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Aristotle and Anaximenes on Arrangement

Abstract: Comparison of the accounts of arrangement (*taxis*) in Aristotle's *Rhetoric* and Anaximenes' *Rhetoric to Alexander* gives further support to belief in a common urtext of the two treatises. It also aids in the interpretation of several hitherto obscure passages in both texts and reveals differences in the approaches used by the philosopher and rhetorician.

Keywords: arrangement, *taxis*, introduction, narrative, proof, urtext.

I t has long been my view that the rhetorical texts of Aristotle and Anaximenes are based on a common source text, which bore some relationship to Aristotle's collection of rhetorical *technai*, the *Synagoge technon*; indeed, I suspect that they were one and the same text. In his paper in this collection, Pierre Chiron has subtly probed questions of the relative chronology of the two works, and of various parts of the two works, speculating about how they may have influenced each other. I still believe it more economical, however, to posit that both authors began with a common work, an "urtext," and developed it in different ways independently.[1] Pierre Chiron's paper indicates to me nevertheless that beyond the

urtext there are points where common issues remained active for both authors.[2]

Since it was my expectation that others at the Paris colloquium were likely to find something interesting to talk about earlier in the text, I decided to try to detail my thesis about the vestiges of this common urtext further by investigating the last quarter or so of the *Rhetoric to Alexander*, which deals with arrangement (*taxis*), and comparing it with the corresponding sections of Aristotle's *Rhetoric*. My researches have used the similar structures of the two presentations as a guide and then focused on the peculiar wording and ideas that the two texts share. The researches have largely confirmed my basic view of the common source text, but they have also led me to suspect that the urtext may have contained little more than outlines for discussion concerning arrangement, together with some key words, even if, as Quintilian and Dionysius of Halicarnassus tell us (though Aristotle surprisingly does not),[3] Isocrates had been the originator of the four-part theory of *taxis* that forms the basis of this teaching. It seems unlikely that Isocrates would have been so laconic. The use of specific terminology, however, is dynamic, each author using the same terms in different and sometimes contestable ways, whether implicitly or explicitly. Sometimes other words are substituted. Aristotle also clearly had access to other handbooks, or to explicit reports about them, and could identify the proponents of particular ideas in them; Anaximenes does not betray his sources—whether he knew the ultimate sources or not—but he does not identify sources in any part of his text.[4]

Aristotle largely scoffs at the subject inasmuch as he thinks arrangement ought to consist simply of a proposition and an argument (*Rhet.* III.13, 1414a 30), which follows his enthymematic approach to rhetoric generally. But he does refer to a laughable "current division" of arrangement (νῦν δὲ διαιροῦσι γελοίως, a 37), a version

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[2]For instance, in a recent paper, "The Disappearance and Reappearance of *Exetasis*," *Mouseion* 8 (2008): 395–408, I have speculated about how Anaximenes may have dealt with the Platonic, dialectical challenge to rhetoric by inventing the *exetastikon* species, which reflects in some ways Socratic dialectic. Aristotle, of course, deals with the same challenge by marking off rhetoric as an *antistrophe* of dialectic in the first line of his treatise.

[3]Aristotle does mention Theodorus and Licymnius (*Rhet.* III.13.4–5, 1414b 13–18), both of whom clearly subdivided speeches into many more than four parts. It does not seem that he is following them in the account that he is critiquing.

[4]The identification of Euripides at *Rh. Al.* 18.15, 1433b 12–14, since he was not a rhetorician, hardly counts.

of which must be that in Anaximenes' text, and Aristotle himself dutifully sketches his views on these standard parts of a speech as well (3.13–17), though apparently with little enthusiasm or intellectual commitment. He makes little distinction in the arrangement of speeches among his three genres of rhetoric, but for Anaximenes the species take an important role even if the demegoric species receives the longest treatment.[5] A complete review of arrangement for each of the species would have led to the text becoming even more repetitive than it already is, but different parts of arrangement receive more and less emphasis in his treatments of the different species, which leads to some economy.

The basic arrangement in Anaximenes sees introduction, narrative, confirmation, and anticipation; curiously, no peroration seems to be envisioned by Anaximenes, although the treatment of emotions in 34.12–15 (cf. 36.47–50) *may* take its place. At any rate, he does not label it. It seems likely that the urtext had all of these elements, introduction, narrative, confirmation, anticipation, and peroration, whether or not they were all identified as "parts." Anticipation, together with repetition (cf. 20 and 36.45–46) and interrogation (cf. 36.43–44), seems an element that is not strictly a "part." Within the introduction there seems assumed in each kind of speech some sort of engagement with *diabole*. Both authors discuss it, and it receives extended treatments from Anaximenes for both demegoric and forensic speeches (29.8–26 and 36.7–15). Narrative actually does not receive a single term in the main discussion in Anaximenes' text. We are instead given a choice of several terms: in demegoric the terms, *apangellein* ("report"), *anamimneiskein* ("recall"), *deloun* ("explain"), and *prolegein* ("discuss in advance") reflect the chronology of the events to be narrated; in epideictic, genealogy and biography substitute as the narrative part of the speech. Confirmation and anticipation only receive extended treatment for demegoric, as does the treatment of emotions. Forensic has an extended treatment of legal argumentation (*dikaiologia*) and of arguments to be used against (but not for) different forms of evidence. The text thus limits its extended discussions of certain topics and places them under the species where they seem most applicable.

At first glance, Anaximenes' introduction is said to have four functions: 1) preparation of the audience, 2) presentation of the head-

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[5]The fact that it is the first treated may account somewhat for its receiving the longest treatment. It receives four Bekker pages (*Rh. Al.* 29–34), compared with only one and a half for praise and criticism (35), somewhat over three pages for the forensic species (36), and a half page for the investigative species (37).

ings of the subject (for those who do not know it),⁶ 3) calling for attention, and, if possible, 4) making the audience friendly (*Rh. Al.* 29.1, 1436a 33–37). But here attention to the particles is crucial. The μὲν following καθόλου is picked up by καὶ ἔτι⁷ three lines later, that is, the *general* description of the introduction as a preparation of the audience (and, if necessary, presentation of the subject) is *specified* as calling for attention and, if possible, making the audience friendly. Four functions seem to shrink in some cases to one and a half. Preparation of the audience is specified as calling for attention, presentation of the subject is not always necessary, and making the audience friendly is not always possible.

   Aristotle's discussion of the introduction in *Rhet.* 3.14 seems to suggest two things: first, that the source text was like Anaximenes' in making distinctions among the genres, since Aristotle devotes considerable space to making barely discernible distinctions among them; and second, that Aristotle has in the forefront of his thinking his theories of poetry, since he draws parallels to music, drama, and epic. He then touches on what an Aristotelian would think the point of an introduction is, namely, to state the goal (*telos*) of the speech (*Rhet.* III.14.6, 1415a 23–24). Before picking up the elements that are common with Anaximenes, he warns us that they are remedial (ἰατρεύματα, a 25). After still more delay, which focuses on how some of these elements are often better for other parts of the speech, Aristotle finally specifies them, namely, "making the audience friendly and, sometimes, attentive" (τὰ δὲ πρὸς τὸν ἀκροατὴν ἔκ τε τοῦ εὔνουν ποιῆσαι καὶ ἐνίοτε προσεκτικὸν, a 34–35), the same one and a half elements identified by Anaximenes and in very similar wording (ἐπὶ προσέχειν παρακαλέσαι καὶ καθ' ὅσον τῷ λόγῳ δυνατὸν εὔνους ἡμῖν αὐτοὺς ποιῆσαι, *Rh. Al.* 29.1, 1436a 36–37). As if to confirm their common approach, both authors then also identify what gains attention in almost identical ways, in Anaximenes "important or alarming matters or matters that closely concern ourselves" (μεγάλων ἢ φοβερῶν ἢ τῶν ἡμῖν οἰκείων, 29.3, 1436b 9), in Aristotle "the important matters, the private matters, and the surprising matters" (τοῖς μεγάλοις, τοῖς ἰδίοις, τοῖς θαυμαστοῖς, III.14, 1415b 1–2).⁸ Clearly there is some

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⁶Those listening to an opposition speech presumably already know the subject.
   ⁷Chiron prints ἔτι τὸ, which seems to me unnecessary. If the article were needed, it would appear also with ποιῆσαι later in the sentence.
   ⁸If it is not already clear, I take τῶν ἡμῖν οἰκείων to be equivalent to τοῖς ἰδίοις and φοβερῶν to be close enough to θαυμαστοῖς.

word substitution, but the outline is the same and that there is a common source seems unmistakable. Aristotle goes on to confirm the external source of his argumentation by disowning it as external to the speech, for a feeble audience, and off the point (III.14.7, 1415b 4–6).[9]

The discussion of *diabole* in Anaximenes extends from 29.8 through 29.26, a full Bekker page, and it receives another half page in the discussion of forensic arrangement, at 36.7–15.[10] That there is a relationship to Aristotle's treatment seems clear enough inasmuch as he also devotes an entire chapter to the subject (3.15), but specific correspondences in this area between the two texts are quite elusive. Both begin with *diabole* directed toward the speaker, but Anaximenes immediately goes on to signal discussions of *diabole* concerning the subject and the speech; he also distinguishes *diabole* against the speaker from the past and from the present, the latter of which he further subdivides into *diabolai* based on age and speaking frequency.[11] Aristotle's account is organized very differently,[12] beginning with denials of what is prejudiced, or its significance, and retreating to admission of the truth of the prejudice with attempts to mitigate its significance. But there are common elements in the two accounts: both recommend vehement condemnations of *diabole* in general (*Rhet.* III.15.9, 1416a 35–37, *Rh. Al.* 29.16, 1437a 21–22), and both also have arguments about how innocents have been suspected, or ruined, as a result of it (*Rhet.* III.15.6, 1416a 24–26, *Rh. Al.* 29.16, 1437a 23).

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[9]Aristotle also reflects Anaximenes' wording in saying that the introduction needs to do nothing other than "to state the headings of the matter" (τὸ πρᾶγμα εἰπεῖν κεφαλαιωδῶς, *Rhet.* 1415b 7–8; cf. 34–35); cf. *Rh. Al.* 29.1: τοῦ πράγματος ἐν κεφαλαίῳ μὴ εἰδόσι δήλωσις, and 3: φράζειν ἐν κεφαλαίῳ τὸ πρᾶγμα. This wording, however, is neither unique nor unusual.

[10]Various translations of the term have appeared in English, even within the same editions. "Slander," "misrepresentation," "calumny," and "prejudice" are the most common. I prefer the last, though it seems that prejudice usually arises from slander.

[11]In 36.7–9 age again appears, regarding whether it is fitting for one who is too old or young to speak on another's behalf. There the issue of speaking frequency is replaced by whether, as a prosecutor, one's personality contradicts the charges or, as defendant, matches the charges.

[12]Aristotle's organization may be obscured by a lacuna: the μὲν at III.15.1, 1416a 4 has no corresponding δὲ. But the lacuna may be Aristotle's own. He may have thought of making the same distinctions that Anaximenes makes, but then changed his plan. We may translate: "one (class of argument) is that from which one may refute an objectionable assumption. For it makes no difference whether the (assumption) is from someone speaking or not, so that this (one class of argument) is universal." Cf. *Rh. Al.* 36.14, 1442b 19.

I would like to suggest a third point where there may be some commonality, at *Rhet.* 1.15.10, 1416b 8 and *Rh. Al.* 36.4, 1442a 4–5. The passage in Anaximenes is vexed; both recent editors have seen it as corrupt, and I do not dispute that, though I wonder whether the corruption is in the same place. Forster translates, "we must bring forward reasons for goodwill towards him, sometimes blending them together and sometimes taking them separately."[13] But what is to be blended or separated? Is it reasons regarding the person himself, the matter at hand, and the speech? They would seem the most immediate referent. Pierre Chiron thinks of a blending of private and public, comparing 36.15, 1442b 25–26.[14] If we glance at the Aristotelian passage (*Rhet.* III.15.10, 1416b 8), another possibility emerges. He says that particularly skillful and unscrupulous purveyors of prejudice mix faint praise of the opponent's good qualities with strong criticism of a bad quality. The reference to "mixing" occurs in both authors (μιγνύντες, μεμιγμένως), though neither refers to it often elsewhere. Anaximenes goes on to say in explanation (γὰρ, 1442a 7) that it is necessary both to praise oneself and to criticize the opponents. Given the corruption of the text, he may be adapting the "mixing" in this way, like Aristotle referring to mixing of praise and criticism, though not of the same people.[15]

If we can assume a common source text for both accounts of *diabole*—and the similarities do seem strong enough to do this—the two authors clearly felt a great deal of freedom to adapt the material in their own ways. The differences in Anaximenes' own accounts of *diabole* in demegoric and forensic speeches give some sense how this could be done even by a single author. He also gives rudiments for a discrete discussion of *prophasis* (the making of excuses) in his account (29.19) and makes several references to the use of anticipation to combat *diabole*; all this is absent from Aristotle.

Aristotle's account of narrative (*diegesis*) in *Rhet.* 3.16 is a mess, bouncing from one topic to another and back again. Whatever elements concerning narrative he drew from the rhetorical tradition and from the urtext are again elusive, but there are hints. The account of Anaximenes, on the other hand, is remarkably well structured even if

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[13] E. S. Forster, "Rhetoric to Alexander," in J. Barnes, ed., *The Complete Works of Aristotle* (Princeton: Princeton University Press, 1984), 2306.

[14] P. Chiron, Pseudo-Aristote, *Rhétorique à Alexandre* (Paris: Les Belles Lettres, 2002), 190.

[15] Aristotle locates this point among topics to be used by the person creating prejudice. Anaximenes demurs from such unscrupulous advice, describing instead how to denigrate (κακολογητέον) the opponent (36.5, 1442a 9).

at times superficial. He does use several different terms for narratives in demegoric speeches, which suggests that he is aiming at greater terminological precision than the urtext may have had, eschewing the generic term in favor of specifics.[16] He speaks of "reporting" (ἀπαγγέλλειν) or "recalling" (ἀναμιμνήσκειν) past actions, "dividing into parts and explaining"[17] (μερίζοντας δηλοῦν) present actions, and discussing in advance (προλέγειν) future ones (*Rh. Al.* 30.1, 1438a 3–6). His example is a report of an embassy, and here he touches on other important principles, but without a focus. For instance, he says that giving a report purely (καθαρῶς) provides the speech importance (μέγεθος), presumably because it is purely a report and no editorializing intrudes. It is an interesting claim; we would like to hear more. He then says that if the embassy was unsuccessful, the blame should be shifted to others. Again, Anaximenes seems inadvertently to touch here on an interesting issue, that of blame/causation (αἰτία), which would seem a significant element in any narrative or historical discourse, but he seems to do so almost accidently.[18]

The three principles of narration that Anaximenes concentrates on more specifically are brevity (βραχέως), clarity (σαφῶς), and credibility (μὴ ἀπίστως) (30.4, 1438a 21–2; cf. 1438b 12). Aristotle interestingly directs part of his disorganized account of narration against those who claim that a narrative should be rapid (ταχεῖαν).[19] "Rapid" is of course not the same as "brief,"[20] but it turns out that when actually explaining the virtues of brevity, Anaximenes instead mentions speaking "concisely" (συντόμως, 30.8),[21] which Aristotle likewise identifies with rapidity in his critique (III.16.4, 1416b 35). Both authors also adopt almost identical wording in explaining that the goal of the brevity is "to explain" (ὅσα δηλώσει τὸ πρᾶγμα, *Rhet.* III.16.4, 1416b 36, δηλώσομεν *Rh. Al.* 30.9, 1438b 1) only so much as the audience can grasp. The use by both authors of the same verb here seems no accident, especially inasmuch as it is used here

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[16] Διηγήσεις appears as the generic term only once, in the synopsis at the end of 31 (31.3, 1438b 28).

[17] Following Spengel, M. Fuhrmann, *Anaximenis Ars rhetorica quae vulgo fertur Aristotelis ad Alexandrum* (Leipzig: Teubner, 1999), 65, rejects the term μερίζοντας, which Chiron defends. There seems here, at least, a correspondence with Aristotle, who uses the expression οὐκ ἐφεξῆς ἀλλὰ κατὰ μέρος, 1416b 17.

[18] Later he explains that the credibility of an account is strengthened if its causes are given (30.9, 1438b 1).

[19] Quintilian 4.2.31–32 identifies Isocrates as the object of Aristotle's criticism.

[20] Rapidity is recommended in *Rh.Al.* 38.6, 1446a 9.

[21] Anaximenes uses this term very often in the treatise.

by Anaximenes presumably not in the sense limited to narration of present actions.

After the lengthy discussions of individual proofs earlier in the works, it is not surprising that the discussions of them under the heading "proof" (or "confirmation") are quite cursory. But my principal aim here is to investigate possible vestiges of the common source for both texts. So I would like to point out first Aristotle's insistence that the proofs' demonstration bear on the question under dispute. He goes on for fifteen lines on this point before moving on to the types of proofs. Anaximenes accomplishes the same in less than three lines:

> After them there is a confirmation, through which we shall confirm, through proofs and claims of justice and advantage, that the aforesaid actions are as we promised to show.[22] (*Rh. Al.* 32.1, 1438b 29–35)

Aristotle discusses proof not only that something is the case, for which a proof is obviously necessary, but also that it has certain qualities. In the same way Anaximenes mentions both proofs and claims of justice and advantage, the goals of his two basic genres of oratory. That is, Anaximenes' reference to "justice and advantage" is his shorthand for what Aristotle uses fifteen lines to clarify. The two authors then go on to the various proofs, Aristotle dwelling on example and enthymeme, not unexpectedly, and Anaximenes conjuring up patterns of events (τὰ τῶν πραγμάτων ἔθη 32.2, 1438b 37), and our old friend the *doxa* of the speaker, the latter of which he also says should be arranged first, with no acknowledgement of its life earlier in the text as a supplementary proof (cf. 14.8–9). The patterns of events, or however we want to translate τὰ τῶν πραγμάτων ἔθη, should not detain us. It is clearly akin to an argument from probability,[23] which in Aristotle forms the basis of his enthymeme.

With regard to the latter, the *doxa* of the speaker, I have earlier speculated that in forensic oratory it might correspond to the charge (*enklema*) of the prosecutor, which was a written statement somewhat like Aristotle's other *atechnoi pisteis*.[24] Here I will make a reminder and a suggestion. My reminder is that Anaximenes' giving priority to the *doxa* of the speaker is consistent with Aristotle saying that φαίνεσθαι τὸν λέγοντα is most useful in deliberative oratory (*Rhet.* II.1, 1377b 29–

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[22]Μετὰ δὲ ταύτας ἐστὶ βεβαίωσις, δι' ἧς τὰς προειρημένας πράξεις ἐκ τῶν πίστεων καὶ τῶν δικαίων καὶ τῶν συμφερόντων, οἵας ὑπεθέμεθα δείξειν, βεβαιώσομεν.

[23]Admittedly with more *post hoc* than *propter hoc*.

[24]D. C. Mirhady, "Non-technical *Pisteis* in Aristotle and Anaximenes," *American Journal of Philology* 112 (1991): 5–28. See the well expressed critique of this speculation in the paper of Manfred Kraus in the present volume.

30). However, the *doxa* of the speaker is *exo tou pragmatos*, off the point, so to that extent Anaximenes, unlike Aristotle, properly identifies it not as a regular *pistis* but as an *epithetos pistis,* a supplementary proof. My suggestion—and it is only that, since I have little evidence to support it—is that we might consider the possibility that the term *doxa tou legontos* here reflects Athenian legislative practice, in which decrees began with the heading ἔδοξε τοῖς Ἀθηναίοις κτλ., "it seemed (a good idea) to the Athenians, etc." That would of course be the form of the proposal put before the Council and Assembly. Once passed by a vote of the Assembly, the legislation was called a *psephisma*, a term that referred to the Assembly's vote, but before being passed it may also have been referred to—and this is where I admittedly cannot produce any direct evidence—as a *doxa* of the *rhetor* who proposed it.[25] As such it would be a fixed document, like the other *epithetoi pisteis*, but it would also reflect the status of the speaker, which allowed him to make the proposal. In a deliberative or demegoric context, the specific wording of the proposed legislation, with the name of the *rhetor* attached to it, would be of utmost importance. It would not only have been the proposer of the legislation who debated it. Others may nevertheless have referred to it as the *doxa tou legontos*.

  "Anticipation" (*prokatalepsis*) is not part of Aristotle's vocabulary, and he denies that "arguments directed at the opponent" (τὰ πρὸς τὸν ἀντίδιϰον), which are mentioned in Aristotle's discussion where Anaximenes turns to anticipation, are a distinct *part* of a speech.[26] But the striking appearance of the terms διασυρεῖς ("tear to pieces" *Rh. Al.* 33.1, 1439b 4) and προδιασύροντα ("tear to pieces before," *Rhet*. III.17.14, 1418b 9) in connection with this part (or non-part) of the speech leaves little doubt that the two authors were working from a common source. Aristotle is preoccupied with the order in which one's own arguments and counter arguments against the opponent are used, which is his justification for not acknowledging

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[25]As well as *psephisma* the term *dogma* is also used. See Dem. 12.16: the *dogma* of Polycrates. The *rhetores* seem to have been the citizens who not only spoke in the Assembly but proposed legislation. A. S. Henry, *The Prescripts of Athenian Decrees* (Leiden 1977) 4, points out the typical formulas, in which the proposer is named (ὁ δεῖνα εἶπε) immediately before the text of the proposal. Henry 64 also notes that the proposer was first given prominence in the 340s, when Anaximenes was likely ruminating over his text: "Before this time the orator had never been given any prominence, but it seems that, when the leading politicians themselves (rather than their mouthpieces) began to propose measures in the assembly, their importance was recognized and reflected in the emphasis given to the orator's name in the prescripts."

[26]The Greek text at *Rhet*. III.17.14, 1418b 5 is actually εἶδος ("species"), where we might have expected μέρος ("part").

"anticipation" as a distinct part. Anaximenes focuses instead on the number of arguments on each side.

What Anaximenes refers to as *dikaiologia* ("legal argumentation") at 36.19–25 involves argumentation about law and justice.[27] He tucks it into his treatment of anticipation, but it seems to have a discrete quality. We recognize that such argumentation is largely fictive—perhaps meant more for student exercises than oratorical practice—inasmuch as its starting point is that there is something wrong with existing legislation. In fact, no Athenian orator ever makes an argument challenging the integrity of any existing legislation.[28] The authority of the judges' oath, by which they swore to vote according to the laws, is absolute. However, many of the themes of Anaximenes' *dikaiologia* are the same as Aristotle's treatment of law as an *atechnos pistis* in *Rhet*. 1.15 except that Aristotle's more philosophically developed concepts of fairness (τὸ ἐπιεικές) and the common law (κοινὸς νόμος) are absent. The most philosophical argument presented by Anaximenes is that law should serve the common good of the city (*Rh. Al.* 36.20, 1443a 12–13). There are other differences: Anaximenes first offers arguments to use where the position is strongest and then those for retreating to weaker positions, finally even to arguments to be used where all the defendant can do is ask for pardon. Aristotle, by contrast, starts from the judges' oath and then appears to integrate his arguments in terms of his *entechnoi pisteis*.[29]

In Anaximenes' text, discussion of laws enters where the opponent admits to having done the alleged actions, but then claims that they are "lawful and just" (36.20, 1443a 11). So the starting point is different from that of Aristotle, who starts with the judges' oath and its second clause about voting with the "best understanding" (ἀρίστη γνώμη, I.15.5, 1375a 29–30), which ostensibly allows jury nullification.[30] Anaximenes instead first envisions the opponent using certain laws, to which the speaker needs to counter with laws

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[27] Cf. 30.5.

[28] C. Carey, "*Nomos* in Attic Rhetoric and Oratory," *Journal of Hellenic Studies* 116 (1996): 33–46, has an excellent discussion of the treatment of this passage in Anaximenes.

[29] See D. Mirhady, "Aristotle on the Rhetoric of Law," *Greek, Roman, and Byzantine Studies* 31 (1990): 393–410.

[30] The wording almost everywhere is δικαιωτάτη γνώμη, but the difference seems inconsequential. For a comprehensive discussion of the wording of the oath, see D. C. Mirhady, "The Dikasts' Oath and the Question of Fact," in A. Sommerstein and J. Fletcher, eds., *Horkos: The Oath in Greek Society* (Exeter: Bristol Phoenix Press, 2007), 48–59, 228–33.

that are just, noble, and advantageous to the common good of the city (36.20). Such positive argumentation is in fact common in Athenian forensic oratory, and the passage seems to reflect that reality, in which orators sought to recruit competing patterns of several laws from which to infer principles that were relevant to the given case.[31] Anaximenes says that if that is not possible, that is, if there are no competing patterns of laws, then the speaker has to underline fidelity to the law. There is a triad of arguments suggested: first, that it is a question not of law but of fact; second, that the judges have sworn to vote according to the established laws; and third that legislating is confined to specific days (36.21). All of these essentially deny the legitimacy of *dikaiologia*, except what supports the law. Now comes the exact opposite, a direct attack on the existing laws: first, that bad law is not law but the negation of law, since law is for the common good (36.22); second, that the judges will be legislating against the use of bad and illegal ordinances; and third, that no law forbids conferring public benefits, and nullifying bad laws is a public benefit (36.23). The occurrence of two triads of arguments for and against laws seems no coincidence, but it is difficult to discern a pattern in them whereby one might pair the first, second, and third arguments in each triad, as I think is possible in reading Aristotle's five arguments against and for statute law in *Rhet.* 1.15.[32] But there seems enough of a common structure and content in the two authors' approaches to suppose again that they made use of the common source text. That Aristotle lifted his account of law out of his account of proof/confirmation and placed it among the *atechnoi pisteis* is one of the signal developments in his rhetorical thought. Why did Anaximenes not do the same, inasmuch as laws were like witness testimony and so on in being documents kept in the evidence jar for the Athenian public courts? Actually, several modern commentators have complained that Aristotle was wrong to lump laws together with the other *atechnoi pisteis*, that the others all go to questions of fact.[33] Here the difference is between what Aristotle considers *atechnos* and what Anaximenes considers *epithetos*. Aristotle identifies it with who composes the wording: since a law is composed by someone other than the practitioner of rhetoric, it is rhetorically *atechnos.* Anaximenes confines his *pisteis* to the words, acts, and persons (or choices *Rh. Al.* 7.2; cf. 1.3), not a well defined set. He is thus able to identify

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[31]Cf. Aeschin. 1.178; Dem. 20.94, 22.11, 25.11, 16, 75, 26.7; Lys. 14.4; Hyp. 2.13.

[32]See Mirhady, "Aristotle on the Rhetoric of Law," cited n. 29 above.

[33]See Carey, "*Nomos* in Attic Rhetoric and Oratory," cited n. 28 above, pp. 34–35.

both the *doxa* of the speaker and the documentary forms of evidence as *epithetoi.*

Aristotle's transfer of law, his *dikaiologia*, to another part of his treatise reminds us that the composition of his text was not a single event. He likely worked and reworked his material many times. But the common elements in the two treatises are clearly not the result of any later editorial attempts to make the Alexander text seem more Aristotelian. Not only are the broad outlines of their treatments of arrangement the same, but the shared, detailed wording that comes forward here and there is clearly not Aristotelian. In fact Aristotle disavows several parts of it. His lack of commitment to this part of rhetoric makes these sections of his text a poor place to search for examples of his original thinking except perhaps in his inserted comments that diverge from the urtext and from Anaximenes. But the detail exhibited in this part of the *Rhetoric to Alexander* should make further study of it profitable.