktores* have to report public debtors to the *boule* (*IG II²* 45.7–9).

Also the inventories of the *epimeletai ton neorion* include lists of debtors. In *IG II²* 1617.68–124 are recorded twenty-two *epimeletai* from the years 369/8–367/6 owing naval equipment to the yards. At 1622.379–578 there is a long list of debts incurred in the period 378/7 to 346/5 and recovered by the *epimeletai* in the quadrennium 345/4–342/1. Each board of *epimeletai* must have kept a record of all such debts and handed over their list to the next board until the debts were eventually paid.

There must have been many more documents to delete than those for which the *praktores*, the *tamiai* of Athena and the other gods, and the *basileus* were responsible.¹⁶ The author of the decree does in fact take that into account with the sweeping statement at 79 instructing the *praktores* and the *boule* to delete all other names (than those explicitly exempted) and ordering the *thesmothetai* and the other magistrates to produce all relevant documents.

Re (7): ἢ εἴ τις μὴ ἐξεγράφη. I can find no fault with MacDowell's interpretation: "'Write out' is the usual meaning of this verb ... Patrokleides means, then, 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."¹⁷

Re (8): Canevaro and Harris are right; there is no exact parallel to μέχρι τῆς ἐξελθούσης βουλῆς ἐφ' ἧς Καλλίας ἦρχεν; but at *IG I³* 84.9–10 we find πρὶν ἢ ἐχσιέναι τένδε τὸν βολέν. So ἡ ἐξελθούσα βουλή is the aorist form of ἡ ἐξιούσα βουλή, and at 31–32 we have ἐπὶ τῆς βολῆς τῆς εἰσιόσας about the incoming Council of Five Hundred. In the late fifth century the Athenians still had a bouleutic year of 366 days and a festival

¹⁶ Harris, in *Archives and Archival Documents* 154–160, provides numerous illuminating examples of complaints and verdicts kept in the archives and by different magistrates after the trial was concluded.

¹⁷ On this issue I now take a different view from what I argued in *Apagoge* 90 n.31.

year of 354 or 384 days. The bouletic year and the festival year became coextensive and coterminous perhaps in 406/5¹⁸—the year before Patrokleides' decree was passed—or perhaps in 403/2 in connection with the restoration of the democracy.¹⁹ No matter which of the two dates one prefers, there is nothing suspicious about dating the turn of the year according to the bouletic calendar.

Re (9): In the document (78) “the expression ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες creates two separate categories, those who have lost their rights and public debtors, but Andocides' summary makes public debtors a subset of those who have lost their rights, which is consistent with information from other sources” (Canevaro and Harris 105). No, a number of sources make the same distinction as Patrokleides, e.g. Dem. 25.30, 58.45, Arist. *Ath.Pol.* 63.3, Hyp. fr.33 Sauppe = fr.29 Jensen, Pl. *Resp.* 555D. For the differences between the two categories of disfranchised citizens, see Hansen, *Apagoge* 67–68.

Re (10): Referring to Arist. *Ath.Pol.* 48.4–5 Canevaro and Harris write (105): “The phrase ὅσων εὐθύναί τινές εἰσι κατεγνωσμένοι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων ... implies that the *euthynoi* and their assessors had the power to try cases, but we know that these cases had to be tried in a regular court.” Yes, in the 320s when the *Ath.Pol.* was composed. In particular two inscriptions show that the *euthynoi* and their *paredroi* did in fact possess judicial powers in the fifth century and sometimes in the fourth century too. In the inventory published by the *epimeletai ton neorion* of 325/4 a *psephisma* is quoted which includes the following provision (*IG* II² 1629.233–242):

ἐὰν δέ τις μὴ ποιήσει οἷς ἕκαστα προστέτακται, ἢ ἄρχων ἢ
ιδιώτης, κατὰ τόδε τὸ ψήφισμα, ὀφειλέτω ὁ μὴ ποιήσας μυρίας

¹⁸ P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 224.

¹⁹ J. Morgan, cited by S. D. Lambert, “Accounts of Payments from the Treasury of Athena,” in *Attic Inscriptions On-line*, Papers 5 (July 2014) 3 n.5, accessible at www.atticinscriptions.com/papers/aio-papers-5/.

δραχμάς ἱεράς τῆι Ἀθηνᾶι, καὶ ὁ εὐθυνοσ καὶ οἱ πάρεδροι ἐπάναγκεσ αὐτῶν καταγιγνοσκόντων ἢ αὐτοὶ ὀφειλόντων.

On the basis of this decree a similar provision in a decree of ca. 430 has been convincingly restored (*IG I³ 133.18–19*):

[– – τοῖν Ἀ]νάκοιν ἔ εὐθυνός[θον] μ[υρία]ς δραχμαῖς ἡέκαστος ἦοι δὲ εὐθυνοὶ καὶ ἦοι πάρεδροι κατ[αγ]ιγνο[σκόντων] αὐτῶν ἔ αὐτοὶ πραττέσθον ἐπάναγκε]ς.

In these two sources as well as in Patrokleides' decree, there is no reference to a final hearing before a *dikasterion*, whereas, according to *Ath. Pol.* 48.4, the *euthynos* passes a preliminary verdict (ἐὰν μὲν καταγνῶ) which then is referred to a *dikasterion*. Another difference is that according to *Ath. Pol.* 48.4 the preliminary verdict is passed by the *euthynos* of the *phyle* alone, but according to *IG II² 1629*, and probably *I³ 133* as well, the verdict is passed by the *euthynos* together with his *paredroi* and they are jointly responsible. The procedures of *euthynai* of *archai* and other officials seem to have been substantially changed in connection with the restoration of the democracy in 403, not least in connection with the introduction of οἱ τετταράκοντα and οἱ διαιτηταί. But the decree of 325/4 indicates that occasionally the judicial powers of the *euthynoi* and *paredroi* were upheld.²⁰

Next, commenting on the phrase μήπω εἰσηγμέναι εἰς τὸ δικαστήριον γραφαί τινές εἰσι περὶ τῶν εὐθυνῶν, Canevaro and Harris write: “How could one know if the defendant were going to owe any money until after his case was tried?” As stated in 78, the *terminus ante quem* for the amnesty was the end of the year 406/5 when Kallias was succeeded by Alexias in whose archonship the amnesty was issued. All magistrates serving under Kallias had to undergo *euthynai* in the following year. Those who had already been convicted of maladministration when the amnesty decree was issued would be covered

²⁰ M. Piérart, “Les εὐθυνοὶ athéniens,” *AntCl* 40 (1971) 526–673, at 529–531, 549–551, 571–573, and A. Scafuro, “Patterns of Penalty in Fifth Century Attic Decrees,” in A. P. Matthaiou and R.-K. Pitt (eds.), *ΑΘΗΝΑΙΩΝ ΕΠΙΣΚΟΠΙΟΣ. Studies in Honour of Harold B. Mattingly* (Athens 2014) 299–326.

by the amnesty. But apparently some public actions about *euthynai* had not yet been heard by the *dikasteria* when Patrokleides proposed and carried his *psephisma* . The provision μήπω εισηγημένοι κτλ. shows that magistrates who had not yet appeared before a *dikasterion* were also covered by the amnesty, and the presumption is that pending cases against magistrates who had served under Kallias would be dropped.

Re (11): Canevaro and Harris hold that “the phrase προστάξεις ἢ ἐγγύαι τινές εἰσι κατεγνωσμένοι contains an unparalleled use of the verb καταγιγνώσκω (106).” But referring to Antiph. 5.70 τούτου ... κατέγνωστο θάνατος, they admit that the passive κατέγνωστο is used with the penalty in the nominative. They also admit that προστάξεις might be a punishment (cf. Andoc. 1.75) but hold that “the word ἐγγύαι refers to contracts of personal security, not to a crime or a punishment.” In 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. For an example of the passive with the crime as the subject see Lycurg. 1.52.

Re (12): The phrase ὅσα ὀνόματα τῶν τετρακοσίων τινὸς ἐγγράπται (78) is judged faulty. But the change from ὀνόματα in the plural to τινος in the singular is a *constructio ad sensum* , cf. e.g. in the scholia on Hermogenes *Peri staseon* : τὸ δὲ καταλείπεσθαι τοῖς μετὰ ταῦτα γενησομένοις ἀνθρώποις ὑπομνήματα λοιδορίαν περιέχοντά τινος τῶν πολιτῶν ἐδυσχέρανεν, διὸ τὰ ὀνόματα λέγειν ἐκόλυσεν (IV 840 Walz).

Re (13): “The inserted document lists several categories of persons excluded from the amnesty” (Canevaro and Harris 106). Yes, and they are in documents explicitly exempted from destruction (Canevaro and Harris 107 referring to *Apagege* 89). They are all exiles and thus excluded from the amnesty in 405. The amnesty for exiles followed in 404 as part of the peace (Xen. *Hell.* 2.2.20, Andoc. 1.80, 3.12). Strictly speaking, it is superfluous in a decree about *atimoi* and *ophelontes* 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. Canevaro and Harris ask: “Where does the decree state that all the exiles are not included in the amnesty, as Andokides himself clearly states at 80?” The answer is: in 77 where, accepting the emendation, Patrokleides states that the amnesty covers <ἄτιμοι> and ὀφείλοντες and again in 78 ὅσοι ἄτιμοι ἦσαν ἢ ὀφείλοντες, cf. Re (1) and (9) above.

Re (14): At 78 Patrokleides' decree lists some documents that are exempted from destruction:

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

This section of the document is obviously modelled on Solon's amnesty of 594 inscribed as the 8th *nomos* on the 13th *axion* and quoted by Plutarch (*Sol.* 19.4):

πλὴν ὅσοι ἐξ Ἀρείου πάγου ἢ ὅσοι ἐκ τῶν ἐφετῶν ἢ ἐκ πρυτανείου καταδικασθέντες ὑπὸ τῶν βασιλέων ἐπὶ φόνῳ ἢ σφαγαῖσιν ἢ ἐπὶ τυραννίδι ἔφευγον

Canevaro and Harris (108) argue that the addition of the Delphinion in Patrokleides' decree “disrupts the careful arrangement” of the Solonian law and “is best explained as a clumsy addition to Plutarch's text made by someone who read the account of the homicide courts at Dem. 23.63–79.”

The text of the passage in Andokides is indeed corrupt and has been variously emended by editors and commentators. However, I do not agree that the Solonian law quoted by Plutarch testifies to a “careful arrangement” of the Athenian homicide courts. ἐξ Ἀρείου πάγου is a reference to a court, ἐκ τῶν ἐφετῶν, on the other hand, to those who hear cases of homicide at three different courts, all left unmentioned. ἐκ πρυτανείου is the name of a another court, and in this case the judges are mentioned too, ὑπὸ τῶν βασιλέων, who are the incumbent βασιλεύς plus the four φυλοβασιλεῖς (Dem. 23.76, Arist. *Ath. Pol.* 57.4). In this case both the court and the judges are mentioned and with the proper prepositions, ἐκ about the

court and ὑπό about the judges, whereas 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.²¹ Furthermore, why is the Prytaneion court mentioned among the exceptions to the amnesty? The Prytaneion was the court where a case of homicide was heard if a person had been killed by an animal or an inanimate object or an unknown person.²² In none of these three cases would there be any named person who could be exempted from the amnesty.

In several respects the text of the Solonian amnesty law is as problematic as the version of it in Patrokleides' decree. The reference to the Delphinion court in Patrokleides' version of the amnesty is in fact more to the point. This court heard cases of homicide where the person on trial confessed to have killed but pleaded that the killing had been justified (κατὰ τοὺς νόμους; cf. Arist. *Ath. Pol.* 57.3, Dem. 23.74). Before and under the oligarchic regime in 411 quite a few democratically-minded citizens had been murdered, and if the murderers had been put on trial by the relatives of the victim they might plead that the killing had been lawful. If the defendant won the case he would go free, if he lost he would be sentenced to death,²³ unless he availed himself of the possibility to leave the court and the country after his speech but before the passing of the sentence (Dem. 23.69). Patrokleides may have had such cases in mind when he added Δελφινίου to the text of the Solonian amnesty.

Re (15): Patrokleides' *psephisma* refers to various lists of named citizens whereas Andokides at 76 uses the term *psephismata* about the documents to be destroyed: ταῦτ' οὖν ἐψηφίσασθε ἐξαλεῖψαι πάντα τὰ ψηφίσματα, καὶ αὐτὰ καὶ εἴ πού τι ἀντίγραφον ἦν. Canevaro and Harris hold that Andokides is right and that the forger got it wrong. But the documents

²¹ Cf. Isae. 6.57.2 with Wyse's note *ad loc.*

²² D. M. MacDowell, *Athenian Homicide Law* (Manchester 1963) 85–89.

²³ Lys. 1.50 with S. C. Todd, *A Commentary on Lysias Speeches 1–11* (Oxford 2007) 46.

of which Patrokleides' decree orders the destruction must have included lists of named persons recorded as *opheilontes* or *atimoi* or both. In Classical Athens the laws and decrees regulating offences punished with *atimia* cannot be expected to have included long lists of named persons punished with *atimia*, as did the documents mentioned by Patrokleides in his decree (ὅσα ὀνόματα ... ὅποσα ... τὰ δὲ ἄλλα πάντα ... τὰ εἰρημένα). So in this case it is probably Patrokleides who got it right and Andokides who is rather sloppy when he uses the term *psephismata* in his reference to the different lists of named *atimoi* that had to be destroyed. At 103, on the other hand, he has a more comprehensive and correct description of these documents: τοῦτο δὲ οὐς ἀτίμους ὄντας ἐπιτίμους ἐποιήσατε, ὧν ἔνεκα καὶ στήλας ἀνείλετε καὶ νόμους ἀκύρους ἐποιήσατε καὶ τὰ ψηφίσματα ἐξηλείψατε. Most of the names were undoubtedly recorded on the *stelai* and they are duly mentioned before the laws and decrees.

There is one more problem, which is not treated separately and in detail by Canevaro and Harris. In the retrospective section at 106–109 Andokides juxtaposes the amnesty before Marathon with the amnesty in the final year of the Peloponnesian War. In both cases, he says, the Athenians prudently decided to allow the exiles to return and to enfranchise the disfranchised: τοὺς τε φεύγοντας καταδέξασθαι καὶ τοὺς ἀτίμους ἐπιτίμους ποιῆσαι (identical formulation in 107 [about 490] and 109 [405/4]). In both cases the Athenians succeeded in restoring *homonoia* (108 and 109). In this passage the distinction between the amnesty for *atimoi* and that for *pheugontes* is obscured, and that is so both for the amnesty in 490 and for that in 405/4. To some extent Andokides' description at 106–109 is in conflict with what he says at 80 where he distinguishes between the amnesty for *atimoi* and *opheilontes* issued in 405 by the decree proposed by Patrokleides, and the amnesty for *pheugontes* issued in 404 after the Athenians had surrendered. In this case only the amnesty for *atimoi* was a decision testifying to the Athenians' moderation, whereas the amnesty for the exiles was enforced by the Lakedaimonians and their allies as part of the

peace treaty and against what was wanted by the democrats who were still in power until after the peace was concluded. What about the amnesty in 490? According to Patrokleides' decree it was identical with the amnesty in 405, i.e. for *atimoi* only. According to Andokides 106–107 it was for *pheugontes* too, but as in 405/4 there may have been two separate amnesties, and since Andokides at 108–109 is inaccurate about the amnesties in 405/4 he may as well be inaccurate about the amnesty for *pheugontes* in 490. We do not know and never shall unless a new source miraculously turns up.

Conclusion

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. But so is the Solonian amnesty, as pointed out above Re 14. Granting that here we have serious problems both of grammar and of content, we still have a preferable alternative to rejecting the document as a forgery. Some of the problems may be due to a copyist, but others to Patrokleides himself who perhaps did not have the time to, or did not care to conduct a thorough and systematic investigation of all the relevant documents to be taken into account. So my overall conclusion is that Patrokleides' decree is probably a genuine document and not a late composition by a "clumsy forger."

The presumption is that Andokides published his speech shortly after he had been acquitted. Twice before he had tried to return to Athens but was forced to leave again. At last he was rehabilitated and allowed to stay in Athens in full possession of his citizen rights. The speech was published not as a piece of forensic rhetoric, but as a political pamphlet. And Andokides decided in the published version of his speech to insert the various documents which he had had the secretary read out to the jurors at the trial.

APPENDIX: The Status of the Demophantos Decree

The authenticity of the Demophantos decree has been persuasively defended by Alan Sommerstein (n.4 above). In support of his argumentation I would like to add some observations that strengthen his position. Sommerstein introduces his argument by granting Canavaro and Harris that the document inserted into Andoc. 1.96–98 cannot be the document which Andokides in 400 asked to have read out. There are, he says, three proofs of this: (1) In the inserted document Demophantos' motion is called a *psephisma* (96) whereas Andokides describes it as a *nomos* (95–96, 99). (2) Andokides says (95) that Demophantos' *nomos* was placed in front of the *bouleuterion*, but according to Lycurg. 1.124, 126, the *psephisma* stood within the *bouleuterion*. (3) The document's provision about the reward to be given to the assassin of a potential tyrant (96 and 97) differs from what Andokides says (95). From these three observations Sommerstein infers (50) that Demophantos' decree "must have been inserted into the text of Andokides at a later (probably Hellenistic) date"; and he suggests that "it might have been extracted from a collection of Athenian decrees such as that of Krateros and inserted here in the mistaken belief that it was the law Andokides was citing." For the following reasons I prefer to believe that the document inserted into Andokides' speech at 96–98 is identical with the document Andokides describes in 95 and asks to have read out to the jurors.

Re (1): The distinction between *nomoi* and *psephismata* was introduced after the restoration of the democracy in 403 and belongs in the fourth century. In fifth-century Athens there is no demonstrable difference, and a decision of the *demos* can be referred to both as a *nomos* (when the emphasis is on the content) and a *psephisma* (when the enactment is stressed). Kannonos' law dealing with offences against the *demos* is called both a *nomos* and a *psephisma* by Xenophon (*Hell.* 1.7.20 and 23). Isotimides' decree is referred to as a *psephisma* by Andokides (1.71, 86, 103) but as a *nomos* by Lysias (6.9, 29, 52). The Megarian *psephisma* (Thuc. 1.139–140) is called a *nomos* by Aristophanes (*Ach.* 532). In the speech *Against Neaira* Apollodoros describes the citizenship bestowed on the Plataians in 427 as a νόμος ἐν τῷ ψηφίσματι (Dem. 59.106), and in Aristophanes *Birds* 1035 ff. the ψηφισματοπώλης displays new νόμοι. These and other examples show that in the fifth century an enactment of the people, like that

proposed and carried by Demophantos in 410, could be called both a *nomos* and a *psephisma*.²⁴

Re (2): There can be little doubt that Demophantos' law/decree of 410 about protecting and defending the Athenian democracy was annulled by the Thirty in 404 and the stele was probably demolished. We know that some of the enactments demolished by the Thirty were re-inscribed after the restoration of the democracy in 403, cf. e.g. *IG I*³ 229, *IG II*² 6 and 9, *SEG XIV* 40, 28, 48, XXXIX 67. Demophantos' decree was probably among the re-inscribed enactments. A re-inscribed decree would have been provided with a new heading referring to the demolition of the original by the Thirty.²⁵ The decree is discussed in Lykourgos' speech *Against Leokrates* 124–127 and read out to the jurors after 125,²⁶ and since Lykourgos says that the decree was passed *after* the Thirty he must refer to the re-inscribed version of it. So too did Andokides when in 400 he says that the decree was inscribed on a stele, but to him it mattered that the original version of the decree had been passed before the Thirty so he left out the introduction about the destruction of the original document by the Thirty.

The disagreement between Andokides and Lykourgos about where the stele was placed has a different explanation. According to Andokides (95) the stele stood in front of the *bouleuterion*, i.e. the old *bouleuterion*. But ca. 400 the old *bouleuterion* was replaced by the more monumental new *bouleuterion* and the stele, associated with the *bouleuterion*, was moved and now placed inside the building (Lycurg. 1.126). The removal of the decree from the old to the new *bouleuterion* must have taken place after Andokides stood trial in 400.

As for the contents of the decree, there is no reason to assume that the document read out to the jurors at Lycurg. 1.126 was different from the document inserted into Andokides' speech at 96–98. One apparent difference is probably due to Lykourgos' cunning interpretation of the decree rather than to the decree itself. The offence dealt with in the decree is overthrowing the democracy (κατάλυσις

²⁴ M. H. Hansen, "Nomos and Psephisma in Fourth-Century Athens," in *The Athenian Ecclesia* (Copenhagen 1983) 316–317 = *GRBS* 19 (1978) 162–163.

²⁵ The best preserved example is *IG II*² 6.

²⁶ Also referred to by Demosthenes in the Leptines speech (20.159).

τοῦ δήμου). The offence allegedly committed by Leokrates was treason (προδοσία). Therefore, as Sommerstein suggests (56), Lykourgos cleverly adds προδοσία to κατάλυσις τοῦ δήμου when he describes the offence although, as we know from Andokides, προδοσία was not mentioned in the decree.

Re (3). The issue about what happened to the aspiring tyrant's property if he was either killed or sentenced to death is convincingly explained by Sommerstein (55).

Thus in my opinion the document read out to the jurors at Andoc. 1.96–98 and at Lycurg. 1.126 is the original decree proposed and carried by Demophantos in 410. The stele was destroyed by the Thirty in 404, but the text was reinscribed after the restoration of the democracy in 403 and a few years later it was moved from its original position before the old *bouleuterion* to a place inside the new *bouluterion*.

A further argument supporting the authenticity of the document is the mention of the secretary of the *boule* during the first prytany of the year 410/09 (Andoc. 1.96). We know from *IG I³ 375.1* that his name was Κλεγένες χαλαιεύς (a deme of Aiantis). Now, the name Κλεγένες—from the late fifth century on spelled Κλειγένης—is extremely rare. Apart from the secretary of the *boule* in 410/09 the name occurs only twice. A Κλειγένης ὁ μικρός is mentioned by Aristophanes in *Frogs* 708 (performed in 405), and a Κλειγ[ένης ... Ἄλαιεύς] is attested in a document of 274/3 from the Asklepieion (*IG II² 1534.A.1*, cf. *SEG XXXIX 165*). The Kleigenes mentioned by Aristophanes was probably identical with the secretary of 410/09,²⁷ and the later Kleigenes of Halai—if the demotic is correctly restored—may have been a descendant.

In the document inserted at Andoc. 1.96–98 the name of the *grammateus* during the first prytany is recorded twice, and both times the spelling is Κλεογένης. No demotic is recorded but it is stated that the tribe Aiantis served during the first prytany. Scholars who believe that the inserted document is genuine argue that the name in the document read out to the jurors in 400/399 was Κλειγένης (as in Ar. *Frogs* 708) or, rather, Κλεγένες (as in *IG I³ 375*), but that later a scribe erroneously changed it to the somewhat more common name

²⁷ The identification is suggested by Osborne and Byrne, *LGPV* II 263.

Κλεογένης,²⁸ and—following Lipsius—they emend the text of Andokides accordingly.²⁹ Canevaro and Harris (122) hold that “it is unlikely that a scribe would have made precisely the same error in two different places” and infer that the inserted document is a later forgery. But, like Sommerstein (53), I find it unproblematical to assume that a scribe faced with what he believed was a repeated misspelling of a name would ‘correct’ it twice.

The crucial question is: how could a late forger know that the *grammateus* of the *boule* in the first prytany of 410/09 had a name beginning with Κλε- and ending with -γενης and that he belonged to the tribe Aiantis? If—what is extremely unlikely—he did know about *IG I³ 375*, or a similar document, he would in his forged document have used the fifth-century spelling Κλεγένες or perhaps Κλειγένης but not Κλεογένης which then in this case too must be an error committed by a scribe. The correct reference to the secretary of the council in 410/09 strongly indicates that the document inserted in Andoc 1.96–98 is genuine and not a late forgery.³⁰

July, 2015

SAXO-instituttet
Njalsgade 80
2300 Copenhagen S
Denmark
mhh@hum.ku.dk

²⁸ According to *LPGN* II 265 altogether nine persons with the name Κλεογένης are attested.

²⁹ MacDowell, *Andokides On the Mysteries* 135.

³⁰ For helpful suggestions I would like thank Peter Rhodes, Lene Rubinstein, Alan Sommerstein, and the anonymous reader.