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ATHENIAN *DOKIMASIAI*
A RESPONSE TO STEPHEN TODD

Stephen Todd has carried out a clear analysis of some of the main questions concerning the *dokimasia* in Athens in the classical age. In my response, I am going to concentrate on three main issues which I believe deserve major focus.

1. Todd has pointed out, among other things, that we should talk about various types of *dokimasiai* instead of one single *dokimasia* and has tried to identify the best way to classify them.

It is worth noting that, in classical Athens, all the magistrates appointed by lot (including the 500 *bouleutai*), all the elective magistrates (including the *strategoï*), as well as ambassadors, heralds, orators, ephebes, newly enfranchised citizens, priests, orphans, invalids, cavalry, horses, mounted skirmishers, foot-soldiers that fought in the ranks of the cavalry, public buildings, ships, coinage and peplums underwent or were likely to undergo *dokimasia*. It is particularly difficult to identify one main *dokimasia* procedure because of the heterogeneous nature of its subjects and because of the fact that some of them came under the exclusive jurisdiction of the *boule*¹, some of the *boule* first and then of the law court², some others only of the

¹ Cavalry, horses, mounted skirmishers, foot-soldiers that fought in the ranks of the cavalry, orphans, invalids and, according to [Arist.] *Ath. Pol.* 46.2, public buildings, which were probably scrutinised by technical experts, as pointed out by Feyel in his recent work (p. 111).

² Archons and, possibly, *bouleutai*. The latter are said to have undergone a double *dokimasia* ([Arist.] *Ath. Pol.* 45.3), although Rhodes, 543, had already pointed out that they did not have to undergo any *dokimasia* before the law court; these remarks are confirmed by the recent and convincing thesis of Feyel, 167 f., who noted that Lysias' orations no. 16 and 31, delivered before the *boule*, do not seem to be followed by another debate before the *dikasterion*. Hence, given also that these orations date back to the beginning of the fourth century B.C. (Lys. 16: 392-389; Lys. 31: 394), Feyel has come to the conclusion that the *dokimasia* of *bouleutai* before the law court is likely to have been introduced between 394 *circa* and 330, the approximate date of the Aristotelian *Ath. Pol.*. However, in my opinion, it has not yet been proved whether *bouleutai* had ever undergone any scrutiny before the *dikasterion*. Another related issue debated among modern scholars is whether the examination for archons and *bouleutai* (assuming that the *bouleutai* should be involved in this debate) before the *dikasterion* was mandatory or only took place if the candidates in question had not passed scrutiny before the *boule*. It is worth noting, incidentally, that although one could be inclined to favour the first

law court³. We know⁴ that the *dokimasia* of ephebes was first conducted before the deme, subject to appeal to the law court, and before the *boule* if they passed the first scrutiny. Some technical *dokimasiai*, for example for ships and coinage, were entrusted with an expert *dokimasthes*⁵. We have no information about the carrying out of other specific *dokimasiai*⁶. In some cases, the *dokimasiai* started *ex officio* (for example that of archons, on whose *dokimasia* we are particularly well documented thanks to [Arist.] *Ath. Pol.* 55) but this was not the case with others (such as orators⁷).

This is why I agree with Todd on the need to talk about various *dokimasia* procedures⁸ and I believe that the best way to classify them is the one recently suggested by Feyel⁹, who has distinguished between technical-financial *dokimasiai* and political *dokimasiai*¹⁰. The latter should be further subdivided into those which were carried out *ex officio* and those which started on the application of one party.

Lys. 26.9 supports this opinion by referring explicitly to a “law on *dokimasia*” (in its plural form), which, according to him, did not allow all those who had held an office during the years of the oligarchic government to become magistrates¹¹. Therefore, a law that provided for various *dokimasiai* at the same time existed after 404. As we will see below, more laws on one single *dokimasia* were probably enacted over time too.

possibility after reading [Arist.] *Ath. Pol.* 45.3, *Ath. Pol.* 55.2-4 and Dem. 20.90 are likely to convince us to favour the second, as appropriately maintained by Lepri Sorge, 427 ff.

³ The other magistrates, orators, newly enfranchised citizens (Dem. 59.105-106) and peplums, assuming that they underwent *dokimasia*, as apparently confirmed by [Arist.] *Ath. Pol.* 49.3 (who specifies that the jurisdiction of the law court had replaced that of the *boule* in the case of peplums). Feyel does not consider the scrutiny of peplums as a *dokimasia*.

⁴ [Arist.] *Ath. Pol.* 42.

⁵ The *dokimasthai* for coinage were two public slaves, one working in the agora and the other in Piraeus. See Feyel, 86.

⁶ Ambassadors, heralds, priests.

⁷ On this point, see the debate between D.M. MacDowell and me, published in *Symposion 2001*, Wien 2005, 79-97, which Feyel has unfortunately ignored in his recent work.

⁸ I also agree with Todd’s opinion that the Athenian *dokimasia* procedure should not be interpreted as an abuse of process, but rather as an essential tool – particularly with respect to political *dokimasiai* – to judge all those who are going to become magistrates in a direct democracy mainly based on election by lot (on this point, also see Feyel, 218 f.).

⁹ Cf. the index for the volume Feyel, 407 f.

¹⁰ It is not an unmistakable distinctive criterion because it does not account for the difference between technical and political *dokimasiai*. For example, according to Feyel (73 ff.), *dokimasiai* of orphans and invalids should be considered as technical but could also be counted among the political ones.

¹¹ *Dokimasia* in its plural form is also quoted in Lys. 16.9.

2. I would also like to focus on the second point analysed by Todd, i.e. whether the political *dokimasiai* only judged the civic virtue of the candidates or also their moral virtue *per se*. The latter opinion has been borne out by Adeleye¹² but opposed by Hashiba¹³ and, now, by Todd¹⁴.

I would support Todd's argument on this point, because the sources available to us apparently show that a citizen's lifestyle was only important, for the purposes of a *dokimasia*, to infer whether he was sufficiently virtuous, in his capacity as public official, to prevent him from having any negative influence on his fellow-citizens¹⁵.

The opposite thesis has been mainly supported by two sources: Lys. 16.9 and Dinarc. 2.17. The former maintains that *dokimasia* candidates should account for their whole life, whereas the latter has been interpreted as indicating that the *dokimasiai* of magistrates were supposed to judge, besides a series of specific questions, the candidates' *idios tropos*, i.e. their character.

In fact, I believe that the former of the above arguments is highly rhetorical and cannot be interpreted in strictly technical terms. As for the latter, it seems to me that the scrutiny concerning the *idios tropos* should not be deemed as additional to but rather as encompassing the others successively listed by the orator. In other words, the following short list is only a sort of analytical explanation of how candidates' *idios tropos* was scrutinized during the *dokimasiai*.

3. Finally, I would like to make some further remarks about Todd's observations on the matters tested during the *dokimasiai* of magistrates and orators. The list of matters for the former is found in [Arist.] *Ath. Pol.* 55.3, whereas those regarding the latter are listed in Aeschin. 1.28-30. Todd has properly suggested that the first of these lists is incomplete, in that it would only include some of the main questions discussed during the *dokimasia* of magistrates. Since the latest works of scholars have shown different views on this matter, I would like to take it a bit further.

According to [Arist.] *Ath. Pol.* 55.3, when the archons were scrutinised, they were asked: 1) whether they had a cult of Apollo and Zeus; 2) whether they had family tombs; 3) whether they treated their parents well; 4) whether they paid their taxes; 5) whether they had performed their military service. (These first questions are included in the first column of the table at the end of this paper.) After replying to the questions, the archons had to produce witnesses to their statements. The *dokimasia* did not finish like that, however, because at this point anybody could stand up and accuse the candidate.

Aeschin. 1.28-30 has allegedly reported the contents of the law on the *dokimasia* of orators (which is specified in the second column of the table). We

¹² Adeleye, 298 f.

¹³ Hashiba, 1 ff.

¹⁴ See also Todd, 288 f.

¹⁵ This is even more evident if we take account of the questions dealt with during a *dokimasia*. See [Arist.] *Ath. Pol.* 55.3-4 and Aeschin. 1.28-30 in particular.

learn that reasons for not passing the *dokimasia* included 1) maltreatment of parents; 2) failure to fulfil military service; 3) prostitution; 4) squandering one's ancestral patrimony¹⁶.

Some questions regarding the *dokimasia* of orators coincide with those analysed in [Arist.] *Ath. Pol.* 55.3 but only some of them. Starting from this preliminary remark, Feyel has compared the *dokimasia* of archons with that of orators and has come to the conclusion that they were different because emphasis was given to prostitution and squandering one's ancestral patrimony only by the latter, and to the cult of Apollo and Zeus, the family tombs and payment of taxes only by the former¹⁷.

We could obviously agree with Feyel's conclusion only if we were sure that the two lists are complete but I have reasonable doubts about that. We should also consider that Aeschines' first oration dates back to 346, the Aristotelian *Athenaion Politeia* is probably datable to the 20s of the fourth century B.C., whereas the institution of the *dokimasia* definitely goes back to an earlier date. We know for sure that the *dokimasia* of magistrates dates back at least to 430¹⁸ (or even before), since *circa* 430 may be the date of the pseudo-Xenophontic *Athenaion Politeia* which refers to it¹⁹. Great caution should be therefore exercised in outlining the features of both *dokimasiai* and in contextualising the source of our information. As we shall see below, a diachronic approach to the study of the main political *dokimasiai* is advisable in that their development covered a historical period of at least one century.

First of all, it is worth noting that there are three other sources dealing with the questions that were put to the candidates who were to hold a magistracy or, more specifically, were to be archons, i.e. Xen. *Mem.* 2.2.13 and Dinarc. 2.17 (for magistrates) and Poll. 8.85-86 (explicitly referred to thesmotetai but manifestly applicable to all the archons). Each of these sources accounts for some of the questions listed in [Arist.] *Ath. Pol.* 55.3, which proves that the questions which the Aristotelian *Ath. Pol.* only referred to archons were in fact applicable to all the magistrates. It should be noted, however, that none of the three sources accounts for all the *Ath. Pol.*'s questions (as synoptically shown in the table below²⁰). This

¹⁶ The Greek text gives an articulate description of the four cases, but the synthesis I have provided is enough for the purposes of this paper.

¹⁷ Feyel, 206. The works of other eminent scholars confirm this opinion (cf. Lipsius, 269 ff.).

¹⁸ As shown in Feyel, 22 ff.

¹⁹ [Xen.] *Ath. Pol.* 3.4. Cf. Feyel himself (32 f.) as the latest account of the date of this work.

²⁰ Columns 3-4-5. As shown in the table, it is uncertain whether Poll. 8.85-86 mentions the question of tax payment. I am inclined to think so because, to my mind, the mention of the *timema* contained in that passage should be referred to this issue. Otherwise, we should deduce that the question concerning the *timema* was another question of the

confirms the allegation that each of them includes an incomplete list and should lead us to doubt that [Arist.] *Ath. Pol.* 55.3 and Aeschin. 1.28-30 contain complete lists. In fact, there is evidence that points to the following conclusion: both lists should be supplemented with other items depending on the type of *dokimasia* and periods of the Athenian history, as I am going to argue²¹.

1) It is certainly true that [Arist.] *Ath. Pol.* 55.3 does not mention prostitution with regard to the *dokimasia* of magistrates but it is likewise true that Aeschin. 1.21²² accounts for the existence of a law which provided that those who had prostituted were not allowed to hold any *arché*²³. This source does not make any explicit reference to any *dokimasia*. Nevertheless, the question of prostitution could probably be raised during the *dokimasia* of magistrates as it certainly could during that of orators: anyway, why would a prostitute-orator be rejected at his *dokimasia* and a prostitute who was magistrate designate pass it?

2) Lys. 26.9 quotes the “law on *dokimasiai*”, which prevented those who had held a magistracy under the oligarchy from passing the *dokimasia*²⁴, although there is no explicit mention of the kind of *dokimasia* which could not be passed. It should be observed that Lys. 26 was delivered during the *dokimasia* against an archon designate. Therefore, the provision at issue certainly concerned the *dokimasia* of archons. However, use of the plural form in the phrase “law on *dokimasiai*” leads us to deduce that the question was also relevant to other *dokimasiai*, and we actually know that the question was also addressed during two *dokimasiai* of *bouleutai* and one *dokimasia* of a magistrate designate who has not been clearly identified²⁵. There is no account of this, however, in the Aristotelian *Ath. Pol.*, nor in any other sources²⁶. I believe that this law was passed in Athens between 403 and 382²⁷, the

dokimasia of archons not listed in [Arist.] *Ath. Pol.* 55.3, nor in any other source available to us.

²¹ The information that I am going to classify is summarised in columns 6-10 of the table below.

²² Column 6 of the table.

²³ On this point, cf. Cantarella, 73 ff.

²⁴ As is well known, Lys. 16.8 maintains the opposite, i.e. that many *bouleutai* had a magistracy under the oligarchy. This divergence is due to the fact that Lys. 16 is an oration written in defence of a candidate scrutinised during a *dokimasia*, whereas Lys. 26 is an oration having the opposite purpose. To my mind, in Lys. 16 the logographer had decreased the scope of the law to favour his client, whereas Lys. 26 makes a faithful account of it. For the opposite view, see Medda, 86 f., nt. 8. On this point, see also Feyel, 168. Irrespective of the scholars’ opinions, it cannot be denied that in all four of Lysias’ orations delivered at a *dokimasia* (Lys. 16, 25, 26, 31), the question at issue is always whether the candidate had held an office under the oligarchy.

²⁵ The question that I address here is dealt with in Lys. 16 and 31, concerning the *dokimasia* of a prospective *bouleutes*, as well as in Lys. 25, for an individual who was going to hold an unknown office.

²⁶ However, see Lys. 25.14.

probable year of Lys. 26, which mentions the oligarchy of the Thirty of 404²⁸. This proves that at least one new item was added over time to the list of questions put during the *dokimasia* of magistrates, or, in other words, that the *dokimasia* of magistrates was revised, if one thinks that the other requirements listed in [Arist.] *Ath. Pol.* 55 go back to an earlier date.

3) We learn from Dem. 59.72 that the archon-*basileus* was asked at his *dokimasia* whether he had married a virgin citizen. If he had not, he had to undertake to do it²⁹. However, there is no account of this requirement in [Arist.] *Ath. Pol.*³⁰.

4) Xen. *Mem.* 1.2.35 mentions the obligation for *bouleutai* to be aged at least thirty. Although it is not specified in this source, this precondition was very likely to be tested during the *dokimasia*.

5) According to Dinarc. 1.71, *strategoï* and orators were supposed to have procreated in compliance with the law (i.e. have legitimate children³¹) and to have land (in Attica)³². Here, too, the mention of the *dokimasia* seems to be only implicit³³. Scholars have different views of the above-mentioned allegation by Dinarchus. Some of them think it is valid with respect to the *strategoï*, sharing the idea that they were supposed to have land in Attica to ensure their actual involvement in the defence of the territory³⁴. Others maintain that it cannot apply to orators³⁵ for two major reasons: this prerequisite is not mentioned in Aeschin. 1.28-30 and at least one orator is known to have spoken in public without having had any children³⁶. The first of these objections cannot be sustained because, as we said before, there is no evidence that the list drawn up by Aeschines is complete. As to the second, Timarchos himself was attacked by Aeschines during a *dokimasia* of orators after he had spoken many times in public and prostituted, and I believe that he would have continued to be a rhetor had he not been attacked by Aeschines on

²⁷ Todd has expressed a different view on this point in the article to which this paper responds.

²⁸ Lys. 26.10.

²⁹ Dem. 59.75.

³⁰ Cf. Feyel, 180, with his bibliography (the author, of course, knows very well that the *dokimasiai* of individual types of archons had their special features).

³¹ As evidenced by [Arist.] *Ath. Pol.* 4.2, which I quote immediately below.

³² Cf. Caillemer, 325.35.

³³ This has not been confirmed by Fröhlich, 125. Dinarc. 1.71, besides orators, only mentions the *strategoï*, but it seems that the rules governing the *dokimasia* of the latter also applied to all the other magistrates having military duties. Cf. [Dem.] 40.34, as well as Feyel, 187, as concerns taxiarches and also [Arist.] *Ath. Pol.* 4.2 with respect to hipparches. A general reference to the *dokimasia* of *strategoï* can be found in Lys. 15.6.

³⁴ Feyel, 190.

³⁵ Cf. Harrison, I.19.1 and II.205.4; Ober, 119; Worthington, 235; Fisher, 159; MacDowell, 81.

³⁶ I.e. Andocide, when the orations *On the Mysteries* and *On his Return* (Andoc. 1 and 2) were delivered. See par. 148 of the former. Cf. MacDowell, 81.

that occasion³⁷. Actually, as concerns the *dokimasia* of orators, if nobody had troubledled to attack an orator initiating an *epanghelia dokimasiai* against him, the scrutiny procedure would not have even started.

To my mind, the opinion expressed in Dinarc. 1.71 may be deemed reliable in light of [Arist.] *Ath. Pol.* 4.2, which informs us that, in Drakon's time, only those who were able to declare a non-mortgaged capital of at least a hundred mines and had legitimate children aged at least ten could be elected *strategoï* and *hipparches*. As is well known, this passage is not fully reliable because it dates the existence of the *strategoï* back to the seventh century B.C. whereas they were introduced towards the end of the sixth century B.C. It is possible, however, that the requirements specified in [Arist.] *Ath. Pol.* 4.2 have not been totally made up. They might also not reflect the political situation of the fourth century B.C. but rather a situation dating back earlier, for example to the fifth century B.C., which, in turn, had its roots in an earlier period³⁸. Likewise, Dinarchus may have not invented his reference to the laws but only have quoted rules that applied at least to the *dokimasia* of *strategoï* and orators in the past. In his time, those rules were archaic and perhaps no longer applicable, although they had never been formally repealed. Therefore, to my mind, the law quoted by Aeschin. 1.28-30 was exclusively supplemented with previous provisions governing the *dokimasia* of orators³⁹.

This comprehensive review leads us to conclude that there existed many different *dokimasia* procedures, as set out at the beginning of my analysis and also maintained by Todd, each governed by a multitude of laws enacted over time. These laws, as subsequently amended, had given rise to a "stratified" legislation which overall may seem more complex than what we would be inclined to think if we took separately [Arist.] *Ath. Pol.* 55.3 for the *dokimasia* of magistrates and Aeschin. 1.28 for that of orators. Actually, neither one of these sources provides a comprehensive list of the questions put during the *dokimasia* at issue, at the time each of the sources was written. Furthermore, the rules governing the various *dokimasiai* are very likely to have changed over time.

In Aristotle's time, prospective magistrates were not only asked the five questions mentioned in *Ath. Pol.* 55.3: these questions were put *ex officio* to the candidates but the procedure actually started after they had replied, when any citizen could take the floor and attack them. At this point, the scrutiny was carried on with respect to other questions, including at least prostitution⁴⁰, squandering one's

³⁷ Gagliardi, 95 f.

³⁸ Thus, Piccirilli, 176. My statement suggests that political *dokimasiai* are older than what is inferable from the sources currently available to us (see Feyel, 22 ff.). These remarks, however, are mainly speculative and cannot be further developed in this paper.

³⁹ Moreover, incidentally, the law governing the *dokimasia* orators mentioned by Aeschines was probably not recent at that time too, as specified in Aeschin. 1.33.

⁴⁰ Aeschin. 1.21.

ancestral patrimony⁴¹ and support of the oligarchy⁴². Also note that, depending on the magistracy office and/or in some periods of Athenian history, the *dokimasia* concerned other different topics, such as matrimony, age, the existence of legitimate children and land property. When orators underwent their *dokimasia*, they were not asked *ex officio* questions and I believe that their *dokimasia* too was very likely to be about some further questions, apart from those listed by Aeschines in his oration against Timarchos.

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⁴¹ This argument is only speculative.

⁴² Lys. 26.9.

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Table see next page:

X: uncertain information; n.d.: *dokimasia* not explicitly mentioned

