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THE TIME LIMIT (*PROTHESMIA*) IN THE *GRAPHE PARANOMON*¹

Abstract

The *graphe paranomon* was a public case (*dike demosia*) introduced against illegal legislation in classical Athens. Although the procedure has attracted the attention of modern scholarship with regard to its function and significance in the Athenian legal system, the statutory limitation on the liability of the author of a decree (*prothesmia*) has been only marginally addressed by modern scholars. This paper discusses the question of the time limit on the liability of the author from the time of the formal introduction of his decree, and, after thorough examination and evaluation of the sources, it establishes the length of the time limit as one year. It also offers an explanation of the rationale behind the tight statutory limitation, compared with other known statutory time limits in Athenian law, and the implications for the purpose and function of the *graphe paranomon* in the Athenian legal system in general.

La *graphe paranomon* era un'azione pubblica (*dike demosia*) destinata a colpire le proposte illegali di legge ad Atene. Benché tale procedura abbia ampiamente attirato l'attenzione della dottrina riguardo alla sua funzione e al suo significato nell'ordinamento giuridico ateniese, la decadenza (*prothesmia*) dall'azione di responsabilità nei confronti dell'autore di un decreto è stata presa in considerazione solo marginalmente. Il presente articolo discute la questione del limite temporale entro il quale poteva essere fatta valere la responsabilità dell'autore di un decreto a partire dal momento della formale proposta di esso. Dopo un accurato esame delle fonti, si giunge ad affermare che il limite era di un anno, e si propone anche una spiegazione del criterio che determinava un termine così breve, se comparato con altri termini di prescrizione nel diritto ateniese. Se ne illustrano infine le implicazioni riguardo allo scopo e alla funzione della *graphe paranomon* nel quadro dell'ordinamento giuridico ateniese nel suo complesso.

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Introduction

In the Athenian legal system there was a public case which could be introduced against the author of a proposal (before the *Boule* or the *Ekklesia*) on the ground that it was illegal in substance or in procedure.² *Ho boulomenos*, a volunteer prosecutor,³ could lodge a charge against the proposer of a decree either after it had been passed by the *Boule* and before it was ratified by the *Ekklesia*⁴ or after it was *formally introduced to, or passed by, the Ekklesia*.⁵

The procedure was initiated by making a sworn statement, *hypomosis*,⁶ during the debate on the proposal in question (in the *Boule* or the *Ekklesia*) and then lodging the written charge with the *thesmothetai*.⁷ There were no prescribed penalties for the convicted author of an illegal decree and the penalty was determined through the procedure of *timesis*—the delivery of a second set of speeches by both litigants proposing a penalty for the offender (*agon timetos*). In case of conviction, the proposal (*probouleuma* or decree) was repealed and the author was punished, usually with a fine.⁸ In addition, if a man was convicted three times in a *graphe paranomon* he suffered *atimia*, disfranchisement.⁹

The aspect of the *graphe paranomon* on which this paper focuses relates to the question of the existence of a statutory limit on the period of liability for the author of a decree and the implications of a time limit for the function of the procedure. We are told in the second *Hypothesis* to the speech *Against Leptines* (*Hypothesis* 2.3 to Dem. 20):

2 The law is not preserved, but given the hostility of the Athenians towards the idea of indicting people when there was no alleged breach of a written law (cf. Andoc. 1.87) and the level of detail about the procedure found in the extant sources, one can be certain that a law/clauses in different laws must have authorised the use of the *graphe paranomon*; the wording of the law would run something like: ἐάν τις παράνομα γράφη/ γράψη, γραφέσθω παρανόμων πρὸς τοὺς θεσμοθέτας ὁ βουλόμενος τῶν Ἀθηναίων οἷς ἐξεστίν/ τὰς γραφὰς πρὸς τοὺς θεσμοθέτας τῶν παρανόμων εἶναι κατ' αὐτοῦ. For the formulation of preserved punitive clauses in Athenian laws, cf. Telfy 1868: nos. 1025, 1053, 1072, 1092, 1098, 1113; see Giannadaki 2014: 22-23.

3 [Dem.] 59.90ff., cf. Aesch. 3.13-14.

4 Hansen 1974: 28-9; cat. nos. 13 (not entirely clear from the text), 30; 1987: 63-73; Carawan 2007: 20 with n.3.

5 Hansen 1974: cat. no. 3 (formally introduced but not passed by the *Ekklesia*); passed by the *Ekklesia*: cat. nos. 4, 5, 12, 15, 16, 17, 18, 27, 38.

6 Cf. Dem. 18.103.

7 Dem. 26.8; Hyp. Ag. *Athenog.* 6; *Ath. Pol.* 59.2; for the technical aspects of lodging the written charge in *graphai paranomon* see Harris 2013: 121-122.

8 The attested fines range from 25 *drachmai* to several talents (10 talents attested in [Dem.] 58.1, 31-32). Cf. Hansen 1974: 53 (potentially death penalty). If the law said that the jury should assess ὅ τι ἂν δοκῆ ἄξιος εἶναι παθεῖν ἢ ἀποτεῖσαι, as an *agon atimetos* (for the formulation of the clause see Canevaro 2013: 228; cf. e.g. Dem. 24.63), then death must always have been a hypothetical possibility, though evidently very remote.

9 [Dem.] 51.12; Hyp. Ag. *Philippides* 11, Antiph. 194.13-14 (Kassel-Austin); Diod. 18.18.2; Hansen 1974: 25; MacDowell 2009: 155 n.7.

νόμος γὰρ ἦν τὸν γράψαντα νόμον ἢ ψήφισμα μετὰ ἐνιαυτὸν μὴ εἶναι ὑπεύθυνον.

there was a law prescribing that the author of laws and decrees is no longer liable after the lapse of one year.¹⁰

Although the validity of this limit in case of laws is corroborated by other sources, its existence in the case of decrees has been questioned in recent scholarship. The reliability of this hypothesis has been recently doubted by Carawan,¹¹ who suggests that restricted liability in the cases of decrees ‘may be simply a mistake’.

Establishing the time limit and the question of commencement of liability for the author

The main argument for scepticism with reference to a time limit is that the author of the *Hypothesis* (quoted above) generalises from the case at hand and applies to the *graphe paranomon* the statute of limitation for the liability of the author which applied only to the *graphe nomon me epitedeion theinai*.¹² The authorship of this *Hypothesis* cannot be determined with certainty, but it has been attributed to Menander of Laodikeia,¹³ the third-century AD rhetorician. Although some scholars recognise silently or in passing¹⁴ the existence of a time limit in the *graphe paranomon*, Carawan (2007) doubted its existence, while MacDowell took a ‘middle’, agnostic position by suggesting that it is not known whether this prescription did exist with regard to decrees.¹⁵

The most important source of evidence in support of the statement of the *Hypothesis* is a passage from the speech *Against Aristocrates*, Dem. 23.104. Euthycles, the man who indicted Aristocrates’ decree which proposed grants of honours to Charidemus, in his attempt to challenge the legality of the decree, cites an example of a decree which took effect, while the proposer was immune from prosecution, after the lapse of a certain period of time.

ὅτε Μιλτοκύθης ἀπέστη Κότυος, συχνὸν ἤδη χρόνον ὄντος τοῦ πολέμου, καὶ ἀπηλλαγμένου μὲν Ἐργοφίλου, μέλλοντος δ’ Αὐτοκλέους ἐκπλεῖν στρατηγοῦ, ἐγράφη τι παρ’ ὑμῖν ψήφισμα τοιοῦτον, δι’ οὗ Μιλτοκύθης μὲν ἀπῆλθε φοβηθεὶς καὶ νομίσας ὑμᾶς οὐ προσέχειν αὐτῷ, Κότυς δ’ ἐγκρατῆς τοῦ τ’ ὄρους τοῦ ἱεροῦ καὶ τῶν θησαυρῶν ἐγένετο. καὶ γάρ τοι μετὰ ταῦτ’, ὦ ἄνδρες Ἀθηναῖοι,

10 The translations of the Greek are mine, unless stated otherwise.

11 Carawan 2007: 33.

12 Kahrstedt 1937-1938: 25; Lipsius 1905-1915: 386; Carawan 2007: 33, but he offers no evidence to disprove the reliability of the *Hypothesis*.

13 Heath 2004: 161-163. Cf. Kremmydas 2012: 62.

14 Such as Bonner/ Smith 1938: 290, Hansen 1991: 207, Kapparis 1999: 179, Heskell 1997: 84 with n.75, Sundahl 2000: 15, Todd 2007: 526, Carey 1992: 87, Kremmydas 2012: 422,

15 MacDowell 1971: 50-51 no comment; 2009: 155.

Αὐτοκλήης μὲν ἐκρίνετο ὡς ἀπολωλεκῶς Μιλτοκύθην, οἱ δὲ χρόνοι κατὰ τοῦ τὸ ψήφισμ' εἰπόντος τῆς γραφῆς ἐξεληλύθεσαν, τὰ δὲ πράγματ' ἀπωλώλει τῆ πόλει. (Dem. 23.104)

After the revolt of Miltocythes against Cotys, when the war had lasted a considerable time, when Ergophilos had been superseded, and Autocles was about to sail away to take command, a decree was proposed here in such terms that Miltocythes withdrew in alarm, supposing that you were not well disposed towards him, and Cotys gained possession of the Sacred Mountain and its treasures. And after this, men of Athens, although Autocles was put on his trial for having brought Miltocythes to ruin, the time for indicting the author of the decree had lapsed; and, so far as the city was concerned, the whole business had come to grief. (Trans. Vince 1935 adapted).

The incident is dated to 361 BCE:¹⁶ Miltocythes revolted against Cotys in Thrace and he asked the Athenians for support. The Athenians passed the decree in question, whose content is not known, but it resulted in the withdrawal of Miltocythes and victory of Cotys over the Sacred Mountain. It is reasonable to assume that the decree contained instructions for the Athenian generals in Thrace, including Autocles. The general Autocles was condemned afterwards (apparently through an *eisangelia*)¹⁷ as he was thought to be responsible for this adverse result of the war in Thrace for Athens. However, the author of the decree *was no longer liable to punishment*. We do not learn the name of the proposer and although unprovable, it cannot be entirely ruled out that it was Autocles himself, but the implication from the text is that they are two separate individuals. In any case, this does not affect my argument.¹⁸

One possible interpretation of the Greek passage is that the chronological point (οἱ δὲ χρόνοι...) might indicate that a *graphe paranomon* should be lodged in a *specific period of the year*; this time reference could then suggest a *period of suspension*. We do have evidence for limited periods of prosecution during a year in some types of cases: trading cases, for instance, could be brought every month (from Boedromion to Mounichion) except in the summer months, in order to enable the sailors and traders to make the most of the good sailing weather.¹⁹ The plural number might well lend itself to such a reading. However,

16 Heskell 1997: 77 (March–April 361), 84.

17 Hansen 1975: 95–96 (cat. no. 90), 1987a: 172 n.590.

18 Carawan 2007: 34 n.35 assumes that Autocles was the proposer, but this is unprovable. The text rather implies that he is a distinct person from the author of the decree.

19 This is the most likely reading of Dem. 33.23 αἱ δὲ λήξεις τοῖς ἐμπόροις τῶν δικῶν ἔμμηνοί εἰσιν ἀπὸ τοῦ βοηδρομιῶνος μέχρι τοῦ μουνιχιῶνος; but the specific period during which litigation was not allowed is debated (summer or winter); however, it is generally agreed that there was a specific period in the year when such cases could not be initiated and this is what matters for my argument. See recently MacDowell 2009: 260; Todd 1993: 334–335. Cf. also Antiphon 6.38, 42: the *basileus* was not permitted to accept an indictment for homicide cases during the last three months of his office (because the three

we have no evidence for any such restriction in the *graphe paranomon*, which makes this hypothesis unlikely. Also, the verb used here (οἱ δὲ χρόνοι... ἐξεληλύθεσαν)²⁰ as well as the pluperfect tense suggest not a temporary suspension, but an absolute expiry (cf. *LSJ* s.v. II).²¹ Therefore, this passage is best explained by assuming that there was a statutory limitation relating to the liability of the author in the *graphe paranomon*, and in this case the author of the decree was evidently no longer liable (*hypeuthynos*).²² Carawan²³ in his attempt to show that there was no time limit to a mover's liability, dismisses this passage. He notes its existence in a footnote but does not discuss it in any detail and thus he does not address its implications for *prothesmia* for the liability of the author in the *graphe paranomon*. He further bases his objection on the assumption that the *graphe paranomon* seems to have targeted mainly honorific decrees and a time limit to the liability of the author would not be meaningful, as honorific decrees had limited effect anyway. However, the *graphe paranomon* was not restricted to honorary decrees with limited effect; there is a range of preserved decrees granting citizenship, protection to certain benefactors of Athens, *enktesis* (right to own land in Attica), *ateleia* (exemption from tax) and *isoteleia* (exemption from certain tax responsibilities for non Athenians), which were meant to last for a lifetime, and were even occasionally extended to the descendants of the honorand too, rather than being time-limited privileges.²⁴

A further argument in favour of the common-sense interpretation of Dem. 23.104 as evidence for the time limit in the *graphe paranomon* is offered by the complementary procedure of the *graphe nomon me epitedeion theinai*. This legal action was instituted after the revision of the laws at the end of the 5th century BCE (403/402)²⁵ as a measure against the introduction of inexpedient laws. The *graphe nomon me epitedeion theinai* has been seen as a result of the distinction between decrees and laws,²⁶ which is dated to this period, and it is widely

preliminary hearings, in three successive months, and the introduction of the case in the fourth month would have to be completed during his term of office). Also, *Ath. Pol.* 52.2.

20 Cf. Dem. 20.144 δὲ αὐτὸν ἔτ' ὄνθ' ὑπεύθυνον ἐγράψατο, ἐξῆλθον οἱ χρόνοι, καὶ νυνὶ περὶ αὐτοῦ τοῦ νόμου πᾶς ἐσθ' ὁ λόγος...; also Dem. 36.26-27 (λαβὲ δὴ μοι καὶ τὸν τῆς προθεσμίας νόμον. (...) Ἀπολλόδωρος δ' οὐτοσί παρεληλυθότων ἐτῶν πλέον ἢ εἴκοσιν...; *Hyp. Eux.* 35 τοῦ ἐξεληθόντος μηνός; *Hdt.* 2.139; *Xen. Hell.* 5.2.2; cf. Dem. 23.80 παρεληλύθασιν οἱ χρόνοι ἐν οἷς ἔδει τούτων ἕκαστα ποιεῖν.

21 For other 'expiration terminology' cf. Dem. 39.17 κατὰ τοῦνόματος τοῦ ἔμαυτοῦ πατρόθεν δέχεσθαι τὴν λήξιν ('expiry'); contrast Dem. 45.4 for the language of *temporary suspension*: οὐ γὰρ ἦσαν ἐν τῷ τότε καιρῷ δίκαι, ἀλλ' ἀνεβάλλεσθ' ὑμεῖς διὰ τὸν πόλεμον.

22 Thus Hansen 1987a: 172 n.591.

23 2007: 34 n.35.

24 Carawan 2007: 36. On the hereditary character of *ateleia* cf. *IG II²* 53.2-3. On the *prothesmia* in the *graphe nomon me epitedeion theinai* see Dem. 20.144 with Hansen 1985: 370; Kremmydas 2012: 422; MacDowell 2009: 155.

25 Kahrstedt 1937-1938: 24; Wolff 1970: 41; Hansen 1991: 175.

26 See Kremmydas 2012: 45-46; Hansen 1978: 317.

accepted²⁷ that the *graphe nomon me epitedeion theinai* postdates the *graphe paranomon*. Apparently the latter procedure was used without discrimination for both laws and decrees before 403 BCE,²⁸ while the *graphe paranomon* is first datably attested in 415 BCE (Andoc. 1.17),²⁹ and it has been suggested with plausibility by Rhodes³⁰ that at that time it was a recent institution; the *graphe nomon me epitedeion theinai* is attested only in the 4th century.³¹

Both legal actions have similarities in the procedures as well as in nature (both are *graphai*, public cases, and both are *agones timetoi*). The plaintiff's intention to proceed in a *graphe nomon me epitedeion theinai* was declared as soon as he made a special sworn statement, the *hypomosia*, as is the case in the *graphe paranomon*;³² in both procedures the *hypomosia* had the immediate effect of blocking the new piece of legislation³³ and put it to further scrutiny by the court, and the *thesmothetai* accepted both cases.³⁴ In addition, the *graphe nomon me epitedeion theinai* gave a significant flexibility to the volunteer prosecutor in lodging his charge, as *graphe paranomon* did: a new law could be indicted either before or after its enactment by the *nomothetai*,³⁵ and similarly a decree could be indicted after its passage by the *Boule* and before (*probouleuma*) or after its passage by the *Ekklesia*. Finally, in both legal actions the court not only penalised the author after conviction, but repealed his measure too as inexpedient or illegal respectively. It is reasonable to suppose that the *graphe paranomon*, which predated *graphe nomon me epitedeion theinai*, served as the model for legislation concerning the examination of the propriety of new laws and especially in regard to the penalties and the liability of the authors.

27 Rhodes 1981: 545; see Hansen 1978: 325-329. Thus Sundahl 2000: 26-27, Kremmydas 2012: 46.

28 Before 403 BCE, there was no formal distinction between laws and decrees; cf. Hansen 1991: 175.

29 It was abolished in 411 and 404 BCE (Rhodes 1981: 660).

30 1981: 378. Jones (1957: 123) suggested that the *graphe paranomon* was instituted at the time of the reforms of Ephialtes in 462 BCE, when the *Areiopagos* had been reduced to a homicide court; however, there is a notable silence in the sources before the first certainly datable case (415 BCE; Hansen 1974: cat. no. 1), which makes this hypothesis rather implausible in a society in which prosecution and litigiousness through this procedure became notorious. This example is dated to the time when the last example of ostracism (to prevent future tyrannies) occurs (Forsdyke 2005: 164), i.e. 417-415 BCE (Thuc. 8.73.3, Hyperbolos). Thus, Forsdyke 2005: 174 n.139; Hansen 1991: 205. Cf. Lanni-Vermeule 2012-2013: 10, Lanni 2010: 2, Sundahl 2000: 24-26.

31 The first known case is dated to 382/381; see Sundahl 2000: 24 (Dem. 24.138).

32 For decrees, see Dem. 18.103; for laws, see Kremmydas 2012: 47.

33 This is indicated in Dem. 23.93 οἱ δὲ γραψάμενοι καὶ χρόνους ἐμποίησαντες καὶ δι' οὗς ἄκυρόν ἐστιν, ἡμεῖς ἐσμεν...; Poll. 8.56 καὶ οὐκ ἦν μετὰ τὴν ὑπομωσίαν τὸ γραφέν, πρὶν κριθῆναι. Sundahl 2000: 10; MacDowell 1971: 50 (no evidence). Cf. Dem. 26.8.

34 *Ath. Pol.* 59.2.

35 Kremmydas 2012: 46.

The existence of a *prothesmia* is firmly established for the *graphe nomon me epitedeion theinai*, as we can see from the case of Leptines, who was prosecuted through this legal action. Leptines' trial is dated to 355/354 BCE (D.H. *Amm.* 1.4), while the charge was lodged a year earlier. As the plaintiff himself explicitly admits,³⁶ Leptines is no longer liable to punishment for passing his allegedly inexpedient law. This evidence perfectly correlates with the information of the *Hypothesis*, which gives a limit of one year in the case of laws. If we consider the distinction between laws and *psephismata* and the superiority of the former to the latter in Athenian collective thinking, which is also reflected in legislation,³⁷ it is intrinsically unlikely that the liability of the author in the case of decrees would be longer than in the case of laws: one needs to bear in mind that *psephismata* are rules with usually a narrower period of validity or target, while laws are generally permanent rules.³⁸ Thus, it is reasonable to assume that the time limitation would be the same for both procedures, or, if one time limitation were to be longer than the other, we would expect the time limitation in *graphe nomon me epitedeion theinai* cases to be longer than that for *graphe paranomon* cases. As a result, the time limit for the *graphe paranomon* is unlikely to have been more than a year. Though any reconstruction of the dynamics of the legislation must be conjectural, given that the *graphe nomon me epitedeion theinai* was modelled according to the existing *graphe paranomon*, it is highly likely that the one-year limitation existed already in relation to *graphe paranomon* and was then introduced in the *graphe nomon me epitedeion theinai*³⁹ and that the author of the *Hypothesis* is not generalising from the case at hand, as has been supposed, but is describing a real practice.

But a crucial question, which has not been explored by modern scholarship, is when does the clock start ticking? The implication of Dem. 23.104 is that the *prothesmia* relates to the *enactment* of a proposal, and in this case apparently by the *Ekklesia*, as the prescribed action has been implemented.⁴⁰ In addition, Dem. 23.92⁴¹ shows that a *probouleuma* would be invalid after a year of its formal

36 Dem. 20.144 ἄλλως τε καὶ γεγενημένου σοι τοῦ ἀγῶνος ἀκινδύνου. διὰ γὰρ τὸ τελευτήσαι Βάθιππον τὸν τουτουὶ πατέρ' Ἀψεφίωνος, ὃς αὐτὸν ἔτ' ὄνθ' ὑπεύθυνον ἐγράψατο, ἐξήλθον οἱ χρόνοι, καὶ νυνὶ περὶ αὐτοῦ τοῦ νόμου πᾶς ἐσθ' ὁ λόγος, τοῦτω δ' οὐδεὶς ἐστὶ κίνδυνος.

37 Andoc. 1.87 (no decree can override a law), Dem. 23.87 with Canevaro 2013: 75-76; e.g. Hansen 1991: 170-4; Sealey 1987: 32-52; Todd 1993: 18-9.

38 Hansen 1978: 317 and 1991: 156-157 for the various types of decrees.

39 We should note also that this was not a common *prothesmia* (see section II below), but in fact very tight compared to other time limitations, which makes the association of the one-year limitation with the *graphe paranomon* very likely.

40 In regard to the *Boule*, the implication of the extant cases of indictments of *probouleumata* is that the author became liable from the time of the passage of his proposal by the *Boule*: Callixenos' decree for the trial of the Arginousai generals (Hansen 1974: cat. no. 3); Ctesiphon's decree Dem. 18.9, 53 (Hansen 1974: cat. no. 30).

41 προβούλευμα γὰρ ἐστὶν, ὁ νόμος δ' ἐπέτεια κελεύει τὰ τῆς βουλῆς εἶναι ψηφίσματα...

introduction/passage by the *Boule*, if the *Ekklesia* had not yet ratified it;⁴² but its expiration did not affect the proposer's liability (Dem. 23.93 τὸ ψήφισμα τοῦθ' οὕτως ἔγραψεν...): the proposer was liable for his measure if he formally introduced a decree. Thus the first passage shows that liability commenced from the time of the enactment of the decree in the *Ekklesia* and the latter case suggests that the proposer's liability could also commence even earlier from the time of the approval of the proposal by the *Boule* (*probouleuma*).⁴³ It is clear that liability to prosecution does not relate to a mere speech (*legein*) in the *Boule* or the *Ekklesia*, but to a formally introduced (*graphein*) or voted motion.⁴⁴ Furthermore, there is no evidence to support indictment of a proposal before its approval by the *Boule*, although it would be entirely possible. The absence in the sources of proposals being challenged before they pass at the *Boule* is easily explained: it would be unnecessary and unwise for a *rhetor* to indict a proposal at that early stage, since the proposal might not be passed by the *Boule* anyway and he would unnecessarily undertake the significant risks attached to the *graphe paranomon* (in case of conviction or failure to obtain one-fifth of the votes of the court).

42 Rhodes (1972: 63) interprets the passage (relying on the confusing Scholion on Dem. 23.92) as saying that a *probouleuma* was valid only for the year in which the *Boule* had passed it—*bouleutic* year), thus MacDowell 2009: 197. MacDowell considers (though as less possible) the interpretation 'for one year after its passage'. The Scholion in question continues: ἐνιαύσια γὰρ ὡς ἀληθῶς τῆς βουλῆς τὰ ψηφίσματα. ἐπέτεια and the Scholiast's ἐνιαύσια can have the meaning of 'annual/ once a year' as well as express duration of time, 'for a year' (cf. *LSJ* s.vv.). The Demosthenic passage seems not to support the first possibility, only the Scholion refers to the year in which a decree is introduced, but given the inherent confusion in the Scholion, this seems not to be a reliable source. The second interpretation ('for a year') seems more plausible as Dem. 23.92 refers to *duration* of time, but without linking the duration of the validity of a decree with the duration of office of the *Boule* which passed it. Furthermore, on the hypothesis that this reference was associated with the expiration of office of the *Boule*, each decree voted by the *bouleutai* would have different period of validity, and this would create significant discrepancies for the *Boule* in terms of the validity and enactment. Also, this would create further discrepancies for the liability of authors, given that there would not be a single time period common for all proposers; the time would vary, dramatically in some cases. Thus it seems more plausible that the reference is the one-year period from the time of the passage of the decree, which would make its validity, enactment and liability consistent. The late and confusing Scholia may well misread the Demosthenic passage (cf. Carey 1995: esp. 114, 117 for misreading of texts by later lexicographers/ authors, in another context). That the Scholiast misread the text is entirely possible in our case too.

43 In cases of *probouleumata*, the approval of the proposal by the *Ekklesia* was signified by the enactment of the decree.

44 Cf. Dem. 1.19 'τί οὖν; ἄν τις εἴποι, 'σὺ γράφεις ταῦτ' εἶναι στρατιωτικά; μὰ Δί' οὐκ ἔγωγε, as against [Dem.] 59.4-5 ἔγραψε ψήφισμα ἐν τῇ βουλῇ Ἀπολλόδωρος βουλευῶν καὶ ἐξήνεγκε προβούλευμα εἰς τὸν δῆμον, λέγον διαχειροτονῆσαι τὸν δῆμον εἴτε δοκεῖ τὰ περιόντα χρήματα τῆς διοικήσεως στρατιωτικά εἶναι εἴτε θεωρικά. (...) γραψάμενος γὰρ παρανόμων τὸ ψήφισμα Στέφανος οὐτοσί... Dem. 1.19 suggests that a mere proposal which was not formally introduced in writing would not make the speaker liable, in stark contrast with the formal introduction of a decree in writing (*graphein*), which made the proposer liable for his suggested policy, as in Apollodoros' case. Cf. Dem. 18.28 (*graphein*), 219 *graphon*, 'he who writes' a motion for a decree (Hansen 1991: 143-144).

There are, however, some cases which *prima facie* do not fit the model of the one-year *prothesmia* which has been described so far. The author of one of the decrees honouring Demosthenes, Ctesiphon, is liable six years after the passage of his *probouleuma*, and despite the fact that the *probouleuma* would have technically expired after a year if it was not enacted (cf. Dem. 23.92). Carawan⁴⁵ along with other scholars⁴⁶ has supposed that the liability of Ctesiphon is ‘peculiar’. He suggests that ‘it may have been subject to an exception or a change in law’. However, we have no evidence in support of this hypothesis. A closer examination of the speeches shows that the liability of Ctesiphon does not disprove the information we receive about time limit from Dem. 23.104 (*psephismata*) and from Dem. 23.91-92 (*probouleumata*).

Both Demosthenes and Aeschines constantly and consistently argue as if the lapse of time made no difference to the liability of Ctesiphon, while Ctesiphon’s *probouleuma* for crowning Demosthenes was passed by the *Boule* in 336 BCE, and the trial took place six years later (in 330 BCE).⁴⁷

Dem. 18.15-6 [15.] νῦν δ’ ἐκστάς τῆς ὀρθῆς καὶ δικαίας ὁδοῦ καὶ φυγῶν τοὺς παρ’ αὐτὰ τὰ πράγματα ἑλέγχους, τοσοῦτοις ὕστερον χρόνοις αἰτίας καὶ σκώμματα καὶ λοιδορίας συμφορήσας ὑποκρίνεται· εἶτα κατηγορεῖ μὲν ἐμοῦ, κρίνει δὲ τουτονί, καὶ τοῦ μὲν ἀγῶνος ὅλου τὴν πρὸς ἐμ’ ἔχθραν προΐσταται, οὐδαμοῦ δ’ ἐπὶ ταύτην ἀπηνητηκῶς [16.] ἐμοὶ τὴν ἐτέρου ζητῶν ἐπιτιμίαν ἀφελῆσθαι φαίνεται.

Now, long afterwards, he has gathered a heap of derisive and abusive charges and puts on a show. What’s more, he accuses me but puts Ctesiphon on trial. He makes his feud with me the foremost issue of the entire lawsuit, but, although he has never challenged me directly, he seems bent on depriving another man of his rights. (Trans. Yunis 2005)

Aesch. 3.210 ὅλως δὲ τί τὰ δάκρυα; τίς ἢ κραυγή; τίς ὁ τόνος τῆς φωνῆς; οὐχ ὁ μὲν τὴν γραφὴν φεύγων ἐστὶ Κτησιφῶν, ὁ δ’ ἀγὼν οὐκ ἀτίμητος; σὺ δ’ οὔτε περὶ τῆς οὐσίας οὔτε περὶ τοῦ σώματος οὔτε περὶ τῆς ἐπιτιμίας ἀγωνίζῃ· ἀλλὰ περὶ τίνος ἐστὶν αὐτῷ ἡ σπουδή; περὶ χρυσῶν στεφάνων καὶ κηρυγμάτων ἐν τῷ θεάτρῳ παρὰ τοὺς νόμους;

But anyway, why the tears? Why the noise? Why the shrill voice? Isn’t Ctesiphon the man under indictment? Isn’t this trial one with the penalty assessed? As to you, you are not on trial for your property, your life, or your citizen status. But what is it that so concerns him? Gold crowns and illegal proclamations in the theatre. (Trans. Carey 2000)

More importantly, relying on Aesch. 3 and Dem. 18, we can confidently date the time of the indictment within *three or four months from the time of the passage*

45 Carawan 2007: 35 with n.36.

46 Hansen 1987: 66-67; cf. Yunis 2001: 11 with n.47.

47 For likely reasons for delay, see Harris 1995: 138-142; Horváth 2016.

of *Ctesiphon's motion*: the decree was passed in or after Scirophorion 337 BCE (the earliest possible date),⁴⁸ while the indictment came *before* the assassination of Philip in 336 BCE (Aesch. 3.219), which is safely dated to the Macedonian month Dios (October),⁴⁹ that is corresponding to the Athenian months Boedromion and Pyanepsion (September/ October - October/ November) of the year 336 BCE.

This must be the case with the indictment brought by Diondas against Hyperides and Demomeles who proposed a grant of honours for Demosthenes. The defence speech against Diondas survives in fragments. Hyperides' and Demomeles' proposal was made in 338 BCE (before the battle of Chaeronea), but the trial took place four years after the proposal, i.e. 335/334 BCE.⁵⁰ As appears from the extant fragments of the speech, Hyperides is still liable to punishment,⁵¹ but as we know from Dem. 18.222 Hyperides and Demomeles were acquitted. We can infer by analogy from Ctesiphon's case that Hyperides' proposal (either *probouleuma* or *psephisma*)⁵² was indicted within a year of its passage, which explains his liability even after the interval of four years until the day of the trial.⁵³ Therefore, it is clear that the *prothesmia* for the liability of the author of a decree commenced from the time of the *passage* of the proposal by the *Boule* or *from the time of the formal introduction of a proposal (graphein)*⁵⁴ or *its passage by the Ekklesia*, and if the indictment was brought within the one-year period, the author of a decree was still liable, even if the trial took place more than a year after the proposal or the passage of the measure. The reason for this rule is fairly obvious. If the liability related to the date of the trial of a *graphe paranomon*, it is reasonable to assume that either side or even both would have tried to postpone the proceedings for the trial until the liability of the author lapsed.⁵⁵

48 Demosthenes was still *hypeuthynos* for two offices when Ctesiphon's decree passed: Aesch. 3.24, Dem. 18.111, 113.

49 Diod. 16.91ff. with Efstathiou 2009: 698-699.

50 Carey et al. 2008: 2-3; Horváth 2008 (spring 335/334 BCE), 2014: 10 (between January and March 335/334 BCE); Rhodes 2009: 226 (May-June 335/334 BCE). Hansen (1974: 36) mistakenly dates the trial to 338 BCE.

51 *Ag. Diondas* 145r. 1-4 (pag.3); 173r 25-33 (pag.5); 174r 22-24 (pag.8). Rhodes 2009: 224 notes that the indictment came within a year, underlining the fact that Hyperides was still liable. However, in terms of limitation he seems to think that the time limit is not a calendar year running from the time of the proposal, but he associates it with the *bouleutic* year (cf. n.42 above).

52 It is not known whether the decree had been passed by the *Boule* or the *Ekklesia*. Rhodes 2009: 224; Carey et al. 2008: 16; cf. Horváth 2008: 27 and 2014: 1-2, 141, who takes *προβούλευσα* (144v. 25) with the technical sense of 'pass a decree by the *Boule*', but the syntax makes it less likely.

53 The most probable reason for the delay is that Diondas postponed the trial on the grounds of his absence abroad for military service (see [Dem.] 48.24 *καλλίστη ἀναβολή*). Cf. Horváth 2014: 35-45; 2016 for the grounds of postponement of a *graphe paranomon* trial.

54 For the distinction between *legein* and *graphein*, see n.44 above.

55 There are cases where the litigants postponed the trial (Dem. 18, Aesch. 3; *Hyp. Ag.*

Having established the one-year *prothesmia* in *graphai paranomon*, a further question still remains, namely, whether there was a single law regulating the *prothesmia*, or more than one. We do have references to time limits in the sources and the references are always associated with a certain type of action, in the singular number.⁵⁶ This may indicate that the speakers are referring to a specific *prothesmia* law attached to the offence they discuss, and *prothesmia* clauses then would appear in a number of different laws.⁵⁷ Nevertheless, it is entirely conceivable that there was a single *prothesmia* law, or a *prothesmia* clause in a general law dealing with the *graphe paranomon*. The reference to ‘a *prothesmia* law’ (Dem. 36.26-7) may well be a shorthand referring to a provision of a certain law relating to the case at hand, as generally happens in the orators: they call the secretary to read out *certain clause(s)* in support of their cases. It is more likely that there were specific time-limit clauses attached to certain laws, as the implication from other references to time limits suggest.⁵⁸ Although there may have been some consolidation in the revised law code⁵⁹ completed in 399 BCE, it is likely that a clause in the law instituting the *graphe paranomon* would outline the one-year time limit for the liability of the author; this is probably the case with the *graphe nomon me epitedeion theinai* too, since it is only in connection with those types of *graphai* that the time limit had any meaning.

Finally, there remains a question of terminology: one needs to ask what the likely wording of the time-limit clause in a law authorising (or associated with) the *graphe paranomon* would be. The term *ὑπεύθυνος* is found in Dem. 20.144 in relation to the time limit in the *graphe nomon me epitedeion theinai*⁶⁰ and it is entirely possible that the relevant clause for the *graphe paranomon* would have employed similar terminology to indicate liability. Based on typical legal formulations of Athenian laws, one can possibly reconstruct the clauses referring to the *graphe paranomon* along the following lines: γραφέσθω ὁ βουλόμενος παρανόμων ἐντός

Diondas); cf. also tactics for prolonging the deliberations in the *Ekklesia*, as it happened with the deliberations for the peace of Philocrates, where voting took place when it already began to darken: Aesch. 3.125-126, Dem. 19.144; Dem. 57.8-10. In modern terms, such delaying strategies include filibustering (USA Senate), which aims at postponing the voting about a proposal indefinitely in order to delay, or block the passage of a bill (cf. https://www.senate.gov/artandhistory/history/common/briefing/Filibuster_Clature.htm).

56 Cf. Dem. 38.17 (*dike epitropes*); 38.27, 36.26-27 (inheritance cases), Dem. 33.27-28 (liability of guarantors), Dem. 43.16 (*epikleros*). In these sources, *prothesmia* is related to the time of the introduction (initiation or reopening) of a legal dispute in court, i.e. commencement of the legal proceedings (cf. Wolff 1963: 87-109). See also Griffith-Williams 2013: 11.

57 Cf. Todd 2007: 526.

58 Dem. 38.17, 27; Dem. 33.27-28; 43.16. Isai. 3.58.

59 Cf. the consolidation of the *eisageltikos nomos*, Rhodes 1981: 524-525.

60 ἄλλως τε καὶ γεγενημένου σοι τοῦ ἀγῶνος ἀκινδύνου. διὰ γὰρ τὸ τελευτήσαι Βάθιππον τὸν τουτοῦ πατέρ’ Ἀψεφίωνος, ὃς αὐτὸν ἔτ’ ὄνθ’ ὑπεύθυνον ἐγράψατο, ἐξήλθον οἱ χρόνοι...

ἐνιαυτοῦ/ τὸν γράψαντα νόμον ἢ ψήφισμα μετὰ ἐνιαυτὸν μὴ εἶναι ὑπεύθυνον.⁶¹ This is only an indicative way to think about terminology, and various other possibilities would be equally suitable to express the time limit.⁶²

The rationale behind the time limit and its significance in the *graphe paranomon*

Information about the *prothesmia* and its purpose in the Athenian legal system is difficult to extract from the extant sources, as is often the case with the rationale behind legislation, whose purpose or function are always embedded in the laws and are not entirely obvious to the modern scholar as they might have been to the Athenians. We hear of various *prothesmiai* more frequently with the time limit of five years in certain types of *dikai*, such as *dikai epitropes* and cases relating to inheritance (Dem. 36.26-27 contractual disputes; 38.27 *dike epitropes*),⁶³ where the law prescribes the five-year limit for initiating a legal action. However, we simultaneously hear of cases where a *prothesmia* did not apply at all, such as in impiety and homicide cases,⁶⁴ presumably because of the pollution arising from killing, which could spread to society,⁶⁵ and debts to the state treasury, which would never be discharged if a *prothesmia* for removal of liability applied.⁶⁶ On the contrary, the absence of a time limit and the hereditary character of state debts (with the associated penalties for failure to pay) illustrate that there was an effective legal frame enabling the city to collect state debts from the debtor, or his heirs and also penalise them severely until the discharge of the debts.

The information about the existence of a *prothesmia* relating to *graphai* in

61 The wording of the *Hypothesis* 2.3 to Dem. 20 νόμος γὰρ ἦν τὸν γράψαντα νόμον ἢ ψήφισμα μετὰ ἐνιαυτὸν μὴ εἶναι ὑπεύθυνον may well be close to the wording of the law (although the *Hypothesis* is possibly drawing its terminology on Dem. 20.144). Cf. the similar wording in *Ath. Pol.* 48.5 ἐντός ἢ ἡμερῶν ἀφ' ἧς ἔδωκε τὰς εὐθύνas εὐθυναν ἄν τ' ἰδίαν ἄν τε δη[μο]σί[α] ἐμβαλέσθαι... The term the Athenians used for 'time limit' is *προθεσμία*, as it is clear from other preserved laws prescribing time limitations (see n.56 and section II below).

62 Cf. Dem. 21.47 οἱ δὲ θεσμοθέται εἰσαγόντων εἰς τὴν ἡλιαίαν τριάκοντα ἡμερῶν ἀφ' ἧς ἄν γραφῆ... (Canevaro 2013: 227 considers the limit clause as a reliable addition to a forged law about *hybris*); Isai. 10.12 (inheritance cases).

63 Dem. 38.17 βούλομαι καὶ τοῦτον ὑμῖν τὸν νόμον εἰπεῖν, ὅστις διαρρήδην λέγει, ἂν πέντ' ἔτη παρέλθῃ καὶ μὴ δικάσωνται, μηκέτ' εἶναι τοῖς ὀρφανοῖς δίκην περὶ τῶν ἐκ τῆς ἐπιτροπῆς ἐγκλημάτων. καὶ ὑμῖν ἀναγνώσεται τὸν νόμον. Charles 1938: 4-5, 20 overstates his assumption that the five-year *prothesmia* was the standard in *dikai* (arguing *e silentio*).

64 Lys. 13.83 οὐ γὰρ οἶμαι οὐδεμίαν τῶν τοιούτων ἀδικημάτων προθεσμίαν εἶναι. This seems to be the case with impiety too (Lys. 7.17); see Todd 2007: 526. Cf. Phillips 2008: 185 n.1. From a comparative perspective, it is worth noting that prosecutions for homicide have no time limit in modern Federal criminal law in the USA.

65 Charles 1938: 15.

66 Dem. 22.33-34; 24.201; 25.38, 42 Aristogeiton is still considered *atimos* for debts after seven years have lapsed. The heir could inherit *atimia* for public debts owed by his father.

general is not quite clear, and the extant evidence about limitations relates to the *graphe paranomon* and *graphe nomon me epitedeion theinai*. We also hear of shorter *prothesmiai*, as in cases of guarantors⁶⁷ for payments falling due within a year.⁶⁸ A fair question is why the proposer was responsible for only one year from the time of the formal introduction or passage of his decree by the *Boule* or the *Ekklesia* in a system which could deal quite ruthlessly with its politicians. One can plausibly infer that the one-year limitation was considered as an adequate period for a citizen to identify an illegal decree and lodge a charge against the proposer⁶⁹ both in order to remove the illegal piece of legislation and have its proposer punished. This is at least the rationale the speaker of Dem. 36.26-27 attributes to Solon: he considered that the time period (five years in cases of contractual differences, in particular) would allow enough time for the victim to seek redress and for the dishonest party to be exposed. One does not have to take this statement at face value, as the intent attributed to the lawgiver for the time limit is part of the strategy of the orator in this passage,⁷⁰ but this rationale was apparently expected to be credible and to find favour with (some of) the audience.

Simultaneously, the *graphe paranomon* may well have functioned as a means of ensuring ‘accountability’ for a *rhetor*, in effect, granted that *rhetores* did not undergo *euthynai*, or any other kind of formal scrutiny for their proposals and policies in the *Ekklesia* in general.⁷¹ Thus by analogy with the accountability of the officials who had to render *euthynai* after the term of their (typically) *annual* office, a proposer could be very economically checked by another *rhetor*, who could act as a voluntary prosecutor through a *graphe paranomon*⁷² at any time, compared to *euthynai*, which only took place after the end of term of office

67 Dem. 33.27-28 λαβὲ δὴ μοι καὶ τὸν νόμον, ὃς κελεύει τὰς ἐγγύας ἐπετείους εἶναι.

68 As MacDowell 2004: 106 n.32 rightly notes, the relevant law does not exonerate the speaker from liability and the meaning of the law must therefore have been that a guarantor was liable only for payments falling due within one year, not that legal proceedings against him must be taken within one year. Cf. p.8 above about the expiry of *probouleumata* which have not been enacted within a year.

69 A similar rationale for longer time limits can be seen in the USA Federal law, beyond the standard five-year statutory limitation: namely, the investigative difficulties or the seriousness of the crime. There is no time limit in homicide cases, a twenty-year time limit for theft of an artwork, ten years for arson, certain crimes against financial institutions, and immigration offences. See Doyle 2012.

70 Cf. Giannadaki 2016.

71 *Rhetores* could undergo the *dokimasia rhetoron*; however, it did not concern their proposals, but their suitability for the task itself of making proposals. And it was an *ad hoc* procedure brought like any other public action by *ho boulomenos*, not a routine process as in the case of magistrates. For the procedure of the *dokimasia rhetoron* see MacDowell 2005: 79-87.

72 Cf. Bauman 1990: 94-95 noting that ‘it [the *graphe paranomon*] saddled *rhetors* with a responsibility equivalent to that resting on the holders of public office, so that in a certain sense it can be described as the non-office-holder’s *euthynai*’. Sinclair 1988: 152: the *graphe paranomon* ‘was one way of applying to the *rhetores* the general principle of personal responsibility for public acts’ (Din. 1.100-101).

of an official. This important aspect of the procedure cannot be overlooked and certainly was not overlooked by the Athenians themselves, who often employed the *graphe paranomon* as a powerful weapon to control their political rivals,⁷³ and were competing to win the favour of the *demos*.⁷⁴

After a year, a decree which had not been enacted would become invalid (Dem. 23.90), and therefore the proposal would not be implemented; simultaneously the author, after a year from the introduction of his proposal, would be free from liability anyway. There is no surviving speech about a decree which is challenged after its implementation, i.e. after it has taken effect. Nonetheless, there is evidence to indicate that an indictment even against a decree which had taken effect may have been a possibility. More specifically, the case of Callixenos (Hansen 1974: cat. no. 3) shows that after the enactment of the decree the proposer was sued by another procedure at a later stage (Xen. *Hell.* 1.7.35). Dem. 23.104 also suggests that the author of a decree which had been implemented was immune, the implication being that since liability had lapsed, a *graphe paranomon* against the author would not be effective (given that the decree was already enacted).⁷⁵ These examples do not suggest that a *graphe paranomon* was not a possibility, but rather that another procedure could be more effectively employed after the time limit of one year.⁷⁶

Carawan, however, doubts the possibility of quashing a decree after it has taken effect and he bases his objection on the irreversible character of certain types of decrees and especially punitive decrees, which could not be reversed after they had taken effect. His objection is absolutely justified in terms of the irreversible character of punitive decrees which had already been implemented. But this is not to say that the *graphe paranomon* was not a possibility even after the implementation of a decree, although, in action, the volunteer prosecutor, after the lapse of a year for the liability of the author of a decree, could opt for another procedure so that the author of the decree would be punished. The possibility of attacking a decree with a *graphe paranomon* at a later stage, after it had taken effect, is also supported by [Dem.] 59.90-1, in the context of decrees prescribing awards of citizenship, which were meant to last for a lifetime. Apollodoros states that naturalisation could be revoked even after the award of the grant through the *graphe paranomon* and he provides two examples of naturalised citizens who lost citizenship after a certain time from the implementation of the relevant citizenship awards.⁷⁷

Nor is it the case that all the implemented decrees would have an irreversible

73 Cf. Giannadaki 2014: 28-33.

74 Perlman 1963: 342-346, 350. Cf. Finley 1962: 18ff.

75 The text suggests that the author of the decree was not Autocles (who was tried by an *eisangelia*: Hansen 1975: cat. no. 90); cf. p.4 above.

76 For the flexibility of using various procedures to prosecute a certain offence, see Carey 2004: 111-136; Giannadaki 2014: 115-117.

77 Cf. Hansen 1974: cat. nos. 15-16; cf. Kapparis 1999: 370.

character. The preserved punitive decrees in literary sources are minimal in number (only two ordering instant execution out of the two hundred and nineteen decrees: Hansen 1987a: 111-112). Finally, it is reasonable to assume that, if the proposer was still liable (whether the decree had been actually enacted or not), then he would have to appear in court to support his proposal.⁷⁸

In cases of indicted *psephismata*, the procedure seems to have been straightforward: if the court overturned a decree, the author was punished and the decree never took effect.⁷⁹ In the opposite case, when a *psephisma* was upheld by the court, a crucial question arises as to what happened with the decree: it is possible that the acquittal effectively passed the decree. The evidence is scanty, but we have an inscription recording a decree which was attacked through a *graphe paranomon*, and was upheld at court and apparently implemented as a result of the decision of the court.⁸⁰ So reasonably, the effect of the court's decision was the implementation of the *psephisma*.

But what happened when a proposal had not been passed by the *Ekklesia*, i.e. it was attacked as a *probouleuma*, or a proposal made on the spot during an *Ekklesia* meeting? The proposal of Ctesiphon (Dem. 18, Aesch. 3) and the outline of Euctemon's indicted proposal by Androtion, Melanopos and Glaucetes⁸¹ are the only preserved cases of indicted *probouleumata* to indicate what may have happened with the decree after the acquittal of the defendant. Hansen⁸² assumes that both speeches (Dem. 18, Aesch. 3) took for granted that conviction would mean the end of the matter and the acquittal of Ctesiphon would mean implementation of Ctesiphon's decree.⁸³ Aeschines taken literally would seem to suggest that the court has the power not only to acquit Ctesiphon, but also to crown Demosthenes (Aesch. 3.232), which implies that acquittal would mean ratification of the proposal arising from the court's decision. Hansen may be right to assume that the trial would put an end to the matter, since there is never any suggestion that after the trial the decree would then have to be brought to the *Ekklesia* to be voted on.⁸⁴ Hansen's assumption may be

78 Dem. 20.144 with Kremmydas 2012: 47; Rhodes 2009: 224. This is the inference by analogy with the *graphe nomon me epitedeion theinai* in which an enacted law would still be indicted, and could be supported by the author even if he was free from personal liability. Also, the implication from [Dem.] 59.90-91, referring to cases of decrees which have taken effect and been challenged with a *graphe paranomon* at a later stage, is that the proposer would still have to support his proposal in court at a later stage even he was not liable for punishment.

79 Hansen 1987: 63; 1974: cat. nos. 4, 5, 17, 18.

80 Stroud 1971: 280-282. Hansen 1974: cat. no. 5.

81 Dem. 24.9, 11-14.

82 1987: 66.

83 Cf. Dem. 26.8; Hansen 1987: 63-73 for the trial as the final stage of the dispute (although the particulars of his reconstruction are problematic); see pp.9-10 above for the legal reconstruction of the case). Hansen 1974: 51-52.

84 Cf. Hansen 1987: 63-73 where he argues in favour of the finality of the court deci-

further supported by the function and purpose of the *graphe paranomon* to scrutinise legislation (at least primarily):⁸⁵ it is reasonable to assume that the court's verdict would have some effect on the proposal, as it did in the case of conviction, i.e. the removal of the decree and the punishment of the author. However, the argument from silence in the speeches is not conclusive for the court's verdict being the final decision on an indicted decree.

Reference to the *Ekklesia* after the decision of the court is entirely conceivable in cases where the proposal had not been enacted, i.e. ratified by the *demos*. The decision of the court would have declared the legality of the proposal, but not its desirability in terms of the substance.⁸⁶ So, one cannot exclude the possibility that the enactment of the decree was finally decided by the *Ekklesia*. But the lack of any reference in the preserved speeches to the need to refer the case back to the *demos* may suggest that there was some law prescribing enactment after acquittal in cases of proposals in the *Ekklesia* which were attacked through a *graphe paranomon* before being ratified. Although it is impossible to answer this question with certainty, it is likely that there was a legal prescription that stipulated the 'automatic' enactment of the proposal. This would explain the silence in the sources⁸⁷ about the reference of the case to the *Ekklesia*, which would normally decide on the desirability of the proposal.

In cases of *probouleumata* there is another aspect to be addressed as to the procedure followed with regard to the enactment, specifically in cases of expired *probouleumata*, such as Dem. 18 and 23. Aristocrates' case proves that the proposer's liability is unrelated to the expiry of a *probouleuma* (Dem. 23.92-93), and this suggests that in case of conviction Aristocrates would be punished and the decree would lapse. But what happened if a *probouleuma* was upheld by the court? Dem. 23.92-93 suggests that a *probouleuma* which had not been enacted within a year became invalid; it was not merely suspended or 'frozen', as the speaker never challenges this in his anticipation of the argument of Aristocrates. This would imply that at the very least, the decision of the court declared the legality of the proposal. Though it is impossible to determine with certainty how expired *probouleumata*, which were then declared legal by the court, were ratified, the most obvious and economical explanation would be that the court ruling would automatically reinstate the *probouleuma*. A subsequent reference to the *Ekklesia* is on balance unlikely, given that the jury

sion, but the evidence from the speeches is inconclusive. Cf. Hannick 1981: 393-397.

85 For *graphe paranomon* as political and legal review see Yunis 1988: 361-382.

86 This possibility would suggest that the court had declared the legality of the proposal, but the desirability of the decree, its substance, would have to be voted by the *Ekklesia*, so that the proposal was ratified. Cf. *paragraphe*: if you prosecute me, and I respond with a *paragraphe*, but my *paragraphe* is unsuccessful, in theory, the substance of your charge against me has not yet been decided. Rejection of a *paragraphe* was not, in law, conviction in the original case (irrespective of the prejudice that the outcome of the *paragraphe* case may have had on the original case, in practice). See Todd 1993: 138.

87 This hypothesis would also explain the silence with regard to the enactment of Euctemon's *probouleuma* after his acquittal (Dem. 24.9, 11-14).

panels were perceived as the *demos* sitting as judges.⁸⁸

The practical implications are however different for ‘open’ and ‘closed’ *probouleumata*. A ‘closed’ *probouleuma* ratified by a court could on the hypothesis above proceed to implementation.⁸⁹ But the situation with time-expired ‘open’ *probouleumata* suspended by *graphe paranomon* is different. In this case, though acquittal would determine the legality of the proposal, it is reasonable to suppose that a successful outcome at the trial would not make the *probouleuma* ‘automatically’ valid, as its content would normally still have to be decided by the people. In cases of open *probouleumata* whose proposer had been acquitted, it is possible that if the decision was not made within a year, the *probouleuma* would be deemed to have expired and therefore, it would have to be reintroduced. Certainly, some decrees would require immediate action, such as the decision about sending out a military expedition, so the circumstances to which the open *probouleuma* responded might have changed and the decision about sending out an expedition was no longer appropriate. Whatever the reality, the *prothesmia* law (or possible subsequent revisions of the law/ clause(s)) is equally likely to have stated what would happen after an acquittal by the court in cases of *probouleumata*.

Conclusion

As this article argues, there was a statutory limitation of one year to the liability of the author in *graphe paranomon* cases, and this time limit commenced from the time of the passage of the decree by the *Boule* or its formal introduction to, or passage by, the *Ekklesia*. The sources are scanty and the rationale of the Athenian laws is never articulated,⁹⁰ but it is firmly embedded within the system, and we can with some plausibility tease out the rationale of the existence of this statutory limitation from this scanty evidence.⁹¹ One year

88 Cf. *Ath. Pol.* 41.2 ἀπάντων γὰρ αὐτὸς αὐτὸν πεποίηκεν ὁ δῆμος κύριον, καὶ πάντα διοικεῖται ψηφίσμασιν καὶ δικαστηρίοις, ἐν οἷς ὁ δῆμός ἐστιν ὁ κρατῶν. Rhodes 1981: 489. Cf. Hansen 2010: 499–536 who allows both the *Ekklesia* and the courts to be seen as embodying the *polis*.

89 Another possibility would be that after the acquittal of the author at the original trial, the expired *probouleuma* would then have to be passed again in the same or similar form and content in the *Boule* and the *Ekklesia*. This is certainly conceivable, and MacDowell (2009: 197 n.120) has entertained that possibility, but this would make the legislative procedure significantly more time-consuming and the verdict of the court would have no effect, in essence, on the proposal, if the proposal would have to go through the *Boule* and the *Ekklesia*.

90 Compare the parallel discussion of the evolution of the function of Attic tragedy as against its purpose as discussed by Goldhill 2000: 34–56 (esp. 37–40), which illustrates our difficulty in tracing the underlying purpose of any particular social phenomenon; in our case, we need to bear in mind that the Athenian understanding of the procedure, as distinct from the original reason for its creation, could have changed in use by a tacit consensus. Cf. Giannadaki 2016.

91 One should bear in mind that there might not have been a single ‘Athenian rationale’ in legislating, and in particular in the case of the statutory limitation of liability in

was presumably considered an adequate period to spot the illegality and lodge the charge against the decree to ensure that the author would be punished (if convicted) and the illegal decree would not be enacted.⁹² After the interval of one year, the Athenians could still punish the author of a decree by employing other public prosecutions, as the case of Callixenos indicates.

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BIBLIOGRAPHY

- Bauman, R. A. (1990) *Political trials in ancient Greece*, London.
- Bonner, R.J./ Smith, G. (1930-1938) *The Administration of Justice from Homer to Aristotle*, Chicago.
- Canevaro, M. (2013) *The documents in the Attic orators: laws and decrees in the public speeches of the Demosthenic corpus (with a chapter by E. M. Harris)*, Oxford.
- Carawan, E. (2007) 'The Trial of the Arginousai generals and the Dawn of "Judicial Review"', *Dike* 10, 19-56.
- Carey, C. (1992) *Apollodoros against Neaira: (Demosthenes) 59*, London.
- , (1995) 'The witness's *exomosia* in the Athenian courts', *CQ* 45, 114-119.
- , (2000) *Aeschines*, Austin.
- , (2004) 'Offence and Procedure in Athenian Law', in Harris, E. M. and Rubinstein, L. (eds.) *The Law and the Courts in Ancient Greece*, London, 111-136.
- Carey, C. et al. (2008) 'Fragments of Hyperides' *Against Diondas*' from the Archimedes Palimpsest'. *ZPE* 165, 1-19.
- Carey, C./ Giannadaki, I./ Griffith-Williams, B. (eds.) (2016) *Use and Abuse of Law in the Athenian Courts*, Leiden.
- Charles, J. F. (1938) *Statutes of Limitations at Athens*, Chicago.
- Doyle, C. (2012) *Statutes of Limitation in Federal Criminal Cases: An Overview*, Congressional Research Service, Report RL 31253.
- Efstathiou, A. (2009) Διόδωρος Σικελιώτης, Ιστορική Βιβλιοθήκη, Βιβλίο XVI, Κέρκυρα.
- Finley, M. I. (1962) 'Athenian Demagogues', *Past and Present* 21, 3-24.
- Forsdyke, S. (2005) *Exile, Ostracism and Democracy: the Politics of Expulsion in Ancient Greece*, Princeton.
- Giannadaki, I. (2014) *A Commentary on the speech of Demosthenes Against Androtion (Dem.22)*, UCL Diss.
- , (2016) '(Re)constructing the Athenian Legal System', in Carey, C./ Giannadaki, I./ Griffith-Williams, B. (2016), Leiden.

the *graphe paranomon*.

⁹² Or it would be suspended if it had been passed by the *Ekklesia* prior to the challenge with a *graphe paranomon*.

- Goldhill, S. (2000) 'Civic ideology and the problem of difference: the politics of Aeschylean tragedy, once again', *JHS* 120, 34-56.
- Griffith-Williams, B. (2013) *A Commentary on Selected Speeches of Isaios*, Leiden.
- Hannick, J.-M. (1981) 'Note Sur la Graphe Paranomôn', *L'Antiquité Classique* 50, 393-397.
- Hansen, M. H. (1974) *The Sovereignty of the People's Court in Athens in the Fourth Century BC and the Public Action against Unconstitutional Proposals*, Odense.
- , (1975) *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century BC and the Impeachment of Generals and Politicians*, Odense.
- , (1978) 'Nomos and Psephisma in Fourth-century Athens', *GRBS* 19, 315-330.
- , (1985) 'Athenian "Nomothesia"', *GRBS* 26, 345-371.
- , (1987) 'Graphe Paranomon against Psephismata not yet Passed by the Ekklesia', *C&M* 38, 63-73.
- , (1987a) *The Athenian Assembly in the Age of Demosthenes*, Oxford.
- , (1991) *The Athenian Democracy in the Age of Demosthenes*, (trans. J. A. Crook), Oxford.
- , (2010) 'The Concepts of Demos, Ekklesia and Dikasterion in Classical Athens', *GRBS* 50, 499-536.
- Harris, E. M. (1995) *Aeschines and Athenian politics*, Oxford.
- , (2013) *The Rule of Law in Action in Democratic Athens*, Oxford.
- Heath, M. (2004) *Menander: A Rhetor in Context*, Oxford.
- Heskel, J. (1997) *The North Aegean Wars, 371-360 BC*, Stuttgart.
- Horváth, L. (2008) 'Dating Hyperides' *Against Diondas*', *ZPE* 166, 27-34.
- , (2014) *Der Neue Hypereides : Textedition, Studien und Erläuterungen*, Berlin.
- , (2016) 'The Postponement of the Trial by Jury in Athens: the Timing of the γραφή παρανόμων', in Carey, C./ Giannadaki, I./ Griffith-Williams, B. (eds.) (2016), Leiden.
- Jones, A. H. M. (1957) *Athenian democracy*, Oxford.
- Kahrstedt, U. (1937-1938) *Untersuchungen zu athenischen Behörden*, *Klio* 30, 10-33 and 31, 1-32 [Repr. in Berneker, E. (1968) *Zur Griechischen Rechtsgeschichte*, Darmstadt, 196-262].
- Kapparis, K. (1999), *Apollodoros 'Against Neaira' [Dem.] 59. Edited with Introduction, Translation and Commentary*, Berlin/ N.Y.
- Kremmydas, C. (2012) *Commentary on Demosthenes Against Leptines*, Oxford.
- Lanni, A. (2010) 'Judicial Review and the Athenian "Constitution"', *Harvard Law School Working Paper No.10-21*, 257-263.
- Lanni, A. and Vermeule, A. (2012-2013) 'Precautionary Constitutionalism in Ancient Athens', *Cardozo L. Rev.* 34, 893-914.
- Lipsius, J. H. (1905-1915) *Das attische Recht und Rechtsverfahren*, Vol. 1-3, Leipzig.
- MacDowell, D.M. (1971) *The Law in Classical Athens*, London.
- , (2004) *Demosthenes, Speeches 27-38*, Austin.
- , (2005) 'The Athenian Procedure of Dokimasia of Orators', in Gagarin, M./ Wallace, R. W. (eds.) *Symposion 2001, Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Wien, 79-87.
- , (2009) *Demosthenes the Orator*, Oxford.
- Perlman, S. (1963) 'The Politicians in the Athenian Democracy of the Fourth Century BC', *Athenaeum* 41, 327-355.

- Phillips, D. D. (2008) *Avengers of Blood: Homicide in Athenian Law and Custom from Draco to Demosthenes*, Stuttgart.
- Rhodes, P. J. (1972) *The Athenian Boule*, Oxford.
- , (1981) *A Commentary on the Aristotelian Athenaion Politeia*, Oxford.
- , (2009) *Hyperides' Against Diondas: Two Problems*, *BICS* 52, 223-8.
- Sealey, R. (1987) *The Athenian Republic: Democracy or Rule of Law?*, Pennsylvania.
- Sinclair, R. K. (1988) *Democracy and Participation in Athens*, Cambridge.
- Stroud, R. S. (1971) 'Greek Inscriptions Theozotides and the Athenian Orphans', *Hesperia* 40, 280-301.
- Sundahl, M. J. (2000) *The Use of Statutes in the Seven Extant 'graphe paranomon' and 'graphe nomon me epitedeion theinai' Speeches*, Diss. Brown University.
- Tél'fy, I. B. (1868) *Corpus Juris Attici, Graece et Latine*, Budapest/ Leipzig.
- Todd, S. (1993) *The Shape of Athenian Law*, Oxford.
- , (2007) *A Commentary on Lysias, Speeches 1-11*, Oxford.
- Vince, J. H. (ed.) (1935) *Demosthenes Against Meidias, Androtion, Aristocrates, Timocrates, Aristogeiton* (Vol. 3). Harvard University Press.
- Wolff, H. J. (1963) 'Verjährung von Ansprüchen nach attischem Recht', in *Eranion in honorem Georgii S. Maridakis*, Vol. 1, Athens, 87-109.
- , (1970) 'Normenkontrolle' und Gesetzesbegriff in der attischen Demokratie, Heidelberg.
- Yunis, H. (1988) 'Law, Politics and the *Graphe Paranomon* in the Fourth-century Athens', *GRBS* 29, 361-82.
- , (2001) *Demosthenes. On the Crown*, Cambridge.
- , (2005) 'The Rhetoric of Law in Fourth-century Athens', in Gagarin, M. and Cohen, D. (eds.) *The Cambridge Companion to Ancient Greek Law*, Cambridge, 191-208.