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***Ho boulomenos* and Athenian public lawsuits from the death of Alexander the Great to the first century B.C.: evidence of the survival of a classical legal institution in Hellenistic Athens**

***Ho boulomenos* e le azioni pubbliche ateniesi dalla morte di Alessandro Magno al primo secolo a.C.: testimonianze sulla sopravvivenza di un istituto giuridico classico nell'Atene ellenistica**

Abstract

The practice of granting any willing individual the right to denounce serious offences has been directly linked to the legal system of Athens. Although the literary and epigraphic material concerning the law of post-classical Athens is less informative than that of the classical period, references to procedures initiated by *ho boulomenos* (“anyone who wishes to do so”) from the late fourth century B.C. to the early years of Augustus’ reign show that the Athenian legal system continued to provide for the right of volunteers to denounce offences affecting important aspects of social and political life, such as acts against the *polis* constitution, religious affairs or the use of proper weights and measures. This article highlights the phenomenon of public lawsuits in Athens during the Hellenistic period by presenting all relevant literary and epigraphic references and demonstrating the continuing importance of this type of prosecution for the Athenian state.

La pratica di garantire a “chi vuole” il diritto di denunciare gravi reati è stata direttamente collegata al sistema giuridico di Atene. Sebbene la documentazione

letteraria ed epigrafica relativa al diritto dell'Atene post-classica sia meno ricca di informazioni rispetto a quella del periodo classico, riferimenti presenti nelle fonti alle procedure avviate da *ho boulomenos* (chiunque lo voglia) dalla fine del IV secolo a.C. ai primi anni del principato di Augusto dimostrano che il sistema giuridico ateniese continuava a prevedere il diritto dei volontari di denunciare reati che riguardavano aspetti importanti della vita sociale e politica, come gli atti contro la costituzione della polis, gli affari religiosi o l'uso di pesi e misure approvati dalla città. Questo articolo mette in luce il fenomeno delle cause pubbliche ad Atene durante il periodo ellenistico, presentando tutti i riferimenti letterari ed epigrafici pertinenti e dimostrando la continua importanza di questo tipo di azione legale per lo Stato ateniese.

Keywords: Athenian law, *ho boulomenos*, Athenian legal procedure, public lawsuits, Hellenistic Athens, early Roman Athens

Parole chiave: diritto greco, *ho boulomenos*, procedure giudiziarie, cause pubbliche, Atene ellenistica, Atene della prima età romana

The Athenian judicial system in the post-classical period has always escaped the attention of scholars and not without good reason. While epigraphic material concerning Athenian law continues until Roman times, it can only be read between the lines or in connection with literary sources. In addition to this, the fact that no group of works equivalent to the corpus of the Attic orators has survived for the Hellenistic period makes study of evidence a difficult task.¹ Lack of explicit information on Athenian justice after Alexander the Great's death is, certainly, associated with the turbulent political situation of Hellenistic Athens, caused by Athenian submission to the superiority of the Macedonian rulers, which affected the administration of justice. Athenian judicial imperialism, visible in several decrees containing Athenian legal proceedings which concerned the administration of the Delian league or relationships with individual allied *poleis*,² is absent from the epigraphic material after Athens' downgrading from being a leading Greek state to being an ally of the superpowers of the post-classical era – namely the Hellenistic kingdoms and Rome. Thus, direct references to Atheni-

¹ Thür 2001, 142.

² On the trying of cases concerning the Delian League or disputes brought from allied *poleis* in Athenian law courts, see Kubala 2013, 140; Low 2013; Buis 2015, 40. See also Filias 2021, 128-130, who criticises some points concerning the degree of Athenian imperialistic attitudes in matters of justice.

an legal procedure in the epigraphic material after 323 B.C. are far fewer than in the fifth and fourth centuries B.C. Yet the evidence in the existing sources shows that, even after the defeats Athens suffered at the hands of Macedonia, the administration of justice, along with other areas of internal organization, such as the official cults, the provision of food supplies and the regulation of finances, remained the exclusive responsibility of the Athenian citizens.³

A careful look at the surviving Athenian decrees after 323 B.C. shows that several Athenian judicial norms continued to be observed. The citizen-populated law court of *Hēliaia*, was in action in the early Hellenistic period⁴ and is attested as late as the first century B.C.⁵ From the late fourth century B.C. onwards, we find evidence for the process of *dokimasia* (scrutiny) before *dikastēria* (law courts). This, in contrast to the situation during the classical period, when this process concerned individuals entering public offices, was connected with awards granted by the assembly to both foreigners and citizens.⁶ These law courts, which are a sign that in Athens there continued to exist substantial law courts staffed by citizens,⁷ are also attested in connection with *euthynai* (accountability) procedures, which appear in honorary awards concerning successful tenure of office held by individuals, until the late second century B.C.⁸ Apart from the continuous existence of judicial bodies in Athens, late Hellenistic decrees reveal the preservation of classical Athenian procedures: a 143/2 B.C. decree demonstrates the existence of the *diadikasia* process regarding responsibility for

³ Habicht 1997, 4.

⁴ The *Hēliaia* is mentioned in a third century B.C. decree concerning the scrutiny of Callias of Sphettus who was honored by the Athenians out of gratitude for his contribution to the 286 B.C. Athenian revolt against the Macedonians: *SEG XXVIII* 60, 101-104. On this decree, see Shear 1978.

⁵ *I.Eleusis* 250, 33.

⁶ On *dokimasia* in Hellenistic Athens, see Feyel 2009, 222-259, and especially 222, where he notes that, unlike what happened in classical Athens, the process of *dokimasia* in the Hellenistic period does not concern individuals' access to a particular status or functions that exist within the *polis*, but persons to whom the civic body has proposed to award honours. On *dokimasia* before law courts in the third century B.C., see Osborne 2012, 86-88.

⁷ Rhodes 2006, 36.

⁸ See Harris 2017, who presents several Hellenistic-era decrees concerning honorary awards granted to Athenian officials which include the provision that the honorands undergo the process of *euthyna* before receiving honors as evidence of the Athenians' continuous observation of their legislation about award of honorific crowns.

the financing of religious festivals,⁹ while another decree dating to 103/2 B.C. refers to *emmēnoi dikai* (trials to be conducted within a month) concerning commercial disputes.¹⁰ The institution of *basanos* (torture) of slave witnesses continues to be attested in the fragments of Athenian comedy writers of the third and second centuries B.C.¹¹ In addition to the above elements of the Athenian legal system which survived after 323 B.C., a typical feature of the Athenian legal procedure is also apparent in post-classical Athens: lawsuits initiated by any willing person (*ho boulomenos*), which have become known as public lawsuits and are attested in both literature and inscriptions.

Prosecution by *ho boulomenos* had its roots in the ancestral laws of Athens. *Ath. Pol.* (9.1) and Plutarch (*Sol.* 18.6) associate this type of procedure with Solon's provision for prosecution on behalf of victims of injustice unable, for legal or personal reasons, to prosecute on their own account.¹² Although the epigraphic evidence from several classical and Hellenistic *poleis*, oligarchic and democratic alike, indicates that the institution of judicial proceedings on the initiative of volunteers was a widespread, if not universal, Greek phenomenon,¹³ a wealth of literary and epigraphic sources on classical Athenian law demonstrates the connection between the establishment of procedures initiated by any willing individual and Athens' citizen-centric legal system which promoted the participation of common individuals in the prosecution of offences affecting the stability of the community. While Solon's provision may have increased Athenian eagerness for litigation,¹⁴ the significance of this type of procedure for the stability of the community and its constitution is repeatedly stressed by fourth-century B.C. forensic speakers.¹⁵ Indeed, the variety of offences prosecuted

⁹ See Walbank 2015.

¹⁰ See Papazarkadas 2017. On the classical *dikai emmēnoi* and the possibility that this means trials conducted within a month and initiated by lawsuits brought once a month, see Hansen 1983, 167-170.

¹¹ See Thür 2001, 155-163.

¹² Leão and Rhodes 2015, 69-70; Ruschenbusch 1966, 83-84.

¹³ On the institution of prosecution by *ho boulomenos* in the ancient Greek *poleis*, see Rubinstein 2003.

¹⁴ Lang 1994, 2, notes that Solon's provision is to a certain extent responsible for Athenian eagerness to go to court.

¹⁵ Cf. Sinclair 1988, 72; Harris 2013, 60-62. Harris provides several passages from speeches of volunteer prosecutors who stress that the reason for accusing the defendants was the latter's harmful behavior towards the state.

by public lawsuits confirms that this type of procedure provided the common Athenians (and in some cases foreign residents)¹⁶ with easier access to justice and reinforced the capacity of the *polis* to deal with legal issues that might affect the community as a whole:¹⁷ in classical Athens prosecution by *ho boulomenos* concerned not only individuals whose interests and well-being were regarded as matters of public concern, such as orphans or the elderly¹⁸ (which seems to have been in the spirit of the original Solonian provision). It later came to include also denunciations of offences which clearly affected the *polis* collectively, such as disrespect for the state religion,¹⁹ misconduct by *polis*' officials²⁰ and proposal of unconstitutional motions.²¹

Given the importance of this type of prosecution for the detection of serious offences in the golden age of the Athenian history, it is a pity that the known cases from the post-classical era are not as varied as those before 323 B.C. and, hence, they cannot be the subject of a particularly thorough analysis. Nevertheless, evidence from Hellenistic Athens demonstrates that public lawsuits concerning transgressions affecting areas of a general concern continued to be filed until the early Roman imperial period. Indictments concerning impiety or unconstitutional acts were still in force in the early Hellenistic era as ways of protecting the stability of the community from individuals whose acts may have strained social cohesion. More importantly, 'extraordinary public actions' open to any willing individual who acted on behalf of magistrates unable or reluctant to bring a charge, such as *endeixis* (denunciation before a magistrate which led to immediate arrest) and, perhaps, *apagōgē* (summary arrest),²² are attested in the time of Roman domination showing that the involvement of citizens in the prosecution of serious transgressions was not affected by constitutional changes in

¹⁶ On the right of foreigners to bring public lawsuits, see Canevaro and Harris 2019, 98-100.

¹⁷ Leão 2013.

¹⁸ See *Ath. Pol.* 56.6.

¹⁹ The most famous case of a public lawsuit for impiety, naturally, is the one brought against Socrates.

²⁰ On procedures against misconduct of Athenian officials, see Roberts 1982, 14-29.

²¹ These are the *graphē paranomōn*, filed against proposers of illegal decrees, and the *graphē nomon mē epitēdeion theinai*, which was brought against proposals for unconstitutional laws.

²² The term 'azioni pubbliche straordinarie' is used by Biscardi (1982, 257) to denote these types of lawsuits. On these legal actions, see the classical work by Hansen 1976.

the post-classical period.

This article aims to show that prosecution by *ho boulomenos* remained the main legal weapon for the detection of serious offences affecting important sectors of life in the *polis* by presenting all relevant evidence. At the same time, it will attempt to show to what extent Athenian rules and regulations applied to cases of public lawsuits, which are known from sources on classical Athenian law, underwent changes throughout the Hellenistic period.

I. The cases between 319-317 B.C.

I.a. The trial of Phocion: evidence of the eisangelia process concerning subversion?

Alexander the Great's death was followed by the Lamian war (323-322 B.C.), in which Athens and its allies saw an opportunity to defy Macedonian rule, which had been established in the Greek peninsula since the time of Philip II. After the Athenian defeat by the army of the Macedonian general Antipater in 322 B.C., an oligarchic constitution was imposed and, as Suda states, the pro-Macedonian orator Demades, who was one of the leading statesmen of the new regime, suspended the law courts and rhetorical battles.²³ Although the fact of this suspension is often rejected, due to the existence of some possible evidence from this period for law court *dokimasia* in grants of naturalization,²⁴ the great need for citizens in the Athenian popular courts would naturally have forced the Athenian state to reduce the number of courts of justice or even to abolish them entirely.²⁵ As for the rhetorical battles, this is probably related to the death of the two major political figures who advocated war against Macedonia, Demosthenes and Hypereides, which led to greater harmony in the political outlook in that period²⁶ and to legal cases with less appeal to state policy. Judging from the problematic legal system of this period, it comes as no surprise that cases of public lawsuits appear in the context of the restored democratic regime that succeeded the Macedonian-backed oligarchy. What is also no wonder is that relevant

²³ Suda s.v. Δημάδης: κατέλυσε τὰ δικαστήρια καὶ τοὺς ῥητορικοὺς ἀγῶνας.

²⁴ e.g., *IG II²* 398 b, 5-6.

²⁵ See Canevaro 2011, 59-60 and n. 14; Gehrke 1976, 98 n. 38.

²⁶ Oliver 2003, 46.

evidence relates to the acts of retaliation against those who have backed, or were considered as supporters of, the former regime.

The first significant case of a possible public lawsuit is that concerning the process followed against the Athenian general and top statesman of the oligarchic regime, Phocion. Diodorus says that, after the restoration of democracy, the Athenian popular assembly gathered to depose and condemn the men who held offices during the period of oligarchy.²⁷ The historian states that the charge against Phocion and his supporters was that they were responsible for “enslaving the motherland” and “overthrowing the democracy and the laws.”²⁸ The latter phrase seems to refer to one of the offences prosecuted by the process of *eisangelia* in classical Athens. Although the term *eisangelia* denotes several distinct types of prosecution initiated by any willing citizen in the Athenian judicial system,²⁹ from Hyp. 4.7-8 we are aware that cases of serious crimes against the state, such as treason and regime subversion, were included in a special law in the fourth century (though its actual date is debated) which provided for the filing of *eisangelia* (*eisangeltikos nomos*).³⁰ This law provided for the prosecution

²⁷ Diod. Sic. 18.65.6: ὁ δὲ δῆμος εἰς ἐκκλησίαν συναλθὼντάς μὲν ὑπαρχούσας ἀρχὰς κατέλυσεν, ἐκ δὲ τῶν δημοτικωτάτων τὰ ἀρχεῖα καταστήσας τοὺς ἐπὶ τῆς ὀλιγαρχίας γεγονότας ἄρχοντας κατέδικασε τοὺς μὲν θανάτῳ, τοὺς δὲ φυγῇ καὶ δημεύσει τῆς οὐσίας: ἐν οἷς ἦν καὶ Φοκίων ὁ ἐπ’ Ἀντιπάτρου τὴν τῶν ὄλων ἀρχὴν ἐσχηκώς (Transl. Waterfield 2019, 232: An assembly was convened, at which the Athenian people deprived the incumbent officers of their posts and replaced them with boards made up of the most committed democrats. Those who had held office under the oligarchy were either condemned to death or punished with exile and the confiscation of their property. Among those condemned was Phocion, who, in Antipater’s day, had been the most powerful man in Athens).

²⁸ Diod. Sic. 18.65.5: ἦν δ’ ὁ σύμπαρ τῆς κατηγορίας λόγος ὅτι οὗτοι παραίτιοι γεγένηται μετὰ τὸν Λαμιακὸν πόλεμον τῆς τε δουλείας τῆ πατρίδι καὶ τῆς καταλύσεως τοῦ δήμου καὶ τῶν νόμων. (Transl. Waterfield 2019, 233: Their accusations rested entirely on the claim that after the Lamian War these men had been responsible for the enslavement of Athens, and for the dissolution of the democratic constitution and legal code).

²⁹ *Eisangelia* could be filed in the cases of officials accused of maladministration, cases of misconduct of arbitrators and cases of maltreatment of orphans. For an analysis of *eisangelia* see the most detailed study by Hansen 1975. But see also Rhodes 1979, who criticizes some points of Hansen’s analysis.

³⁰ The law is mentioned by Hyp. 4.7-8. Hansen 1975, 17 and 19, believes that the law on *eisangelia* to the council and the assembly was a creation of Cleisthenes, which was revised after the fall of the 411/0 B.C. oligarchic regime. See Pecorella Longo 2002, who argues that a law on *eisangelia* existed already after 411/0 B.C. Harris and Esu 2021, 93-94, argue for a date in the period after the fall of the regime of the Thirty (403

of “those who attended a meeting with intent to overthrow democracy” (Hyp. 4.8),³¹ and deposal by *apocheirotonia* (negative vote) in the assembly, which was particularly common for generals³² could be followed by prosecution by *eisangelia*: the case of general Cephisodotus in 360/59 B.C. who was indicted through this type of lawsuit is indicative of this process.³³

At first glance, it appears that Phocion was brought to trial after the filing of an *eisangelia*, which, as Diodorus states, took place before the Athenian assembly probably at the end of the process of *epicheirotonia* (vote of confidence in officials).³⁴ The process of *eisangelia* served as a weapon used against generals, though not forged for that specific purpose³⁵, and it appears that Phocion’s trial was part of the same tradition. Yet, while Phocion’s case demonstrates the preservation of democratic institutional practices after four years of oligarchy,³⁶ there are certain problems in identifying the denunciation against Phocion with *eisangelia*. In the first place, it should be noted that no mention of the term *eisangelia* or *eisangellein* appears in the literary sources on Phocion’s trial. A more important piece of evidence is what another source on the trial, namely Plutarch, says: the accusation was included in the letter sent by Polyperchon, who succeeded Antipater in the Macedonian regency, the very same letter that also restored democracy in Athens.³⁷ Hagnonides forwarded a decree, according to which the assembly was to decide on the guilt of Phokion and the rest of the defendants, but there is no reference to him as filing an *eisangelia*.³⁸

B.C.) .

³¹ ἢ “συνίη ποι ἐπὶ καταλύσει τοῦ δήμου...”

³² Roberts 1982, 21.

³³ On this case, see Dem. 23.167-8 (who mentions the deposal) and Aeschin. 3.51-2 (who mentions the *eisangelia*).

³⁴ Arnaoutoglou 2008, 36.

³⁵ Hansen 1975, 59.

³⁶ Mossé 1998, 84.

³⁷ Plut. *Phoc.* 34.3: ἐπεὶ δ’ ἦ τ’ ἐπιστολὴ τοῦ βασιλέως ἀνεγνώσθη, λέγοντος αὐτῷ μὲν ἐγνωσθαι προδότας γεγονέναι τοὺς ἄνδρας, ἐκείνοις δὲ διδόναι τὴν κρίσιν, ἐλευθέρους τε δὴ καὶ αὐτονόμοις οὖσι (Transl. Waterfield 2016, 134: The king’s letter to the Athenian people was read out, the gist of which was that he had no doubt of the men’s treachery, but he left it up to them, as free and autonomous agents, to reach a verdict).

³⁸ Plut. *Phoc.* 34.5: ὁ δ’ Ἀγωνίδης ψήφισμα γεγραμμένον ἔχων ἀνέγνω, καθ’ ὃ τὸν δῆμον ἔδει χειροτονεῖν περὶ τῶν ἀνδρῶν εἰ δοκοῦσιν ἀδικεῖν, τοὺς δ’ ἄνδρας ἂν καταχειροτονηθῶσιν ἀποθνήσκειν (Transl. Waterfield 2016, 135: But Hagnonides read out a proposal he had prepared and brought with him, to the effect that the Athenian people were to vote on the guilt of the accused by a show of hands, and that in the event

The same problem is evident in the case of trials before the assembly which have long been considered trials initiated by *eisangelia*, but these had been set up through an assembly decree,³⁹ as in the case of the trial of the generals after the naval battle of Arginusae in 406 B.C.⁴⁰ In this latter case, too, the word *eisangelia* is absent from the relevant accounts of Xenophon and Diodorus and it is Callixenus who, according to Xenophon, brings forward a decree for the purpose of trying the generals for not having collected the bodies of dead soldiers after the naval battle.⁴¹

Judging from the above, it becomes clear that the whole procedure concerning Phocion's guilt of subversion was an *ad hoc* measure. As in the case of the generals in Arginusae in fifth century B.C. Athens, the state of tension led to measures of disputed legitimacy, which had to be ratified by the chief governing body of Athens, the assembly. Nevertheless, as it will be argued, the process of *eisangelia* appears in late fourth-century B.C. Athens.

I.b. The graphē asebeias against Theophrastus of Eresus

While Phocion's case does not serve as a definite proof of the survival of a type of public lawsuit after 323 B.C., another legal "act of vengeance" following the restoration of democracy is explicitly associated with a procedure initiated by *ho boulomenos*: the *graphē asebeias* (written indictment for impiety) brought by Phocion's accuser Hagnonides against Aristotle's disciple and head of the philosophical school of Peripatos Theophrastus of Eresus during the time of the restored democracy of 319-317 B.C.⁴² A vast majority, if not all, of the known Athenian trials for impiety can be deemed political, or politically motivated in certain ways⁴³ and, although there were not always direct attacks from political enemies, individuals might still be prosecuted by sycophants.⁴⁴ The case of Theophrastus appears to have been no exception. Like all scholars from Aristotle's school, Theophrastus was

of a guilty verdict the penalty was death).

³⁹ As Harris and Esu 2021, 56, rightly note. See also Scafuro 2018, 204, who prefers to call similar trials as "trials by decree".

⁴⁰ See Harris 2019, 103-104, and Harris and Esu 2021, 61-62.

⁴¹ Xen. Hell. 1.7.9.

⁴² On the timeframe of Theophrastus' trial, see O' Sullivan 1997, 137-138.

⁴³ Filonik 2013, 80.

⁴⁴ Eidinow 2016, 49.

seen by many as an opponent of democracy and pro-Macedonian, and this made him an obvious target, but the fact that he was popular among the Athenians and had fought for democracy in his country helped him escape conviction.⁴⁵ According to Diogenes, Hagnonides was defeated in court, barely escaping payment of a fine,⁴⁶ which would traditionally have been imposed had he not managed to secure one-fifth of the votes.⁴⁷ The presence of Demochares, the nephew of the anti-Macedonian orator Demosthenes, among Theophrastus' prosecutors speaks volumes about the political motives behind the *graphē*.⁴⁸

Unfortunately, with the exception of Socrates' case, in which it is accepted beyond doubt that he was accused by a *graphē asebeias*,⁴⁹ there is no certain proof that the same procedure applied in the case of the other philosophers accused of disrespect to the Athenian cult in the classical period - namely Anaxagoras of Klazomenai and Diagoras of Melos. In numerous Athenian orations one party calls the other impious (*asebēs*), though this rarely forms the basis for a legal charge and should be understood simply as a hyperbole within the rhetorical argumentation.⁵⁰ It is typical of the attitude to the use of indictments for impiety against pro-Macedonian individuals during the early Hellenistic period that Athenaeus (who cites Carystius of Pergamon) refers to an accusation probably related to an act of disrespect to the state cult, which was brought against Demetrius of Phalerum, the would-be head of the Athenian state around 318 B.C. and a supporter of Phocion: Demetrius allegedly offered sacrifices to obtain the divine manifestation (*epiphaneia*) of his brother Himeraeus, who had been executed on Antipater's orders.⁵¹ However, it is reasonable to suppose that

⁴⁵ Bayliss 2011, 100.

⁴⁶ Diog. Laert. 5.37: τοσοῦτον δ' ἀποδοχῆς ἤξιούτο παρ' ὧσ' Ἀγνωνίδης τολμήσας ἀσεβείας αὐτὸν γράψασθαι, μικροῦ καὶ προσῶφλεν (Transl. Mensch 2018: The Athenians held him in such high regard that Hagnonides, having had the temerity to prosecute him on a charge of impiety, barely escaped incurring a penalty).

⁴⁷ Unsuccessful prosecutors who brought public lawsuits were fined 1,000 drachmae and were *atimoi* (disenfranchised) - therefore, unable to bring suit at all, either public or private- until they had paid. See Dem. 21.47. Harrison 1971, 83.

⁴⁸ Demochares is mentioned by Ael. *V.H.* 8.12.

⁴⁹ Bowden 2015, 325.

⁵⁰ Filonik 2013, 77.

⁵¹ Athen. 12.60. On the accusation of impiety against Demetrius of Phalerum, see O'Sullivan 1997, 139-142.

the legal scope of the term was narrower⁵² and, therefore, despite the actual background of the prosecution, the complaint itself must have included the characteristics of the indictment required by law.

Concerning the nature of Theophrastus' offence, in his *Various Histories* Aelian speaks of the philosopher's silence during the hearing of his case by the members of the Areopagus as a result of his admiration for the members of this judicial body, which led his accuser Demochares to remark that his judges were Athenians and not the twelve gods.⁵³ Demochares' response seems to imply that Theophrastus was indeed indicted for some alleged offence of the traditional deities. If we consider Demochares' acquaintance with the charge of impiety brought against Demades a few years earlier, when the latter suggested the deification of Alexander the Great,⁵⁴ it is highly likely that the basis of the accusation against Theophrastus can be paralleled with the experience of Demades.⁵⁵ If that is correct, then Theophrastus' offence was similar to that of his mentor Aristotle a few years previously. According to Athenaeus and Diogenes Laertius, a *graphē asebeias* was brought against Aristotle by Demophilus and the hierophant Eurymedon, on the grounds of having equated Hermeias, tyrant of Atarneus and the philosopher's father-in-law, with the Greek heroes Hercules and Achilles in a paean, but the philosopher fled Athens before the trial.⁵⁶ The accusations against Aristotle appear to have come from pro-Macedonian Athenians and especially from Alexander's friends after Aristotle's negative reaction to Alexander's claim for divine honours, and they were eventually included in the indictment against the philosopher.⁵⁷

From the above information, it seems that the legal precedent of Aristotle's trial served as an example for the accusation brought by Hagnonides, though this time the prosecution derived from anti-Macedonian feelings. Nevertheless, the presence of the Areopagus in Aelian's account is not consistent with Diogenes' reference to a trial before a popular court whose votes Hagnonides failed to win. Although the Areopagus was concerned with religious matters and it has been argued that it could sometimes re-

⁵² Cohen 1991, 205.

⁵³ Ael. *V.H.* 8.12.

⁵⁴ Athen. 6.58; Ael. *V.H.* 5.12.

⁵⁵ See O'Sullivan 1997, 138; Bauman 1990, 122.

⁵⁶ Athen. 15.51; Diog. Laert. 5.5.

⁵⁷ Oliver 2003, 39.

ceive *graphai*,⁵⁸ it should be noted that the *graphē asebeias* is almost invariably associated with citizen-populated law courts presided by the *archōn basileus*.⁵⁹ It is more likely that the Areopagus may have acted in the context of the process of *apophasis*, a preliminary investigation undertaken by this council in cases of serious offences, such as treason or impiety, initiated by assembly decrees⁶⁰ and, though there is no reference to this procedure, it may have slipped the historian's attention. Hence, it seems that Demochares' attack against Theophrastus occurred in another lawsuit against Theophrastus.

The nature of Theophrastus' crime may be gathered from a text by the philosopher, excerpts of which are quoted by the third century A.D. philosopher Porphyry of Tyre. In the second book of his work *On the abstinence from eating animals* (*De abstinentia ab esu animalium*) Porphyry mentions several passages from Theophrastus' book *On piety* (*De pietate*), which reveal the philosopher's aversion to animal sacrifice.⁶¹ In his speech *Against Nikomachos*, Lysias claims that the defendant accuses him of *asebeia*, because he proposed the abolition of the sacrifices set by the new calendar, which had been edited by Nicomachus and the committee of *anagrapheis*, the officials responsible for republishing and revising the old Athenian laws.⁶² If Lysias' reference to the impious character of a motion regarding the abolition of established sacrifices is accurate, it may be assumed that a similar accusation was made in the *graphē* filed by Hagnonides against Theophrastus. In that case, it appears that the same group of anti-Macedonian Athenians who attacked Demetrius of Phalerum for improper sacrifice may have formed a similar accusation regarding disrespect for established religious practices against the Peripatetic philosopher.

⁵⁸ See Filonik 2012 n. 40, who cites Todd 2007, 513, and Carey 1989, 119.

⁵⁹ *Ath. Pol.* 57.2; Hyp. 4.6.

⁶⁰ On *apophasis*, see De Bruyne 1995, 117-146.

⁶¹ On Porphyry's references to Theophrastus' book, see Bouffartigue and Patillon 1979, 92-93.

⁶² Lys. 30.17. Whether the committee had merely clerical duties or had the authority to decide on the validity of laws to be published is still debated among scholars. On the assumption that the *anagrapheis* were officials who decided on the validity of laws, see Dow 1963, 38; Stroud 1968, 25; Todd 1996, 108; Volonaki 2001. On the assumption that they were officials with clerical duties, see Robertson 1990, 45; Rhodes 1991, 93; Sickinger 1999, 98; Canevaro and Harris 2012, 112 n. 76.

II. The cases from the era of Demetrius of Phalerum (317-307 B.C.): the reform of the *eisangelia* process and impiety trials against philosophers

The restored democracy was succeeded by another oligarchy under Demetrius of Phalerum. The judicial reforms of Demetrius, who was head of the Athenian state from 317 B.C. until its overthrow by Demetrius Poliorketes (307 B.C.), seems to have had an impact on the organization of law courts in Athens, though these changes do not appear to have been sweeping.⁶³ The only piece of information concerning a type of procedure initiated by volunteers from that period comes from Pollux (8.53-4) and the *Lexicon Rhetoricum Cantabrigiense* (s.v. *eisangelia*), who refer to the increased number of citizen-judges in the law courts judging offences prosecuted by *eisangelia* in the time of Demetrius. Yet, apart from the problem of their reliability,⁶⁴ these sources are not very descriptive and, thus, we cannot elaborate about the form of this legal process during the Phalerean's rule. As argued in the next chapter, the procedure of *eisangelia* seems, however, to have existed even after the new restoration of democracy.

As indicated by the literary sources, trials for impiety are evident during this period. Diogenes Laertius reports that Theodore of Cyrene told Euryklides the hierophant of the Eleusinian mysteries that the priest himself was guilty of profanation of the Mysteries since he explained them to the uninitiated. The philosopher escaped his referral to the Areopagus thanks to the intervention of Demetrius of Phalerum (2.101). On the other hand, Stilpo of Megara was brought before the Areopagus and was eventually banished from Athens because he claimed that Pheidias' statue of Athena was not itself a god.⁶⁵ As in the case of Theophrastus' trial, these trials appear to have been politically motivated, and they can be seen in the context of legal "acts of vengeance" against those who had supported the oligarchic regimes or were considered pro-Macedonian. Theodore was saved by Demetrius of Phalerum's intervention, and the literary sources indicate that he was associated with the pro-Macedonian party in Athens.⁶⁶ As for Stilpo,

⁶³ For Demetrius of Phalerum's reforms on the Athenian justice system, see O'Sullivan 2009, 138-159.

⁶⁴ See O'Sullivan 2009, 141-144, who questions whether Demetrius was responsible for this change.

⁶⁵ Diog. Laert. 2.115.

⁶⁶ On Theodore's relationship with pro-Macedonian politicians, see O'Sullivan 1997,

Diogenes Laertius reports that he drew students from Theophrastus, and this would have made him a target for the anti-Macedonian party of Athens (2.113).

The evidence concerning the procedure is indecisive. As in the case of Theophrastus, it is possible that the procedure followed was that of the *apophasis*: Diogenes states that both the above men were brought before the Areopagus, the same court which investigated Theophrastus. However, the same author nowhere mentions the passing of a decree concerning the accusations against the two philosophers, and the reference to the punishment of exile imposed on Stilpo by the Areopagites shows that the court acted as an actual law court in that case.⁶⁷ This seems to indicate an extended jurisdiction of the Areopagus, established by Demetrius of Phalerum, but evidence for such a reform is not clear.⁶⁸ Concerning Theodore, Philo of Alexandria says that he was accused of atheism and corruption of the young. This charge naturally brings the charges against Socrates to mind,⁶⁹ and thus seems less plausible than that mentioned by Diogenes. Diogenes cites a reference by the first-century B.C. sophist Amphicrates to Theodore's condemnation to "drink the hemlock",⁷⁰ which also echoes Socrates' execution, yet lack of any mention of the *graphē asebeias* by an author who mentions the term in relation with Theophrastus' trial means that Theodore was not indicted by such a lawsuit. Lack of explicit terminology in these cases compels us to remain cautious about the nature of the procedure associated with these offences.

III. The evidence after 307 B.C.

III.a. The process of eisangelia in the restored democracy

In 307 B.C. Demetrius Poliorcetes overthrew the regime of Demetrius of Phalerum and restored the democratic constitution in Athens.⁷¹ Having the

145-147.

⁶⁷ De Bruyne 1995, 167-168.

⁶⁸ Both Derenne (1930, 201) and Bauman (1990, 125) have supported the assumption of the increased jurisdiction of the Areopagus during Demetrius' era. Wallace (1989, 204-205) and O'Sullivan (2009, 147-159) are sceptical about relevant evidence.

⁶⁹ Philo, *Quod omnis probus liber sit*, 127. Filonik 2013, 75.

⁷⁰ Diog. Laert. 2.101.

⁷¹ Plut. *Demetr.* 8.5.

royal blessing to restore their ancestral laws, the Athenian state followed a two-pronged policy aiming to ensure the punishment of those responsible for the overthrow of democracy and to strengthen the restored regime.⁷² The Athenians' regained freedom was associated with settling accounts with all those who stood for the rule of Demetrius of Phalerum or were seen by the Athenian people as being connected with him. For this reason, several lawsuits with a decidedly political superstructure were brought against prominent Athenians, even if the actual cause was often personal friendship with the Phalerean and not direct involvement in his rule.⁷³ The cases of the famous comic poet Menander and of the orator Deinarch belong to this new set of legal "acts of vengeance". Menander was accused of "being a friend of Demetrius (of Phalerum)", yet Diogenes Laertius, who refers to the poet's trial, does not give any watertight information about the actual charge.⁷⁴ As for Deinarch, Dionysius of Halicarnassus reports that the orator was accused of "subverting the regime", a possible reference to the process of *eisangelia*.⁷⁵

The above observation, apparently confirmed by the literary evidence concerning the procedure against those who overthrow democracy, seems clearer in the case of the prosecution of the supporters of Demetrius of Phalerum after the restoration of democracy in 307 B.C. According to Dionysius of Halicarnassus (who cites Philochorus), after the capture of Athens by Demetrius Poliorketes, Demetrius of Phalerum and many other citizens who supported him were denounced, and those who fled into exile were sentenced to death, while those who remained in Athens were acquitted.⁷⁶ The term used to denote denouncing (*eisēngelthēsan*) reveals that the procedure followed against them was that of *eisangelia* and, even if we do not accept that the term is used in a technical sense, it should be noted that the only way of prosecuting someone for overthrowing the democratic regime

⁷² Arnaoutoglou 2021, 264-265.

⁷³ Haake 2008, 92-93.

⁷⁴ Diog. Laert. 5.79.

⁷⁵ Dion.Hal. *De Dinarcho* 2.

⁷⁶ Dion.Hal. *De Dinarcho* 3 (= *FGrHist* 328 F 66): "Υστερον δὲ εἰσηγγέλθησαν πολλοὶ (τῶν) πολιτῶν, ἐν οἷς καὶ Δημήτριος ὁ Φαληρεὺς. Τῶν δ' εἰσαγγελθέντων οὐκ μὲν οὐχ ὑπομείναντας τὴν κρίσιν ἐθανάτωσαν τῇ ψήφῳ, οὐκ δ' ὑπακούσαντας ἀπέλυσαν (Transl. Shoemaker 1971, 397: But later, many of the citizens were impeached, Demetrius of Phalerum also among them. And of the impeached, those who did not await the verdict of a trial they condemned to death by decree, but those who submitted they acquitted).

was the filing of *eisangelia*, according to the *eisangelitikos nomos* (Hyper. 4.7-8)⁷⁷ and that, unlike what happened in the case of Phocion, there is a clearcut reference to a term associated with a specific legal process initiated by volunteers.

The preservation of the procedure of *eisangelia* in early Hellenistic Athens appears to be indirectly attested in the constitution of the 302 B.C. Hellenic League of Antigonos Monophthalmus and Demetrius Poliorcetes. The constitution of the League, which survives in an inscription found in Epidaurus,⁷⁸ had included procedures against transgressors initiated by volunteers, which appear to have been modeled on well-known classical Athenian lawsuits instituted by *ho boulomenos*. Demetrius had a very close relationship with Athens and some of the *polis*' statesmen,⁷⁹ so it is very likely that he, either in person or through his local protégés, such as Stratocles of Diomeia,⁸⁰ had been given the opportunity to observe the functioning of the political and judicial system of Athens. The organization of the League in terms of decision-making was to a large extent based on the regulations of the Second Athenian league, especially the provisions relating to the judicial role of the council of representatives of the allies of Demetrius and Antigonos.⁸¹ Yet a careful look at the text of the League's constitution shows that the prosecution system against offenders was heavily influenced by Athenian legal practices.

The term used to denote the acts of denunciation against states or individuals who acted contrary to the League's interests is *eisangeliai* and, although this word is not always used as a technical term, the words *eisangellein* and *eisangelia* in the sense of denouncing offenders do not appear in the epigraphic evidence from *poleis* other than Athens before the third century B.C.⁸² The League's charter forbade the *poleis* to act contrary to

⁷⁷ Arnaoutoglou 2021, 265.

⁷⁸ *IG* IV² 1.68.

⁷⁹ On the close relationships between Athens and Demetrius Poliorcetes and the honors granted to him and his father Antigonos, see Habicht 1970, 44-50 and Wheatley and Dunn 2020, 127-144.

⁸⁰ For the relationship between Demetrius and Stratocles, see Bayliss 2011, 159-172.

⁸¹ Harter-Uibopuu 2003, 328-329.

⁸² *IG* IV² 1.68, 83-87: [ἄν δέ τις εἰση/γήσ<ασ>θαι π[ροαιρητᾶι τι τῶν] / συμπερόντων τοῖς βασιλευσῖν κα/ι τοῖς Ἑλλη/σιν ἢ εἰσαγ/γεῖλαι τινας ὡς ὕ/πεναντία πράπτοντας τοῖς συμμά/χοις ἢ μ/ἢ πειθομέν/ους τοῖς ὠμολογημέ/νοις, ἢ ἄλλο τι χρηματίσαι τοῖς συνέδροις/, ἀπογραφέσθω [πρὸς τοὺς προέδρους]. οἱ δὲ προτιθέωσαν εἰς τοὺς συνέδρου/ς (Transl. Bagnall and Derow 2004, n. 8: [If anyone wishes] to introduce

its constitution “in word or deed”:⁸³ it is very tempting for us to see in the “word” mentioned in the text an abbreviated version of the clause concerning the prosecution of orators who “make speeches contrary to the interests of the Athenian people” in the law on *eisangelia*.⁸⁴ Reference to the punishment that was to be decided by the League’s council (what the transgressor had to “suffer or pay”) shows that this trial was to be an *agōn timētos*, which means that there was not a fixed penalty and both prosecutor and defendant had to propose one, as was the case in a trial initiated by *eisangelia*.⁸⁵

Whether the employment of a procedure similar to that provided against the supporters of Demetrius of Phalerum reveals the impression that this type of prosecution made on Demetrius Poliorcetes or has some other reason is unclear. It is more logical to consider that some of his supporters who had been involved in the prosecution of the adherents of the oligarchic regime urged the Macedonian ruler to follow a similar process against those who defied the League’s regulations. In any case, it demonstrates that a typical way of tackling enemies of the state in democratic Athens was still part of the Athenian legal system and found its way into the charter of an interstate organization led by non-democratic rulers.

III.b. The graphē paranomōn against Sophocles’ law and the protection of the state from unconstitutional measures.

The accounts of the attacks on Phalerean Demetrius’ supporters reveal the existence of another public lawsuit known from the classical period: the *graphē paranomōn*, i.e., the indictment for proposal of unconstitutional motions. Diogenes Laertius is once again our source: in particular, the author states that Sophocles, son of Amphicleides, passed a law in 307/6 B.C.,⁸⁶ which prohibited philosophers from presiding over schools without the permission of the popular assembly or the council.⁸⁷ Athenaeus claims

[any matter] of advantage to the kings [and the Greeks,] or to report [anyone as] acting contrary to the interests of the allies [or] disobeying the resolutions, or to bring any other business before the *synedroi*, let him register [with the *proedroi*] and let them bring the matter before the *synedroi*). On the *eisangelia* procedure in the constitution of the league, see Thür 1997, 225-226, and Filias 2021, 138-139.

⁸³ *IG IV²* 1.68, 35: εἰς δὲ τινεὶς ἐναντίον τι πράττωσιν ἢ λόγῳ ἢ ἔργῳ.

⁸⁴ ἢ ῥήτωρ ὦν μὴ λέγῃ τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων’. Filias 2021, 140.

⁸⁵ See Hansen 1975, 33-36.

⁸⁶ For the date of this motion, see Arnott 1996, 858-859.

⁸⁷ Diog. Laert. 5.38.

that Sophocles' motion attacked all the philosophers;⁸⁸ however, it is more safe to follow Diogenes' account and consider the general thrust of Sophocles' law an essentially political gesture, prompted by the perceived collaboration of the Peripatos, the school of Aristotle, with the hated Macedonian overlords.⁸⁹ Philo, a disciple of Aristotle, brought the *graphē paranomōn* against his proposal, while the orator Demochares, the same person who attacked Theophrastus almost a decade earlier, composed a speech in defence of Sophocles' law.⁹⁰

An examination of the law in question shows that it was not technically an outright prohibition against such schools, although within the exaggerated realm of contemporary comedy, where we find it mentioned, it may have been misrepresented as such; in any case, its impact on Athenian philosophical society was marked.⁹¹ However, it seems that one problem was the presumably retroactive character of the law. The schools already each had an individual in charge and there was no reference to the new status of their heads (to whether they would be removed or replaced). Furthermore, it imposed an implicit restriction on the freedom of expression and the freedom of people to dispose of their property as they saw fit, which was in sharp contrast with the rule of law.⁹² At this point, it is worth mentioning a passage from Dem. 35.39. The speaker of this demosthenic speech says that his written contract with the defendant, Lacritus, is binding and that no law or decree brought forward can annul it. This observation is consistent with the view shared by some scholars -and established by many passages in forensic speeches- that opposition to a law or a decree could not overrule an agreement by two or more persons.⁹³ Such agreements may have been related to groups of people whose legal status was ambiguous, as in the case of philosophical schools. In cases like these, where the binding character of the agreement was not evident to all individual participants, confirmation was needed in the form of contract.⁹⁴ If the above reasoning is correct, then a law which interfered with the details of such an agreement would have

⁸⁸ Athen. 13.92.

⁸⁹ O'Sullivan 2002, 252.

⁹⁰ Athen. 13.92.

⁹¹ O'Sullivan 2002, 252.

⁹² See Arnaoutoglou 2021, 271.

⁹³ See Arnaoutoglou 2016, 112 and especially n. 79, where many of these scholars are cited.

⁹⁴ Arnaoutoglou 2016, 114.

been considered unconstitutional.

It has been argued that the *graphē paranomōn* was abolished after the establishment of the *nomophylakes* by Demetrius of Phalerum, a board which, according to a reference by Philochorus, prevented things inexpedient for the *dēmos* from being performed.⁹⁵ This phrase seems to be an indication of the abolition of a procedure, which can be seen as a significant symbol of democracy by the oligarchic regime of Demetrius.⁹⁶ However, the evidence concerning the actual role of this body is inconclusive, and it is difficult to establish a connection between the detection of unconstitutional motions and the duties of the *nomophylakes*.⁹⁷ At any rate, this piece of evidence shows that, even after the oligarchic regime of 317-307 B.C., this lawsuit continued to serve the purpose of protecting the state from breaches of the Athenian code of laws in the late fourth century B.C.

Another issue concerning the procedure is its form: Diogenes speaks of a *graphē paranomōn*, which means that the Sophoclean law was in fact a *psēphisma*, otherwise one would expect the filing of a *graphē nomon mē epitēdeion theinai*, according to the constitution of classical Athens. The fact that it is not possible to decide on the nature of the *graphē* and the classification of the Sophoclean law is regrettable, but what is more important is that a great deal is known about this lawsuit - the last one from Athens to be attested – and moreover it shows that in fourth-century Athens such procedures were invariably politically motivated.⁹⁸ Athenaeus refers to a *psēphisma* and not a *nomos* passed by Sophocles (13.92), which supports the assumption that a *graphē paranomōn* was filed, but both Diogenes Laertius and Pollux in his *Onomasticon* (9.42) refer to a law. The fact that the proposed law was challenged by this type of lawsuit could lead to the conclusion that motions in the form of laws were enacted by the assembly in late fourth century B.C.,⁹⁹ though we should not dismiss the possibility of a merging of the two types of lawsuit.

From the above, it can be concluded that, while evidence regarding public lawsuits is limited, the restored Athenian democracy continued to endorse the filing of lawsuits related to the protection of the constitution.

⁹⁵ *Lexicon Rhetoricum Cantabrigiense*, s.v. *nomophylakes*. Canevaro 2011, 66-69.

⁹⁶ Atkinson 2015, 24.

⁹⁷ See O'Sullivan 2009, 139-141, who argues against the existence of such a reform by Demetrius.

⁹⁸ Haake 2008, 101.

⁹⁹ See Canevaro 2011, 75-77.

It is indicative of this attitude that, according to the charter of the Hellenic League, whose regulations, as already mentioned, were heavily influenced by Athenian legal practices, *ho boulomenos* was allowed to bring written complaints (*graphai*) for misconduct before their successors to office against the outgoing *proedroi* (chairmen) of the League's council. In fourth-century Athens the *proedroi* had extensive powers in the assembly which enabled them to encourage deliberation and steer it towards consensus,¹⁰⁰ so the Athenian state provided for special procedures against these officials such as the *graphē prytanikē* and the *graphē proedrikē*, known from the *Ath. Pol.* 59.2.¹⁰¹ The provision in the Hellenic League's constitution appears to mirror the Athenian provisions which aimed at preventing unnecessary and harmful discussions in the assembly and testifies to the continued use of indictments against those responsible for such prolonged and harmful discussions in the early Hellenistic period.

IV. Public lawsuits from 166 B.C. to Sulla's sack of Athens

IV.a. Evidence from Athenian Delos: an imitation of Athenian public lawsuits by a private foreign association?

Unfortunately, the epigraphic and literary material of the third century B.C. does not provide any information about public lawsuits. The relevant evidence reveals the preservation of the procedure of *euthyna* in Athenian law courts,¹⁰² which in classical Athens included the possibility for any willing person to bring charges,¹⁰³ yet lack of any clear information means that we can only speculate about the application of the fourth century B.C. procedures known from the forensic corpus. The silence of the epigraphic and lit-

¹⁰⁰ Canevaro 2018, 128-129.

¹⁰¹ *IG IV²* 1.68, 87-89: ὑπευθύνους [δὲ πάντων εἶναι τοὺς] / προέδρους, ὧν ἂν πράξωσιν· τὰς δὲ [γρ]αφὰς διδόντω κατ' αὐτῶν ὁ βουλόμενος πρὸς] / τοὺς μετὰ τούτους ἀποκληρωθέντας προέδρους (Transl. Bagnall and Derow 2004, n. 8: [The] *proedroi* chosen by lot [are to be] required to render account for [everything] which they do. Let [whoever wishes (to bring a charge against them)] register it with the *proedroi* next chosen by lot). Filias 2021, 143-144.

¹⁰² See *IEleusis* 208, 27-30, where it is stated that the superintendents of the Eleusinian mysteries in 214/3 B.C. rendered accounts to the law court 'according to the law'.

¹⁰³ For the *euthynai* procedure in the fourth century B.C., see Efstathiou 2007.

erary sources is, however, interrupted by inscriptions containing Athenian procedures initiated by *ho boulomenos* in the late Roman republican period. The preservation of the Athenian legal system during this period appears to be the result of Athens' attitude to Roman power. In the aftermath of conflicts that affected Greece in the first half of the second century B.C., Athens always rallied to the Roman cause, contributing to the war effort by sending ships or supplies, and playing the role of mediator between Rome and the conquered peoples. Hence, without ever playing a leading military role, Athens managed to maintain and even to consolidate its positions in the Greek world until Athenian defection during the first Mithridatic war and its consequent sack by the Roman dictator Sulla.¹⁰⁴

The greatest success of Athenian policy towards Rome was the return of Athenian rule to the island of Delos, which practically overnight became the property of the Athenian state in 167 B.C.: a cleruchy with its own council and assembly, in the fashion of Athens, was immediately dispatched to the island along with an assortment of officials who were to administer Delos, despite Roman tariff restrictions.¹⁰⁵ It is highly likely that the financial prosperity caused by the Athenian reoccupation of the economic centre of Delos accounted for the rejuvenation of the Athenian law courts and the proliferation of allotment procedures associated with these, which, after all, had never really died out, but which acquired extra impetus after 167 B.C.¹⁰⁶ Three honorific decrees published between 147/6 and 144/3 B.C., which respectively refer to procedures of *euthyna* the honorands went through after the end of their office, appear to serve as a proof of that rejuvenation.¹⁰⁷ In the first of these decrees, the accountability procedure required the rendering of their accounts before the assembly of the cleruchy and then before the "determined by the law" court. Although Roussel believes that this procedure took place in Delos,¹⁰⁸ Fröhlich rightly points to the elaborate process, with a hearing before the assembly preceding that before the law court, and the fact that the decree speaks of a law court which is "determined by the law", an indication of the existence of several tribunals,

¹⁰⁴ Fournier 2010, 113.

¹⁰⁵ Rauh 1993, 5.

¹⁰⁶ Papazarkadas 2021, 118.

¹⁰⁷ *ID* 1504 (147/6 or 146/5 B.C.), 28-31; *ID* 1505 (146/5 or 145/4 B.C.), 6-9; *ID* 1507 (144/3 B.C.), 8-11.

¹⁰⁸ Roussel 1916, 45.

something inconceivable for the cleruchy of Delos alone.¹⁰⁹

Concerning evidence of public lawsuits from the mid-second century B.C., a 153/2 B.C. decree of a foreign private association in Athenian-occupied Delos seems to indirectly suggest that public lawsuits were part of the Athenian legal system during the mid-second century B.C. This honorific decree, issued by the *koinon* (association) of Poseidoniastai from Berytus of Phoenicia in Delos,¹¹⁰ bestowed honours on Marcus Minatius Sextus, a Roman banker who was a member of the association. Misconduct by any of the association officials involved in the proclamation of honours could be denounced by any willing member of the association who was “permitted to do so”.¹¹¹ Although the independent state of Delos acknowledged such procedures,¹¹² this expression does not appear on a decree on the island before the Athenian re-occupation. On the other hand, the expression ὁ βουλόμενος τῶν θιασ[ι]τῶν οἷς ἔξεστιν brings to mind the phrase ὁ βουλόμενος Ἀθηναίων οἷς ἔξεστιν which appears in Athenian laws cited in forensic speeches,¹¹³ and designates the citizen who held full civic rights and has acted on his own initiative.¹¹⁴ The same phrase appears in two decrees issued by other *poleis*¹¹⁵ but only in Athens do we find epigraphic

¹⁰⁹ Fröhlich 2004, 359.

¹¹⁰ For this association see Picard 1920; Bruneau 1978, 133-134.

¹¹¹ *I.Délos* 1520, 81-89: οἱ δὲ μὴ ποιήσαντές τι τῶν ἐν τῷδε τῷ ψηφίσματι κατακεχωρισμένων ἔστωσαν μὲν καὶ τῇ ἀραῖ ἔνοχοι, προσαγγελλέτω δὲ αὐτοὺς καὶ ὁ βουλόμενος τῶν θιασ[ι]τῶν οἷς ἔξεστιν· ὁ δὲ ἀρχιθιασίτης ἀεὶ ὁ ἐν ἀρχ[ῆ] ὡ] γ εἰσαγέ[ω] / τὸν κατήγορον καὶ τὸν ἀπολογούμενον καὶ ἀναδιδότω ψηφον / τοῖς θιασίταις . . ENAD[. τοῦ εὐ]θνομένου ἔστω τῷ προσαγγεῖλαντι, κομισαμένου τοῦ [αὐ]τοῦ τὸ τρίτον μέρος τοῦ εἰσπραχθέντος· ἐὰν δὲ τι [ὁ ἀρχιθιασ]ίτης μὴ ποιήσει, ἔστω κατ’ αὐ[τ]οῦ ἡ εἰσαγγελία, ἐπειδὰν ἰδιώτης γένηται, κατὰ τὰ αὐτά· (Transl. *AGRW* 224: Now let those who do not do what is recorded in the decree also be subject to a curse, and let any member of the society who wants to accuse them do so, for this is permitted for them. Let the one who is head of the society at the time summon both the prosecutor and the defendant, and let him distribute a pebble for voting to the members of the society [...] goes well, to the one who has made the accusation, being rewarded with one third of the fine. But if the head of the society does not do something as stipulated here, let him be prosecuted concerning these things when he is no longer an official of the association).

¹¹² See e.g., *ID* 509, 14-18 (235-230 B.C.); *SEG* XXXIII 498, 10-13 (third century B.C.).

¹¹³ *Dem* 21.47 and 24.105.

¹¹⁴ Rubinstein 1998, 126. Hansen 1999, 266.

¹¹⁵ *IG* XII.7 515, 129-130 (Aigiale of Amorgos, end of second century B.C.): γραφέσθ[ω] δὲ ὁ βουλόμενος Αἰγιαλέω[ν] / οἷς ἔξεστιν. *IMagnesia* 100b, 35-36

instances between the fourth and the first century B.C. in which it denotes the willing citizen who is allowed to bring charges.¹¹⁶ More importantly, the expression is non-existent in other decrees of private associations, and it is difficult for us to understand exactly “who is permitted” to bring charges: it may refer to members who had a certain status in the association. These would have probably been those who had not been punished by exclusion (or expulsion) or those who had consistently paid their dues (e.g., membership fees).¹¹⁷ In any case, this bears witness to the strong influence of the Athenian legal institutions on the association’s regulations.

Although we cannot figure out the exact type of Athenian public lawsuit that served as a model for the process in the decree, it is a logical necessity to consider that the provision mirrored accountability procedures, which took place before the Athenian law courts and were known to the Athenian cleruchs who lived on the island. The decree concerns a significant number of association officials who were to be fined in case of misconduct¹¹⁸ and, as already mentioned, several decrees of the Athenian cleruchy refer to the accountability process. There is, however, a departure from Athenian legal tradition in this decree: the promise of reward for the successful prosecutor. The Athenian legal system provided for such rewards in processes of *phasis* and *apographē*, but it generally avoided this type of incentive, mainly “relying on the political rivalry, personal animosity and – perhaps – public spiritedness of its citizens”, as Rubinstein notes.¹¹⁹ Concerning associations, in which the relationships between their members were less formal than those between citizens, a reward was a strong impetus for the detection of offences regarding the members’ common life.

(Magnesia on the Maeander, 130/129 B.C.): εἶναι φάσιν τῶι βουλ/ομένωι τῶν πολιτῶν, οἷς [ἔ]/ξεσθιν.

¹¹⁶ SEG XXVI 72, 34-35 (375/4 B.C.): εἰσαγ/αγέτω αὐτὸ/ν ἐς τὴν βολὴν Ἀθηναίων ὁ βολόμενος οἷς [ἔξεσθιν]. *I.Eleusis* 250, 30-31 (2nd/1st century B.C.): ἐνδε/ίξις ἔσ/τω πρὸς τὸν βασιλέ/α τῶ βουλομένῳ οἷς ἔξε[σθι Ἀθηναίων]. SEG XXII 114, 9-10 (ca. 37 B.C.): [φάσι]ς πρὸς τὴν βουλὴν καὶ τὸν βασιλέα Ἀθή/νησιν / τῶ βουλομέ]νω οἷς ἔξεσθιν.

¹¹⁷ Filias 2023, 109.

¹¹⁸ ID 1520, 66-68 (fine imposed on the head of the association who does not follow the commands prescribed in the decree); 78-81 (fine imposed on the officials responsible for the breeding of the cattle for sacrifice, who do not perform their duties in connection with the honors granted to Sextus).

¹¹⁹ Rubinstein 2016, 427.

IV.b. Apographē and the prosecution of kakourgoi in late second-century B.C. Athens

The first certain epigraphic attestation of a lawsuit by *ho boulomenos* in Athens after 167 B.C. appears in a late second-century B.C. decree concerning the establishment of new weights and measures, found in Eleusis. It is highly likely that the Romans were behind this set of economic regulations, in which Attic weights were converted to Roman ones, presumably to make trade with Rome easier.¹²⁰ It may be assumed that the decree sanctioning the introduction of new weights and measures for commercial use aimed at facilitating trade with Delos and transactions with Italian merchants.¹²¹ While this initiative may well have come from Rome and be connected with another Roman initiative -the Delphic decree which recognized the Athenian tetradrachm as an international currency-¹²² Habicht believes that this is not necessarily the case.¹²³ In any event, the decree and the lawsuit contained therein relate to the economic life of the *polis*, which was on the rise after Athenian reoccupation of Delos.

According to the decree, the magistrates responsible for checking the accuracy of weights and measures were ordered to compel shopkeepers to abide by the regulations of this legal text. If they failed to enforce the proper weights and measures or to compel the shopkeepers to observe the regulations, these magistrates were forced to pay a heavy fine of a thousand drachmae to be consecrated to the goddesses Demeter and Kore. The decree allowed any Athenian citizen to bring an *apographē*.¹²⁴ The word *apographē* designated a denunciation of those in debt to the state along with

¹²⁰ See Worthington 2020, 200 n. 30, who notes that by this decree the attic coin *mna* became the equivalent of two Roman pounds (655 grams).

¹²¹ Lasagni and Tropea 2019, 168.

¹²² See Doria 1985, 426-427.

¹²³ Habicht 1997, 291.

¹²⁴ Doyen 2016, 461, n. 11-14: καὶ μη[κ/έτι ἐξέστω μηδεμῖαι ἀρχῆι ποιήσασθαι μήτε μέτρα μήτε στάθμια [μηδὲ / μείζω] μηδὲ ἐλάττω τούτων· ἐὰν δὲ τις ποιήσῃ τῶν ἀρχόντων ἢ μὴ ἐπαναγκάζῃ/ι αὐτοὺς / τοῦ/τοῖς πωλεῖν, ὁ/[φ]ειλέτω ἱεράς τῆι Δήμητρι (κ)αὶ τῆι Κόρηι δραχμὰς χιλίας καὶ ἑστ[ω] περὶ / τοῦ/του ἀπογραφῆ τῆς οὐσίας πρὸς τοῦτο τὸ ἀργύριον Ἀθηναίων τῶι βουλομένωι οἷ[ς] ἔξ/ε/στι[ν] (Translation based on the French translation by Doyen 2016, 465: If any of the magistrates make the sellers or do not [oblige them] to sell by means of them, let him be indebted for a thousand drachmae consecrated to Demeter and Kore, and let there be [in this connection] a declaration of wealth to the amount of that money for anyone who may wish, among the authorised Athenians, to calibrate and verify measures and weights, for the future as well).

a list of the debtor's property, which was to be confiscated. In some cases, nevertheless, the *apographē* dealt with raising the sum of a debt owed to the public treasury and included the listing of property sufficient to meet the debt,¹²⁵ as in the case of the decree on weights and measures. A similar case can be seen in the 342-338 B.C. accounts of the body of *pōletai*, the officials responsible for selling confiscated property handed over to them by the body of the Eleven. Three men reported through *apographē* a piece of land at Aphidnae which belonged to Nicodemus, son of Aristomenes, of Oinoe, the *epimelētēs* of the tribe Aiantis who levied money but did not pay it over, and who had been fined a thousand drachmae.¹²⁶

There are, however, two problems. It is not entirely clear when this measure could be, or had to be, applied for. In the sources, we find examples both of cases in which the *apographē* only took place after the imposition of a sanction and of cases in which this happened beforehand. Another point not clarified in the decree is to whom the application for a list of assets should actually be addressed.¹²⁷ Doyen believes that the term designates a simple written declaration or a registration to the authorities on a voluntary basis and not necessarily the judicial procedure of making an inventory of assets with a view to confiscation, a process which is well attested in the fourth century B.C.¹²⁸ Nevertheless, it should be noted that, a few lines further down in the text, the council is charged with the observation of the proper weights and measures.¹²⁹ It is, thus, highly probable that the *apographē* could be brought before the executive body of the *polis*, which acted as supervisor to both the officials responsible for, and the individuals involved in, the sale of products (either as buyers or as sellers) and which sentenced the transgressors.¹³⁰

The council's role in this task is made clear by a fifth century B.C. decree on the use of the Athenian weights, measures and coins by the members of the Delian league, which included a provision for an addition to the oath of the Athenian councilors. This concerned legal reactions to in-

¹²⁵ Osborne 1985, 44 and 54.

¹²⁶ *Agora* XIX P 26, 498-509.

¹²⁷ Rizzi 2017, 86-87.

¹²⁸ Doyen 2016, 469.

¹²⁹ Doyen 2016, 461, n. 16-17.

¹³⁰ Doyen 2016, 475. Harris 2006, 147, rightly notes that, while any person was allowed to bring the *apographē*, the task of checking to see that anyone used the proper weights and measures belonged in the hands of officials.

dividuals or states not complying with the Athenians' decision. The text is fragmentary, but it appears that the council would have certain powers to punish offenders.¹³¹ But what seems to demonstrate that the roots of the second century B.C. decree lay in the fifth century B.C. is a clause in the text from the classical period. This states that any archon in the allied *poleis* which did not follow what had been decreed should lose his civic rights, and his property should be confiscated, with a tenth of it given to the goddess Athena.¹³² Since the *apographē* was the measure by which property liable to confiscation was inventoried, it is safe to assume that the clause in the second century B.C. decree was modelled after the classical provision.

Interestingly, in addition to this procedure, the decree states that anyone (magistrate or private individual) who is caught committing a serious offence (*kakourgein*) concerning weights and measures is to be punished according to the law on *kakourgoi*, a legal text which is known from Antiph. 5.9.¹³³ This term designated criminals who were taken *ep' autophōrōi* - a term meaning that their guilt was evident- and were, thus, subject to the

¹³¹ O-R 155, 10: προσγράψαι δὲ καὶ πρὸς τὸν ὄρκον [τ/ὸν τῆς βολῆς τὸν γραμματέα τῆς βολῆς κ/αὶ τοῦ δήμου? τα/δί: “ἐάν τις κόπτηι νόμισμα ἀργυρίο ἐν τῆσι πό/λεσι/ καὶ μὴ χρῆται νομ/ισμασιν τοῖς/ Ἀθη[να]ίων ἢ σταθμοῖς ἢ μέτ/ροις ἀλλὰ ξενικοῖς νομίσμασι/ ν καὶ σταθμοῖς καὶ [μ/έτροις [...]]” (The secretary of the council and people is to add the following to the oath of the council: ‘If anyone strikes silver coinage in the cities and does not use the coins of the Athenians or their weights or measures, but foreign coins and weights and measures[...]).

¹³² O-R 155, 3: ἐὰν δὲ [τις ἄλλος τ/ῶν ἀρχόν/των ἐν τ/αῖσι πόλεσι μὴ ποιῆι κα/τὰ τὰ ἐψηφισ/μένα ἢ τῶν [πολι/τῶν ἢ τῶν ξένων, [ἄτ/μι/ος ἔστω καὶ τὰ χρή/ματα δημόσια /ἔσ/τω καὶ τὰ χρή/ματα δημόσια /ἔσ/τω καὶ τῆς θεοῦ τ/ὸ ἐπιδέκατον] (If any other of the magistrates in the cities does not act in accordance with the decrees, whether citizens or foreigners, let him lose his civic rights and let his property be confiscated and a tenth of it given to the goddess).

¹³³ Doyen 2016, 463, n. 56-60: [ἐ]άν δὲ τις ἀλίσκηται κακούργων (περὶ τὰ μέτρα καὶ τὰ σταθμὰ τὰ κε(ί)με/να ἐν τε τῇ Σκι/άδ/ι καὶ ἐν Ἐλευσίνοι καὶ ἐμ Π/ειραιε/ϊ καὶ ἐν Ἀκροπόλει, ἐάν τε ἄρχον ἐάν τε [ιδιώτης / ἐ]άν τε δημόσιος, ξνο/χ/ος ἔστω τῷ ν/όμ/ωι τῷ κε/μ/ένωι περὶ τῆς τῶν κακούργων [ζήμιας]/ · ἐπιμελείσθω δὲ καὶ [ἢ] βο[υ]λ[ῆ] ἢ/ ἐξ Ἀρείου πάγου καὶ τὸν κακούργου/ντά τι πε/ρὶ ταῦτα κο/λαζέτω κατὰ τοὺς περ[ὶ] τῶ/ν/ κακούργων κειμένου/ν νόμους (Austin 2006, n. 129: If anyone is caught committing an offence concerning the measures and weights deposited [in the Skias], at Eleusis, at [Piraeus] and on the acropolis, whether he is a magistrate or [a private citizen] or a public slave, he will be punished in accordance with the law passed on [the punishment] of wrongdoers. [The council] of the Areopagus shall be responsible and shall punish anyone who has committed an offence [in these matters] in accordance with the laws passed about wrongdoers).

process of *apagōgē* (summary arrest),¹³⁴ which could be conducted by any willing individual. It should be noted that the beginning of the decree refers to the *apagōgē* of individuals who do not use the proper measures, but, as Doyen rightly notes, this does not necessarily imply a process initiated by *apagōgē*.¹³⁵ Rizzi argues that there may be a reference to the *apagōgē* process in the fragmentary beginning of the decree, but acknowledges the problems of this assumption.¹³⁶ The competence of the Areopagus over cases of *kakourgoi* in Roman Athens is in sharp contrast to the Athenian provision for the involvement of the body of the Eleven, yet the former seems to be confirmed by passages from two works by the second century A.D. writer Lucian. In his dialogues *Bis Accusatus* (15-17) and *Vitarum Auctio* (7), Lucian refers to the possibility of trials for *andrapodismos* (selling free men as slaves) before the Areopagus. In classical Athens individuals who committed this crime were considered *kakourgoi*, and a process against them could be initiated by *apagōgē*. Hence, it is not unlikely that a similar process continued to be followed in the Roman period, but the case was not tried by a law court presided by the Eleven, as was the case in classical Athens.

From the above, it appears that, while certain magistrates were responsible for the application of the reforms and the council was charged with the surveillance of the provisions on weights and measures, the Areopagus was the last resort in cases of infringements of this decree.¹³⁷ As already mentioned, the trials of certain philosophers in the early Hellenistic period seem to demonstrate that the jurisdiction of the Areopagus may have extended to the trying of cases which were not traditionally associated with this law court, but the information given by ancient authors is inconclusive. On the other hand, evidence from the Roman period of Athens demonstrates significant changes in the competence of the Areopagus in the Roman era, which resulted in its jurisdiction covering a wider range of offences and procedures than in the classical period.¹³⁸

Yet another interpretation of the term *kakourgein* seems to demonstrate

¹³⁴ On *kakourgoi*, see Harris 2006, 373-390.

¹³⁵ See Doyen 2016, n. 0-3, and his comments in 468.

¹³⁶ See Rizzi 2017, 37-43, who offers a detailed analysis of the possibility of this term's being associated with the process of *apagōgē*.

¹³⁷ Fournier 2010, 150-151.

¹³⁸ On the jurisdiction of the Areopagus in the Roman period, see De Bruyne 1995, 185-196.

the actual nature of the types of crime tried by the Areopagus. In his *Annals* (2.55), the Roman historian Tacitus refers to a man named Theophilus who was convicted of *falsum* (forgery) by the Areopagus in 18 A.D. Kiel sees in Tacitus' reference the possibility of a Latin word for the Athenian legal term *kakourgia* in the sense of falsification.¹³⁹ The word is used in this sense by the speaker of Dem. 24.65. The speaker states that the defendant, Timocrates, falsified the laws (*tous nomous kakourgōn*) and, thus, should be executed without trial. This suggestion is, of course, an exaggeration, since no person was executed without trial except for those who confessed their guilt.¹⁴⁰ This provision echoes one in the fifth-century B.C. decree regarding the use of Athenian coins, weights and measures by the allies of Athens. Although the decree is fragmentary, it seems to have provided for the *apagōgē* of any Athenian citizen who proposed a motion for the use of other weights or measures to the Eleven.¹⁴¹ Although the decree does not mention anything about falsification, it should be noted that the speaker of Dem. 24.65 identifies Timocrates' suggestion for the change of law as a falsification. If that is correct, then it may be argued that the term *kakourgein* had a wider meaning than it appears to have had, and that the second century B.C. decree provided for the prosecution of any action which could lead to changes in the use of established weights and measures.¹⁴²

Judging from the above, it is highly likely that classical Athenian law accepted the *apagōgē* as the form of initiation of legal proceedings in falsifi-

¹³⁹ Kiel 1920, 60-61.

¹⁴⁰ See Carawan 1984; Harris 2006, 373-390.

¹⁴¹ O-R 155, 6: [καὶ ἐάν τις εἴπῃ/ῆ] ἐπιψηφίση περὶ τούτων... ἐς ἄλλο] τι χρῆσθαι ἢ δανε/ίξεσθαι, ἀπαγέσθω αὐτίκα μάλα πρὸς] τοὺς ἕνδεκα· οἱ δ/ὲ ἕνδεκα θαν/άτωι ζ/ημιωσάντων· ἐάν] δὲ ἀμφισβητῆι, ἐσ/αγαγόντων ἐς τὸ δικαστήρ/ιον (And if anyone makes or puts to the vote a proposal about these things [...] to use or loan for some other purpose, let him straightway be hauled off to the Eleven. The Eleven are to punish him with death. If he disputes the charge let them bring him to the court). The term *apagēsthō* is restored; however, the references to the *Hendeka* (Eleven) and to the death penalty point to this type of procedure.

¹⁴² Doyen 2016, 467, translates the term *kakourgein* as committing fraud. The following translation is based on Doyen's French translation for the text in footnote 131: If anyone is caught committing fraud against the measures and weights which are deposited [in the Skias], at Eleusis, at Piraeus and on the Acropolis, whether he is a magistrate, [private person] or public slave, he shall be subject to the law in force regarding the [punishment] of fraudsters. Let the council of the Areopagus also be competent and punish any fraud in relation to these matters according to the laws in force regarding fraudsters.

cation of the established weights and measures and that this same procedure was also provided for this offence in the era of Roman domination. Yet, unlike what happened in the classical era, trials arising from this lawsuit took place before the Areopagus law court and not a popular law court presided by the Eleven. This extended competence of an aristocratic council along with the absence of any reference to popular law courts shows a certain departure from traditional Athenian legal practices, which does not, however, seem to have affected the continuous use of lawsuits by *ho boulomenos*.

IV.c. The process of endeixis in the Eleusinian mysteries during the time of Athenion

After many years of relative peace and financial prosperity in Athens, a new leader named Medeios came to the fore as sole leader of the state in 91 B.C. Although there is no clear evidence of him becoming an actual tyrant,¹⁴³ Medeios appears to have illegally held three successive eponymous archonships between 91-88 B.C, probably with the Roman senate's support, for Rome needed to keep control over Athens during the Social War (91-87 B.C.).¹⁴⁴ The situation described by Athenion, a friend of the king of Pontus, Mithridates VI, and a Peripatetic philosopher who eventually succeeded Medeios, shows that Athens was a *polis* in decay during that period: assemblies were not held, gymnasia and temples were closed and the law courts were not in force.¹⁴⁵ Although Athenion probably exaggerated somewhat in describing the conditions to which Roman domination reduced the city, his words must have a basis of truth, especially when he speaks of tribunals rendered voiceless, which is reminiscent of constitutional changes noted during the last years of the second century B.C.¹⁴⁶ As already seen, the decree on weights and measures did not mention a trial before a popular court and, despite the existence of law courts associated with the process of *emmēnoi dikai* in a 103/2 B.C., the silence of epigraphic sources in the time of Medeios' rule seems to confirm a malfunctioning of the legal sys-

¹⁴³ On Medeios, see Antela-Bernárdez 2021, 201-202.

¹⁴⁴ Worthington 2020, 202 and n. 44 with relevant bibliography.

¹⁴⁵ Athen. 5.51: μὴ περιίδωμεν τὰ ἱερὰ κεκλημένα, ἀρχμῶντα δὲ τὰ γυμνάσια, τὸ δὲ θέατρον ἀνεκκλησίαστον, ἄφωνα δὲ τὰ δικαστήρια (Transl. Olson 2006, 523: And let us not ignore the fact that our temples are locked, our gymnasia filthy, our theater deserted by the Assembly, our lawcourts mute).

¹⁴⁶ Candiloro 1965, 153.

tem similar to that during the time of the oligarchic regime of 322-319 B.C.

As in that dark period of Hellenistic Athens, the evidence on law courts and trials becomes apparent in connection with the establishment of a new regime. In his account of the events following the rise of Athenion to Athenian leadership, Athenaeus (who uses Poseidonius as a source) speaks about the law courts where trials for treason were held against “those who co-operated with the exiles to effect their return”. The form of those trials is, of course, not described by an author who presents Athenion as a demagogue who made the Athenians believe that he would restore democracy, but in the end became a tyrant protected by bodyguards who put all his enemies to death.¹⁴⁷ Therefore, it is hard to decide whether those lawsuits were initiated by common citizens who supported the new leader. Yet, despite negative assessment by Athenaeus, a careful look at the sources shows that Athenion appears to have favored a radical democratic regime, and it is likely that he was behind an attempt to change the Athenian constitution, in order to establish a new political system, strongly democratic in form, and clearly influenced by Peripatetic political theory.¹⁴⁸ In view of the above, it comes as no surprise that a decree which was probably part of this reform demonstrates the re-appearance of a typical Athenian public lawsuit which was to be tried before the popular law courts.

This first century B.C. decree concerned the Eleusinian mysteries and seems to have aimed at forestalling any public disturbance which might be caused by the cancellation or curtailment of the Mysteries in 89 B.C. on the eve of the Mithridatic war. According to Athenaeus, in his address Athenion mentioned the “silenced voice of Bacchus”, a reference to the festival of Dionysia, which means that religious celebrations had been neglected.¹⁴⁹ The provisions of the decree appear to be similar to those in a fourth-century law which also regulated the organization of the festival at Eleusis.¹⁵⁰ As expected, over the course of time it was inevitable that new

¹⁴⁷ Athen. 5.51-52.

¹⁴⁸ Antela-Bernárdez 2021, 205. On the reform of the constitution by Athenion, see Antela-Bernárdez 2009.

¹⁴⁹ Athen. 5.51: μή περιίδωμεν δέ, ἄνδρες Ἀθηναῖοι, τὴν ἱερὰν τοῦ Ἰάκχου φωνὴν κατασεσιγασμένην (Transl. Olson 2006, 523: Nor let us ignore the fact, men of Athens, that Iacchus' holy voice has been silenced). See the comment by the editors of *SEG* XLVIII 117 who see a possible connection between the situation during the Mithridatic war and the publication of the decree.

¹⁵⁰ On this law, see Clinton 1980.

circumstances would require the addition of new regulations and revision of others, especially as legal procedures changed and different penalties became desirable.¹⁵¹ This decree reveals the preservation of a typical Athenian lawsuit brought by any willing citizen: the *endeixis*.

In particular, in a fragment of this decree, it is stated that any willing Athenian who preserved his citizenship rights was allowed to bring an *endeixis* before the *basileus*, who was one of the officials responsible for the organization and supervision of the Eleusinian religious festival.¹⁵² From what is known of this type of lawsuit, it may be argued that this denunciation was aimed at those who were not considered eligible to take part in the festival. This is demonstrated by Andoc. 1, which offers significant information about the process of *endeixis* against the orator Andocides. This type of procedure was associated with the denunciation of disenfranchised individuals (*atimoi*) who appeared in places forbidden to them. Andocides was in fact indicted for his participation in the mysteries, although he had been convicted of *asebeia* (impiety), as reported by the *basileus* to the Athenian council (Andoc. 1.111). The first-century B.C. Roman author Livy speaks about two men from Acarnania who were convicted of entering the shrine at Eleusis without having been initiated into the Mysteries and were executed in 200 B.C., so it is very likely that the procedure continued to be associated with this type of offence in the second century B.C.¹⁵³ However, Hansen doubts the existence of an *endeixis* to the *basileus* in classical Athens and considers that the passage from Andocides' speech *On the Mysteries* refers to the *basileus*' report to the council and not to the denunciation of the orator by the prosecutor Cephisius to the *basileus*.¹⁵⁴ Yet even if one accepts this interpretation, another decree dated to the first

¹⁵¹ Clinton 2008, 282.

¹⁵² I.Eleusis 250, 26-32: [— ἐὰν δὲ οἱ μυσταγωγοὶ μὴ συνπ[ο]ρεύωνται τοῖς μύσταις —/—] καὶ οἱ τῶν μυστηρί[ω]ν [ἐπιμε]ληταὶ κ[ύριοι] ἔστω[σαν] ζημ[ιῶ]σαι τὸν[ς] ... /— — — — —]θαὶ παραχ[ρ]ῆμα ἐ[ν] τῶ[ν] ... 7-8. ...]ΔΕΤΟΙ[— c.6 —]ς καὶ ἐνδε[ξ]ίς ἔστω πρὸς τὸν βασιλέ[α] τῶ βολομένῳ οἷς ἔξ[ε]στι Ἀθηναίων — —] κα[ὶ] το[ῦ] /ς ἐπιμεληταῖ[ς] ... /... τῶν μυστηρί[ων] (Transl. by the author: If the officials who introduce the initiates to the Mysteries do not proceed together with the initiates [...] before the time of initiation they expound to the initiates – when they lead the initiates to [...] forthwith in the [...] and the supervisors of the mysteries shall be responsible for punishing the [...] and there shall be an *endeixis* to the *basileus* by any of the Athenians who wishes – and the supervisors [...] of the mysteries). Clinton 2008, 282.

¹⁵³ Liv. 31.14.7.

¹⁵⁴ See Hansen 1976, 28-29, who notes that.

century B.C. (which will be mentioned in next chapter) seems to demonstrate that this type of lawsuit could have been filed before a different type of magistrate from those of the classical age.

A mention of a lawsuit initiated before the *epimelētai* of the festival in the same decree seems to reveal the existence of two separate procedures: one initiated by citizens and one by the *epimelētai* who undertook the prosecution probably on the basis of the information given by individuals who were not full citizens.¹⁵⁵ The *epimelētai* were to introduce the lawsuits to the popular law courts, which would then assess the penalty to be imposed on transgressors.¹⁵⁶ This is an indication that the trial initiated by the *endeixis* was an *agōn timētos*. Evidence from Athenian forensic speeches shows that this provision appears only in connection with disenfranchised men (*atimoi*) who sat as judges at the popular courts, addressed the assembly or acted as prosecutors in trials.¹⁵⁷ On the other hand, Andoc. 1.4 and 1.49 seems to offer evidence supporting the assumption that in classical Athens disenfranchised men who entered sanctuaries were to be executed, which means that this was an *agōn timētos*. It is likely that Andocides was probably referring to the extreme penalty in this case, but Hansen dismisses this possibility.¹⁵⁸ Nevertheless, this assumption seems to be confirmed by the procedure in the decree under discussion, though reforms in procedural practices unknown to us and associated with Athenion's political program cannot be ruled out.

V. Public lawsuits after the sack of Athens by Sulla

V.a. A process initiated by ho boulomenos for the protection of the cult of Isis in Athens

The defeat of Athens by the Roman army led by the Roman dictator Cornelius Sulla in 86 B.C. was followed by restrictions imposed on Athenian social life, which led to an oligarchic trend affecting the Athenian political and judicial system.¹⁵⁹ Indeed, while *dikastēria* are attested in the second

¹⁵⁵ Oliver 1941, 69.

¹⁵⁶ *I.Eleusis* 250, 31-35.

¹⁵⁷ Harrison 1971, 231.

¹⁵⁸ Hansen 1976, 97-98.

¹⁵⁹ See the significant analysis of the Athenian constitution after the sack of Athens by

century, from the first century B.C. onwards traces of them are completely lost, to such an extent that it is sometimes thought that they had disappeared forever.¹⁶⁰ In a 56 B.C. speech, the Roman orator and statesman Cicero complains about Roman citizens who become Athenian citizens and serve as *iudices* (judges) and Areopagites in Athens, which seems to imply that a form of law court perhaps similar to the classical Athenian popular law courts may have existed during this period, but lack of clear evidence militates against the holding of such a view.¹⁶¹ On the other hand, it is evident that the Areopagus court was held in high prestige by the Romans: in particular, in 68 B.C. the Roman governor of the province of Asia Publius Cornelius Dolabella referred a homicide case to that Athenian law court, which implies that Athens may have ceased to be a free state; but, once again, the evidence is indecisive.¹⁶² As already mentioned, the Areopagus was already trying cases of *kakourgoi* in the second century B.C., so its extended competence outside Athens during a period when the Athenian regime was becoming less democratic is unsurprising. Yet even the regime change of that period appears not to have affected the right of any willing citizen to bring charges against serious offences before the authorities.

The first case from the period following that of Sulla is related to Athenian foreign affairs in the late first century B.C.: a denunciation by *ho boulomenos* in a 37 B.C. council decree about the cult of Isis in Athens. The enactment of this decree is probably attributable to Cleopatra VII, the last queen of the Ptolemaic dynasty, who came into closer contact with Athens than any of her predecessors. This close relationship between the queen and Athens is not irrelevant to her husband Marc Antony's attempts to establish himself in Athens. Antony had already used Athens as his headquarters between 40 and 36 B.C., during which period he was accompanied by his first wife, Octavia, and he seems to have engaged with Athens' cultural life with Athenians for their part offering many honours to the Roman statesman and his associates.¹⁶³ Cleopatra did everything she could to win the sympathy of the citizenry, and it is said that the Athenian assembly voted a decree in Cleopatra's honor that was delivered by a delegation of citizens led by

Sulla by Geagan 1967.

¹⁶⁰ Fournier 2010, 246.

¹⁶¹ Cic. *Balb.* 30. On that reference by Cicero, see Fournier 2010, 130-131.

¹⁶² Val. Max. 8.1a.2; Aul. Gell. 12.7. See Worthington 2020, 216-218.

¹⁶³ On the relationship between Athens and Antony, see Heijnen 2018, 89-91.

place: the cutting down of trees or the collection of dead branches or leaves in Apollo Erithaseus' forest. The priest imposed penalties on those who breached the regulation: an offender who was a slave was to receive fifty lashes of the whip, while an offender of free status was fined fifty drachmae.¹⁶⁸ In addition to this, it appears that the priest had the obligation to refer the culprits to competent magistrates before they received their punishment.¹⁶⁹ The priest was to hand over the offending slave along with the name of his/her owner to the archon *basileus* and the council; on the other hand, the offender who was a free person was to be fined by the priest and the demarch (the head of the deme), who were to hand over the offender's name to the *basileus* and the council.

The decree regarding the cult of Isis does not make such a distinction. Furthermore, the editors of the restored text disagree over the form of the lawsuit brought to the competent officials. Both *phasis*¹⁷⁰ and *endeixis*¹⁷¹ have been proposed as corresponding to the procedure initiated by any willing Athenian. While *phasis* to the *basileus* is attested in the fourth century B.C.,¹⁷² the discussion of an *endeixis* regarding offences of a religious nature before the council appears in And. 1.111: as already mentioned, after being indicted by *endeixis*, the orator Andocides was brought before the council, which indicates the jurisdiction of the council in such cases.¹⁷³ The next lines of the decree seem to show that the *endeixis* was the procedure

¹⁶⁸ IG II² 1362, 7-18: ἂν δέ τις ληφθεῖ [κ]/όπτων ἢ φέρων τι τῶν ἀπειρημένων ἐκ τοῦ [ι]/εροῦ, ἂν μὲν δοῦλος εἴ ὁ ληφθεῖς, μαστιγῶ[σ]/εται πενήκοντα πληγὰς καὶ παραδώσει [α]/ὕτὸν καὶ τοῦ δεσπότου τοῦνομα ὁ ἱερεὺς [τ]/ῶι βασιλεῖ καὶ τεῖ βουλευεῖ κατὰ τὸ ψήφισ[μ]/α τῆς βουλῆς καὶ τοῦ δήμου τοῦ Ἀθηναίων / ἂν δὲ ἐλεύθερος εἴ, θαόσει αὐτὸν ὁ ἱερε[ῦς] / μετὰ τοῦ δημάρχου πενήκοντα δραχμαῖ[ς] / καὶ παραδώσει τοῦνομα αὐτοῦ τῶι βασιλ[εῖ] / καὶ τεῖ βουλευεῖ κατὰ τὸ ψήφισμα τῆς βου[λ]ῆς καὶ τοῦ δήμου τοῦ Ἀθηναίων (Translation based on the translation by Lambert, Schuddeboom and Takeuchi 2023: And if anyone is caught cutting or taking any of the forbidden items from the sanctuary, if the person caught is a slave, he will be flogged with fifty lashes of the whip and the priest will hand him over, with the name of his master, to the *basileus* and the council in accordance with the decree of the Athenian council and people; and if he is a free man, the priest, together with the demarch, will fine him fifty drachmae and will hand over his name to the *basileus* and the council in accordance with the decree of the Athenian council and people).

¹⁶⁹ Le Guen-Pollet 1991, 65.

¹⁷⁰ SEG XXII 114, 9.

¹⁷¹ SEG XXIII 77, 9; SEG XLV 125, 9.

¹⁷² Dem. 22.27.

¹⁷³ Andoc. 1.111.

against transgressors. The decree calls for entrance to the shrine to be forbidden to those who had committed any of the offences mentioned in the first lines of the decree and to those who had brought offerings without the council's permission.¹⁷⁴ This is a typical clause associated with the process of *endeixis*: the accuser had to denounce individuals who had entered a place forbidden to them.

Concerning the decree's prohibition of a second term as a *zakoros*, it should be noted that the *basileus*' jurisdiction over disputes concerning priesthood is known from *Ath. Pol.* 57.2. The term used by the author of *Ath. Pol.* is *diadikazein*, a word used for lawsuits in which rival claimants sought to obtain a right or avoid a duty, and, unlike the term *dikazein*, implies that the *basileus* presided over a law court which decided on the case.¹⁷⁵ However, the first-century B.C. decree avoids mentioning any law court and it is more likely that, as in the regulation about the forest of Apollo Erithaseus, the *basileus* only have been responsible for introducing the lawsuit to the council.

V.b. Graphai asebeias and the protection of sacred land in early Augustan Athens

The last case known to us of a public lawsuit in first century Athens comes from a fragmentary decree concerning the restoration of sanctuaries in Attica, dated to the last decade of the first century B.C.¹⁷⁶ The decree belongs to the early reign of Augustus, so it would be justifiable to include discussion on its provision on public lawsuits in a general study of the institution of prosecution by *ho boulomenos* in Athens under the rule of the emperors. The relevant provision appears, however, in a transitional period for the Roman and Athenian states, in which imperial intervention in the legal life of Athens is not yet evident. Later epigraphically attested cases of public lawsuits come from the era of Hadrian's rule in the middle of the third century A.D. and are associated with that emperor's legislative activity concerning Athens: the 124/5 A.D. Athenian oil law¹⁷⁷ and a *rescriptum* by Hadrian on the sale of fish during the Eleusinian mysteries.¹⁷⁸ Hence, these

¹⁷⁴ *SEG* XXIII 77, 10-14.

¹⁷⁵ Rhodes 1993, 640.

¹⁷⁶ On this decree, see Culley 1975. For the date see Schmalz 2008-2009, 14-17.

¹⁷⁷ *IG* II² 1100. On this legal text, see Harter-Uibopuu 2008.

¹⁷⁸ *IG* II² 1103 and *SEG* XXI 502. On this *rescriptum*, see the latest works by Lytle 2007

require special treatment to detect possible external influence on the relevant provisions. In addition to this, the provision under discussion is the last epigraphical attestation of a procedure whose centrality for the protection of the *polis*' *sacra* in classical and early Hellenistic Athens has already been stressed in that paper: the *graphē asebeias*.

The decree is associated with Augustus' programme for the restoration of public cults in Greece, which in Athens was also connected with efforts to give prominence to the history of the *polis*.¹⁷⁹ Despite an initial negative attitude as a result of Athenian support for his rival, Antony,¹⁸⁰ it appears that the first Roman emperor expressed his support for Athens by distributing grain to Athens (along with other Greek *poleis*) and initiating into the Eleusinian mysteries.¹⁸¹ Both events -the distribution of grain and Augustus being initiated into the Mysteries- were clearly linked with one another as they revolved around the themes of fertility and prosperity¹⁸² and it is very likely that the decree was part of the pattern followed by Augustus. The overarching theme of the decree is the "glory (*doxa*) of the Demos", as represented in the recovery and security of the ancestral customs that governed the administration and inviolability of the sites and properties concerned. This program of restoration sought to enhance the efforts of previous decrees to address the condition of other Attic shrines and sacred lands, most notably the properties of Demeter and Kore at Eleusis,¹⁸³ the two goddesses associated with grain and land fertility.

From the surviving parts of the decree, it appears that this provided for the filing of *graphai asebeias* against those who gave up possession of sacred land. The restoration of SEG XXVI 121 refers to a *phasis* brought before the *basileus*, who then writes down the *graphai asebeias* against the transgressors.¹⁸⁴ Yet such a procedure is very unusual: a *graphē asebeias*

and Cortés Copete 2015.

¹⁷⁹ See Spawforth 2012, 107-113.

¹⁸⁰ Cassius Dio (54.7) refers to Octavian's punitive attitude towards Athens, which was shown by his removing Athenian control over Aegina and Eretria. Plutarch states that Octavian refused to visit Athens (*Mor.* 207F).

¹⁸¹ Plut. *Ant.* 68.4 (grain distribution). Suet. *Aug.* 93 (initiation into the mysteries).

¹⁸² Heijnen 2018, 95.

¹⁸³ Schmalz 2008-2009, 9.

¹⁸⁴ SEG XXVI 121, frg. 2a 8-9: καὶ μὴ ἐξεῖναι εἰς τὸν μετὰ τ/αὐτὰ χ/ρόνον ἰ/ποδόσθαι τι τῶν ἱερῶν τεμενῶν κατὰ μηδένα τρόπον, μηδὲ ὠνήσασθαι μη//δὲ ἀποτίμημα ἢ δῶρον λαβεῖν· εἰ δὲ μὴ, εἶναι φάσιν πρὸς τὸν βασιλέα τῶι βουλομένωι, καὶ τὸν βασιλέα γράφει/ν κ[ατ/ἄ τῶ[ν] ἀποδομένων γραφὰς ἀσεβείας [κ/αἰ] ὀφίλειν τῆι Αθηνᾶι τὸ χρῆμα ὅσου

could be brought by any willing individual; hence, it is logical to assume that a similar provision was included in the decree. However, the role of the *basileus* as the official who received those *graphai* seems to have been assumed by another official who is mentioned in the text of the decree: the hoplite general, an official known from the third century B.C., who rose to prominence in the Roman period.¹⁸⁵ This official appears in the decree as offering sacrifices along with the *basileus*,¹⁸⁶ but it seems that his duties also concerned the prosecution of offences regarding religious matters. In his work *Lexiphanes* (9-10), Lucian refers to Eleusinian priests bringing complaints before the hoplite general against those who mention the names they held before their appointment to the priesthood, so it is not unlikely that the same person would have a similar competence concerning the protection of sacred land.¹⁸⁷ However, the decree is so fragmentary that we can only speculate about the role of the hoplite general in the *graphai asebeias*.

The connection between appropriation of sacred land and impiety is somewhat strange. No explicit mention of such a procedure against those who do not respect the sacred character of specific areas in Attica appears in the epigraphic and literary sources. Yet a passage in the orator Lycurgus' speech *Against Leocrates* seems to reveal the possibility of filing *graphai asebeias* in such case. Lycurgus accuses the defendant of a series of offences: among these, an accusation of *asebeia* against Leocrates concerns his involvement in the destruction of sacred precincts (*temenē*) and temples. Lycurgus appears to associate Leocrates' *asebeia* with his desertion in that his behavior led the enemies to ravage (*temnesthai*) the *temenē*.¹⁸⁸ Before his statement, Lycurgus appears to cite a decree concerning piety (*eusebeia*) about which nothing is known from other sources. Although it is very likely that the orator used a legal text which evoked piety to justify his prose-

ἀπέδοντο. (Transl. by the author: And it shall not be permitted to anyone in the future to sell any plot of land belonging to the sacred precincts in any way whatsoever, neither to purchase or take it as a security or receive it as a gift. Otherwise there shall be a *phasis* by any willing individual to the *basileus*, and the *basileus* shall file written complaints for impiety against the sellers and they shall owe to Athena the money for the sale).

¹⁸⁵ On this office, see Sarikakis 1951.

¹⁸⁶ *SEG* XXVI 121, frg. 2a 12.

¹⁸⁷ On the judicial role of the hoplite general in such cases, see Geagan 1967, 29-30.

¹⁸⁸ *Lyc.* 1.147. On the use of this term in regard to sacred land used for cultivation, see Papazarkadas 2011, 79 n. 269.

cution,¹⁸⁹ the fact that he relates Leocrates' *asebeia* with the defendant's failure to protect the sacred land shows that the first century B.C. decree dealt with a subject relevant to this. That *asebeia* could be connected with improper use of sacred land seems to be confirmed by a 352/1 B.C. decree concerning the boundaries of the Sacred Orgas of Eleusis. According to this decree, the Athenians decided to ask the Delphic oracle about the use of the Orgas in order that no impiety (*mēden asebes*) should be committed regarding the sacred land.¹⁹⁰ Given that this is an official document, it may be assumed that the term *asebeia* is used in a technical sense. What seems to support such an assumption is that the decree concerning the restoration of sanctuaries has a reference to the protection of the Sacred Orgas in it. This indicates that, despite lack of relevant evidence in the Hellenistic period, this area remained under protection, "a fact that", as Papazarkadas notes, "has escaped scholarly attention so far."¹⁹¹ In that case, it may be assumed that what was considered *asebes* in the 352/1 B.C. decree could be denounced through a *graphē asebeias*, which is explicitly mentioned in the decree of the Augustan period.

A final point can be made concerning the penalty imposed on transgressors. The *graphē asebeias* was an *agōn timētos* in classical Athens, but this decree provides for the imposition of a fine equal to the price of the conceded land to be paid to the goddess Athena. This is a clear indication of departure from classical legal practices justified by the seriousness of the offence. If we consider the significance of the restoration of the shrines along with the involvement of Augustus, it becomes clear that the Athenians had to provide maximum protection for the sanctuaries. Athens had already been an enemy of Augustus during his conflict with Marc Antony and Cleopatra and the *polis* needed to show that it took the restoration plan

¹⁸⁹ See Edwards and Roisman 2019, 223-224, who note that piety appears as a term in many fourth-century B.C. decrees and that Lycurgus may have cited one of these.

¹⁹⁰ R-O 58, 49-54: καθ' ὅποτέρα δ' ἂν τὰ γράμματα ὁ/θεὸς/ἄ/ν/έ/λη/ι/ λῶιον [καὶ ἄμειν/ον εἶναι τῶι δῆμῳι τῶι Ἀθηναί/ω/ν/] κα/τὰ ταῦτα π/οι/εῖν, ὅπ/ω/ς/ ἄ/ν/ ὡς εὐσεβέστατα ἔχει τὰ πρὸς τ/ὸ θεῶ [καὶ μηδέποτ' εἰς τὸν λοιπ/ὸ/ν/] χρόνον μηδὲν ἀσεβῆς γίγν/η/ται περὶ τῆς ἱερᾶς/ ὀ/ργᾶδος καὶ/ περὶ τῶν ἄλλων ἱερῶν τῶν Ἀ/θήνισιν' (According to whichever of the written messages the god indicates that it is preferable and better for the Athenian people, according to that message they are to act, in order that relations with the two goddesses may be as pious as possible and in future no impiety may be done concerning the sacred land and the other sacred things at Athens).

¹⁹¹ SEG XXVI 121, fig. 2a 20-22. Papazarkadas 2011, 251 n. 39.

seriously so as to avoid possible sanctions. It was, thus, regarded advisable to avoid a penalty assessment process and to impose a fixed punishment on offenders. One may assume, however, that the text distinguishes between the procedure for impiety and the penalty for the illegal sale. If the restored section regarding the filing of the *graphē* by the *basileus* is correct, then the verb ὀφίλειν appears to be connected with the penalty imposed on the *basileus* in case he did not initiate the procedure: he provided the money equal to the price of the conceded land himself.¹⁹² Yet the fact that the text is to a large extent restored means that this is mere speculation.

Conclusions

All in all, while sources on post-classical Athens are not very informative, evidence of procedures initiated by *ho boulomenos* in both the literary and epigraphic material indicates that the Athenian legal system continued to allow public lawsuits for the prosecution of offences affecting important aspects of the *polis* life from the early Hellenistic period to the early years of Augustus' rule. Although the attitude to democracy was unstable throughout the post-322 B.C. era due to the *polis*' unstable foreign policy, the surviving cases show that public lawsuits known from the classical period remained in force long after the glorious period of Athens. The sources on the early Hellenistic period show that procedures concerning the protection of the constitution, such as the *eisangelia* and the *graphē paranomōn*, were still used by the restored democratic state and stayed unaffected by the oligarchic intermissions. Concerning the protection of the *polis*' *sacra*, which always had a serious impact on the stability of the community, procedures like the *graphē asebeias* and the *endeixis* are attested from the late fourth century to the late first century B.C., the former retaining its character as a weapon against political enemies in the late fourth century B.C. as in the pre-323 B.C. era. References to special classical procedures, such as the *apographē* for the confiscation of the offenders' property and the law on *kakourgoi*, in the Roman period show that such types of process were preserved as an essential part of the judicial system inherited from the classical period. Changes concerning the competence of officials, as in the case of the *kakourgoi* in the decree on weights and measures, or the pen-

¹⁹² SEG XXVI 121, fig. 2a 9. In the first edition of the decree (*IG II² 1035*, fig. 2a 9) the conjunction καὶ is restored.

alty assessment procedure concerning the *graphai asebeias* in the decree concerning the restoration of sanctuaries, are evident and to be expected, as is the case with all legal systems, which evolve in the course of history. Yet, despite these changes, from the overall picture of cases as shown in the sources, it may be concluded that the Athenian legal system never ceased to acknowledge public lawsuits undertaken by willing individuals as a significant judicial instrument in the disclosure of serious offences affecting the community and its foreign policy.

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