

## The Case against Nikomachos\*

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**SUMMARY:** Lysias 30 attacks Nikomachos for his work on the Sacrificial Calendar; the issue remains unclear. Sterling Dow supposed that Nikomachos was charged with omitting ancient obligations. But the speech shows that Nikomachos was charged with excessive additions; these caused a shortfall for ancient rites that were not part of his mandate. This reading suggests that the aim of the lawsuit was to cancel obligations that were introduced when Athens and Eleusis were divided (403–401 B.C.E.). The massive erasure that Dow discovered in the inscribed Calendar was probably the result of that revision. In addition, this theory of the case offers a new solution for an old problem in the text of the speech.

THE THIRTIETH SPEECH IN THE LYSIANIC CORPUS REPRESENTS A SUIT AGAINST the law transcriber Nikomachos in the turbulent year 399 B.C.E. The speech includes important testimony for the process of revision and reauthorization of the laws after democracy was restored in 403; most significantly, it reveals that Nikomachos's task included transcribing the Sacrificial Calendar, of which substantial fragments survive. But it has proven difficult to determine just what crime Nikomachos was charged with—all the more because major fragments of the Calendar were inscribed over a huge erasure. Much of the speech deals with old business, condemning Nikomachos for corrupt practices in his first term (410–405), but the main charge appears to involve his work on the Calendar in his second term (403–399): he is accused of “abolishing” ancestral rites enshrined in traditional sources, sources prominently cited in what remains of the Calendar. Stephen Todd (1996) made the best of our frustration, pointing out that Nikomachos “did not actually need to have

\* For constructive critique on successive drafts of this essay, I am much indebted to Noel Robertson, David Phillips, and the readers for *TAPA*. Of course any errors are mine. Translations are my own, except where noted.

done (or not done) anything in particular” to be prosecuted (108); his was the fate of an eminent expert subject to deep-seated resentment and suspicion.<sup>1</sup> Todd’s theory of the case and, indeed, most of the progress on this problem owes much to the work of Sterling Dow (1941, 1959, 1960, 1961), who reconstructed the series of calendars on the “Wall” (where the city’s sacred obligations were inscribed).<sup>2</sup> Dow supposed that the extant Calendar is Nikomachos’s work and that, whatever the outcome of the lawsuit, the popular rites that Nikomachos had codified must have triumphed over the reactionary agenda of his accusers. It is a measure of Dow’s influence that scholars regularly refer to the extant Calendar as “Nikomachos’s Law Code.”<sup>3</sup> In 1990, however, Noel Robertson authored an important study dealing with all aspects of the transcribers’ project and, without arguing the point in detail, reversed Dow’s reading of the Calendar: the fragments so closely correspond to the prosecutor’s agenda that, we can only conclude, Nikomachos’s work must have been erased and the extant Calendar inscribed over it. Robertson’s findings have proven persuasive on other aspects of the transcription,<sup>4</sup> but on this crucial point his reading has not been accepted.

In this essay I argue that Dow misread the charge and thus misconstrued the connection between the erasure and the target of Lysias’s speech. Robertson is most probably right: the fragments inscribed over the erasure indicate a victory for Lysias’s client. In light of these findings, much that has been assumed about the speech has to be reconsidered. We are presented with one of those rare cases where external evidence gives us a glimpse of the outcome, and in this instance we can see that the speechwriter was singularly effective in capturing the attitudes that prevailed in that contentious year.

We begin by reexamining the charges against Nikomachos, then reconsider the timing and the procedure, and conclude with a new characterization of the prosecutor.

<sup>1</sup> Todd 1996 surveys earlier studies and reappraises the speech as something of a masterpiece. He discounts the partisan motives that Dow read into the case (117). With Todd, I see no good reason to doubt that Lysias is the author of this speech.

<sup>2</sup> For translation and commentary on the major fragment (Agora I 727), see Harding 1985: 15–17 (no. 9). For the text, see now Lambert 2002, with further comment on minor fragments by Robertson 2004: 130–36 and Gawinski 2007. In the present study, the “Wall” refers to the connected stelai on which laws were inscribed (not to the wall mentioned in Teisamenos’s decree, as explained in the next section).

<sup>3</sup> Among the most respected studies, e.g., Stroud 1979: 8–10; Jones 1987: 28–30.

<sup>4</sup> Cf. Rhodes 1991: 99–100 (favoring Robertson on Teisamenos’s decree) with 94–95 (discounting the theory that Nikomachos’s work was erased); Robertson 1992: 34; Wolpert 2002: 40.

## NIKOMACHOS'S MANDATE AND THE CHARGES AGAINST HIM

Fifty years ago Dow authored three closely-argued studies of this material (1959, 1960, 1961). Much that Dow deduced from the content of the Calendar remains convincing. But he made an argument about the speech, based on a "close reading" of the argument at §§17–22, that is simply mistaken: Dow concluded that the chief complaint against Nikomachos was that he had omitted sacrifices he was obliged to include. There are, to be sure, expressions in the speech that might suggest as much.<sup>5</sup> But if we read the extended argument carefully, it is quite clear that the main charge was not a crime of omission but of excess: the transcriber had added costly rituals, on dubious authority, and these additions preempted more ancient obligations preserved on *kyrbeis*.<sup>6</sup> As Dow recognized, the chief provocation for the lawsuit was the fact that in the year before the trial, traditional sacrifices at the cost of three talents had been neglected. But he also supposed that the neglected rites were part of the mandate (what Nikomachos was required to transcribe) and that the lawsuit was brought precisely because those ancestral rites were omitted from publication on the Wall.<sup>7</sup> The accuser never says that. The most natural reading of Lysias's argument is, to the contrary, that Nikomachos's crime consisted of encumbering the city's finances with new sacrifices, so lavish that no funding remained for the older rites.<sup>8</sup> Were it not for these addenda, the older rites would have been funded.

Dow's interpretation of the charge was prompted in large part by Andokides, not by what Lysias says.<sup>9</sup> For Andokides has been supposed to say that

<sup>5</sup> Primarily §21, πολλὰ τῶν ἱερῶν καταλύεται. But καταλύεται does not necessarily mean that statutes were deleted from the corpus; cf. Carawan 2008: 384–85.

<sup>6</sup> Much as Robertson suggested (1990: 71 n102), comparing Isoc. 7.29–30 on the theme of "ancient custom ... displaced by costly new sacrifices." On the pillars of sacred law called *kyrbeis*, see Stroud 1979.

<sup>7</sup> Dow 1959: 18: "He was first to edit the Solonian ... laws about sacrifice, the ones, that is, 'from the kyrbeis' ... He was to add others, also ancestral and duly established, 'from the stelai' ... But [he] ... erred so greatly as to cause to be omitted in just one year, three talents' worth of ancestral sacrifices"; 1960: 275: "three talents of omitted old sacrifices were not part of the code now in force ... [but] had been omitted from the draft proposed by Nikomakhos and consequently also from the Code as finally adopted and transcribed."

<sup>8</sup> This view prevailed before Dow's reassessment: cf. Blass 1887: 466–67; Gernet in Gernet and Bizos 1999 [1926]: 158–59.

<sup>9</sup> Dow 1960: 272–73, with n2: empowered by Teisamenos's and related measures, "Nikomakhos brought within the scope of his activity not just parts of the Calendar, but the

the restored democracy decided (in 403/402) to reauthorize and reinscribe *all the laws*; and supposedly the decree of Teisamenos, inserted into the text of Andokides, is the very legislation that required that codification. That theory has always been problematic: there is no subsequent reference to any such code inscribed in the Stoa Basileios, where Andokides would seem to put it, while there are many fourth-century references to valid texts of the law at other sites.<sup>10</sup> It now seems doubtful that a new code was even conceived in 403.<sup>11</sup> After all, Teisamenos's decree calls for reviewing old laws and drafting whatever *supplementary* legislation was needed, to complete the Solonian corpus (including Dracon's homicide law), much of which was transcribed in the first term (410–405). Nothing in the decree indicates a compendious reinscription of *all* the laws; that is an inference drawn from what Andokides seems to say about the decree that he cited (which may not be Teisamenos's). Nonetheless, largely based upon the notion that *all* the laws had to be reinscribed after 403, scholars have supposed that, as a part of this project, the sacrificial laws were now put into a complete and systematic arrangement. And once the fragments of the Calendar were found to document just such a compendium, that finding tended to confirm the notion that Nikomachos's mandate was exhaustive.

If we read the accuser's argument on its own, however, we find that Nikomachos's mandate included an important limitation and that his offense consisted in exceeding those limits. Thus in his first term, Nikomachos was assigned to transcribe "the laws of Solon" but, allegedly, usurped Solon's role.<sup>12</sup> In the second term, the accuser insists, "the sources that [Nikomachos] was

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whole." In sum, the "systematic Calendar" to which the fragments attest is Nikomachos's work in response to Teisamenos's initiative. In n2, Dow wrestles with the difficulty ("there can be no doubt about what Nikomachos did: but from Teisamenos' decree alone, we should never infer the existence of the Calendar") and goes on to suppose a subsequent decree that applied Teisamenos's conception to the sacred laws.

<sup>10</sup> Cf. Todd 1996: 129–30; on the developing archives, see Sickinger 1999: 94–105.

<sup>11</sup> Cf. Clinton 1982: 28–29, suggesting that the first-term mandate was to inscribe "the laws of Solon *then in use*," and that the second term filled the gaps. Robertson 1990: 46–51 suggests that Teisamenos's provision, "writing up the laws on the wall where they were written up previously," refers to temporary publication of the supplements, not reinscription at a permanent installation; he is probably right, as Rhodes 1991: 99 concludes and Hedrick 2000 confirms. Carawan 2002: 12–19 argues that Teisamenos's decree is probably the wrong document inserted by a later editor and that Andokides refers to a list of the procedural laws affected by the limitation "to apply from Eukleides' archonship."

<sup>12</sup> §2: προσταχθὲν γὰρ αὐτῷ τεττάρων μηνῶν ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος, ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν.

to transcribe were clearly defined”; instead of adhering to that limitation, however, “he made himself master of all.”<sup>13</sup> The limitation may not have been quite so specific, but the distinction seems plausible enough: the second-term mandate was not as comprehensive as the first. And that second mandate included or implied a bar against the sort of latter-day intrusions that Nikomachos had introduced. This description agrees with the later argument (detailed below): Nikomachos’s offense was not that he omitted or deleted material that he was authorized to inscribe but, rather, that he incorporated material that was (arguably) beyond his proper scope and thus produced a bloated agenda that preempted legitimate obligations.

This turn of the argument begins (§17), like most of the arguments in this speech, by anticipating an accusation that Nikomachos will make<sup>14</sup>: N will protest that AA is committing *asebeia* by cancelling sacrifices. To which AA responds with the counterfactual formulation that he *would be* open to that charge *if he were* making laws regarding the transcription; but instead he is simply insisting that the transcriber “obey the established laws that we hold in common” (τοῖς κοινοῖς καὶ κειμένοις ἀξιῶ τοῦτον πείθεσθαι). So, arguably, N will accuse the accuser of *asebeia* for demanding the performance of sacrifices according to the *kырbeis* and the inscribed *syngraphai*.<sup>15</sup> But that agenda (AA asserts) is precisely what the Athenians have decreed.<sup>16</sup>

Now AA defends his agenda by pointing to the piety and prosperity of the ancestors, who were content to follow the *kырbeis* alone, without any other source for their rites (§18). So, “how could anyone be more pious than I who demand first that (we) sacrifice according to *ta patria*, second that (we do) what is most advantageous to the polis, and moreover what the demos has decreed and we can pay for out of the funds coming in” (§19). Dow and oth-

<sup>13</sup> §4: ἔπειτα διωρισμένον ἐξ ὧν ἔδει ἀναγράφειν, αὐτὸν ἀπάντων κύριον ἐποιήσατο. Cf. §19: ἀναγράψας ... πλείω τῶν προσταχθέντων.

<sup>14</sup> In summaries of the argument, N = Nikomachos and AA = his anonymous accuser. For the crucial term κοῖνοι (νόμοι), I have borrowed a phrase from Todd’s translation (2000: 303), “that we hold in common” (= recognized by all parties).

<sup>15</sup> As Robertson 1990 argues, the *syngraphai* in question are expert compilations of sacred law: comparanda below at nn18–20. To be clear about confusing terms: Nikomachos, who took office as *anagrapheus* in 410, was not among the committees of 411, the *anagrapheis* and *syngrapheis* in *Ath. pol.* 29–30; on the latter, see esp. Ostwald 1986: 377–80, 405–11. And, as Rhodes 1991: 88–89 observes, it seems unlikely that N served the interim regime of Five Thousand.

<sup>16</sup> §17: θαυμάζω δὲ εἰ μὴ ἐνθυμῆται, ὅταν ἐμὲ φάσκη ἀσεβεῖν λέγοντα ὡς χρὴ θύειν τὰς θυσίας τὰς ἐκ τῶν κύρβων καὶ τῶν στηλῶν κατὰ τὰς συγγραφάς, ὅτι καὶ τῆς πόλεως κατηγορεῖ· ταῦτα γὰρ ὑμεῖς ἐψηφίσασθε. The decree cited here is probably recent legislation authored by AA and his allies (cf. Blass 1887: 466), as argued below.

ers have taken this passage to imply that “what the demos has decreed” refers to the measure authorizing N’s work and that this specifically referred to the *kyrbeis* (= *ta patria*). But AA never says that the original mandate included the *kyrbeis*, rather that N was authorized to transcribe only certain texts and that, if he had stuck to those sources, he would not have created such a problem.

AA pursues that implication in what follows (as §19 continues): “But you, Nikomachos, have done the opposite of this, transcribing more than was authorized, you have been responsible for expending the income on these rites and defaulting on the ancestral sacrifices” (σὺ δέ, ὦ Νικόμαχε, τούτων τάναντία πεποίηκας· ἀναγράψας γὰρ πλείω τῶν προσταχθέντων αἴτιος γεγένησαι τὰ προσίοντα χρήματα εἰς ταῦτα μὲν ἀναλίσκεσθαι, ἐν δὲ ταῖς πατρίοις θυσίαις ἐπιλείπειν). Thus AA claims that N was responsible for a shortfall; he never says that N had actually omitted traditional rites that he was required to inscribe—and if AA could have pointed to such a violation, he would certainly not have missed the opportunity. Instead, he puts all his emphasis upon the additional rites that N included, beyond the mandate and in excess of available funds. Thus, he seizes upon the tally for 400/399 (§20):

Just last year rites totaling 3 talents, among those inscribed on the *kyrbeis*, were unfulfilled. And one cannot say that moneys coming into the polis were not enough, for if this fellow had not transcribed additional rites, more by 6 talents, (that income) would have sufficed for the ancestral rites (that were neglected) with a surplus of 3 talents for the polis.

If the traditional rites were simply omitted from a transcription where they had to be included, that whole line of argument (§§17–20) would be pointless: even without the additional expenditures, the traditional rites would not have been funded because they were simply not on the schedule. After expert testimony, AA goes so far as to claim that when we follow “the stelai that [N] has inscribed, many rites are abolished” (21): ἐπειδὴν δὲ κατὰ τὰς στήλας ἃς οὗτος ἀνέγραψε, πολλὰ τῶν ἱερῶν καταλύεται. But it is clear that he uses the word καταλύεται figuratively, for he goes on to complain that N excuses himself by insisting that “he transcribed (the laws) out of piety, not economy; and if you (Athenians) are displeased with his inscription, he urges you to erase it,” not that they should reinscribe what he has deleted. Again the implication is that N has abolished certain rites only by overspending on others. And that, moreover, is the gist of the calculations that follow (22), charging N with piling up 12 talents in unnecessary expenditures over the last two years.

But those who follow Dow’s theory prefer another interpretation of the *syngraphai* that our accuser champions. The clearest statement of that view is Rhodes’s and it is best to consider it in detail (the emphases are mine):

*Syngraphai* should denote a draft presented to the assembly for approval, in this case presumably the decree which ordered the *anagrapheis* to revise the sacrificial calendar and **which specified the sources to be followed**. I suspect that §17 is correct and the sources specified included both the *kyrbeis* of Solon and the *stelai* on which more recent enactments had been published; **Lysias then conveniently forgets** that the *syngraphai* mentioned *stelai* as well as *kyrbeis*, and alleges that the *stelai* of Nikomachos went beyond what was authorised by the *syngraphai*. ***Syngraphai* are not a separate source, but the draft of the decree which specified the sources ...** (1991: 95).<sup>17</sup>

Dow's theory and Rhodes's defense of it assume that the position of this accuser is as follows: In §17, AA protests that N accuses him of impiety for defending the *kyrbeis* and the inscriptions according to *syngraphai*. When AA objects that "this is what you (Athenians) have decreed," this refers to the measure authorizing N's work and implicitly identifies that decree as *syngraphai*. And when he again refers to the *syngraphai* (in §21), AA contrasts the arbitrary practice of N with that order for faithful transcription of traditional sources. By this view, the *syngraphai* in question would be a proposal that listed the *kyrbeis* and other documents that Nikomachos was to draw upon; presumably it also gave instructions about putting the disparate materials into an integrated arrangement (if this was indeed the decree that led to the extant Calendar). This would be the sort of decree that authorizes a "work order" or plan for construction.<sup>18</sup> But in the closest comparanda dealing with sacrificial laws there is no instance of this usage: whenever an inscription refers to *syngraphai*, the referent appears to be the complete text of the sacrificial laws, not a set of instructions on how to draft it.<sup>19</sup> The natural sense of what

<sup>17</sup> Cf. Parker 1996: 44–45 with n6, who reasons that in §21 "the συγγραφαί are contrasted with Nikomachos' actual practice." Similarly Todd 2000: 303n18; Lambert 2002: 354.

<sup>18</sup> Cf. *IG I<sup>3</sup>* 35.6–9 with 45.6–11 (448–445) and *IG I<sup>3</sup>* 50.3–4 (c. 435). Such orders become commonplace in the later fourth century. Of course, *syngraphē/-ai* and *syngraphein* describe a range of "compositions," from "constitution" (e.g., *Ath. pol.* 29–30) to "contract" (see esp. Carawan 2006b: 351–57, on the documents in Dem. 56, 38–39, 34.7, and 35.9–12, and the law cited in Dem. 32.1–2). Across that range, these terms regularly refer to the full text of obligations, not an outline.

<sup>19</sup> The best comparandum is the First-fruits Decree, *IG I<sup>3</sup>* 78 (a generation earlier); cf. Cavanaugh 1996: 29–95. The set of rules for grand new offerings is described initially as what the *syngrapheis* *synegrapsan* (3–4), and then the main body of the inscription is the complete text of those obligations. Then in the rider, Lampon proposes that the secretary see to the inscription of the *syngraphai* **and** the psephisma that contains it, τὰ μὲν ἄλλα καθάπερ αἱ χυγγραφαὶ τῆς ἀπαρχῆς ... τὰς δὲ χυγγραφὰς καὶ τὸ φέφισμα τόδε ἀναγραφάστω (47–49); the rider then describes *syngraphai* that Lampon will



Lysias says (and the normal assumption of his audience) is that the *syngraphai* are the traditional schedules of sacrificial obligations that experts compiled, not the decree authorizing them.<sup>20</sup> By contrast, “what you (Athenians) have decreed” seems to be a recent measure that AA has advocated, in defense of those traditional texts.

In §17 (as we noticed) AA defends his agenda, “requiring that we sacrifice according to the *kyrbeis* and the stelai according to the *syngraphai*”: by opposing that agenda, N takes issue with the city itself, “for this is what you have decreed.” AA goes on to insist that the city reached the height of its power and prosperity when they sacrificed *only* in accordance with the *kyrbeis* (but now, by N’s scheme, three talents of rites from the *kyrbeis* have been neglected, §20). And then, after calling witnesses to confirm that accounting, in §21 AA again contrasts the *syngraphai* with N’s work: “Consider that when we act according to the *syngraphai*, all the ancestral rites are performed, but when we follow the stelai that this fellow has inscribed, many sacred rites are abolished.” The connecting argument treats *syngraphai* as the old documents that guided Athenian piety in the past—ὅταν ... κατὰ τὰς συγγραφὰς ποιῶμεν (§21)—by contrast to the default on obligations in the last year.<sup>21</sup> In each passage, at the beginning and the end of the argument, the *syngraphai* are specifically contrasted with the schedule(s) of sacrifices that N has inscribed. Both comparanda, the *syngraphai* and N’s stelai, are treated as the full text of sacrificial obligations for the city to honor, not an authorization or list of sources for the inscriber to follow.

Thus the essential implications of that key argument (§§17–22) are as follows: (1) N’s mandate was not comprehensive; he had not been charged to transcribe *all* sacred obligations, including those preserved on *kyrbeis* and old *syngraphai*. The mandate may not have been quite as specific as AA insists, but his argument consistently implies that the second-term project was limited in scope and that N exceeded those limits. Moreover, (2) ancestral rites not listed in N’s publication could still be funded—indeed, would

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compile. In such cases the inscribed decree contains the *syngraphai*, and so the decree itself might be described as *syngraphai*. But for Nikomachos’s work on the Calendar, the authorizing decree could not include the full text, only the outline or list of sources.

<sup>20</sup> Such appear to be the *syngraphai* referred to on the older face of the Wall (in the Attic alphabet), *IG I<sup>3</sup> 238.4*, κατὰ τὰς χυσυγγραφὰς; noted by Robertson 1990: 70–71, who also notes the distinction in *IG I<sup>3</sup> 78.48–49*, τὰς δὲ χυσυγγραφὰς καὶ τὸ φσέφισμα τόδε.

<sup>21</sup> Conversely, if we interpret the *syngraphai* in §21, by which “all the ancestral rites are fulfilled,” with Dow and Rhodes, it refers to the authorizing decree of 403/402: the period of fulfillment would be only the remaining months of that year and the year 402/401, while Athens remained at odds with Eleusis.



have been funded—if not for the deficit. After all, the obligations on *kyrbeis* could always be cited from that source. The sacred laws that N was charged to transcribe were drawn from other sources and did not include the *kyrbeis*. His job was not a complete compilation but an official edition of certain texts for which there was a particular need. These were texts that had been thrown into confusion by the events of 405–403 (presumably including erasures by the Thirty).<sup>22</sup> The essential task of the *anagrapheis* was not to alter the law but simply to (re)produce valid texts that were somehow damaged or doubtful. These new editions stood first on the Wall and were therefore consulted first. There may have been no express decision to give them priority, but the new inscription of those sacred obligations, as the authorized version, would tend to take precedence over other rites that languished in their traditional setting. The disparity may have seemed manageable when Nikomachos's work began, but the turn of events would soon make it intolerable. The extant fragments, by contrast, belong to a project that integrated all relevant documents in a comprehensive publication, in order to avoid such disparities in future.

#### THE TIMING OF THE CHARGES AND THE NATURE OF THE PROCEDURE

The timing of the prosecution has always been problematic, especially when it was supposed that the procedure is a long-overdue accounting (as the manuscript title indicates: Κατὰ Νικομάχου γραμματέως εὐθυνῶν κατηγορία). There seem to be serious complaints going back to Nikomachos's first term. What finally provoked the accusers to bring their case? In the fragments of the Sacrificial Calendar, Dow discovered something crucial about the turn of events. Prominent among the fragments are the biennial schedules (Lambert 2002 frs. 2–3; Dow 1961 frs. E and C). Where the fragments include material from *kyrbeis* and other traditional sources,<sup>23</sup> Dow saw this as confirming that Nikomachos had been assigned to include that material but had omitted some significant items from the *kyrbeis*. These omissions must have clustered in the biennial schedule that first came due in the year before Nikomachos's trial.<sup>24</sup>

<sup>22</sup> Fingarette 1971 suggested that the Thirty's deletions contributed to the problem in 403.

<sup>23</sup> Stroud 1979: 11 and 25 even assumed ἐκ κύβρων among the rubrics used by the *anagrapheis*, on the model of the Salaminian calendar (Sokolowski 1962: 49–54).

<sup>24</sup> Thus Dow 1960: 291, referring to the biennial schedule on Agora I 727 (fr. 3 Lambert; fr. C Dow): "... three talents' worth of sacrifices which were 'old' were omitted from the First Trieteric Series. Nikomachos cut them out of a Trieteric list because from that they would be less missed than from any Annual list. He cut them out of festivals accessible to, and usually attended by, the gennetai. The democrats lost no meat. Probably the Old-

After all, the Calendar is full of documentation and, in Dow's view, this is bound to be a sign of Nikomachos's prudence. The hostile reference to him in Aristophanes' *Frogs* (1504–14) shows that he was a controversial figure at the end of his first term (in 405); he weathered that controversy and (supposedly) survived his accountings for that first term, and thus he learned to document his sources as a precaution. But, ironically, it was this very documentation that allowed his accusers to build a case against him, analyzing the detailed expenditures, tallying up how much was spent on new rites and how much was lacking for the old.<sup>25</sup> This theory is sophisticated and appealing, but every feature of it is problematic.

Dow formed his view of the case before he discovered the massive erasure covering more than half of the later side of the Wall (inscribed in the Ionic alphabet).<sup>26</sup> So long as there was no sign of any major alteration, it was natural to suppose that Nikomachos's work had survived the lawsuit intact. When Dow himself discovered the erasure, that finding did not lead him to reconsider.<sup>27</sup> After all, there are various ways to explain the erasure; indeed, Lysias claims that Nikomachos himself had freely deleted older laws (at some stage of his project). But it is only reasonable to wonder whether Dow might have reached a different conclusion if he had discovered the erasure before he formulated his theory of the case. If we simply consider the evidence now available to us, without carrying over prior assumptions, it is more straightforward to reason, as Robertson does, that the extant Calendar—which preserves much material that Nikomachos “abolished”—was not in fact the work condemned by this accuser. The erasure canceled material that was once important enough to

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Tribe Synoikia sacrifices preserved in Col. II represent just such a reduction, indeed are an actual part of the reduced kyrbeis sacrifices instanced by Lysias.”

<sup>25</sup> Dow 1959: 21: “The suggestion is natural that Nikomachos had realized in advance that such a charge would be made; we are told that once at least he had already been in trouble (Lysias 30.2–3).”

<sup>26</sup> Dow 1961: 63–64 describes a few traces of the original; more significant is the very slight projection of the fascia (less than one would expect for ornamental effect), and the uneven lower edge of the fascia. Several scholars examined the stone and “[t]here was general agreement in the principal finding, viz. the fact of erasure” (63). These features affect Dow's (1961) fragments A, B, and E, but most notably the major fragment C (= fr. 3 Lambert): see Dow 1961, plate 10a; Lambert 2002, plate 33a. In discussion at the APA meeting (10 January 2009), Julia Shear observed that the erasure may not be as extensive as Dow supposed, perhaps limited to fragments 2 and 3 Lambert (= C and E Dow). These fragments represent the crucial biennial schedules.

<sup>27</sup> Dow's earlier studies (1941, 1959, 1960) make no clear reference to the erasure. The only acknowledgement is 1960: 277n4: “... the publication of my 1959 article produced new information affecting all the physical aspects. The arguments of the present article are not vitally affected.”

be inscribed on a permanent installation at a prominent site: that canceled material was probably the very edition discredited in this lawsuit; a revised version had to be inscribed over it. In my view that conclusion is inescapable: if we read Lysias's indictment closely (as in the first section, above), it shows that Nikomachos's mandate did not include the *kyrbeis*, which figure prominently in what is inscribed over the erasure.

The inscription targeted by this lawsuit must belong to Nikomachos's second term.<sup>28</sup> In the first reference to the charge that will later emerge as the focus of the suit, the accuser describes the appointed task of Nikomachos (as we saw) as transcribing a well-defined body of text (§4), διωρισμένον ἐξ ὧν ἔδει ἀναγράφειν. Here the accuser is clearly and specifically referring to the second term, when Nikomachos held office for four years (403–399). And later, when he returns to this main charge, he plainly implies that the excessive expenditures of the past two years (401–399) were a new phenomenon, the result of Nikomachos's more recent transcription (§§19–21). Up until the last biennium, revenues (arguably) sufficed. But in drafting the new schedule of rites, Nikomachos disregarded Athens' post-war obligations and overburdened the treasury: in each of the last two years "he levied a fine on the city for 6 talents, even as he saw that she was at a loss to pay" the demands of Sparta and Thebes (§22). That last characterization would involve too wide a distortion, even for so glib an accuser as this, if the transcription at issue had been completed before the fall of Athens.

Let us also dispose of the assumption that Nikomachos had already submitted accounts and faced trial in 405. The text almost certainly means just the opposite (§3)<sup>29</sup>: πρότερον ἢ πόλις εἰς τὰς μεγίστας συμφορὰς κατέστη, πρὶν τοῦτον ἀπαλλαγῆναι τῆς ἀρχῆς καὶ τῶν πεπραγμένων εὐθύνας ὑποσχεῖν. That is, disaster befell the city before Nikomachos left office, without any accounting. After the disaster, there was no opportunity to bring him to trial.

The passage leading up to this has contributed to the confusion: "And the litigants presented conflicting laws to the court, both sides claiming to have gotten the text from Nikomachos. (Yet) when the archons assessed fines (*epibolai*) and brought cases to court, he was unwilling to hand over the laws."<sup>30</sup> Scholars have assumed that Nikomachos himself was fined and taken to court

<sup>28</sup> The erasure has been explained as covering material that was inscribed in Nikomachos's first term: thus Rhodes 1991: 94–5, 100; cf. Robertson 1990: 73.

<sup>29</sup> Robertson 1990: 74n106, rightly.

<sup>30</sup> §3: καὶ οἱ ἀντίδικοι ἐπὶ τοῖς δικαστηρίοις ἐναντίους παρείχοντο, ἀμφοτέροι παρὰ Νικομάχου φάσκοντες εἰληφέναι. ἐπιβαλλόντων δὲ τῶν ἀρχόντων ἐπιβολὰς καὶ εἰσαγόντων εἰς τὸ δικαστήριον οὐκ ἠθέλησε παραδοῦναι τοὺς νόμους. The genitive absolute allows for N to be an implied object (cf. Todd 1996: 109), but that is not the most natural implication.

(e.g., Todd 2000: 299). The most natural implication, however, is not that the archons had imposed *epibolai* on Nikomachos and took him to court, but that various cases had been decided on the basis of laws that Nikomachos provided arbitrarily. In some cases the archons had assessed *epibolai*; in other cases they brought the matter to court, for the jury to decide. Thus *Ath. pol.* 56.7 refers to *epibolai* as lesser penalties which magistrates assess (*epiballein*) on their own authority; if the judgment exceeded that range, the magistrate would take the case to court. That usage fits the context in §3, better than the notion that archons fined and prosecuted Nikomachos—and still could not force him to deliver the laws. The point is that *lawsuits were decided*, some summarily (ἐπιβαλλόντων ... ἐπιβολὰς), others at trial (εἰσαγόντων εἰς τὸ δικαστήριον), based on laws that litigants cited on Nikomachos's authority alone, when no such laws were published.

Thus the speech itself gives us no indication that Nikomachos had faced charges before the case at hand, and there are certainly considerations to the contrary. If Nikomachos had at any time submitted his accounts or defended his official acts in court, he could triumphantly dispose of the whole line of argument that he had illegally avoided accounting (§§2–5 and *passim*). Indeed, it is just possible that Nikomachos was exempt from accounting; he was not properly an office-holder (*archon*) but an employee, not assigned any judicial or administrative authority but commissioned to carry out a specific and relatively methodical task. Presumably, at each stage of the transcription, his draft had to be approved by the council (not to be published at his discretion), and it was therefore reasonable for Nikomachos to shift the blame to the *boulē* (as the accuser anticipates, §23). Of course, it was once a vital principle that all agents of government must be accountable, and so it was easy for the accuser to insist that Nikomachos should have faced accounting like any ordinary official.<sup>31</sup> But it is probably here that Lysias applies his most effective devices of distortion, treating the case as a long-overdue accounting and an indictment for subverting the laws, all rolled into one.

Taken together, Lysias's harangue and the fragments of the Calendar provide crucial evidence on the sequence of events that prompted the prosecution. The speech tells us that three talents' worth of traditional rites had been neglected in the year before the trial, while in each of the last two years six talents of excessive expenditures were required by Nikomachos's compilation. As Dow recognized, that description points to the biennial schedules partly preserved in the fragments. We may suppose that the transcriber was given

<sup>31</sup> Gernet in Gernet and Bizos 1999 [1926]: 158 assumes that N held an accountable office, "fonction qui constituait une magistrature (ἀρχή)."

his assignment in the first year of the new regime and that his work on the calendar carried over into the second year; then, at the turn of the third year (401/400), the new calendar went into effect. It was only thereafter, in the second year of the new calendar (400/399), that the three talents of traditional rites were preempted by the other expenses. Those rites that were unaffected one year but canceled the next would belong to a biennial schedule (listing expenses for alternate years). And the relevant fragments clearly point to material derived from *kyrbeis* (esp. the pre-Kleisthenic rites from τὰ φυλοβασιλικά, in Agora I 727 = fr. 3 Lambert). The arrangement thus explains the timing of the case: the shortfall belongs to the biennial calendar that first applied in the year before the trial.<sup>32</sup> That sequence fits with other formative events: it so happened that Nikomachos's compilation was completed and approved in the year before Athens and Eleusis were reunified, and the deficits first became apparent in the year after reunification.<sup>33</sup>

But, of course, that timeframe fits as well or better if we suppose that Nikomachos was never authorized to draft a complete calendar such as the fragments reveal: the Athenians defaulted on older obligations simply because they were overburdened with the rites that Nikomachos had published. The default on biennial obligations arises in the first year in which Eleusis was fully represented in proceedings at Athens. It was only then, when citizens who had relocated to Eleusis were restored to their rights at Athens, that the deficit became a *cause célèbre*. Thus the "last year" before the trial (400/399) would have been the first year in which the traditional rites were short-changed because of other accumulated costs, and also the year in which the contingent from Eleusis reentered Athenian politics.<sup>34</sup> At this point some of

<sup>32</sup> Dow 1960: 288–91 worked out the timing as follows: the Trieteric calendars were finished and adopted in 401/400, and only came into effect the following year, 400/399, at the end of which Nikomachos was prosecuted.

<sup>33</sup> That is, the year of reunification (401/400) was a year of no Eleusinia; the next year (400/399) celebrated the lesser Eleusinia (in fr. 3 Lambert); cf. Dow 1960: 276, 288. Dow considers reunification a possible factor (1960: 289): "... Nikomakhos' Earlier Trieteric Series, which included the Lesser Eleusinia, is performed in the very first year after the fall of Eleusis. Certainly this does nothing to weaken the chronology given. It may however be merely a coincidence: we do not know for certain that the Eleusinia were held at Eleusis itself, so that the Thirty could ... interfere." Simms 1975 treats it as quite certain that the Eleusinia were held at Eleusis; thus also Clinton 1979. Whether the Thirty would interfere is another question, but it would not be unreasonable for the Athenians to be more cautious in their commitment.

<sup>34</sup> These would be intransigents who had closed ranks behind the remnant of the Thirty in 403, reunited with Athens in 401/400 (*Ath. pol.* 39.1–4 and 40.4). On adaptations in the settlement of 401, see Carawan 2006a.

the most important rituals preserved on *kyrbeis* were not transcribed onto the Wall; any of those might be preempted by the rites that Nikomachos had published there. So long as the disparity persisted, ancient obligations would have to be defended against the encumbrances that Nikomachos inscribed. Traditionalists would therefore argue that a more comprehensive publication was needed, one in which all obligations were set forth on the same footing. Nikomachos's original work was therefore erased and, in its place, a complete sacrificial schedule was inscribed. It was because of this new and compendious format that the Wall had to be extended by several stelai.<sup>35</sup>

The calendars of this second edition incorporated the rites preserved on *kyrbeis*, but they probably also included much of the material that Nikomachos had catalogued for the first edition. It may be impossible to identify that material with any confidence. Dow supposed that the material targeted by this accuser may be indicated in the fragmentary lines [ἐκ] νέων [...], and [ἐκ τ]ῶν ν[έων ...]; he completed the first phrase as [ἐκ] νέων [θυσίων], and he saw this rubric as referring to precisely the additional material that Lysias's client condemned as excessive.<sup>36</sup> Robertson objected that the line Dow construed as the heading for Nikomachos's addenda, [ἐκ] νέων [θυσίων], is probably not a rubric at all. Indeed, Robertson supposed that all of the extant rubrics refer to much older sources. But that view was based on the assumption that the material at issue in our case was actually transcribed in Nikomachos's first term, and that assumption does not fit Lysias's argument. The speechwriter clearly indicates that the target of prosecution is material transcribed in the second term (above at n28). Those second-term compilations must have been approved in some form by the council in the first years of the restored democracy, and those sacred obligations of the new regime could not be simply abandoned. Some of that material may have been included under the fragmentary rubric that Robertson reads as ἐκ τῶν συ[γγραφῶν], others as ἐκ τῶν στ[ηλῶν].<sup>37</sup> By either reading, this rubric would appear to allow for more recently authorized rites, as opposed to the material derived from *kyrbeis*.<sup>38</sup>

<sup>35</sup> Cf. Fingarette 1971; Dow 1961: 69–73 suggests that the extension “fits better than ever with the fact that Nikomachos required ten years to complete the Code” (73).

<sup>36</sup> Dow 1941: fr. F (1961 fr. E) = Lambert fr. 2. Lambert dispenses with the supplement [θυσίων].

<sup>37</sup> Agora I 727, line 77. Oliver in Oliver and Dow 1935: 21 suggested σ[υμβολῶν?]. Lambert (fr. 3), with Dow, prefers στ[ηλῶν], but this would seem to need some qualifier unless it was an obvious reference to the earlier edition that Lysias calls “the stelai that this fellow inscribed” (21).

<sup>38</sup> It is also possible that more recent rites were included in the “month by month,” τὰ κατὰ μῆνα, Agora I 727 (= fr. 3 Lambert), col. i.6 and 21; IG II<sup>2</sup> 1357a (= fr. 1 Lambert), 4–5.

Under whatever heading, there were certainly more recent rites, published by the new regime, that threatened the funding of ancient obligations. These may well have included popular feasts for the demos, prescribed by the new regime at Athens (much as Dow supposed). These commitments were made when Eleusis remained a separate enclave and did not share in those decisions (403–401). With the year of reunification (401/400) the oligarchic partisans at Eleusis would again have had a say in such matters. In the very next year, Nikomachos's schedule(s), standing at the head of the Wall and bearing the imprimatur of the democratic regime, would take precedence over traditional rites that were not so assertively published. Even if their own revenues were never actually at risk, the Eleusinians were likely to be especially offended by the prospect that rites preserved on *kyrbeis* might be unfunded or underfunded because of the schedule(s) that Nikomachos inscribed.<sup>39</sup> From our vantage it might seem unreasonable to blame the transcriber for this.<sup>40</sup> But again, as Todd remarked, Nikomachos did not need to have done or not done anything criminal to be charged.

If we could make sense of the procedure, we would be in a better position to assess the merits of the case. It was probably not an accounting (*euthyna*), despite the manuscript title; nor does the case appear to be an ordinary "impeachment" (*eisangelia*) for official wrongdoing.<sup>41</sup> Those explanations are based on a tactic in the argument, where Nikomachos is treated as a secretary who has somehow evaded accounting all these years. But we noticed that the accuser seems to refer to particular legislation that paved the way for his indictment. Thus in §17, AA answers the charge that he himself is impiously canceling rites with a counterfactual consideration: he might be charged with such a crime if he had authored laws for the transcription (εἰ μὲν νόμους ἐτίθην περὶ τῆς ἀναγραφῆς); but as it is, "I am insisting that [N]

<sup>39</sup> Conversely, they would honor those who served their interests, as shown by a decree for hierophant Hierokleides Teisamenou (mid-fourth century), *IG II²* 1188. Clinton 1974: 19 suggests, "he could be regarded as responsible to some extent for a large attendance at the Mysteries and thereby for bringing considerable economic benefit to the deme, which had to provide the material needs of the participants."

<sup>40</sup> AA may be deflecting that objection when he dismisses N's call for deleting what no longer suited (§21) and discounts the obvious defense, namely, that the transcriptions were approved by council (§23).

<sup>41</sup> The complaint in §22, that council, for want of funds, has been driven to accept *eisangeliai* to confiscate property, weighs against the notion that this is an instance of the same procedure. That the case was debated in council (§7) is also consistent with a γραφή on the model of γραφή παρανόμων (anticipating γραφή νόμον μὴ ἐπιτήδειον θείναι): the prosecutor would initiate proceedings by *hypomosia*, before council or assembly. On this alternative, see below at n44.



obey the established laws that we hold in common” (νῦν δὲ τοῖς κοινοῖς καὶ κειμένοις ἀξιῶ τοῦτον πείθεσθαι). On this basis AA is demanding that the ancient obligations on *kyrbeis* and *syngraphai* be restored; for this is what the Athenians have decreed (ταῦτα γὰρ ὑμεῖς ἐψηφίσασθε). This is of a piece with other passages where the crime is construed as subverting the established laws or violating rules about how to enact or reauthorize legislation.<sup>42</sup> We know that this was a paramount concern of the restored democracy and, I suggest, it was all the more pressing in the first few years after reunification, as those who had taken refuge at Eleusis found themselves subject to Athenian justice.

The situation in 401/400 called for a new enactment reformulating a cardinal principle of the Reconciliation, to abide by the ancestral laws.<sup>43</sup> That conservative principle had been recognized in the initial provisions of Teisamenos’s decree (soon after 403): πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος ... καὶ τοῖς Δράκοντος θεσμοῖς, οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ (Andoc. 1. 83). This formulation invokes *ta patria* and gives a concrete dimension to those rules: the “established laws” that derive from traditional inscriptions (esp. *axones* and *kyrbeis*) represent a higher authority than recent enactments. But the covenants of reconciliation required certain adaptations, and thus Teisamenos laid out a template for “supplementing” the Solonian laws (Andoc. 1.83, ὁπόσων δ’ ἂν προσδέη); these addenda were construed as integral to the ancestral body and not as innovations—indeed Teisamenos later refers to this augmented body of law as *keimenoi*.

The specific measure that our accuser champions, “to abide by the *κοινοὶ καὶ κειμενοὶ*,” probably included what is notably lacking in the decree of Teisamenos (whom AA treats with such scorn, §28): a specific remedy against those who abuse the new process for supplementing the laws. An offense of that nature is indicated in the passages where our accuser claims

<sup>42</sup> Esp. §§2–6: ἀντὶ μὲν Σόλωνος αὐτὸν νομοθέτην κατέστησεν (§2). N inserted and deleted laws arbitrarily (§3), to the point that ἐκ τῆς τοῦτου χειρὸς τεταμεινόμεθα τοὺς νόμους (ἐταμεινόμεθα Dobree). He supplied conflicting laws to litigants but postponed the official transcription. Though (in the second term) he was to complete a limited transcription, “he made himself master of all” (§4); and he showed no regard for decrees or laws—“some you insert, others you delete” (§5). He must now be punished for his arrogance and illegality (παρανομήσας, §6). Cf. §§25–28: N et al. have injured the city for all time, taking bribes to corrupt the transcription. While others risked their lives fighting abroad, N stayed at home to corrupt the laws of Solon, τοὺς Σόλωνος νόμους ἐλυμαίνετο (§26). From *hypogrammateus* he has become *nomothetes*—a far cry from the lawgivers our ancestors chose, Solon, Themistokles, and Perikles.

<sup>43</sup> Thus in *Ath. pol.* 39.5, homicide law is κατὰ τὰ πάτρια, except for the rule regarding the “planner.”

that Nikomachos has made himself *nomothetes* or a second Solon (§§2, 27). The crime would be described as legislating “contrary to the established laws *that we hold in common*,” ἐάν τις νόμον τιθῇ παρὰ τοὺς νόμους τοὺς κοινούς καὶ κειμένους (*vel sim.*). That further qualifier represents a stricter standard than Teisamenos’s; any legislation must be consistent with the body of laws respected by both communities, at Athens and Eleusis as well. Thus the adaptations of 403–401 (when Eleusis was not represented) might now be challenged. Our accuser’s remedy, which replaces one text of law with another (§17), seems to be a step toward the *graphē nomon mē epitēdeion theinai* of the later fourth century.<sup>44</sup> The closing of the speech seems to capture the central issue in just such terms, where AA calls upon the jury to punish N and his allies as enemies of the legislative process (§35), τοὺς τὴν ὑμετέραν νομοθεσίαν ἀφανίζοντας.

### THE CHARACTER OF THE ACCUSER

Whatever the procedure, the speech against Nikomachos is certainly, as Todd described it, an artful essay. It may also have been singularly effective. We cannot say whether this particular speech was the key to winning the case for reform of the Calendar, as there were other accusers, probably more prominent. But the winning prosecution owes something to the non-partisan profile that Lysias has given this speaker. By my reading, the speaker emerges as a somewhat younger man, a newcomer to high-profile trials, who has recently made his debut in the assembly defending the κοῖνοι καὶ κείμενοι νόμοι. He appeals to tough-minded “democrats,” but he is naturally aligned with religious conservatives and probably has ties to Eleusis. There is a crucial passage in the received text, long obscured by emendation, which supports that profile.

The defense of ancestral rites suggests in itself that the accuser is allied with the noble elite. But the speechwriter does all that he can to minimize that association. It is for this reason, I suppose, that the accuser never identifies the specific rites and perquisites nor the priestly personnel affected by the case, those whom Nikomachos has deprived of their due and whom the accuser and his allies would restore to their privileges. It is doubtful whether the witnesses called in §20 would have been more specific<sup>45</sup>; the accuser says

<sup>44</sup> The fourth-century remedy is construed as a control on legislation as a zero-sum process, whereby nothing extraneous to the traditional corpus can be added; cf. Carawan 2007: 38–41. For the distinction of this procedure from *graphē paranomōn*, see esp. Hansen 1974: 44–8, and most recently Sundahl 2003.

<sup>45</sup> Robertson 1990: 72 suggests that these witnesses must have mentioned specific rites, but it seems to me more likely that other speakers, with obvious loyalties, would have introduced that testimony and developed the relevant themes (defense of cult and priestly elite).

only that their testimony would confirm the financial calculation (12 talents in excess, leading to a shortfall of 3 talents). And at every opportunity Lysias balances the hieratic theme with appeals to democratic values, such as the legacy of Perikles.

The most striking feature of the speech is dictated by this strategy. The argument on the main charge, appealing to the elite, is almost equaled by the complaint against Nikomachos as a traitor to the democracy: at the end of his first term he had served the interests of the Thirty, and that collaboration led to the judicial murder of Kleophon. The speechwriter is careful to portray his client as a sensible moderate for whom the end does not justify the means. But I think we can glimpse even here, behind this studiously non-partisan figure, the shadow of his oligarchic associations: because he has no democratic credentials, he cannot simply condemn Nikomachos for packing the court against Kleophon.

This non-partisan stance is all the more plausible, apparently, because the accuser has a short résumé. In the problematic passage introducing the plot against Kleophon (§§7–8, treated below), it appears that this speaker was not well known for any earlier agenda: thus Nikomachos might plausibly invent guilty associations and the accuser could simply dismiss them. The speaker may have first emerged as an activist supporting the very legislation that provided a remedy against Nikomachos's work, a bill defending the κοῖνοι καὶ κέμεινοι. And now in the lawsuit against Nikomachos, he plays a supporting role: other speakers and expert witnesses would bear the burden of proof; this accuser's task was to straddle the partisan divide.<sup>46</sup>

His turns of phrase are marked by wit (*eutrapelia*) and a certain audacity, such as Aristotle finds characteristic of the young.<sup>47</sup> He uses word-play in lieu of argument. Thus in the epilogue he remarks how unsuitable a choice Nikomachos was to transcribe *ta patria* when he was not even entitled to citizenship *kata patera* (§§29–30). The same attitude is indicated in the passages that distort Nikomachos's title and name. He was officially enlisted as *anagrapheus* (to research and transcribe important texts), but our accuser demotes him to *hypogrammateus* in order to declare him accountable as such. And, in line with the slur upon his parentage,<sup>48</sup> Nikomachos is ironically

<sup>46</sup> The view that ours is a "second speech" (Blass 1887: 46) is dismissed by Todd (1996: 114). But AA refers to other prosecutors (§§34–35), cites no other evidence than the one *martyria* (§20), and never bothers to frame the issue as a solo or first speech would do.

<sup>47</sup> *Rhet.* 2.12, 1389a–b, at §16. There is even a hint of "the novice's excuse" in §24, where he calls upon the jurors not to punish artless speakers.

<sup>48</sup> The implication is that N and his father were state-owned slaves, were then freed, and that at least N was later enfranchised. Thus AA suggests that N was admitted to a phratry

called Nikomachides (“scion of Nikomachos”), as though this son-of-a-slave claimed a proud lineage.

That same style appears in a problematic passage whose implications have been long overlooked. The version given by most editors is as follows (§§7–8, with emendations underlined):

ἐὰν δ' ἄρα ἐπιχειρῇ λέγειν ἅπερ ἐν τῇ βουλῇ, ὡς ἐγὼ τῶν τετρακοσίων ἐγενόμην, ἐνθυμείσθε ὅτι ἐκ τῶν τοιαῦτα λεγόντων τῶν τετρακοσίων πλεῖν ἢ χίλιοι γενήσονται· καὶ γὰρ τοὺς ἔτι παῖδας ὄντας ἐν ἐκείνῳ τῷ χρόνῳ καὶ τοὺς ἀποδηοῦντας οἱ διαβάλλειν βουλόμενοι ταῦτα λοιδοροῦσιν. ἐγὼ δὲ οὕτω πολλοῦ ἐδέησα τῶν τετρακοσίων γενέσθαι, ὥστε οὐδὲ τῶν πεντακισχιλίων κατελέγην.

But if in fact he tries to say what he said in council, that I was one of the 400, you have to consider that, on the basis of such accusations, members of the 400 would be more than a thousand; and among the targets of such slander, some were boys at that time and others had left the country. But I myself, far from being one of the 400, was not even enrolled among the 5000.

The manuscript tradition however gives a different meaning: the accuser anticipates the counter-charge that he had been one of the 300 (τριακοσίων); but on the basis of such accusations the 300 would be more than a thousand; and far from being one of those 300, he protests, he was not even enrolled among the 3000 (τρισχιλίων). Despite the agreement of the manuscripts, this passage has been emended by almost all editors, going back to the Aldine edition (1513). Henri Estienne (1575)—Stephanus—reverted to the manuscript reading and then apparently relied upon this passage to emend Lys. 25.9 (from τετρακοσίων to τριακοσίων). Taylor, otherwise faithful to Stephanus, took him to task for this, as he knew of no other report indicating a body of 300 to vindicate that reading.<sup>49</sup>

rather late (§6); i.e., he was not inducted at sixteen years of age by his own father (as were most Athenians), but chose his phratry when he gained citizenship (cf. Osborne 1981–83: 4.158). Such would be the past benefactions of §28. Of course such slurs upon parentage were common stock (cf. Voegelin 1943: 115–16), and the very fact that AA has so little to say suggests there was not much to it. But in an era when many Athenians were not as proficient in handling documents as the slaves and metics who were active in business, it is not out of the question that Nikomachos was indeed the son of a non-citizen.

<sup>49</sup> “Quo iure hic nobiscum egit Stephanus, neque hic solum, verum etiam in iis quae sequuntur orationibus, ego plane divinare nequeo; neque novi CCC istos homunciones quos illi visum est obtrudere contra Manuscriptorum fidem, contra rationem et contra historiam ... Ceterum *tercentumvirale* neque collegium neque classem ex Atticis monumentis novi quae te [sc. Stephanum] expediat” (Taylor 1739: 420–21). He goes on to discount later bodies of 300 as obviously irrelevant. In our passage (Lys. 30.7–8), Taylor 1739: 473–74 restores the Aldine reading and simply refers the reader to his notes on Lys. 25.

Taylor's argument for the Four Hundred in Lys. 30.7–8 has been followed almost without exception, and editors often rely on Taylor's reasoning for the whole set of emendations.<sup>50</sup> But let us reconsider how precarious that correction must now seem. First, we are to suppose, the scribe made a casual error in writing τριακοσίων for τετρακοσίων; and then he or a later corrector regularized it in the other instances, without noticing the confusion. And then supposedly, the corrector also altered πεντακισχιλίων to τρισχιλίων (without understanding what one group had to do with the other).<sup>51</sup> That sequence of errors is certainly possible, but it is, at best, a cumbersome solution, and I suggest that it is at least as reasonable to retain the manuscript reading—as Stephanus did even before there was any evidence to confirm it.

We have the advantage of testimony that came to light long after Taylor's edition, which tends to confirm the manuscript reading but which no one (to my knowledge) has brought to bear upon this passage. For *Ath. pol.* 35.1 lists official bodies under the Thirty, and there we find, alongside the 500 *bouleutai*, "the other offices they filled from the 1000 *prokritoi*": such were the Ten who administered Peiraieus, and the Eleven jailers, and the 300 *hypēretai*, who served as their henchmen—whom *Ath. pol.* also calls *mastigophoroi*. These last three groups—the Peiraieus Ten, the Eleven (in Athens), and their 300 supporters—were the security forces, with which the Thirty maintained control. The last of these, the Three Hundred, were notorious for their role in the arrest of Theramenes, on orders from Kritias. Xenophon introduces them contemptuously as *neaniskoi*.<sup>52</sup>

If he was linked with this younger group, there is more of a point to the accuser's objection, that many of those wrongly implicated were boys (*paides*) at the time. By contrast, those accused of being members of the Four Hundred (in 411) could hardly have been children. Scholars have perhaps been reluctant to regard our accuser as someone whom an adversary might number among this younger group, because he speaks with such authority (or pretends to). But as we noticed, there is much in Lysias's characterization to suggest a younger activist.

Moreover, for the second group that he disavows, the Three Thousand is much more plausible than the Five Thousand. If he had been counted among the moderate regime of 410, there was nothing to be gained by disavowing it. But there are important implications if he could plausibly deny that he

<sup>50</sup> Taylor actually retained the reading τρισχιλίων, but cast doubt upon it in his commentary; some of his successors did likewise, but cf. Sauppe 1841: 22, who defends τρισχιλίων.

<sup>51</sup> Cf. the apparatus of Carey 2007 ad loc. (τριςκισχιλίων is a misprint).

<sup>52</sup> *Hell.* 2.3.23, 55; cf. Rhodes 1981 [1993]: 439, on *Ath. pol.* 35.1.

was counted among the Three Thousand: the point is that, in keeping with his non-partisan posture, he was not directly involved in the city-party at all. That complication is at least consistent with his discreet loyalties: he was probably an Eleusinian who remained at Eleusis when the Thirty took refuge there and he is therefore suspected of collaborating with them. He might be one among the many who returned to Eleusis after the Decesean War and remained there because of ties to family and estate, not necessarily out of any preference for the oligarchic regime. A young man of this background would be vulnerable to charges of complicity, perhaps even called an *hypēretēs* of the Thirty. Of course, preempting that charge may be simply a prejudicial tactic, to put Nikomachos's claims in the worst possible light, whether such charges were forthcoming or not.<sup>53</sup> But in any event, it is an indication of the kind of counter-charge that the jury might readily expect Nikomachos to make, and thus it tells us something about the associations of this accuser that he himself does not otherwise acknowledge.

There is one further consideration that weighs in favor of the received text: the reference to the pledge of no reprisal, *μη μνησικακεῖν* (§§8–9):

δεινὸν δέ μοι δοκεῖ εἶναι ὅτι, εἰ μὲν περὶ ἰδίων συμβολαίων ἀγωνιζόμενος οὕτω φανερώς ἐξήλεγchon αὐτὸν ἀδικοῦντα, οὐδ' ἂν αὐτὸς ἤξισσε τοιαῦτα ἀπολογούμενος ἀποφεύγειν, νυνὶ δὲ περὶ τῶν τῆς πόλεως κρινόμενος οἰήσεται χρῆναι ἐμοῦ κατηγορῶν ὑμῖν μὴ δοῦναι δίκην. (§9) ἔτι δὲ εἶναι θαυμαστὸν νομίζω Νικόμαχον ἑτέροις ἀδίκως μνησικακεῖν ἀξιοῦν, ὃν ἐγὼ ἐπιβουλεύσαντα τῷ πλήθει ἀποδείξω.

It seems outrageous to me that, if I were litigating over a private contract and so plainly convicted him of wrongdoing, even he would not expect to win acquittal by making such claims; but in this case, on trial concerning the city's obligations, he thinks he must evade punishment by accusing me in this way. (§9) And I think it amazing that Nikomachos expects to recall wrong against others unjustly, when I shall expose him for plotting against *to plēthos*.

Disposing of the (presumptive) charge, that he had been implicated in the oligarchic regime, our accuser condemns Nikomachos for making unwarranted recriminations, when (allegedly) Nikomachos himself had plotted against the *demos* in the case against Kleophon. The reference to the Reconciliation is usually seen as an appeal to amnesty in the broadest sense, a commitment to forgive and forget. But that is a doubtful value in the lawsuits of this era,<sup>54</sup> and

<sup>53</sup> As is often pointed out, this is how preemptive arguments work: if the adversary, after hearing the objections, made no such allegations, jurors might suppose that he was foiled by the objections.

<sup>54</sup> Cf. Carawan 2002: 5–12, on the meaning of *mnēsikakein*, where it has some “legal effect”; and 2006b, esp. 368–74, on the adaptation of contract law under the covenants.

it is only suggested here if we read the preceding passage (§§7–8) as emended: that is, if we suppose that the charge it rebuts was the tenuous allegation of involvement in the regime of 411. If we follow the received text, suggesting that our accuser was accused of complicity in the regime of the Thirty, then the meaning is more in keeping with other contemporary usage: *μὴ μνησικακεῖν* is the closing oath of the settlement, a commitment to abide by the covenants and not to resurrect any claim that is specifically resolved by them.

The covenant at issue would be the provision regarding homicide (*Ath. pol.* 39.5; *Andoc.* 1. 94); for it was permitted to prosecute the actual perpetrator, the “own-hand” killer (*autocheir*), but not to prosecute the “planner,” the instigator or accomplice (ὁ βουλευων). By that covenant those who served in the Three Hundred could not be charged for their complicity in the executions carried out by the Eleven. In that context the pledge *μὴ μνησικακεῖν* naturally conveys its strict sense (not to go back on the covenants): anyone merely complicit, as the Three Hundred were, enjoyed the same immunity as Nikomachos himself. For, the accuser insists, Nikomachos was complicit in the judicial murder of Kleophon because he came up with the statute that authorized the proceedings.<sup>55</sup>

To bring home the parallel, Lysias puts particular emphasis on the role of Satyros of Kephisia (§§10–14), one of the most notorious agents of the Thirty (before he joined them, apparently). He is perhaps best known as the leader of the Eleven at the arrest of Theramenes. Xenophon describes the scene (*Hell.* 2.3.54–55). At Kritias’s prompting the herald summoned the Eleven against Theramenes: they entered the council chamber, led by Satyros, “the boldest and most shameless” among them, attended by the *hypēretai* (the 300). Kritias remanded Theramenes to them, whereupon Satyros “pulled Theramenes from the altar and the *hypēretai* began to drag him away,” as he called gods and men to witness.

In 405 that same Satyros had served in council and had introduced the measure to bind Kleophon over for trial. Nikomachos was then “persuaded” to supply the law-text that allowed for the special proceedings (with council and court in joint session). By linking them to Satyros, Lysias suggests that Nikomachos and the corps of 300 served in roughly parallel roles: both acted as agents of the Thirty, in close collaboration with their most ruthless operative, the right-hand man of Kritias.

<sup>55</sup> Todd 1996 points out the linkage between this point against Nikomachos and the argument on judicial murder in *Lys.* 13 (*Agoratos*), 12–13, regarding the general Strombychides (as in 30.14). He dismisses the reference to *mnēsikakein* as “an irrelevance designed to mislead” (120).



This theme, respecting the covenants of the Reconciliation Agreement, is also indicated in the defense of κοινὸι καὶ κείμενοι νόμοι (§17). That commitment, to honor “the established laws that we hold in common,” was probably affirmed in the second settlement, the agreement of 401 that led to the reunification of Athens and Eleusis (Xen. *Hell.* 2.4.43; *Ath. pol.* 40.4): old laws, recognized by both sides, would take precedence over any new obligations or remedies. That commitment trumped the obligations that Nikomachos published, though the settlement itself probably did not specifically refer to the *kyrbeis* or *syngraphai*; their superior authority is simply the plausible implication that this speaker draws from the cardinal phrase, κοινὸι καὶ κείμενοι. Obligations recognized by both communities, fixed in statutes of long standing, would override any innovations the Athenians had made when Eleusis was not party to them—such as the transcriptions of Nikomachos. The enactment of this rule would be a decree ratified by the community as a whole, soon after reunification (thus AA addresses the jury without distinction, ταῦτα γὰρ ὑμεῖς ἐψηφίσασθε, §17).

From this perspective, the Calendar of 401 was a casualty of unforeseen events, undermined by the settlement between Athens and Eleusis, which was perhaps concluded even as the Calendar was being inscribed. It is understandable that Nikomachos and his allies would resist overturning the work of his commission, especially if that edition incorporated generous new rites, popular with the *plēthos* (as Dow supposed). But with the return of Eleusis, the center of gravity seems to shift. That perspective on the timing of the suit may not redound to Lysias’s credit, but it does not weigh against his authorship. We might expect Lysias to sympathize with Nikomachos, if both were outsiders allied with the democracy; but other loyalties prevailed.<sup>56</sup> Despite their metic status, Lysias and his family closely associated with wealthy nobles.<sup>57</sup> And if the client for whom he wrote this speech had no real tie to the Thirty, Lysias had no reason to reject his patronage. The draconian penalty that he demands for Nikomachos (§§22, 27) was probably true to the accuser’s character but not a serious threat. Indeed, Nikomachos may have assisted in transcribing the edition that survives in the fragments (he seems willing enough to undo his own work, §21). So, in this diminished sense, it may be “Nikomachos’s Lawcode” after all. But whatever the fate of Nikomachos, the non-partisan plea

<sup>56</sup> And Nikomachos’s democratic credentials may have seemed minimal: with §§15–16, cf. Wolpert 2002: 105–6.

<sup>57</sup> Thus Kephalos played host in Plato’s *Republic*; cf. Dover 1968: 47–56. Elite interests may also be represented in *Against Theozotides*, fr. 130 Carey, which protests cutbacks to the cavalry.

against him seems to have been singularly effective in changing the sacrificial agenda precisely because it so faithfully reflected the Athenians' complicated attitudes about reconciliation and the reconstruction of the laws.

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