

STEPHEN C. TODD (MANCHESTER)

THE ATHENIAN PROCEDURE(S) OF *DOKIMASIA*

[a] *Dokimasia* in the Attic Orators, esp. Lysias

This paper arises out of a long-term interest in the speeches attributed to Lysias, where cognates of the verb *dokimazō* (“scrutinise” or “examine”), including the related noun *dokimasia* (“scrutiny”), are found more frequently than in any of the other Athenian orators.¹ Such language is used, in Lysias as in other orators, to denote a variety of procedures whereby those appointed to hold public responsibility, or to exercise some form of public benefit or entitlement, were typically required to undergo scrutiny of their credentials, normally as a precondition before entering into their new status.²

Dokimasia, particularly as it relates to public officials, is discussed in passing or systematically in most standard works on Athenian administration of justice, or the democratic constitution, or political accountability;³ there are also specialist studies focusing typically on particular problems, such as the relationship between the Amnesty of 403 and the peculiar prevalence of contested *dokimasia* cases in the corpus of Lysias,⁴ or more generally the relationship between the various *dokimasia* procedures.⁵ Among the most interesting specialist studies is Feyel’s book on *Dokimasia*, which was published just as I began work on this paper, and follows a number of preliminary studies.⁶ The chief virtue of this book is perhaps its

¹ A TLG search for the letter-combination -δοκιμα- reveals 61 occurrences in the corpus of Lysias, with the next most common being Demosthenes (54 occurrences), Isokrates (31) and Aiskhines (14).

² The *dokimasia* of orators, however, was retroactive: see text at n.27 below.

³ Examples can only be selective. For administration of justice, see Lipsius (1905-15: 269-285), Bonner & Smith (1930-38.ii: e.g. 243-245), Harrison (1968-71.ii: 200-207). Constitution: Hignett (1952: 205-208), Hansen (1991: e.g. 218-220). Political accountability: Roberts (1982: 14-15).

⁴ E.g. Adeleye (1983), Hashiba (1997-98).

⁵ E.g. Caillemer (1892), Koch (1903), Borowski (1976). Specialist studies of particular forms of *dokimasia* include MacDowell (2005, on the *dokimasia* of orators, with response by Gagliardi), and various of the preliminary studies by Feyel (listed in following note).

⁶ The book is Feyel (2009). The preliminary studies known to me are all primarily epigraphic in their focus: Feyel (2003) on the Athenian silver coinage law, Feyel (2006) on animals to be sacrificed, primarily in the Entella inscription, and Feyel (2007) on newly enfranchised citizens, primarily at Athens.

comprehensiveness, in that Feyel assembles and discusses pretty well every conceivable text, epigraphic as well as literary or lexicographical; and indeed his longest chapter, albeit narrowly, is the one on *dokimasia* outside Athens, for which his evidence derives entirely from inscriptions.⁷ The significance of Feyel's book is precisely that his epigraphic and non-Athenian material presents a picture which is in some ways very different, at least in its highlights, from the ways in which Athenian legal procedure was depicted by earlier scholars. As such, it invites reconsideration of the Athenian material, and this paper therefore takes the opportunity to focus on two sets of issues: first, the historiography of the problem of classification (the question of how scholars have interpreted the relationships between the various types of *dokimasia* procedure attested at Athens), and secondly the juridical consequences of such classificatory decisions (particularly as they affect our understanding of the contested *dokimasia* cases in Lysias).

The frequent appearance of *dokimazō* and cognates in the speeches of Lysias has already been mentioned. Such usage reflects, albeit with some distortion,⁸ the high visibility of various *dokimasia* procedures within the Lysianic corpus.⁹ Since these will be referred to with some frequency in the paper, it may be helpful to start by summarising them. For reasons that will emerge,¹⁰ they are presented here in the order of prominence and frequency with which they manifest themselves to a reader of Lysias, with brief discussion where appropriate of the evidence provided by the *Ath.Pol.*:

⁷ This is perhaps a slightly false statistic given that it covers types of *dokimasia* which for Athens fill several chapters, but it still amounts to nearly one-third of the book: ch.1 origins (13pp); ch.2 *dokimasia* in Athenian institutions after 403 (13pp); ch.3 “technical and financial” at Athens (65pp), ch.4 “political” at Athens (106pp), ch.5 Hellenistic Athens (primarily foreign benefactors receiving e.g. honorific enfranchisement, 39pp); ch.6 outside Athens (118pp); conclusions (6pp).

⁸ It is much more frequent in speeches which attack a *dokimasia* candidate (most notably Lys. 26 and Lys. 31, which account for 26 and 11 instances respectively of *dokimazō* and cognates), as if such speakers are much more keen to draw attention to the seriousness of the occasion. By contrast, such language is used in *dokimasia* defence speeches far less often: only five times in Lys. 16 (one of these is in the speech-title, while §13 refers to illicit cavalry service by other people rather than to the present case), only once in Lys. 25, and not at all in Lys. 24.

⁹ Lysias uses primarily the verbs *dokimazō* (29 instances in all: the same term is used in Greek, as Lipsius [1905-15: 276] notes, to denote both the process of scrutiny and the act of approving the candidate) or *apodokimazō* (to denote the rejection of a candidate, 12 instances), the procedure-noun *dokimasia* (11 instances), and the adjective *adokimastos* (“unscrutinised”, 7 instances, particularly common when discussing illicit cavalry-service, for which see n.26 below). For the rarity in the orators of the agent-noun *dokimastēs* (“scrutineer”, once in Lysias, twice in Demosthenes, once in Aiskhines), see text at n.41 below.

¹⁰ See §2 of this paper.

[1] Most prominent is the type of *dokimasia* undergone by all public officials at Athens before entering office.¹¹ Jurisdiction in such cases was shared in rather complex ways between the *boulē* and the dikastic lawcourts: the Nine Arkhōns evidently underwent a double *dokimasia* before both bodies;¹² *bouleutai* were scrutinised by the outgoing *boulē* (apparently with the right of appeal to the lawcourt);¹³ but the *boulē* was not involved in the *dokimasiai* of any other official, and such cases instead went straight to the lawcourt. The *Ath.Pol.* discusses this procedure in two separate places, once briefly summarised when considering the responsibilities of the *boulē* (*Ath.Pol.* 45.3) and again in more detail when discussing the appointment and scrutiny of the Nine Arkhōns (*Ath.Pol.* 55.2-4). Four of the extant speeches of Lysias are generally thought to derive from cases of this type, plus two of the speeches from which only fragments survive.¹⁴ As often with lawcourt speeches, we have no direct evidence for the result of any of these cases, but there are passing allusions in the corpus to a couple of other occasions where

¹¹ Aiskhin. 3.15 indeed regards the requirement to undergo *dokimasia* as one of the characteristics that serve to define whether a particular public responsibility should or should not be regarded as an *arkhē*.

¹² I.e. *boulē* then lawcourt in all cases: *Ath.Pol.* 55.2.

¹³ “The Athenians could never quite make up their minds whether the *boulē* was to be regarded as a magistracy and therefore needing the curb of the courts, or as a representative random selection of ordinary citizens and therefore exactly on all fours with a dikastery of five hundred”: thus Harrison (1968-71.ii: 200 n.2), using the latter to explain why the *boulē*’s decision in *dokimasiai* of invalids and cavalry (types [2] and [4] below) seems to have been final, without appeal to the lawcourt. However, *bouleutai* themselves needed to undergo *dokimasia*: Bonner & Smith (1930-38.i: 233) rightly draw the contrast with dikastic jurors, to which Adeleye (1983: 295) adds assembly members, since for neither of these bodies was *dokimasia* required (though there were procedures for dealing retroactively with those who had attempted to serve while disqualified: Pyrrhos is said to have been prosecuted by *endeixis* and executed for having sat as *dikastēs* while a state-debtor, cf. Dem. 21.182 with Hansen 1976: cat. 21).

¹⁴ In three speeches the *dokimasia* setting is explicit: Lys. 16 *For Mantiheos* (defence speech addressed to *boulē*, probably for a *bouleutēs*-designate, cf. primacy of βουλευόντας at §8); Lys. 26 *Against Euandros* (attack on Arkhōn-designate, addressed to *boulē*, i.e. at the first stage of proceedings); Lys. 31 *Against Philon* (attack on *bouleutēs*-designate, addressed to *boulē*). The fourth speech, Lys. 25, carries the dubious MS title “Defence on a charge of overthrowing the democracy”, but the absence of any indication of specific charge or penalty faced by the speaker has led most scholars to read it as a *dokimasia*-defence for an unspecified other public office (addressed to lawcourt). Of the fragments, the same interpretation is generally suggested for frag. sp. L (Carey) *For Eryximakhos who remained in the city* (addressed to lawcourt), on the grounds that remaining in the city (sc. in 404/3, as a supporter of the Thirty) was not an offence, though it was often alleged against *dokimasia* candidates; see also frag. sp. CXLV (Carey) *Against [lost name] at his dokimasia* (audience not known), evidently delivered against a candidate, in a speech where the one surviving fragment precludes identification with any of the others listed here.

candidates were rejected.¹⁵ There is incidentally no reason to believe that the MS tradition of Lysias has selectively preserved these four *dokimasia* speeches, in the way that it does on occasions selectively preserve groups of speeches relating to other procedures;¹⁶ the fact that this type of *dokimasia* appears far more often in Lysias than in other orators¹⁷ is therefore a genuine research question, i.e. a phenomenon that needs explaining.¹⁸

[2] The Lysianic corpus also provides the sole surviving example of what is evidently a speech from the *dokimasia* of a man who claims to be disabled (*adunatos*) and as such is defending the continuance of his invalidity pension.¹⁹ It is evident that this form of *dokimasia* was a recurrent requirement: i.e., the recipient had to appear periodically before the *boulē* to prove his continuing entitlement.²⁰

¹⁵ Lys. 13.10 claims that Theramenes was rejected at his *dokimasia* for the Generalship in either 405 or possibly 406 (unique among known *dokimasia* cases in being an elective office, whereas all the other contested cases relate to offices appointed by lot: on this case, see further n.86 below); Lys. 26 is evidently the second *dokimasia* for the Arkhōnship of 382/1 BC, following the *dokimasia*-rejection of the original candidate Leodamas.

¹⁶ There is evidence for at least some of the speeches in our manuscript being grouped on the basis that they share the same legal procedure (Todd 2007: 19-25), and in such cases it is obviously dangerous to argue from frequency. The speeches under consideration, however, are scattered throughout the manuscript: including Lys. 25 and Lys. 26, which appear together in modern editions but were originally separated by the now-lost speech *Against Nikides* (evidently not a *dokimasia*, cf. Todd 2007: 24 n.1).

¹⁷ The only *dokimasia* speech attributed to an orator other than Lysias is Deinarkhos' lost speech *Against Polyeuktos*, appointed by lot as *Basileus*. There are two allusions in orators other than Lysias to contested or potentially contested *dokimasiai*, only one of which came to a hearing: Dein. 2.10 (Aristogeiton rejected at *dokimasia* as *epimelētēs* of the *emporion*), and Dem. 21.111 (Meidias' unfulfilled threat to oppose Demosthenes at his *dokimasia* as *bouleutēs*). For the constitutional significance of such cases, see n.84 below.

¹⁸ For further discussion of this research question, see the final section of this paper. My other research question concerns the difference between oratorical and epigraphic evidence for *dokimasia*, and is discussed in the second section of the paper.

¹⁹ Lys. 24 (described in the manuscript title as an *eisangelia*, but evidently reflecting the procedure for the *dokimasia* of *adunatoi* set out at *Ath.Pol.* 49.4): for the absence of *dokimazō* and cognates from the speech, see n.8 above. Scholars have occasionally doubted whether this is a genuine speech, though it is hard to pick on non-Lysianic features apart from an unusual reliance on humour: it is tempting to suggest that the orator may to some extent be parodying the conventions of public office *dokimasia* cases, with the aim of disguising the weaknesses of the speaker's case by making his opponent look ridiculous.

²⁰ Probably once a year, in view of the reference at Lys. 24.26 to the decisions of previous *boulai* (thus Borowski 1976: 223-24, though the passage is not incompatible with greater frequency). It may have been thought necessary to check that the disability was a long-term condition, and it is worth noting that one of the requirements specified by *Ath.Pol.* (and ignored by Lysias) was inability to work, which presumably could in some cases change over time.

These two are the only types of *dokimasia* from which Lysianic speeches survive,²¹ but there are allusions in the corpus to at least two and possibly three other *dokimasia* procedures:

[3] We hear of a process of scrutiny undergone by young Athenian males as a precondition for becoming adult citizens: the *Ath.Pol.* says that they had first to be registered and voted on by their deme,²² but that it was the *boulē* which then scrutinised the candidates (*dokimazō*), and Lysias like other orators uses this verb without comment as a synonym for “become an adult citizen”.²³

[4] We are told again by the *Ath.Pol.* that the cavalry – this meant the men and the horses, and included also various other mounted units as well as the regular *hippeis*²⁴ – were required to undergo *dokimasia* at the hands of the *boulē*,²⁵ in a way that seems not to have been required for any other form of military service, whether as hoplites, as trierarchs, or as rowers (where issues of expertise might seem important) or light-armed troops. This procedure is alluded to in the pair of speeches against Alkibiades the younger (Lys. 14 and Lys. 15), where the charge of failure to undertake military service is based on the fact that he had served in the cavalry (albeit evidently at the request of the Generals) without having fulfilled this requirement.²⁶

[5] One further though less certain Lysianic allusion relates to the *dokimasia rhētorōn* (“of orators”). The leading case here is Aiskhin. 1, which shows that it was

²¹ Indeed, the only non-Lysianic speech to use any of the *dokimasia* procedures is Aiskhin. 1, brought against Timarkhos using the procedure of *dokimasia* of orators, for which see text at n.27 below.

²² *Ath.Pol.* 42.1-2 (the verbs used are *engraphomai*, *diapsēphizomai*), with at least some right of appeal to a dikastic court if rejected at this stage. Scholars sometimes use *dokimasia* to denote the whole process, before deme as well as before *boulē* (thus e.g. Rhodes 1981: 502 and Feyel 2009: 143), but the *Ath.Pol.* seems careful to maintain a linguistic distinction.

²³ *Dokimazomai* (“I am scrutinised”), as at Lys. 10.31; 21.1; 32.9, 24. For convenience, scholars often refer to the process as the “*dokimasia eis andras*” (i.e. to join the ranks of adult men) or “*dokimasia* of ephebes” (i.e. as a preliminary to the two-year period of military service which was required at least by the late fourth century during the first two years of adulthood).

²⁴ *Ath.Pol.* 49.1-3, including also *prodromoi* (“a special force of light-armed cavalry”, Rhodes 1981: 566) and *hamippoi* (“light infantry who fought with cavalry”, Rhodes 1981: 566).

²⁵ It is generally assumed that there will have been a preliminary process in front of a much smaller group, primarily on iconographic grounds (the name-vase of the so-called *dokimasia* painter, c.480-470 BC, with other later vases suggested by Cahn 1973). Rhodes (1972: 175) regards preliminary scrutiny by smaller group as *prima facie* plausible, though there is nothing in the *Ath.Pol.*’s text to suggest it, noting that “the *dokimasia*-painter could hardly be expected to depict the whole *boulē*”.

²⁶ Hence the particular frequency of *adokimastos* (“unscrutinised”) in these two speeches, which together account for four of the seven uses of the term in the Lysianic corpus (and cf. similarly 16.13).

available for use against those who spoke or attempted to speak in the assembly in defiance of some form of disqualification which they had incurred as a result of previous behaviour.²⁷ This is in several ways very different from the types of *dokimasia* so far discussed. In particular, whereas other types of *dokimasia* seem to have taken place automatically and as a precondition for exercising a right or privilege, the *dokimasia* of orators did not occur automatically, but only if the speaker was challenged to undergo it: the procedure was therefore in a sense retroactive as well as responsive. The verb used to denote the challenge was *epangellō*, implying a formal undertaking,²⁸ and some scholars have suggested that this should be read as a textual emendation (for *eisangellō*) at Lys. 10.1, which would fit the context (where an opponent is alleged to have spoken in public when disqualified), though there are linguistic problems.²⁹

[6] There is incidentally no reference in Lysias, as there is in Dem. 59.105-106, to the use of *dokimasia* in the case of non-Athenians being granted citizenship: this is a process for which the evidence belongs mainly in the period after 320 BC, and comes mainly from the epigraphic record, in the shape of naturalisation decrees.³⁰

[b] *Dokimasia* and the historiography of law

Part of the reason for setting out these various types of *dokimasia* in the order of prominence as they manifest themselves in Lysias, with supporting evidence from other orators and from the *Ath.Pol.*, has been to enable the highlighting of some patterns in the distribution of literary vis-à-vis non-literary evidence, which may help us to understand the historiography of *dokimasia* in ways that have perhaps continued to affect modern interpretations of the topic more than we may be aware.³¹

²⁷ Aiskhin. 1.28, quoting (probably with authorial glosses) a law which lists maltreatment of parents, failure to fulfil military service, having been a (male) prostitute, and squandering of patrimony. Some of these behaviours could form the basis of prosecution, but it is by no means clear that prostitution could form the basis of a charge against a man who chose not to speak in public.

²⁸ MacDowell (2005: 82) plausibly suggests that the existence of such a challenge implies the likelihood of penalties for a challenger who failed to proceed with the case, or who challenged frivolously, on the model of the rule imposing penalties on a prosecutor who failed to proceed with a public case or failed to get 20% of the votes; this is one of the features that tends to make the *dokimasia* of orators much more like a regular prosecution than other types of *dokimasia* (see further n.77 below).

²⁹ See Todd (2007: 662-663).

³⁰ *Dokimasia* of individuals is mentioned in Apollodoros' discussion of the collective Plataian enfranchisement decree of 427 BC (Dem. 59.105), but not in the decree as quoted (59.104): there is debate over whether the detail is unusual at this early date but genuine (as M. J. Osborne 1981-83.ii: 14-15), or an anachronism on Apollodoros' part (thus Feyel 2007: 25-27).

³¹ It is the particular merit of Feyel's book (2009) that by concentrating on epigraphic as well as literary evidence, he gives a much broader picture, but the difference of

One of the biggest problems when analysing *dokimasia* is the question of how to count the number of such procedures. This applies at various levels. On the simplest level, there is the difficulty of providing a comprehensive list, which is particularly important for nineteenth-century scholars, whose numbers vary quite widely. There is also the question of classification within such a list, because it is by no means obvious what should be regarded as primary similarities or significant differences. And finally, there is perhaps the underlying question of whether we should be thinking (and whether Athenians would have thought) in terms of *dokimasia* as juridically a single tree with different branches, or as a much looser grouping, or indeed not.

Numbers of *dokimasiai* tend to vary considerably in the works of scholars writing before the discovery of the *Ath.Pol.* (published in 1891).³² A more systematic picture, by contrast, begins to emerge at the start of the twentieth century, as can be seen for instance in Koch's influential Pauly-Wissowa article of 1903, which divides *dokimasiai* into two types, beginning briefly with those which in his view the *boulē* was competent to resolve on its own authority without appeal (cavalry and invalids), and then dealing in numbered detail with four others, in the order ephebes, newly enfranchised citizens, public officials, orators. A similar classificatory scheme, albeit with some variation of internal order, is found in the two most detailed systematic handbooks of Athenian law produced during the twentieth century, viz. Lipsius (1905-15: 269-282) and Harrison (1968-71.ii: 200-204), with the latter indeed offering pride of place in his opening footnote to Koch's treatment: both scholars agree with Koch in giving only passing and initial attention to cavalry and invalids (Harrison indeed relegates them to a footnote), while focusing on the other four for detailed treatment, albeit both of them sharing an order which is slightly different from that of Koch.³³

perspective in the two types of source is to my mind a problem which deserves more attention.

³² Of those earlier scholars whose work includes systematic treatment of the *dokimasia*, Perrot (1867: 79-88 at p.79) mentions only types [1] public officials and [5] orators in my list. The first edition of Meier & Schömann (1824: 200-214, at p.200) focuses similarly on [1] and [5], but alludes also to the existence of *dokimasia paidōn* and *dokimasia eis andras* (probably both type [3], albeit worded as if separate procedures, unless the former alludes to orphans, for which cf. below), [4] cavalry, and [2] invalids. By contrast, their second edition (Meier, Schömann & Lipsius 1883-87.i: 235-257, at p.235) mentions [3] ephebes and [2] invalids only in passing, but devotes attention to [1] officials, [5] orators, then orphans (not listed above, but alluded to in other literary and lexicographical texts, cf. n.45 and n.46 below), then [6] newly-enfranchised citizens.

³³ Officials, orators, ephebes, enfranchised citizens (Lipsius and Harrison) in place of Koch's ephebes, enfranchised citizens, officials, orators: I have no clear explanation for the change of order, unless it is to prioritise those that are seen as politically important; Koch's order, by contrast, allows what is procedurally the most exceptional form to be placed last.

Such a principle of classification by jurisdiction is not unproblematic, in part because there is room for debate over who had the primary jurisdiction in several cases. In the *dokimasia* of ephebes, for instance, the *Ath.Pol.*'s account would seem to suggest that there is provision for appeal to the lawcourt from the refusal of the deme to accept the initial registration, but gives no indication that the *boulē*'s decision is subject to appeal.³⁴ And although the lawcourt may have had the power to override the decision of the *boulē* in cases of double jurisdiction and/or appeal, it is nevertheless worth emphasising that Lys. 26 (*dokimasia* of the Arkhōn) as well as Lys. 16 (probably that of a *bouleutēs*) and Lys. 31 (certainly that of a *bouleutēs*) are all delivered in front of the *boulē* – as if even in the case of the Nine Arkhōns (where double jurisdiction certainly applied) it was at this first stage that it was worth commissioning a logographer.³⁵

Until the recent publication of Feyel (2009),³⁶ there has been little by way of systematic challenge to the six-fold classification that we find in Koch, Lipsius and Harrison, though it is worth noting that Rhodes' article in *Neue Pauly* (2004 [1997]) offers seven types of *dokimasia*, the first six of them being the ones we have been dealing with (this time without any marginalisation of those under bouletic

³⁴ Rhodes (1981: 500) questions the completeness of some aspects of *Ath.Pol.*'s account here, but accepts that the *boulē*'s verdict is not subject to appeal. It is presumably on basis of such a reading that Borowski's dissertation, which opens (1976: iii) by crediting Koch's summary of types of *dokimasia*, nevertheless regards ephebes as well as invalids and cavalry (in that order) as coming under the jurisdiction of the *boulē*, with officials, cavalry and new citizens (again in that order) coming under that of the court.

³⁵ On the commissioning of a logographer, see text at n.79 below. Feyel (2009: 167) suggests an alternative explanation for why Lys. 16 and Lys. 31 were written for hearings before the *boulē*, viz. that the right of appeal for prospective *bouleutai* to a lawcourt (*Ath.Pol.* 45.3) had not yet been introduced, but that explanation would not work for Lys. 26, which deals with the *dokimasia* of a prospective Arkhōn, and where a (compulsory) second hearing in court is clearly envisaged at 26.6.

³⁶ Feyel covers an even wider range, including (Feyel 2009: 35-40) the *dokimasia* of laws in the decree of Teisamenos of 403/2 (Andok. 1.85 [passive verb, ἐδοκιμάσθησαν sc. οἱ νόμοι], with text of law at Andok. 1.84 [active verb, δοκιμασάτω sc. ἡ βουλή καὶ οἱ νομοθέται]), and (Feyel 2009: 42) the Eleusinian Mysteries law (δοκιμασ<θ>ῶσιν θύεν, noting Clinton's suggestion that this refers to the *spondophoroi* undergoing *dokimasia* and sacrificing before being sent out). His division of material is first "technical and financial" (ch.3: warships, cavalry, orphans, invalids, money and precious metals, architecture), then "political" (ch.4: primarily public officials and orators, but also e.g. ambassadors), then Hellenistic innovations (ch.5, honours for foreign benefactors). Even here, however, his desire for a classificatory system sometimes seems over-schematic: e.g. he claims (Feyel 2009: 49) that the types of *dokimasia* in ch.3 have in common not simply that they are primarily technical and normally based on precise criteria, but also that they are normally under the competence of the council but could be delegated to subordinate persons; it is not clear to me how coinage fits into this pattern.

jurisdiction),³⁷ plus the addition of silver coinage, the latter on the basis of the inscription recording Nikophon's law of 375/4 BC, as published by Stroud (1974). But in fact the epigraphic attestations of *dokimazō* and cognates at Athens are now much more wide-ranging than this, and in this section of the paper I want to suggest that the picture presented by the epigraphic record differs in some quite interesting ways from what would be suggested by an oratory-based reading of the literary sources. (Hence, of course, the approach taken in the first section of this paper.)

Even in Nikophon's law, for instance, we should note that what is to be tested on each occasion is not the rights of a person but the commercial standing of an item of coinage.³⁸ But perhaps more striking is the fact that this inscription (which is very substantially legible, to the extent that variant readings do not affect to the point being made here) contains no instances of the procedure-noun *dokimasia*, but is instead dominated by repeated reference to the duties of the agent-noun *dokimastēs* (the public slave who is to do the testing, and who is referred to seven times in a text of under 500 words),³⁹ plus three uses of the verb *dokimazō* to indicate his activity (used consistently in the active, even in one context where a passive might have been more convenient).⁴⁰ In the corpus of the orators, by contrast, the agent-noun *dokimastēs* is used on only four occasions and always metaphorically,⁴¹ as if suggesting that for the types of *dokimasia* they are interested in, what matters is the

³⁷ Indeed, Rhodes' order is ephebes, officials, cavalry, invalids, orators, newly-enfranchised citizens, with the addition of silver coinage.

³⁸ The closest parallels at Athens for the testing of an object rather than a person would be the use of *dokimasia*-vocabulary in connection with naval equipment (on which see following note), and the occasional appearance of inscriptions in which an *arkhitektōn* is to give some sort of certificate for a building (e.g. *IG* ii² 1678 line 2, δοκίμασει ὁ ἀρχιτέκτων, again with verb rather than procedure-noun), presumably prior to its use. For these architectural texts, see Feyel (2009: 111-113).

³⁹ The other context in which the term *dokimastēs* appears in Athenian texts (leaving aside the metaphorical usages at n.41 below) is the naval inventories, where we repeatedly have ship-hulls and their equipment being described as *dokimos/dokima* or *adokimos/adokima* (adjectives, evidently used to describe their state of repair). The verb *dokimazō* does not seem to appear in the naval inventories, but we twice find references to a *dokimastēs* (*IG* ii² 1612 line 220, *IG* ii² 1604 line 56) who assists the *epimelētai* in verifying their condition: presumably this is some form of specialist, but details of appointment are not given. See Gabrielsen (1994: 137), and Feyel (2009: 49-53).

⁴⁰ Lines 16-17 τὸ ἄ[ρ]χ[ι]τέκτωνιον ὅ τ[ι] ἂν ὁ δοκίμαστής δοκιμάσῃ “whatever coin the *dokimastēs* approves”, rather than e.g. τὸ ὑπὸ τοῦ δοκίμαστοῦ δοκιμασθέν.

⁴¹ In the sense that the reference is never to those who actually are hearing a *dokimasia*, but either to those whom the opponent would like to have as *dokimasia* judges (*Lys.* 26.16), or to those hearing other types of case (*Aiskhin.* 2.146; *Dem.* 21.127; 48.3). We do find one literary (though not oratorical) reference to a *dokimastēs* for coinage, in Menander, frag. 581 K, line 8, but the context is not terribly informative.

collective jurisdiction of the *boulē* or the lawcourt as representing the *dēmos* as a whole.⁴²

Another example is Theozotides' law of c.400 BC, again published by Stroud (1971), in which the sons of those Athenians killed fighting for the democracy during the civil war of 404/3 are granted financial support from the state, subject to a requirement to undergo *dokimasia*.⁴³ Feysel (2009: 81) suggests that the use of *dokimasia* in regard to orphans could have been a post-403 innovation, but the existence of a support-system for war-orphans is attested as a fifth-century phenomenon in the Perikleian funeral speech (Thuc. 2.46.1), so presumably the point of Theozotides' decree is to insist that deaths in civil war do qualify for similar treatment, provided they died on the correct side.⁴⁴ Thucydides makes no mention of any procedural requirements, but *prima facie* any such support-system would require at least a one-off initial *dokimasia* "to determine that an orphan's father had died in war and that he had been an Athenian citizen" (Stroud 1971: 291). Such a process had indeed already been suggested as the basis for a rather cryptic reference in the Old Oligarch to the pressure of business created by a range of annual tasks including the *dokimasia* of orphans,⁴⁵ although this passage does not refer specifically to war-orphans and had occasionally been read in support of a puzzling comment in one of the lexicographers that orphans underwent *dokimasia* at the end of their minority to check that they were capable of taking over their inheritance from their guardians.⁴⁶

⁴² It is striking that Athens seem to have no board of *dokimastai* to prepare material for the *dokimasiai* of public officials, in the way that they do have boards of *euthunoi* and *logistai* to prepare for their *euthunai*.

⁴³ Unfortunately, the incompleteness of the text means that we do not know who is to conduct this: the verb in line 15 is an imperative singular (δ[οκι]μασάτω ἀν[τ]ὸς "is to scrutinise them"), but the missing subject could easily be a collective noun such as "the *boulē*" or "the *dikastērion*".

⁴⁴ The opening words of Theozotides' decree are emphatic in this regard (lines 4-6): ὀπόσοι Ἀθηναίω[ν] ἀ[πέθαν]ον [β]ιάϊωι θανάτωι ἐν τῆι ὀλιγ[αρχίαι β]ο[ρηθ]όντες τῆι δημοκρατίαι ("those of the Athenians who died a violent death under the oligarchy, coming to the assistance of the democracy").

⁴⁵ [Xen.], *Ath. Pol.* 3.4: πρὸς δὲ τούτοις ἀρχὰς δοκιμάσαι καὶ διαδικάσαι καὶ ὄρφανοὺς δοκιμάσαι καὶ φύλακας δεσμοτῶν καταστήσαι. ταῦτα μὲν οὖν ὅσα ἔτη. ("Moreover, they [sc. the Athenians] must scrutinise magistrates and resolve their disputes, and scrutinise orphans, and appoint guardians for prisoners; all of these happen every year.") For discussion of whether this means that each orphan was examined annually, or that there was a one-off initial examination for a new cohort of orphans each year, see Forrester (1970: 113-114): in support of the latter, he argues "unlike the *adunatos* [cf. n.20 above], an orphan could not cease to be an orphan". But those missing believed killed might sometimes return (e.g. from Sicily), and the *boulē* might also have been charged with checking that the recipients themselves were still alive.

⁴⁶ Bekker, *Lexica Segueriana, Lexeis Rhētorikai*, 235.11-15: δοκιμασία· ἡ κατὰ τῶν στρατηγῶν καὶ τῶν ἀρχόντων καὶ τῶν ῥητόρων ἐξέτασις, εἰ ἐπιτήδειοί προίστασθαι τῶν πολιτικῶν πραγμάτων. δοκιμάζονται δὲ καὶ οἱ ἐφ' ἡλικίας ὄρφανοί, εἰ δύνανται τὰ πατρῶα παρὰ τῶν ἐπιτρόπων ἀπολαμβάνειν. ("*Dokimasia*: the examination used

What is significant for present purposes, however, is that although orphans do occasionally get mentioned in nineteenth-century handbooks (e.g. Meier, Schömann & Lipsius 1883-87, cited at n.32 above), they nevertheless fail – perhaps because of their absence from the orators – to make it into the systematic body of twentieth-century discussions of *dokimasia* such as Koch, Lipsius or Harrison (cf. text at n.33 above).⁴⁷

More briefly and without detailed analysis, I append a couple of further epigraphic points. The first of these is another recently published text, viz. the grain-tax law of 374/3 BC (Stroud 1998) which includes the clause that “the purchaser must nominate two creditworthy guarantors, whom the Council has scrutinized, for each share”.⁴⁸ The other is a range of previously-known post-classical texts, which use the term *dokimazō* to denote a process of membership-vetting undertaken not by the *boulē* or a lawcourt, but by religious groups regulating their own affairs.⁴⁹

Harrison (1968-71.ii: 201) describes the lexicographers’ discussions of *dokimasia* as “tend[ing] rather to confuse the picture”. This is certainly true. In addition to the Bekker passage quoted at n.46 above, there are a couple of relevant but muddled passages in Pollux, the first of them dealing with the *dokimasia* of officials and of orators but containing at least one significant error,⁵⁰ while the

against Generals and Arkhōns [or ‘officials’] and orators, to see if they were worthy to be placed in charge of political matters. Orphans reaching their majority were also scrutinised, to see if they were capable of taking over their inheritance from their guardians.”) There is no sense here, incidentally, that the *dokimasia* of orators was unique in operating retroactively and in requiring a formal challenge, for which see text at n.29 above.

⁴⁷ Both Koch (1903: 1269) and Lipsius (1905-15: 284 with n.62) mention the *dokimasia* of orphans in passing, but in both cases as part of their discussion of *dokimasia* of epebes, rather as a distinct type.

⁴⁸ ἐγγυητ<ἀ>ς καταστήσ[ε]ι ἢ ὁ πριάμενος δύο κατὰ τὴν μερίδα ἄξι[ο]|χρεως, οὓς ἂν ἡ βουλὴ δοκιμάσῃ (lines 29-31, trans. Rhodes & Osborne). I am not aware of any discussion of timing in regard to this text, but would imagine that what is envisaged comes after the contracts are auctioned and as a condition of having them confirmed.

⁴⁹ καὶ ἡ δοκιμασθῆ ὑπὸ τῶν ἰοβάκων ψή|φω, εἰ ἄξιος φαίνοιτο καὶ ἐπιτήδειος ἢ τῶ Βακχείῳ (IG ii².1638 = LSCG 51, lines 35-37). [μη]δενὶ ἐξέστω ἰσι[έν]αι ἰς τὴν σεμνοτά[τη]ν ἢ σύνοδον τῶν ἐρανιστῶν πρὶν ἂν δοκιμασθῆ εἴ ἐστι ἀ[γν]ός καὶ εὐσεβῆς καὶ ἀγλα[θ]ός. δοκιμα[ζέ]τω δὲ ὁ προστάτης [καὶ ὁ] ἀρχιεραριστῆς καὶ ὁ γ[ρ]αμματεὺς καὶ ἢ [οἱ] ταμίαι καὶ σύνδικοι. (IG ii².1639 = LSCG 53, lines 31-36, decree of *eranistai*), both second century AD. (For these two decrees, see Feyel 2009: 373-374.) It is perhaps worth noting that such language is not used in the Demotionidai decree (390s BC), which uses words cognate with *diadikazō* (not *dokimazō*) to describe the process of membership-vetting for some sort of phratric group, and *apopsēphizomai* (not *apodokimazō*) to denote the rejection of an unsuccessful candidate.

⁵⁰ Pollux 8.44-45: δοκιμασία δὲ τοῖς ἄρχουσιν ἐπηγγέλλετο, καὶ τοῖς κληρωτοῖς καὶ τοῖς αἰρετοῖς [8.45] εἴτ’ ἐπιτήδαιοι εἰσιν ἄρχειν εἴτε καὶ μὴ, καὶ τοῖς δημαγωγοῖς, εἰ ἡταιρηκότες εἶεν ἢ τὰ πατρῶα κατεδηδοκότες ἢ τοὺς γονεάς κεκακωκότες ἢ ἄλλως κακῶς βεβιωκότες ἀτίμους γὰρ αὐτοὺς ἐχρῆν εἶναι καὶ μὴ λέγειν. (“A *dokimasia* is

second is evidently a summary of *Ath.Pol.*'s list of questions asked at the *dokimasia* of the Nine Arkhōns.⁵¹ Even Harpokration, who is normally the clearest and most accurate of the lexicographers when dealing with legal matters, despite using *dokimazō* or *dokimasia* in ten separate entries, nevertheless typically discusses only one type of *dokimasia* procedure at a time.⁵² The nearest he gets to a systematic discussion is in his entry s.v. *dokimastheis*, which is perhaps worth quoting in full:

Dokimastheis ('one who has been scrutinised'): in place of 'has been inscribed among the men', Demosthenes in the *Prosecution against Onetor* (Dem. 30). The word *dokimasthēnai* is also used in the case of the Arkhōns, as the same orator says in the *Ephesis in response to Euboulides* (Dem. 57). It is also said about politicians, even if they were not holding any office: for the lifestyle of such men used on occasions to be examined, as Aiskhines says in the *Prosecution against Timarkhos* (Aiskhin. 1). And Lykourgos says in the speech *On his Administration*, 'there exist three types of *dokimasia* according to the law: one in respect of which the Nine Arkhōns are scrutinised, another in respect of which orators [ditto], and a third in respect of which the Generals [ditto].' However, he mentions in the same speech the *dokimasia* of cavalry.⁵³

challenged [i.e. brought on the basis of challenge] in the case of officials ['the Arkhōns' seems less likely, in view of the reference to election], both those who are appointed by lot and those who are elected, to see if they are worthy to hold office or not; also in the case of demagogues, in case they have been prostitutes or have squandered their patrimony or have maltreated their parents or have in any other way lived a bad life: for such people must be *atimoi*, and not be allowed to speak.") *Epangellō* should be used only for the *dokimasia* for orators, which was the only *dokimasia* procedure requiring formal notice of a challenge, cf. text at n.29 above. (The use of "demagogues" for "orators" is also perhaps tendentious.)

⁵¹ Pollux 8.85-86, discussed at n.69 below.

⁵² Harpok. s.vv. ἀδοκίμαστος (ephebes, though NB the extant speeches of Lysias typically use this word in contexts of cavalry, cf. n.9 above), ἀδύνατοι (invalids), βάσανος (metaphorical use), βασανίσας (ditto), διεκωδόνισε (ditto), δοκιμασθεῖς (discussed in text), ἐπακτροκέλης (title of lost Deinarkhos speech, cf. n.17 above), ἐπιλαχόν (officials), πάρεδρος (ditto), παλιναίρετος (quotation from Arkhippos with interesting use of *apodokimazō*, but Lipsius 1905-15: 276 n.33 argues on the basis of Harpokration's surrounding remarks this must be loose usage for e.g. *apokheirōtoneō*).

⁵³ Harpok. s.v. δοκιμασθεῖς: ἀντὶ τοῦ εἰς ἄνδρας ἐγγραφεῖς Δημοσθένους ἐν τῷ κατὰ Ὀνήτορος. λέγεται δὲ καὶ ἐπὶ τῶν ἀρχόντων τὸ δοκιμασθῆναι, ὡς ὁ αὐτὸς ῥήτωρ ἐν τῇ πρὸς Εὐβουλίδην ἐφέσει δηλοῖ. ἐλέγετο δὲ καὶ ἐπὶ τῶν πολιτευομένων, εἰ καὶ μηδ' ἦντιναοῦν ἦρχον ἀρχήν· ἐξητάζετο γὰρ αὐτῶν ὁ βίος ἐνίοτε, ὡς Αἰσχίνης ἐν τῷ κατὰ Τιμάρχου φησίν. Λυκούργος δ' ἐν τῷ περὶ τῆς διοικήσεως "γ' δοκιμασθῆναι κατὰ τὸν νόμον" φησὶ "γίνονται, μία μὲν ἦν οἱ θ' ἄρχοντες δοκιμάζονται, ἕτερα δὲ ἦν οἱ ῥήτορες, τρίτη δὲ ἦν οἱ στρατηγοί." λέγει μὲντοι ἐν τῷ αὐτῷ λόγῳ καὶ ἱπέων δοκιμασίαν. (I have used "examine" here to translate *exetazō*, keeping "scrutinise" for *dokimazō*; it is perhaps worth noting that Harpokration uses *politeuomenoi* rather than *rhetores*.)

It is notable here that despite the range of procedures covered, Harpokration mentions only four of the six types of oratorically-attested *dokimasiai* set out in the first section of this paper (the omission of newly-enfranchised citizens is perhaps less surprising than that of invalids, of which he is undoubtedly aware, cf. his entry s.v. *adunatoi*). But more striking is the passage that he quotes from a lost speech by Lykourgos, together with his somewhat puzzled response. *Prima facie*, Lykourgos is describing *dokimasia* as a tripartite procedure, but one which includes only two of our six oratorically-attested types, since his first and third items are both categories of public official (to the exclusion, incidentally, of *bouleutai* and other office-holders). We do not of course have the Lykourgan context, and Harpokration's final sentence shows an awareness on his part that what Lykourgos is attempting cannot be a systematic classification. But the fact that he quotes the passage suggests that this was the nearest he could find to a systematic classification in the lawcourt speeches: it is perhaps worth noting here that even though the *Ath. Pol.*, as we saw in the first section of this paper, gives a lot of scattered information about different types of *dokimasia*, this is not gathered together into one systematic analysis.

Against this background, it is tempting to suggest that attempts by modern scholars systematically to count and classify types of *dokimasia* may be analytically a flawed project, despite the value of such an exercise as a way of collecting information. In other words, rather than thinking about *dokimasia* procedures as a single body of law,⁵⁴ perhaps we should instead be thinking of it as a semantic field available for would-be legislators, which might for instance make better sense of the way that Nikophon uses such terminology in ways that focus on the duties of the *dokimastēs* (see text at n.39 above), or the way that religious groups use it in contexts of vetting their own membership lists, rather than having this done by a body representing the community as a whole (see text at n.49 above). This might indeed help to explain some of the otherwise puzzling doctrinal differences between the *dokimasia* of orators and what we know of all other types of *dokimasia*.⁵⁵ A parallel would be the procedure of *phasis*, at least as reconstructed by Wallace (2003), which raises many similar issues about the nature of Athenian legislation and juridical thinking.

[c] *Dokimasia* of officials: the frequency and basis of contestation

The issue of how the different types of *dokimasia* relate to each other is of course partly a question of juristic thinking, and the extent to which Athenian law rests on a

⁵⁴ It is perhaps worth noting here that the language of Aiskhin. 1.27-30 seems to imply that there is a single statute governing the *dokimasia* of orators (thus MacDowell 2005: 80), but there is no clear evidence for an integrated statute incorporating all types of *dokimasia*. [Unlike Gagliardi, this vol. §3.2, I would read the plural *dokimasiai* at Lys. 26.9 as referring to “cases of *dokimasia*” rather than “types of *dokimasia*”.]

⁵⁵ E.g. that the *dokimasia* of orators is retroactive and requires a process of challenge, making it much closer to a conventional prosecution (cf. n.28 above).

basis of underlying doctrinal principles. But it also has interpretative implications for the procedure(s) of *dokimasia*. To the extent that we conceptualise the *dokimasia* as a single process with variants, it is natural and indeed legitimate to interpret one type of *dokimasia* in the light of others; but to the extent that we see them as a collection of procedures which happen to share a piece of terminology, then such assumptions become more dangerous. To illustrate the implications of this, the final section of this paper will shift its focus, looking specifically at the *dokimasia* of public officials and the way that our evidence for contested cases is dominated by the corpus of Lysias, thereby allowing us to return to the research question set out in the text at n.18 above.

A striking example of the single-procedure approach to the *dokimasia* is Borowski's dissertation, which argues for the existence of one criterion spread across all six of the oratorically-attested types of *dokimasia*, viz. "testing for fitness (*epitēdeia*)" (Borowski 1976: iv); and indeed seeks to establish a chronological relationship between what he sees as the earliest *dokimasia* procedures heard by the *boulē* (including epebes, in his view, as well as invalids and cavalry), where he suggests that this was simply a test of physical suitability, with those procedures heard by the lawcourt being putatively later innovations, designed to focus on "fitness of character" (Borowski 1976: e.g. 165). Borowski claims that previous scholars have not paid sufficient attention to this criterion (Borowski 1976: iv), but although I am not aware of anybody before or since who has sought to apply it so systematically, there has undoubtedly been a long tradition of interpreting the *dokimasia* of public officials in terms of moral worthiness or at least political suitability. This indeed was the basis of the much earlier dispute between Headlam⁵⁶ and Busolt,⁵⁷ and it is notable that Adeleye, even without mentioning Borowski's dissertation, nevertheless summarises this dispute in terms of Busolt and his supporters "maintaining that the institution aimed at eliminating unsuitable candidates".⁵⁸

⁵⁶ Headlam (1891: 95-102), arguing that *dokimasia* was meant to deal simply with cases of legal incapacity (he cites the modern parallel of having to produce a birth certificate, p.98), and that the use of the *dokimasia* to raise esp. political objections to the candidate was "an abuse which had grown up at the end of the Peloponnesian war, and was a direct result of the shock given to the whole state by the two oligarchic revolutions" (p.97).

⁵⁷ Headlam was reacting to the view set out in the first edition of Busolt's *Griechische Geschichte* (1888: 469), which presents *dokimasia* as a mechanism designed to remedy the putative disadvantages of election by lot. For subsequent re-statements, taking account of *Ath.Pol.*'s list of *dokimasia* questions but reiterating the claim that a candidate would nevertheless have to give account of his whole life (cf. Lys. 16.9), see Busolt (1897: 274-275), Busolt-Swoboda (1920-26.ii: 1071-1073).

⁵⁸ Adeleye (1983: 295); the language of suitability, though not the Greek term *epitēdeia*, is certainly used in Busolt-Swoboda (1920-26.ii: 1072): "ungeeignet oder unwürdig oder nicht gesinnungstüchtige Demokraten" ("those unsuitable or unworthy or those who were not convinced democrats").

Now, it is certainly true that the language of *epitēdeia* is used by the lexicographers as a straightforward statement of criteria in contexts that include the *dokimasia* of public officials,⁵⁹ but this does not seem to be the pattern in fourth-century texts. For instance, *Ath.Pol.* uses such language only and repeatedly when discussing the *dokimasia* of cavalry (*prodromoi* at 49.1, *hippeis* at 49.2);⁶⁰ and although Theophrastos argues that *epitēdeia* ought to be an important criterion in the *dokimasia* of officials, nevertheless in context this is not a statement of Athenian practice, but instead asserts his authorial view of what well-governed *poleis* should do.⁶¹ On this basis, it is perhaps not surprising that the language of *epitēdeia* is virtually absent from speeches written for *dokimasia* of public officials.⁶² The one exception comes at the start of Lys. 31 *Against Philon*, and forms part of what seems to be a highly-charged piece of persuasive definition. The speaker in this case has not simply presented himself at the hearing in order to accuse a particular candidate, but is himself a member of the outgoing *boulē*, addressing his colleagues who are to judge the case. As such, he seeks to justify his intervention by claiming that the bouleutic oath, sworn by council-members before entering their year of office, requires him to offer the best advice and to denounce anybody he knows to be an unsatisfactory candidate for next year's membership.⁶³ In conjunction with this, he seeks also to redefine the criteria for bouleutic membership, presumably so as to counter what appears to most readers as a significant weakness in his case.⁶⁴ This

⁵⁹ Bekker, *Lexica Segueriana, Lexeis Rhētorikai*, 235.11-15 (quoted at n.46 above) and Pollux 8.44-45, quoted at n.50 above): I have translated *epitēdeios* as “worthy” in both passages.

⁶⁰ An example of the tendency to over-interpret can be found in Bonner (1933: 41), who offers a translation of *Ath.Pol.* 55.2 (NB, not a gloss) which appears to render *apodokimazō* as “reject as unsuitable”.

⁶¹ Theophrastos (*de eligendis magistratibus*, lines 101-105): αὐτοὺς δὲ δοκιμάζοντας αἰρεῖσθαι χρὴ τῶν ἐπιτηδ<ε>ϊοτάτους (“it is necessary that those who scrutinise candidates choose the most suitable”, trans. Keaney & Szegedy-Maszak). The immediate context from line 36 onwards concerns the rôle of wealth vis-à-vis virtue in the selection of different types of official, and Theophrastos' method throughout this palimpsest is to discuss a range of approaches adopted in different cities, as background to his own view of what ought to be done.

⁶² It does appear at Lys. 16.14, but to mean “supplies” or “necessities of life”.

⁶³ Lys. 31.1-2: ἐγὼ δὲ ὁμόσας εἰσηλθὼν εἰς τὸ βουλευτήριον τὰ βέλτιστα βουλευέσθην τῇ πόλει, [31.2] ἔνεστί τε ἐν τῷ ὄρκῳ ἀποφαίνειν εἴ τις τινα οἶδε τῶν λαχόντων ἀνεπιτήδειον ὄντα βουλεύειν (“I took an oath when I became a member of the *boulē* that I would offer the best advice for the *polis*, [31.2] and it is a part of that oath to make known if one is aware that any of those who have been selected by lot is not suitable to serve on the *boulē*.”) The oath to offer best advice is well-attested, but Carey (1989: 184) notes that there is no other evidence for the clause at the start of §2, and it may be best to read it as an authorial claim that *dokimasia*-denunciation is an implicit subset of best advice.

⁶⁴ Lys. 31.5-7 (Philon is being accused not of staying in the city and/or supporting the oligarchs, but of failure to support either side).

background may help explain why the passage contains two examples of the extremely rare negative form *anepitēdeios/ōs* (§2, §5), which is found only seven times in the corpus of the orators.

Much of the debate over the criteria for the *dokimasia* of public officials focuses on the *Ath.Pol.*'s account of the procedure as it applies to the Nine Arkhōns, which locates the process in the context of a set of statutory questions:

[55.3] When the Archons are scrutinised, they are asked first, "Who is your father, and from which deme? Who is your father's father? Who is your mother? Who is your mother's father, and from which deme?"⁶⁵ Then the Archons are asked whether they have a cult of Apollo of Ancestry and Zeus of the Courtyard, and where the sanctuaries of these are; whether they have family tombs, and where these are; whether they treat their parents well; whether they pay their taxes; whether they have performed their military service. After asking these questions, the presiding magistrate says, "Call witnesses to these things." [55.4] When witnesses have been produced, he asks, "Does anyone wish to accuse this man?" If there is an accuser, the magistrate allows accusation and reply, and then puts the question to the vote, by show of hands in the council, by ballot in the court. If there is no accuser, he puts it to the vote immediately; in these cases, previously, one man would cast a token vote, but now it is obligatory for all the jurors to vote on the candidates, so that, if a crooked man has disposed of his accusers, it will be possible for the jurors to reject him.⁶⁶ (trans. Rhodes)

This is the fullest account that we possess, though it has been suggested that it represents only a list of core questions asked of all officials, and that there may have been additional questions asked of candidates for particular offices.⁶⁷ There are

⁶⁵ The reason that the question about the deme was asked only of these two relatives is that deme membership was reserved to males (so it was only the mother's father that had a deme), and was hereditary in the male line (so the father's father would share the deme of his son).

⁶⁶ *Ath.Pol.* [55.3] ἐπερωτῶσιν δ', ὅταν δοκιμάζωσιν, πρῶτον μὲν 'τίς σοι πατήρ καὶ πόθεν τῶν δήμων, καὶ τίς πατὴρ πατῆρ, καὶ τίς μήτηρ, καὶ τίς μητὴρ πατῆρ καὶ πόθεν τῶν δήμων;' μετὰ δὲ ταῦτα εἰ ἔστιν αὐτῷ Ἀπόλλων Πατρῶος καὶ Ζεὺς Ἐρκεῖος, καὶ ποῦ ταῦτα τὰ ἱερά ἐστιν, εἴτα ἡρία εἰ ἔστιν καὶ ποῦ ταῦτα, ἔπειτα γονέας εἰ εὖ ποιεῖ, [καὶ] τὰ τέλη <εἰ> τελεῖ, καὶ τὰς στρατείας εἰ ἐστράτευται. ταῦτα δ' ἀνερωτήσας, 'κάλει' φησὶν 'τούτων τοὺς μάρτυρας'. [55.4] ἐπειδὴν δὲ παράσχηται τοὺς μάρτυρας, ἐπερωτᾷ 'τούτου βούλεται τις κατηγορεῖν;' κἄν μὲν ἦ τις κατηγορῶν, δοὺς κατηγορίαν καὶ ἀπολογίαν, οὕτω δίδωσιν ἐν μὲν τῇ βουλῇ τὴν ἐπιχειροτονίαν, ἐν δὲ τῷ δικαστηρίῳ τὴν ψήφον· ἐὰν δὲ μηδεὶς βούληται κατηγορεῖν, εὐθὺς δίδωσι τὴν ψήφον· καὶ πρότερον μὲν εἰς ἐνέβαλλε τὴν ψήφον, νῦν δ' ἀνάγκη πάντας εἶναι διαψηφίζεσθαι περὶ αὐτῶν, ἵνα ἂν τις πονηρὸς ὦν ἀπαλλάξῃ τοὺς κατηγοροῦς, ἐπὶ τοῖς δικασταῖς γένηται τοῦτον ἀποδοκιμάσαι.

⁶⁷ Lipsius (1905-15: 273-274), noting in particular the legal requirement for the *Basileus* to have a wife in her first marriage (implying that the *Ath.Pol.*'s list was incomplete even in

some other texts which allude to one or more of *Ath.Pol.*'s questions,⁶⁸ perhaps the most interesting of which are Pollux 8.85-86 and Dein. 2.17-18. The first of these is broadly similar to *Ath.Pol.*, but omits the family tombs, and replaces the question about taxes (τὰ τέλη <εἰ> τελεῖ) with one that is apparently about Solonian property classes, which is certainly something we might have expected to find if the list of questions goes back to an early date.⁶⁹ Deinarkhos, on the other hand, who is the only author to set the *dokimasia* questions in a context that is explicitly wider than that of the Nine Arkhōns, omits the questions relating to parentage and household cult, includes *Ath.Pol.*'s clause about taxes, but introduces his version with an otherwise unattested question about the candidate's character:

[2.17] Moreover, when examining those who are about to administer some aspect of public affairs, [they ask] what his personal character is, whether he treats his parents well, whether he has undertaken his campaigns on behalf of the *polis*, whether he has ancestral tombs, and if he pays his taxes; [2.18] Aristogeiton cannot show that any of these qualifications are attributable to him.⁷⁰

Scholars have sometimes sought to read these questions as evidence that moral or civic virtue, alongside legitimate citizen birth, had a formal status as criteria to be tested at the *dokimasia* of public officials.⁷¹ But Athenian law classified

the case of one of the Nine Arkhōns), and similarly for Generals to have land in Attica, for *bouleutai* to be aged at least thirty, etc.

⁶⁸ E.g. Xen., *Mem.*, 2.2.13 (upkeep of parents and care for their grave, in a context of *dokimasia* probably of Nine Arkhōns, cf. the prospect of the candidate sacrificing on behalf of the *polis*); Dem. 57.66-70 (framed as hypothetical *dokimasia* of Thesmothetai, and phrased as a sequence of questions and answers, emphasising the range of witnesses to the speaker's parentage, especially those who are relatives or who share in specified cults or family tombs); and Dein. 2.17-18 and Pollux 8.85-86, both discussed in the text.

⁶⁹ Pollux 8.86 (*dokimasia* of Thesmothetai, or possibly of Nine Arkhōns more generally): εἰ τὸ τίμημα ἔστιν αὐτοῖς, "if they have the *timēma*"). The absence of Solonian property classes in *Ath.Pol.*'s list led Hignett (1952: 207) to argue that the procedure could not antedate Kleisthenes, but others have disagreed ("das hohe Alter ihrer Fassung", Lipsius 1905-15: 272; "an ancient institution", Rhodes 1981: 617).

⁷⁰ Dein. 2.17-18: πρὸς δὲ τούτοις ἀνακρίνοντες τοὺς τῶν κοινῶν τι μέλλοντας διοικεῖν, τίς ἐστὶ τὸν ἴδιον τρόπον (an internal accusative, presumably), εἰ γονέας εὖ ποιεῖ, εἰ τὰς στρατείας ὑπὲρ τῆς πόλεως ἐστράτευται, εἰ ἥρια πατρῶ' ἔστιν, εἰ τὰ τέλη τελεῖ. [2.18] ὦν οὐδὲν ἂν ἔχοι δεῖξαι συμβεβηκὸς Ἀριστογείτων αὐτῶ.

⁷¹ Thus for instance Busolt-Swoboda (1920-26.ii: 1072) "personenrechtlichen Befähigung und bürgerlichen Würdigkeit"; cf. Borowski (1976: 81) "was the man just elected a solid citizen who paid his taxes, performed his military service, and respected his parents?" Feysel (2009: 158-159) suggests that *dokimasia* of public officials ceases to have political significance from 380 as the generation of those involved in the civil war dies out, at which point it ceases to be a test of politics and becomes a test of morals, but his examples (e.g. p.162, p.168) for moral criteria are Lys. 16 and Lys. 31, which in my view mis-reads the case (cf. n.73 and n.75 below), and which certainly belong well before 380.

maltreatment of parents, alongside what we would regard as public matters such as failure to undertake military service or unpaid debt to the state, among offences punishable by *atimia* or deprivation of citizen rights (Hansen 1976: 72-73). On this basis, it seems reasonable to read the totality of *Ath.Pol.*'s formal questions as representing an ideological construction of what it was to be a citizen, not least in a world where citizenship was something to be inherited from your parents and ideally transmitted to your descendants (hence the constitutional significance of filial respect), and where the primary contribution of the citizen to his city was as soldier.⁷²

The only one of these texts that might suggest a contrary reading is the Deinarkhos passage quoted above, where the reference to individual character (*tropos*) is used for this purpose by Adeleye (1983: 298). However, Hashiba (1997-98: 3) has rightly objected that it is methodologically unsound to give precedence to a text where it is so obviously in Deinarkhos' interests to attack Aristogeiton on character grounds – to which we may add that one of the reasons why Deinarkhos has phrased his passage as a series of indirect rather than direct questions may be precisely to blur the distinction between official questions and authorial comment.

It is of course true that Mantitheos in Lys. 16 claims that it is appropriate for a *dokimasia*-defence to pay attention to the whole of the candidate's life, but this again needs to be read in terms of the speaker's forensic strategy rather than as a statement of law,⁷³ since it allows him to pass fairly quickly over the events of 404/3, where he seems to have a pretty shaky record, in favour of an extended presentation of his own *curriculum vitae*.

Having said this, however, it is important not to concentrate solely on the formal questions. This is to my mind the weakness of Headlam's analysis,⁷⁴ which narrowly preceded the publication of the *Ath.Pol.*, and which understandably therefore takes no account of the latter's statement that the formal questions were succeeded by the invitation, "Does anyone wish to accuse this man?" (*Ath.Pol.* 55.4, quoted at n.66 above). To phrase the invitation in this way is to offer something of an open goal, and it is notable that the Lysianic *dokimasia* speeches, which are of course the only ones where we can analyse the arguments of at least one side of the dispute, say very

⁷² I am therefore not persuaded by Adeleye's attempts to distinguish between citizenship and civic responsibility (Adeleye 1983: 296), or to classify behaviour towards parents as a private matter ("It goes without saying that [treatment of parents] applies more to a candidate's private life than his legal qualifications as a citizen", Adeleye 1983: 299).

⁷³ Thus rightly Hashiba (1997-98: 2-3), against Adeleye (1983: 298). For the weaknesses of Mantitheos' claim not to have returned in time to serve in the cavalry under the Thirty, see briefly Todd (2000: 179).

⁷⁴ "The proceedings were as a rule almost formal: they consisted in putting to the newly elected magistrate certain questions; if they were satisfactorily answered the matter was at an end: if it appeared that the man did not possess some of the qualifications he was excluded" (Headlam 1891: 98).

little about anything relating to the *Ath.Pol.*'s formal questions,⁷⁵ but instead focus almost entirely on the political record of the candidate during the civil war of 404/3, typically with the allegation that he supported the oligarchs, or at least that he failed to support the democrats.⁷⁶

The choice of the language used to describe this invitation deserves attention. It is certainly true that the automatic nature of the process, together with the absence of evidence for any further penalty being imposed on a rejected candidate (who seems simply to have been disqualified from the office under consideration), together serve to distinguish the *dokimasia* of public officials from an ordinary trial.⁷⁷ This makes it all the more notable that *Ath.Pol.* gives formal status within the proceedings to the verb *katēgoreō*, which is typically used of a prosecutor, and such usage is matched by the fairly consistent deployment of such language across the *dokimasia* speeches.⁷⁸

One of the most striking features of *Ath.Pol.*'s account is the impression that each case is heard in turn at a single hearing, with no indication of any possibility for adjournment.⁷⁹ Such a process would of course allow the accuser to come prepared, since it would presumably be obvious which officials were going to have their cases heard on which day, but would require the defendant to improvise – thereby implying that those who do commission a logographer must have either long pockets or good cause to fear the prospect of challenge, which would cast an interesting light particularly on Manti-theos' case. Michael Gagarin has indeed suggested to me *prima facie* that there must have been some process to sort out contested cases and reserve them for later discussion, but on reflection I am not sure that we should expect Athenian legal procedure to be constructed in the interests of those candidates who

⁷⁵ The only real exception is the allegation that Philon treated his mother badly, to the extent that she entrusted her burial to a non-relative (Lys. 31.20-21: it is of course possible that this happened while Philon was living in Oropos). The care taken by Manti-theos to emphasise his campaign record may well represent an attempt to play the formal questions as a strength (Lys. 16.12-18), and the emphasis on Philon's failure to support either side in the civil war either militarily or financially (Lys. 31.9 and 31.15, cf. following note) may perhaps be an attempt rhetorically to suggest that this is the equivalent of failure to undergo campaigns or pay taxes to the *polis*.

⁷⁶ Lys. 31.8-13 formally alleges a failure to support either side, but makes clear in passing that it is the Peiraieus democrats that Philon ought to have joined (e.g. οὐ γὰρ ἦλθεν εἰς τὸν Πειραιᾶ at §9, εὐτυχοῦντας ὀρῶν ἡμᾶς ἐτόλμα προδιδόναι at §10; cf. also βοηθῆσαι εἰς τὸν Πειραιᾶ and χρήματ' εἰσενεγκεῖν εἰς τὸ πλῆθος τὸ ὑμέτερον at §15).

⁷⁷ Thus MacDowell (1978: 168); cf. for contrast MacDowell's comments on the *dokimasia* of orators, at n.28 above.

⁷⁸ *Katēgoreō* with its cognates is used three times in Lys. 16, six in Lys. 25, five in Lys. 26, four in Lys. 31, twice in the extant portions of Lys. frag. *Eryximakhos*. (Cf. also eight times in Lys. 24.)

⁷⁹ Thus e.g. Busolt-Swoboda (1920-26.ii: 1073 with n.2), MacDowell (1978: 168), Rihll (1995: 95).

wish to commission logographers, and am again struck by the absence of a board of *dokimastai* (cf. n.42 above) to prepare the cases in advance.

We return finally to the issue of politicisation, where the interpretative problem is to determine how far such politicisation of the *dokimasia* procedure is a special feature of the generation after 403, and whether that is therefore, in Headlam's terms, an abuse of process and a mechanism for evading the terms of the Amnesty of 403/2, which prohibited the "remembering of wrongs" (*mnēsikakein*).⁸⁰ Several arguments have been put forward to suggest that political charges at the *dokimasia* were not a breach of the Amnesty.⁸¹ Many scholars, for instance, have read Lys. 26.9 as evidence that there was a statutory change in the *dokimasia* procedure at some stage after 403, since the passage claims that the intention of the legislator had been to weed out those who had held office under the oligarchy.⁸² But it looks more like an example of a standard topos in the orators, whereby statements about the legislator's intention are an attempt to lend greater authority to what is simply an inference about present and (in the speaker's view) desirable practice⁸³ – not least because legislative change of the type envisaged could be argued simply to transfer the problem from one of individual into one of collective *mnēsikakia*.

The other type of argument that has been put forward in this context is that what is going on in the Lysianic *dokimasia* speeches does not represent a peculiar and temporary process of politicisation, but rather that contestation of the *dokimasia* on political grounds was at all times more frequent than we might imagine.⁸⁴ For

⁸⁰ In a series of studies, Carawan (2001, 2002, 2006) has sought to read this clause as a repudiation of out-of-court reprisals rather than in the traditional sense of an amnesty as a cancellation of claims, but this view has not generally won favour.

⁸¹ E.g. the argument of Dorjahn (1946: 32) that *dokimasia* attacks must have been a "recognised exception" to the Amnesty because they happened, and that of Cloché (1915: 395) that cases like that of Mantiheos should not be counted as breaches of the Amnesty because we do not know that he was rejected (though this seems to be contradicted by 1915: 397, which claims that rejection would not have breached the Amnesty anyway).

⁸² Lys. 26.9: ὁ θεὸς τὸν περὶ τῶν δοκιμασιῶν νόμον οὐχ ἥκιστα τῶν ἐν ὀλιγαρχίᾳ ἀρξάντων ἔθηκεν ("the man who made the law about *dokimasiai* did so not least because of those who had held office under an oligarchy": for the plural *dokimasiai*, see n.54 above). The fullest statement of the case for post-403 legislation is Hansen (1978: 319) and (1979: 36-37), who is followed by Roberts (1982: 21 n.33) and with slight difference over date by Adeleye (1983: 303-304); a similar reading was put forward previously but very briefly by Bonner (1933: 13), and now again by Feyel (2009: 155).

⁸³ Thus e.g. Weissenberger (1987: 225), Wolpert (2002: 70). Lübbert (1881: 63) had previously suggested that Lysias is simply imputing his own view here to the legislator. There is also the problem of combining the passage with Lys. 16.8, where Mantiheos claims that if he had served in the cavalry he could still expect to pass his *dokimasia* (though the two texts are not entirely exclusive, since there could be a distinction between former cavalry and former office-holders).

⁸⁴ The other known fourth-century cases are listed at n.17 above: it is hard to see the nature of the charge without a surviving speech (and we certainly cannot tell anything about charge against Polyuektos, which is just a title), but we hear hints of allegations against

instance, Lipsius (1905-15: 274-275 with n.22) argued rather cautiously that a passage in Aristophanes' *Knights* showed that anti-democratic sentiments could be used against candidates as far back as the 420s,⁸⁵ and Bonner (1933: 13 with n.35) sees this as proving that politicisation of the *dokimasia* was nothing new, but although the *Knights* passage is undoubtedly evidence for the threat, there is in fact nothing in the text to suggest *dokimasia* as a context.⁸⁶ Rihll (1995: 95) has similarly argued that Theogenes' need for Stephanos' support at his *dokimasia* as *Basileus* indicates that this was much more than a formality,⁸⁷ and that the introduction of plenary and secret voting, even in cases where there was no accuser, indicates an intention to make it a serious procedure (*Ath.Pol.* 55.4, quoted in text at n.66 above).⁸⁸ But we are not told precisely what help Stephanos offered, which might for instance have been no more than organising sufficient witnesses to demonstrate the citizen paternity of the evidently inexperienced Theogenes; while the shift to plenary and secret voting need indicate no more than moral panic or possibly one scandalous case.

When I discussed the Lysianic *dokimasia* speeches in my PhD thesis (Todd 1985: 117-128), and again more briefly in my first book (Todd 1993: 287-289), I came down heavily in favour of Headlam's opinion that the political use of the *dokimasia* in the generation after the civil war was not only a temporary

both the remaining candidates that if proven could form a good legal basis for rejection: Aristogeiton as an alleged state-debtor, and Demosthenes as an alleged homicide.

⁸⁵ Aristophanes, *Knights*, 447: τὸν πάππον εἶναί φημί σου τῶν δορυφόρων ("I will claim that your ancestor was a member of [the tyrants'] bodyguard").

⁸⁶ The only firmly-attested pre-403 case of contested *dokimasia* is Theramenes' rejection as General probably in 405 (Lys. 13.10), which is unique in being an elected office (cf. n.15 above). There is dispute over the reasons for his rejection: Lysias claims it was because he was thought not well-disposed to the democracy (οὐ νομίζοντες εὖνουν εἶναι τῷ πλήθει τῷ ὑμετέρῳ), but this could reflect perceptions at the date of the speech in c.399. Other possible motives for rejection suggested by modern scholars include the part which he had played at the Arginousai trial (e.g. Lehmann 1972: 205 with n.10, Ostwald 1986: 443), his relations with Alkibiades (Buck 1995: 20 n.36), or even the suggestion that he may have been subject to partial *atimia* (Adeleye 1983: 300-301, on the basis of Andok. 1.75). Of hypothetical cases prior to 403, Plato Comicus frags. 166-167 K (discussed by Traill 1981) envisages rejection of Hyperbolos at a *dokimasia* for some category of public office at a date before the end of his political career in c.416, but this may be on the technical grounds that he is putatively not a citizen (reading πονηρῶ καὶ ξένῳ as hendiadys).

⁸⁷ Dem. 59.72, presenting it as part of a plot laid by Stephanos to gain influence over the unsuspecting Theogenes, who is described as ἀνθρώπων εὐγενῆ μὲν, πένητα δὲ καὶ ἄπειρον πραγμάτων ("a man who was well-born, but poor and inexperienced in public affairs").

⁸⁸ Rihll's other arguments relate to Lysias' failure to make more of Theramenes' rejection (on which see last-but-one note) and to the way in which Lys. 31.33-34 presents the expectation that there will be candidates who fail (but this relates to a period when rates of contestation and presumably therefore of failure seem to have been unusually high).

phenomenon but also an abuse of process. Since then I have modified my view, at least at the margins, primarily as a result of further thinking about the similarities in function between the *dokimasia* of public officials at Athens and the constitutional rule requiring the US Senate to hold confirmation hearings for a range of presidential nominees, including most notably Supreme Court Justices.⁸⁹

Two points emerge from the US literature on confirmation hearings. The first is the way in which the frequency and seriousness of contested cases particularly for Supreme Court Justices has varied across time,⁹⁰ with a much greater frequency of such cases in the nineteenth century, relatively few in the first half of the twentieth, and a much heavier degree of contestation (as illustrated by the greater length of confirmation hearings even in cases where the candidate is eventually confirmed)⁹¹ in the period since 1969 and especially since 1987. It would be unwise to suggest any direct parallel here, but it does not seem unreasonable to suggest that contestation and/or politicisation of this sort of confirmation process is the sort of thing for which fashions can change over time, and that the success or near-success even of a single case can encourage copy-cat tactics on the part of allies or opponents.⁹²

The second point which emerges from the US material, and for our purposes perhaps the more interesting one, is the continuing debate over whether the ideological scrutiny of Supreme Court justices, which has become so much the

⁸⁹ I should perhaps note that there is no UK equivalent for this process, so I am speaking here as an outsider, on the basis of secondary works of US political science and constitutional law. I am grateful to the University of Texas at Austin for hospitality as Visiting Scholar in March-April 2009, and the opportunity to discuss these matters in detail.

⁹⁰ Gerhardt (2003: lxxix-lxxxii) tabulates cases of Supreme Court nominations that were rejected or withdrawn: of these, 21 cases fall within the period 1793-1894, including eight rejections, seven of which occurred when the Senate majority was from the President's own party (for voting figures, see the table in Tribe 1985: 142-151). By contrast, Gerhardt records only one subsequent rejection (in 1930) and two withdrawals (both in 1968), before the rejections of Haynsworth and Carswell in 1969-70 and of Bork in 1987 (both nominated by Republican presidents and rejected by Senate under a Democrat majority): it is the last of these in particular which has set the tone for the examinations of judicial ideology which have dominated the majority of subsequent confirmation hearings.

⁹¹ For speedy confirmation as the norm in the period 1897-1967, see Cominskey (2004: 14).

⁹² In recent US cases it seems mainly to have been Republican nominees who have run into most difficulty: Cominskey (2004: esp. 66) suggests that Clinton's nominations were more pragmatic, but notes that nominees from Presidents of both parties can now expect much greater scrutiny especially of their judicial ideology. In the Lysianic corpus, the objections are in each instance based on support for the oligarchs in the specific past context of the civil war (or in Philon's case a failure to support the democrats, cf. n.76 above), though the rôle played by Thrasyboulos of Kollytos in the cases of Leodamas (Arist., *Rhet.*, 2.23.25 = 1400a32-36) and of Euandros (Lys. 26.21-24) suggests that patterns of support may also have been affected by personal considerations.

pattern since 1987, is or is not a legitimate reading of the “advice and consent” clause of the US constitution.⁹³ Liberal scholarship, perhaps predictably, tends to argue that some at least of the founding fathers did envisage ideological scrutiny,⁹⁴ against legalist critiques which attack the post-1987 process as trivialising. Once again, it would be unwise to suggest any direct parallel with Athens,⁹⁵ but I am inclining towards the view that rather than seeing the temporary politicisation of the *dokimasia* as a clear abuse of process, we should instead consider the hypothesis that nobody actually knew whether such politicisation was or was not a threat to the Amnesty, perhaps because nobody had thought to work out this sort of detail in the summer of 403.⁹⁶ Quite where such flexibility would leave the political significance of the Amnesty is another matter.

BIBLIOGRAPHY

- Adeleye, G. (1983) “The Purpose of the *Dokimasia*”, *GRBS*, 24.4: 295-306.
- Bearzot, C. (1998), “Criteri alternativi di applicazione dell’*amnistia* in Lisia”, in M. Sordi, ed., *Responsabilità, perdono e vendetta nel mondo antico = Contributi dell’Istituto di storia antica*, vol. 24, pp.111-144. Milan.
- Bonner, R. J. (1933), *Aspects of Athenian Democracy*. Sather Classical Lectures, vol. 11. Berkeley & Los Angeles, CA.

⁹³ Article II section 2 paragraph 2: “[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.”

⁹⁴ E.g. Cominsky (2004: 39-84).

⁹⁵ In particular, I am not suggesting that Athenian oligarchs should be seen as strict constitutionalists: my sense is that all sides at Athens would subscribe to the Lys. 26.9 perspective (for which see n.82 above) in which the legislator’s intention is simply inferred from or equated with what the speaker sees as the current or the desirable working of the law, primarily because the speeches generally display a very limited sense of historical change (Lys. 10 is exceptional here for its historical/juridical sophistication, as in so many other ways).

⁹⁶ If so, then this would lend weight to Bearzot’s reading of arguments such as Lys. 26.16-20 as an attempt to construct “alternative criteria” for the interpretation of the Amnesty (Bearzot 1998: 119). I am not persuaded by the view of Hashiba (1997-98: 6-7) that the failure of *dokimasia* candidates to plead the Amnesty in their defence indicates an acknowledgement of its irrelevance: it is always dangerous for a defendant to insist too much on things that the audience might regard as technical grounds for a favourable verdict, because of the risk of sounding as if you are not sure of your case on the facts, and I see no difficulty in reading Mantitheos’ failure to mention the Amnesty as an aspect of his construction of a persona of confidence; there are, as Hashiba himself notes, some (albeit rather generalising) references to the Amnesty in Lys. 25.28, 34.

- Bonner, R. J., & Smith, G. (1930-38), *The Administration of Justice from Homer to Aristotle*. 2 vols. Chicago (repr. New York 1970).
- Borowski F. S. (1976), “*Dokimasia*: A Study in Athenian Constitutional Law”. Unpublished dissertation, Cincinnati, OH.
- Buck, R. J. (1995), “The Character of Theramenes”, *Ancient History Bulletin*, 9.1: 14-23.
- Busolt, G. (1888), *Griechische Geschichte bis zur Schlacht bei Chaironeia*, Bd. II. *Die Perserkriege und das attische Reich*. Gotha.
- Busolt, G. (1897), *Griechische Geschichte bis zur Schlacht bei Chaironeia*, Bd. III.i. *Die Pentekontaëtie*. Gotha.
- Busolt, G., & Swoboda, H. (1920-26), *Griechische Staatskunde*. 2 vols., Munich.
- Cahn, H. A. (1973), “Dokimasia”, *Revue Archéologique*, vol. not numbered, pp.3-22.
- Caillemer, E. (1892), “Dokimasia”, in C. Daremberg & E. Saglio, eds., *Dictionnaire des antiquités grecques et romaines d’après les textes et les monuments*, II.1, pp.324-328. Paris.
- Carawan, E. M. (2001), “What the Laws Have Prejudged: *Paragraphē* and early Issue-Theory”, in C. Wooten, ed., *The Orator in Action and Theory in Greece and Rome*, pp.17-51. (= *Mnemosyne*, suppl. 225.) Leiden.
- Carawan, E. M. (2002), “The Athenian amnesty and the scrutiny of the laws”, *JHS*, 122: 1-23.
- Carawan, E. M. (2006), “Amnesty and accountings for the Thirty”, *CQ*, 56.1: 57–76.
- Carey, C. (1989), *Lysias. Selected Speeches*. (Greek & Latin Classics). Cambridge.
- Cloché, P. (1915), *La restauration démocratique à Athènes en 403 avant J.-C.* Paris.
- Cominsky, M. (2004), *Seeking Justices: the judging of Supreme Court justices*. Lawrence, KS.
- Dorjahn, A. P. (1946), *Political Forgiveness in Old Athens: The Amnesty of 403 BC*. Evanston, IL.
- Feyel, C. (2003), “À propos de la loi de Nicophon. Remarques sur le sens de δόκιμος, δοκιμάζειν, δοκιμασία”, *Revue de Philologie*, 77.1: 37-65.
- Feyel, C. (2006), “La *dokimasia* des animaux sacrifiés”, *Revue de Philologie*, 80.1: 33-55.
- Feyel, C. (2007), “La *dokimasia* des nouveaux citoyens dans les cités grecques”, *REG*, 120: 19-49.
- Feyel, C. (2009), *Dokimasia: la place et le rôle de l’examen préliminaire dans les institutions des cités grecques*. Nancy.
- Forrest, W. G. (1970), “The date of the pseudo-Xenophontic *Athenaion Politeia*”, *Klio*, 52: 107-116.
- Gabrielsen, V. (1994), *Financing the Athenian Fleet: public taxation and social relations*. Baltimore, MD & London.

- Gagliardi, L. (2005), "The Athenian procedure of *dokimasia* of orators: a response to Douglas M. MacDowell", in R. Wallace, ed., *Symposion 2001: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, pp.89-97. Vienna.
- Gerhardt, M. J. (2003, 2nd edn), *The Federal Appointments Process: a constitutional and historical analysis*. Durham, NC & London.
- Hansen, M. H. (1976), *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes: a Study in the Athenian Administration of Justice in the Fourth Century BC*. Odense.
- Hansen, M. H. (1978), "Nomos and Psephisma in Fourth-Century Athens", *GRBS*, 19.4: 315-330, repr. in Hansen *The Athenian Ecclesia*, vol. 1 (1983) pp.161-176, with addenda on p.177.
- Hansen, M. H. (1979), "Did the Athenian *Ecclesia* Legislate after 403/2?", *GRBS*, 20.1: 27-53, repr. in Hansen *The Athenian Ecclesia*, vol. 1 (1983) pp.179-205, with addenda on p.206.
- Hansen, M. H. (1991), *The Athenian Democracy in the Age of Demosthenes: structure, principles, and ideology*. Oxford. (Repr. with addenda London 1999.)
- Harrison, A. R. W. (1968-71.ii), *The Law of Athens*. vol. 2, *Procedure*. Oxford. (Repr. London & Indianapolis, IN 1998).
- Hashiba, Y. (1997-98), "Dokimasia reconsidered: what was its purpose", *Kodai*, 8-9: 1-10.
- Headlam, J. W. (1891, edn.¹; 1933, edn.²), *Election by Lot at Athens*. Cambridge.
- Hignett, C. (1952), *A History of the Athenian Constitution to the End of the Fifth Century B.C.* Oxford.
- Koch, E. (1903), "Dokimasia", in A. F. von Pauly & G. A. Wissowa, eds., *Real-Encyclopädie der classischen Altertumswissenschaft*, vol. 5.1, cols. 1268-1273. Stuttgart.
- Lehmann, G. A. (1972), "Die revolutionäre Machtergreifung der 'Dreissig' und die staatliche Teilung Attikas (404-401/0 v.Chr.)", in R. Stiel & G. A. Lehmann, eds., *Antike und Universalgeschichte: Festschrift Hans Erich Stier zum 70. Geburtstag am 25. Mai 1972*, pp.201-233. Münster.
- Lipsius, J. H. (1905-15), *Das attische Recht und Rechtsverfahren*. 3 vols., Leipzig.
- Lübbert, J. (1881), *De amnestia anno CCCCCIII a Chr.n. ab Atheniensibus decreta*. Diss. Kiel.
- MacDowell, D. M. (1978), *The Law in Classical Athens*. London.
- MacDowell, D. M. (2005), "The Athenian procedure of *dokimasia* of orators", in R. Wallace, ed., *Symposion 2001: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, pp.79-87. Vienna.
- Meier, M. H. E., & Schömann, G. F. (1824), *Der attische Process*. Halle.
- Meier, M. H. E., Schömann, G. F., & Lipsius, J. H. (1883-87), *Der attische Process*. 2nd edn. Berlin.
- Osborne, M. J. (1981-83.i-iv), *Naturalization in Athens*. 4 vols. in 3. Brussels.

- Ostwald, M. (1986), *From Popular Sovereignty to the Sovereignty of Law: law, society and politics in fifth-century Athens*. Berkeley & Los Angeles, CA.
- Perrot, G. (1867), *Essais sur le droit public et privé de la république athénienne*. Paris.
- Rhodes, P. J. (1972), *The Athenian Boule*. Oxford (repr. with additions and corrections 1985).
- Rhodes, P. J. (1981), *A Commentary on the Aristotelian Athēnaiōn Politeia*. Oxford.
- Rhodes, P. J. (1997), “*Dokimasia*”, in H. Cancik & H. Schneider, *Der neue Pauly: Enzyklopädie der Antike*, vol. 3, cols. 730-731. Stuttgart & Weimar. Cited as Rhodes (2004 [1997]) = Eng. trans., in *Brill’s New Pauly*, vol. 4 (2004), cols. 614-615. Leiden & Boston, MA.
- Rihll, T. E. (1995), “Democracy denied: why Ephialtes attacked the Areiopagus”, *JHS*, 115: 87-98.
- Roberts, J. T. (1982), *Accountability in Athenian Government*. Madison, WI.
- Stroud, R. S. (1971), “Theozotides and the Athenian Orphans”, *Hesperia*, 41: 280-301.
- Stroud, R. S. (1974), “An Athenian law on silver coinage”, *Hesperia*, 43.2: 157-88.
- Stroud, R. S. (1998), *The Athenian Grain-Tax Law of 374/3 BC* (= *Hesperia*, suppl. 29). Princeton, NJ.
- Todd, S. C. (1985), “Athenian Internal Politics, 403-395 BC, with Particular Reference to the Speeches of Lysias.” Unpublished dissertation. Cambridge.
- Todd, S. C. (1993), *The Shape of Athenian Law*. Oxford.
- Todd, S. C. (2000), *Lysias*. Translation with introductions and notes. (The Oratory of Classical Greece series.) Austin, TX.
- Todd, S. C. (2007), *A Commentary on Lysias, speeches I-11*. Oxford.
- Traill, J. S. (1981), “Athenian Bouleutic Alternates”, in D. S. Shrimpton & D. G. McCargar, eds., *Classical Contributions: Studies in honour of M. F. McGregor*, pp.161-169. New York, NY.
- Tribe, L. (1985), *God save this honorable court: how the choice of Supreme Court justices shapes our history*. New York, NY.
- Wallace, R. W. (2003), “*Phainēin* in Athenian laws and legal procedures”, in G. Thür & F. J. Fernández Nieto, eds., *Symposion 1999: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, pp.167-181. Cologne & Vienna.
- Weissenberger, M. (1987), *Die Dokimasienreden des Lysias*. Frankfurt am Main.
- Wolpert, A. (2002), *Remembering Defeat: Civil War and Civic Memory in Ancient Athens*. Baltimore, MD & London.