



Athanasios Efstathiou

EUTHYNA PROCEDURE  
IN 4<sup>TH</sup> C. ATHENS  
AND THE CASE ON  
THE FALSE EMBASSY<sup>1</sup>

Though the issue of the legal procedure called *euthyna* has received an adequate amount of scholarly attention<sup>2</sup>, there is still scope for further reconstruction of the procedure on the basis of re-evaluation of the evidence. This re-evaluation should not only allow us to achieve a clearer understanding of the procedure itself, but also to define its position and its function in the legal system of classical Athens. In order to clarify how the procedure works in Athens in

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<sup>2</sup> Previous research on *euthyna*: Arvanitopoulos (1900), *passim*; Hoyer (1928), *passim*; Piérart (1971), pp. 526-573; Roberts (1982), esp. pp. 17-19; Fröhlich (2000), pp. 81-111, and Fröhlich (2004), *passim*; Rhodes (2005), pp. 1-15. Also chapters long or brief included in general handbooks on Athenian law such as Lipsius (1905-1915), pp. 286-298; Harrison (1971), esp. pp. 208-211; MacDowell (1978), pp. 170-174; Sinclair (1988), esp. pp. 78-79, 146-152; Hansen (1991), esp. pp. 222-224; Todd (1993), pp. 99 ff. and 112-113; Bleicken (1994), pp. 277-280; or other books which discuss *euthyna* in their broader compass such as Wilamowitz-Moellendorff (1893), II, pp. 231-251; Rhodes (1981), pp. 560-564 and 597-599; MacDowell (2000), esp. pp. 14-22.

the period of the mid 4<sup>th</sup> c. BC we can use the important case of Demosthenes' and Aischines' speeches *On the False Embassy* as a case study.

The Athenian legal system provided various procedures to enforce accountability such as the scrutiny of officials before entering on office (δοκιμασία), the periodic review of magistrates by the Ekklesia during the tenure of office (ἐπιχειροτονία τῶν ἀρχῶν), prosecution by εἰσαγγελία or ἀπόφασις consequent upon suspension from office, inspection of an official's accounts each prytany by *logistai* elected from the Boule, final inspection of accounts by the non-Councilor Accountants and their *synegoroi* after magistrates' demitting office, and scrutiny of general conduct in office by the ten *euthynoi* with their assessors.

It becomes clear from all scholarly accounts of the above procedures that εὐθύνῃ or εὐθύναι<sup>3</sup> belongs to a broad spectrum of actions which ensure the accountability. It seems like a well organised and tight legal system which purports to discourage an official from amassing political power through formal public duties, and represents a strong checking machine provided by a democratic system.

In addition, since the magistrates' audit after they demitted office was radically changed, presumably in connection with the restoration of the democracy in 403/402, it is insecure to apply procedures and conditions of *euthyna* as performed in 5<sup>th</sup> c. Athens to that of 4<sup>th</sup> c.<sup>4</sup> Thus, we intend to discuss the *euthynai* procedure as it is presented mainly in 4<sup>th</sup> c. sources.

Εὐθύνῃ belongs to the group of procedures which dealt with a magistrate's conduct in office (ἀρχαί) and even with citizens who carried out a public function and financial dealings, like trierarchs, ambassadors<sup>5</sup>, priests<sup>6</sup>. This procedure taking place after the magistrate demitted office, usually at the end of the year, reflects the constant attempt by the Athenian *demos* to monitor the magistrates and anyone

<sup>3</sup> It is used either in singular or mostly in plural; the forms εὐθύνῃ may be mistaken and εὐθύνῃ occurs in later Greek; cf. for more LSJ *s.v.* εὐθύνῃ, Piérart (1971), pp. 548-549, 553 n. 104, and MacDowell (2000), p. 16.

<sup>4</sup> Piérart (1971), p. 572; Hansen (1975), p. 45.

<sup>5</sup> Cf. Aischin. 3.17: Ἐν γὰρ ταύτῃ τῇ πόλει, οὕτως ἀρχαία οὔση καὶ τηλικαύτῃ τὸ μέγεθος, οὐδεὶς ἐστὶν ἀνυπεύθυνος τῶν καὶ ὁπωσοῦν πρὸς τὰ κοινὰ προσεληλυθότων.

<sup>6</sup> See Aischin. 3.17-20, 29; *Ath. Pol.* 54.2, and Hansen (1991), p. 222.

with public duty, to see how they implemented the instructions of the *demos* and whether they kept to their monetary and political restrictions. Until the end of the investigation a magistrate was not allowed to leave Attica and was under a continuous process of checking.

At first sight, it is almost obvious to divide the εὔθυνα procedure into three parts: the first was the financial part, the λόγος, directed by λογισταί, the second was the part of the *euthynoi* to whom accusations were handed and the third was the final court hearing. The whole procedure is referred to as λόγος καὶ εὔθυναί or in one word εὔθυναί. In the financial part of the examination, the magistrate had to give an account of his financial dealings during his term of office; the purpose of this stage of the examination was to check the financial records of the office in question, to spot cases of embezzlement (κλοπή), corruption, bribe-taking (δῶρα) and malefaction (ἀδικίῳ). The whole examination was directed by ten public auditors, λογισταί, amateurs who were chosen by lot from all citizens. This group of *logistai* may be distinguished from the group of *logistai* who conducted audits each prytany and were selected by lot from the members of the Boule<sup>7</sup>.

The *logistai* who conducted the annual audits were assisted by ten advocates, συνήγοροι, again chosen by lot<sup>8</sup>. If we believe the *Lexicon Rhetoricum Cantabrigense* (s.v. Λογισταὶ καὶ συνήγοροι) there is a kind of preliminary questioning which takes place before *logistai* and *synegoroi*<sup>9</sup>. In particular, we can suppose that the lo-

<sup>7</sup> *Ath. Pol.* 48.3: [κ]ληροῦσι δὲ καὶ λογιστὰς ἐξ αὐτῶν οἱ βουλευταὶ δέκα, τοὺς λογιουμένους τῆς ἀρχαῖς κατὰ τὴν πρυτανείαν ἐκάστην.

<sup>8</sup> The account of the *logos* stage is mainly based on *Ath. Pol.* 54.1 ff.: Κληροῦσι δὲ καὶ τάσδε τὰς ἀρχάς· ... καὶ λογιστὰς δέκα καὶ συνηγόρους τούτοις δέκα, πρὸς οὓς ἅπαντας ἀνάγκη τοὺς τὰς ἀρχὰς ἄρξ[αντ]ας λόγον ἀπενεγκεῖν. οὗτοι γὰρ εἰσι μόνοι <οἱ> τοῖς ὑπευθύνοις λογιζόμενοι καὶ τὰς εὔθυνας εἰς τὸ δικαστήριον εἰσάγοντες. κἂν μὲν τινα κλέπτοντ' ἐξελέγξωσι, κλοπὴν οἱ δικασταὶ καταγνώσκουσι, καὶ τὸ γνωσθὲν ἀποτίνεται δεκαπλοῦν. ἐὰν δὲ τινα δῶρα λαβόντα ἐπιδείξωσιν καὶ καταγνώσιν οἱ δικασταὶ, δῶρων τιμῶσιν, ἀποτίνεται δὲ καὶ τοῦτο δεκαπλοῦν. ἂν δ' ἀδικεῖν καταγνώσιν, ἀδικίῳ τιμῶσιν, ἀποτίνεται δὲ τοῦθ' ἄπλοῦν, ἐὰν πρὸ τῆς θ πρυτανείας ἐκτεῖσθαι, εἰ δὲ μή, διπλοῦται. τὸ <δὲ> δεκαπλοῦν οὐ διπλοῦται. *Logistai* appear in inscriptions of 454/453; while thirty *logistai* were elected in 5<sup>th</sup> c., in 4<sup>th</sup> c. according to Aristotle (*loc. cit.*) their number is reduced to ten (cf. Piérart [1971], p. 564, citing ATL I 1, ll. 1-4); see also about *logistai* IG I<sup>3</sup> 369 (of 420 BC).

<sup>9</sup> Cf. *Lexicon Rhetoricum Cantabrigense*, s.v. Λογισταὶ καὶ συνήγοροι (cf. Houtsma [1870], in Latte [1965], p. 80): Λογισταὶ καὶ Συνήγοροι. Ἀριστοτέλης ἐν τῇ Ἀθηναίων πο-

*gistai*'s job concerns mainly technical matters such as accounts while the *synegoroi*'s duty may included a more specific investigation, a kind of examination and questioning, which possibly concerned matters of embezzlement, receiving bribes, improper use of public and private funds and property. Additionally, when the *euthynoi* call a meeting <sup>10</sup>, the role of *synegoroi*, acting as official prosecutors, may be to present the case arising from the accounts which the *logistai* examined before. According to Aristophanes' *Wasps*, 691, *synegoroi* were paid for duty one drachma (= six obols) a day <sup>11</sup>.

However, there were some magistrates who had no involvement with public money; in these cases it was necessary for the magistrate to present a written statement saying that he neither received nor spent any public money <sup>12</sup> and this seems to have exempted him from the financial part of their *euthyna*.

But even in a case of a magistrate who performed a duty without obvious financial dealings he might still be suspect of bribe-taking (δῶρα), and probably this is also an offence which belonged to the jurisdiction of the *logistai*. After their preliminary examination, the *logistai* sent the case to trial and brought each magistrate before a jury panel presided over by the *logistai* themselves <sup>13</sup>. Finally, even in a case where no fault was found in the accounts of the magistrate, a herald invited anyone who wished to make an accusation, but probably this invitation concerned only accusations of financial misconduct <sup>14</sup>. If an outgoing official failed to present his accounts

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λιτεία οὕτω λέγει· λογιστάς δὲ αἰροῦνται δέκα, παρ' οἷς διαλογίζονται πᾶσαι αἱ ἀρχαὶ τὰ τε λήμματα καὶ τὰς γεγενημένας δαπάνας· καὶ ἄλλους δέκα συνηγόρους, οἵτινες συνανακρίνουσι τούτοις· καὶ οἱ τὰς εὐθύνας διδόντες παρὰ τούτοις ἀνακρίνονται πρῶτον, εἶτα ἐφίενται εἰς τὸ δικαστήριον εἰς ἓνα καὶ πεντακοσίους.

<sup>10</sup> For *euthynoi*'s predominant role see below.

<sup>11</sup> Ar. *Wasps*, 691: αὐτὸς δὲ φέρει τὸ συνηγορικὸν δραχμὴν, κἂν ὕστερος | ἔλθῃ

<sup>12</sup> Cf. Aischin. 3.22: ... διδάσκει ὁ νόμος ἃ χρὴ γράφειν· κελεύει γὰρ αὐτὸ τοῦτο ἐγγράφειν, ὅτι «οὐτ' ἔλαβον οὐδὲν τῶν τῆς πόλεως οὐτ' ἀνήλωσα». Ἄνυπέθυτον δὲ καὶ ἀζήτητον καὶ ἀνεξέταστον οὐδὲν ἔστι τῶν ἐν τῇ πόλει.

<sup>13</sup> That the *logistai* presided over the jury-panel may be implied from the text (sc. 54.2; see above n. 8); conversely, see below *Ath. Pol.* 48.5, where the implication is that, after the second stage of *euthyna*, the *euthynoi* passed the public cases to the *thesmothetai*, who introduced the case to the court and it is the *thesmothetai* not the *euthynoi*, who presided the jury-panel at that case.

<sup>14</sup> Though it is not absolutely clear whether every magistrate had to be presented before the court of *logistai* or only the magistrates whose accounts were found unsatis-

before the *logistai*, he could be indicted for an offence of ἀλόγιον (γραφὴ ἀλογίου)<sup>15</sup>.

The second stage of the examination-according mainly to *Ath. Pol.* 48.4<sup>16</sup> – consisted of an investigation of any alleged malpractice by the official. For this investigation, ten men (εὐθύνου) were chosen by lot, one from each tribe; as MacDowell<sup>17</sup> rightly notes, the implication is that they are chosen from the Boule and not from the citizen's body. Two assessors (πάρεδροι) were chosen again by lot for each *euthynos*, making a total of twenty<sup>18</sup>. Following the exculpation of the magistrate before the court of the *logistai* during the first part of the examination, the *euthynoi* and their assessors sat in the *agora* for three days beside the statues of the eponymous heroes and anyone who wished to accuse a magistrate, who had just been discharged by the *logistai*, could submit the charge to the *euthynoi* belonging to the same tribe as the accused magistrate.

However, the text of *Ath. Pol.* 48.4 is not certain. Chambers' edition of the text<sup>19</sup> presents us with a word that starts with an α (alpha), with then a gap of possibly three letters and after that an

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factory. The procedure is described by Aischin. 3.23: «οὐκ οὖν ἐχρῆν σε, ὦ Δημόσθενες, ἔασαι τὸν τῶν λογιστῶν κήρυκα κηρύξαι τὸ πάτριον καὶ ἔννομον κήρυγμα τοῦτο, τίς βούλεται κατηγορεῖν; ἔασον ἀμφισβητῆσαι σοι τὸν βουλόμενον τῶν πολιτῶν ὡς οὐκ ἐπέδωκας ...», and Dem. 18.117: ... καὶ δέδωκά γ' εὐθύννας ἐκείνων, οὐχ ὧν ἐπέδωκα. νῆ Δί', ἀλλ' ἀδίκως ἤρξα; εἴτα παρών, ὅτε μ' εἰσήγον οἱ λογισταί, οὐ κατηγορεῖς;

<sup>15</sup> See mainly Pollux, 8.54, who refers to a δίκη and not a γραφὴ ἀλογίου: καὶ ἀλογίου δὲ δίκη ἦν κατὰ τῶν οὐκ ἀποδιδόντων λογισμοὺς ὧν ἂν διαχειρίσωσιν; *Lexicon Rhetoricum Cantabrigiense*. O. Houtsma, *Lexica Graeca minora*, ed. by K. Latte - H. Erbse, Hildesheim, Olms, 1965, pp. 69-86, especially p. 70, l. 23 f.: 'Αλογίου δίκη, ὅταν τινὲς λαβόντες χρήματα εἰς ἀναλώματα δημόσια μὴ ὧσιν τοὺς λόγους ἀνενηνοχότες τοῖς δικασταῖς; but clearly this seems to be a public offence.

<sup>16</sup> κληροῦσι δὲ καὶ εὐθύνουσι ἕνα τῆς φυλῆς ἐκάστης, καὶ παρέδρους β' ἐκάστῳ τῶν εὐθύνων οἷς ἀναγκαῖόν ἐστι ταῖς ἀγοραῖς κατὰ τὸν ἐπόνυμον τὸν τῆς φυλῆς ἐκάστης καθῆσθαι, κἄν τις βούλῃται τι τῶν τὰς εὐθύννας ἐν τῷ δικαστηρίῳ δεδωκότων ἐντὸς γ' ἡμερῶν ἀφ' ἧς ἔδωκε τὰς εὐθύννας εὐθύναν ἂν τ' ἴδιαν ἂν τε δημολογίῳ ἐμβαλέσθαι, γράψας εἰς πινάκιον λελευκωμένον τοῦνομα τὸ [θ' αὐ]τοῦ καὶ τὸ τοῦ φερόντος, καὶ τὸ ἀδίκῃ ὅ τι ἂν ἐγκαλῆ, καὶ τίμημα ἐπιγραψάμενος ὃ τι ἂν αὐτῷ δοκῆ, δίδωσιν τῷ εὐθύνῳ; cf. also Rhodes (1981), p. 562, who opts for thirty days (he prefers the reading λ).

<sup>17</sup> MacDowell (2000), p. 18.

<sup>18</sup> For the *euthynoi* and the *paredroi* see for example IG II<sup>2</sup> 1629.238-239.

<sup>19</sup> Chambers (1986), pp. 43-44.

uncertain letter, interpreted by Chambers as σ (sigma), and an ending with three letters: αῖς. The reading ἀ[γορ]αῖς has been proposed by Kenyon and other scholars and accepted by Rhodes, while the reading ἀ[νατολ]αῖς was proposed by Rehm and adopted tentatively by MacDowell. The reading for the numeral γ (gamma) likewise is not beyond doubt. Instead the reading λ (lambda), meaning thirty, has been proposed. As to the former, most readings fall on palaeographical grounds, because it is not quite certain that we have space for five instead of three letters. So if the current consensus that the lost word begins with alpha is correct, ἀ[γορ]αῖς has been proposed, though the plural is unusual. For the numeral, the reading γ (gamma) is arguably preferable, since a period of three days could be enough for the *euthynoi* accepting accusations against outgoing officials <sup>20</sup>.

The main duty of each *euthynos* and his two *paredroi* was to receive, assess and process any written complaint against the official and his performance of his duty <sup>21</sup>. These complaints included the name of the prosecutor, the name of the defendant (magistrate), the offence and a proposed penalty. Any such accusations are then considered by the *euthynos* and his *paredroi* (assessors) in the office of the *logistai* <sup>22</sup>.

The charge may be of different types; it could be either misuse of power or negligence in discharging people's instructions; De-

<sup>20</sup> Rehm (1931), pp. 118-122; see also MacDowell (2000), p. 18 n. 45 referring to IG I<sup>3</sup> 68.30; Ar. *Ach.* 20, *Eccl.* 20 for public business at dawn. From the various readings proposed (see for example ἀναδικαίαις, ἀνατολαῖς, ἀπαγωγαῖς, ἀπογραφαῖς, ἀναπαύλαις, εὐθύναις and especially this peculiar reading ἀ[γορ]αῖς); see for more Wilamowitz (1893), p. 235 n. 15; Rhodes (1981), p. 561; Chambers, *loc. cit.* and (1971), p. 45. For a full discussion of various readings see also Rhodes (1981), pp. 561-563; MacDowell (2000), p. 18. However, I remain unconvinced that the traces in the papyrus have been correctly interpreted and among these readings would prefer εὐθύναις, which makes sense and does not perverts the meaning of the passage. I am going to offer a radical reconstruction of this papyrus passage elsewhere in near future.

<sup>21</sup> For the necessary good cooperation between the *euthynos* and his two *paredroi* see Kapparis (1998), p. 391 citing And. 1.178 (by mistake; the correct reference is 1.78) and IG I<sup>3</sup> 133.18-19; IG II<sup>2</sup> 1174; IG II<sup>2</sup> 1629.233-242 (= 200 Tod) and comments on the information given by Hesychios, π 757.

<sup>22</sup> See And. 1.78: ... καὶ ὅσων εὐθυναὶ τινές εἰσι κατεγνωσμένοι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων; cf. also [Lys.] 20.10-11: ... καὶ οἱ μὲν τὸν βίον ἅπαντα πονηροὶ ὄντες χρηστοὶ ἐν τῷ λογιστηρίῳ γεγέννηται, πείσαντες τοὺς κατηγοροὺς, οἳ δ' αἰεὶ ὑμῖν χρηστοὶ ἦσαν, οὗτοι πονηροί;.

mosthenes in his speech *On the Embassy* commenting on ambassadors' duties says that the matters for which an ambassador ought to hold responsible are the followings: First of all for the reports he has made; second, for his advice to the *demos*; third, for the instructions which the *demos* gave to him; after that, for his timing; and above all, whether all this has been carried out corruptly or with integrity <sup>23</sup>.

*Ath. Pol.* 48.5 <sup>24</sup> again presents textual problems; first of all, some scholars instead of ἀν[ακρίνα]ς prefer ἀν[αγνού]ς <sup>25</sup>, possibly from an assumption that ἀνακρίνειν would imply a role for the *euthynos* as presiding magistrate, when the context makes clear that the *For-ty* or the *thesmothetai* presided at any trial. However, the reading ἀν[ακρίνα]ς may be accepted if we suppose it to describe a preliminary checking of the charge. This would be consistent with the verb καταγνῶ, which suggests more than a routine and mechanical acceptance of the charge. Additionally, although the *euthynos* gives a decision about the charge as the verb καταγνῶ reveals, this decision is not final and this becomes clear from the context of the passage <sup>26</sup>. As for the verb at the end of the sentence, συνα]ναγράφει,

<sup>23</sup> Cf. 19.4: ... εἰ σκέψαισθε παρ' ὑμῖν αὐτοῖς, ὧ ἄνδρες δικασταί, καὶ λογίσαισθε τίνων προσήκει λόγον παρὰ πρεσβευτοῦ λαβεῖν. πρῶτον μὲν τοίνυν ὧν ἀπήγγειλε, δεύτερον δ' ὧν ἔπεισε, τρίτον δ' ὧν προσετέξατ' αὐτῶ, μετὰ ταῦτα τῶν χρόνων, ἐφ' ἅπασιν δὲ τούτοις, εἰ ἀδωροδοκῆτως ἢ μὴ πάντα ταῦτα πέπρακται. For the common use of ἀδωροδοκῆτως in honorific decrees of 4<sup>th</sup> c. in Athens see for example IG II<sup>3</sup> (1-1369): 672.9 and 1299.2.

<sup>24</sup> Cf. *Ath. Pol.* 48.5: ὁ δὲ λαβὼν τοῦτο καὶ ἀν[ακρίνα]ς, ἐὰν μὲν καταγνῶ, παραδίδωσιν τὰ μὲν ἴδια τοῖς δικασταῖς τοῖς κατὰ δῆμ[ους τοῖς] τὴν φυλὴν ταύτην δικάζουσιν, τὰ δὲ δημόσια τοῖς θεσμοθέτα[ις] συνα]ναγράφει. οἱ δὲ θεσμοθέται, ἐὰν παραλάβωσιν, πάλιν εἰσάγουσιν [ταύτην τὴν] εὐθυναν εἰς τὸ δικαστήριον, καὶ ὅ τι ἂν γνῶσιν οἱ δικαστα[ί, τοῦτο κύριόν ἐστιν.

<sup>25</sup> Cf. Rhodes (1981, p. 563) actually prefers ἀν[αγνού]ς claiming that the *euthynos* here does not act as εἰσάγουσα ἀρχή, if he has the right to acquit. So, he finds the reading ἀν[αγνού]ς better. But I think we have to see the problem the other way round; we can not accept that the verb καταγνῶ further down points to a final judgement, but only to an initial assessment. It is odd to accept that a magistrate, in that case a *euthynos*, although a charge had been brought against a magistrate, has the power to acquit this magistrate, without passing the case further to the court (see also Harrison [1971], pp. 210-211, expressing the same view).

<sup>26</sup> See also above n. 25. For parallels about καταγιγνώσκειν used to refer either to a final or to a tentative decision see the following passages in *Ath. Pol.* For final decisions: 54.2: οὗτοι γὰρ εἰσι μόνοι <οἱ> τοῖς ὑπευθύνους λογιζόμενοι καὶ τὰς εὐθύννας εἰς

this seems marginally preferable to ἀ]ναγράφει, since it would mean that the case would be inscribed on the list of *thesmothetai*, among other public cases which were also included <sup>27</sup>.

However, the real problem in this passage is caused by the conditional conjunction ἐὰν further down in the phrase ἐὰν παραλάβωσιν, which at first sight seems to mean «if the *thesmothetai* take up the accusation». MacDowell says: «... apparently an accusation approved by a *euthynos* concerning a public offence was taken forward to the *thesmothetai* by the accuser, not the *euthynos*, so until the accuser proceeded nothing further would happen» <sup>28</sup>. This is entirely possible but not inevitable; the text of *Ath. Pol.* 48.5 clearly suggests that the various cases are referred to the appropriate authorities, the

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τὸ δικαστήριον εἰσάγοντες, κὰν μὲν τινα κλέπτοντ' ἐξελέγξωσι, κλοπὴν οἱ δικασταὶ καταγιγνώσκουσι, καὶ τὸ γνωσθὲν ἀποτίνεται δεκαπλοῦν. ἐὰν δὲ τινα δῶρα λαβόντα ἐπιδείξωσιν καὶ καταγνώσιν οἱ δικασταί, δῶρων τιμῶσιν, ἀποτίνεται δὲ καὶ τοῦτο δεκαπλοῦν. ἂν δ' ἀδικεῖν καταγνώσιν, ἀδικίου τιμῶσιν, ἀποτίνεται δὲ τοῦθ' ἅπλοῦν, ἐὰν πρὸ τῆς θ' πρυτανείας ἐκτείσῃ τις, εἰ δὲ μή, διπλοῦται. τὸ <δὲ> δεκαπλοῦν οὐ διπλοῦται. 60.2: ἔκρινεν ἡ ἐξ Ἀρείου πάγου βουλή, καὶ εἴ [του] καταγοίη, θανάτῳ τοῦτον ἐζημίουν. For tentative decisions: 45.4-46.2 (Boule's jurisdiction): τούτων μὲν οὖν ἄκυρός ἐστιν ἡ βουλή· προβουλεύει δ' εἰς τὸν δῆμον ... Ἐπιμελεῖται δὲ καὶ τῶν πεποιημένων τριήρων καὶ τῶν σκευῶν ... ἐξετάζει δὲ καὶ τὰ οἰκοδομήματα τὰ δημόσια πάντα, κὰν τις ἀδικεῖν αὐτῇ δόξῃ, τῷ τε δήμῳ τοῦτον [ἀ]ποφαίνει, καὶ καταγοῦσα παραδίδωσι δικαστηρίῳ. Also 45.2 ff.: κρίνει δὲ τὰς ἀρχὰς ἡ βουλή τὰς πλείστας, καὶ μάλιστα ὅσα χρήματα διαχειρίζουσιν· οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἢ ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις· ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον, ἐὰν αὐτῶν ἡ βουλή καταγνῶ. 45.1 ff.: χρήμασι ζημιούν, καὶ νόμον ἔθετο, ἂν τις ἀδικεῖν ἡ βουλή καταγνῶ ἢ ζημιώσῃ, τὰς καταγνώσεις καὶ τὰς ἐπιζημιώσεις εἰσάγειν τοὺς θεσμοθέτας εἰς τὸ δικαστήριον, καὶ ὅ τι ἂν οἱ δικασταὶ ψηφίσωσιν, τοῦτο κύριον εἶναι. See also 59.4: εἰσάγουσιν δὲ καὶ τὰς δοκιμασίας ταῖς ἀρχαῖς ἀπάσαις, καὶ τοὺς ἀπεψηφισμένους ὑπὸ τῶν δημοτῶν, καὶ τὰς καταγνώσεις τὰς ἐκ τῆς βουλῆς.

<sup>27</sup> Cf. the use of the passive infinitive (συναναγραφῆναι) in Aischin. 2.83: Κριτόβουλος ὁ Λαμψακηνός ... ἀξιοίη δὲ ἀποδοῦναι τοὺς ὄρκους τοῖς Φιλίππου πρέσβεσι, καὶ συναναγραφῆναι Κερσοβλέπτην ἐν τοῖς ὑμετέροις συμμάχοις. Presenting the request by Kersobleptes his name to be inscribed on the list of members of the Second Athenian League some thirty years after the foundation of the League (for similar use with the verb in active form see Diod. 17.1: συναναγράψομεν καὶ τὰ ἅμα τούτοις συντελεσθέντα). Thus, the verb in active or passive voice may mean the addition of a name or a case on a list already existed or formed.

<sup>28</sup> See MacDowell (2000), p. 21. Though it seems that there is a logical gap in MacDowell's argument concerning the procedure; two questions are failed to be answered: (i) what happened to *euthynos*' decision-judgement? and (ii) was it transferred to the *thesmothetai* and in which way?



private suits to the *Forty*, the public to the *thesmothetai* by the *euthynos* himself; in particular, the text must be divided in two parts: the first (ὁ δὲ λαβὼν ... συνα]ναγράφει) refers to the job of *euthynoi* and the second part (οἱ δὲ θεσμοθέται ... κύριόν ἐστιν) refers to the job of *thesmothetai* and to the job of the jurors of the law-court. In the first part it is clearly stated that «the examiner (= *euthynos*) undertakes the case and makes a preliminary checking of the charge, and if he decides there is a case to answer, he hands private accusations to the deme-judges who give verdicts for the tribe in question and the *euthynos* (not the accuser) adds the case on the list of public accusations which the *thesmothetai* keep»<sup>29</sup>; in the second part of the passage in question it is stated that «the *thesmothetai*, if they accept an accusation, introduce this examination into the jury-court again, and whatever the jurors decide has the final validity»<sup>30</sup>. The run of the sentence suggests that charges for which the *euthynos* accepts that there is a *prima facie* case proceed to trial but *euthynos*' decision certainly is not final. Moreover, the phrase ἐὰν παραλάβωσιν may simply refer to the receipt of a charge handed over; but since that would be otiose, it is more likely to indicate a degree of autonomy for the *thesmothetai* to determine whether the action is formally admissible; accordingly, from the phrase ἐὰν παραλάβωσιν it is also implied that the *thesmothetai* have the liberty not to accept the case (ἐὰν μὴ παραλάβωσιν). Finally, the verb παραδίδωσιν suggests that the involvement of the *euthynos* ends when he passes the case to the magistrates<sup>31</sup>, while the verb used of the *thesmothetai* (εἰσάγουσιν) is the normal one for presiding magistrates, though it does not suggest that the *thesmothetai* themselves act as prosecutors. Another implication at this point goes the issue further: particularly, at the final stage the public case being on the list of *thesmothetai* needs more a confirmation or a reactivation by the accuser himself, in order to be introduced to the court for a final

<sup>29</sup> The subject of the verb συναναγράφει is clearly ὁ λαβὼν (= *euthynos*).

<sup>30</sup> The explanation of the two passages is mainly based on Rhodes' translation (1984), p. 94, with amendments.

<sup>31</sup> See as a parallel to this use Lys. 9.6-7: ἐξιούσης δὲ τῆς ἀρχῆς γράψαντες εἰς λεύκωμα τοῖς ταμίαις παρέδοσαν. οἶδε μὲν τάδε διεπράξαντο· οἱ δὲ ταμίαι οὐδὲν ὅμοιον τοῖσδε διανοηθέντες, ἀνακαλεσάμενοι [δὲ] τοὺς παραδόντας τὴν γραφήν, ἐσκοποῦντο τῆς αἰτίας τὴν πρόφασιν.

judgement. If a case would not be reactivated by the accuser, that means if the *thesmothetai* do not receive a formal accusation by the accuser, this case may be suspended. Therefore it is likely that at the final stage the original accuser must pursue the case.

Finally, to make the description more lucid we have to go through Patrokleides' decree quoted by And. 1.78<sup>32</sup>, which seems to separate out among other cases firstly the cases which have been condemned by the *euthynoi* and their *paredroi* but they have not reached the court and secondly the public actions (*graphai*) which have been transferred by the *euthynoi* to the *thesmothetai*, were probably activated by the accusers and were about to be judged by the law-court. It is worth noting that the term *graphe* in And. 1.78 may mean «indictment» or simply a public action<sup>33</sup>.

Thus, in view of these two important passages *Ath. Pol.* 48.5 and Patrokleides' decree quoted by And. 1.78, we are able to reconstruct the *euthyna* procedure and especially to deduce as safe conclusions as possible concerning the structure of this procedure. Hence, *euthyna* can be viewed as a preliminary investigative procedure comprised of the stages of the *logistai* and the *euthynoi* and that any complaint that arose, was then pursued in court by a separate legal action (*dike*, *graphe*, *eisangelia*) depending on the nature of

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<sup>32</sup> Patrokleides' decree (And. 1.78) belongs to end of the fifth century; this decree mentions officials subject to a *euthyna* referred among those to whom amnesty was granted after the battle of Aigospotamoi: ὅσοι ἄτιμοι ἦσαν ὀφείλοντες καὶ ὅσων εὐθυναί τινές εἰσι κατεγνωσμένοι ἐν τοῖς λογιστηρίοις ὑπὸ τῶν εὐθύνων καὶ τῶν παρέδρων, ἢ μήπω εἰσηγμένοι εἰς τὸ δικαστήριον γραφαί τινές εἰσι περὶ τῶν εὐθύνων, ἢ προστάξεις, ἢ ἐγγύαι τινές εἰσι κατεγνωσμένοι, εἰς τὸν αὐτὸν τοῦτον χρόνον: ... I read the passage without taking liberties and accepting the readings of the manuscript tradition. Thus, the translation could be «all those who became disfranchised because they were public debtors and all who have been condemned for misconduct in office by the *euthynoi* and their assessors in the office of the *λογισταί* or some *graphai* (*γραφαί*) concerning the *euthynai* which have not reached the court or cases of partial disfranchisements (*προστάξεις*) or men who have been condemned to carry out guarantees (*ἐγγύαι*), at exactly the same year ...»; for comments on this decree see Piérart (1971), esp. pp. 534-536; Boegehold (1990), esp. pp. 153-158, 161-162; Ostwald (1986), p. 60.

<sup>33</sup> Cf. the discussion of *euthyna* in its general sense in Harrison (1971), p. 208 and n. 1, and Lipsius (1905-1915), p. 288, where it is shown that *euthyna* in its original form was closely connected with a punishment imposed by decision of the court, thus including the court procedure.

the allegation, once a citizen has declared a readiness to prosecute the relevant action <sup>34</sup>.

Furthermore, it has already been stated, at least by Rhodes and Hansen, that the trial which may follow a *euthyna* procedure of an outgoing magistrate could be *eisangelia* or in other words that *eisangelia* may replace the last stage of *euthyna* procedure <sup>35</sup>; this view supports our reconstruction of the procedure.

In addition, a great number of *euthyna* cases do not come up to the sources as *euthyna*, since they appear with the name of the separate legal action (e.g. *eisangelia*) which were used to bring the cases before the law-court, and this explicates the otherwise puzzling fact that in a society like Athens, in which politicians were prosecuted so venomously, we cannot find many cases of people prosecuted by *euthyna* <sup>36</sup>. Moreover, the legal hearing is so closely

<sup>34</sup> Cf. MacDowell (1962), p. 108, who commenting on And. 1.78 says that after the *thesmothetai* refer the case back to the law-court, there «the accused man was prosecuted by a γραφή» probably corroborating our reconstruction of the procedure.

<sup>35</sup> Cf. Rhodes (1979), p. 110: «Similarly what began as the εὐθυναί of a retired magistrate could culminate in a trial in which eisangelitic procedure was followed ...» and Hansen (1975, p. 46) writes that «an eisangelia may replace the second stage of the euthynai proper»; Hansen making this comment refers to the *eisangelia* against Philokrates (343 BC) and quotes Dem. 19.116. Here we can discuss Dem. 19.116: Ὁ τοῖνον ὕστατον μὲν γέγονεν, οὐδενὸς δ' ἐστὶν ἔλαττον σημεῖον τοῦ πεπρακέναι τοῦτον ἑαυτὸν Φιλίππῳ, θεάσασθε. ἴστε δῆπου πρῶην, ὅτ' εἰσήγγελλεν Ὑπερείδης Φιλοκράτην, ὅτι παρελθὼν ἐγὼ δυσχεραίνειν ἔφην ἔν τι τῆς εἰσαγγελίας, εἰ μόνος Φιλοκράτης τοσοῦτων καὶ τοιοῦτων ἀδικημάτων αἴτιος γέγονεν, οἱ δ' ἐννέα τῶν πρέσβων μηδενός ... The passage clearly makes reference to the *eisangelia* of Philokrates introduced to the court very closely to the trial *On the Embassy*, namely in 343 (see Ὁ τοῖνον ὕστατον μὲν γέγονεν and πρῶην) and the question is how this *eisangelia* is used by Hypereides so late (three years after the case), since we all agree that *eisangelia* was a quick procedure, which was used even during the magistrates' office (cf. Hamel [1998], p. 129, referring to the *eisangelia* against Timotheos and [Dem.] 49.25, 28). However, it is important to make a comparison of the two cases, the *eisangelia* against Philokrates and Aischines' *euthyna*, both delayed for three years (cf. Dem. 19.103: καὶ εἴ γέ τι τῶν προσηκόντων ἐγίγνετο, ἐν εἰσαγγελίᾳ πάλαι ἂν ἦν· νῦν δὲ διὰ τὴν ὑμετέραν εὐθείαν καὶ πραότητ' εὐθύνας δίδωσι, καὶ ταύτας ὀπηνίκα βούλεται). It seems that while Demosthenes postponed for three years for political reasons the activation of the *euthyna* against Aischines and he activated it with a separate graphe, for the same reasons Hypereides introduced from the floor, three year after the events in discussion, an *eisangelia* against Philokrates, and this implies that *eisangelia* could have been a really flexible procedure.

<sup>36</sup> It is worth of note that in Hansen (1991) one can find numerous cases of politicians and generals who were prosecuted, while the cases of *euthyna* are very few.

associated with the investigative procedure that the distinct stages are in effect treated as one by Athenian writers<sup>37</sup>; this would explain the way Aischines and Demosthenes present the court hearing itself as *euthyna*.

Besides, what seems certain regarding the administration of justice in Athens is that even technical terms like *euthyna*, *eisangelia* etc. may be used with liberty and sometimes the same term might apply to quite different institutions. This is a flexibility in terminology which seems to be a common phenomenon in the administration of the Athenian law<sup>38</sup>.

Finally, this divisible model may be also found in the procedure of *probole*. Harris contrary to MacDowell offers a parallel to *euthyna* procedure. In particular, he presents *probole* as a procedure which includes only the hearing in the *Ekklesia* followed by a separate legal action bringing the case to the law-court. If we accept Harris' view we have two mutually supported reconstructions of the special procedures, *euthyna* and *probole*<sup>39</sup>.

## 1. THE SPECIFIC SITUATION OF THE «FALSE EMBASSY» CASE

The case *On the False Embassy* may be used as a model to understand *euthyna* procedure and its stages since this case is the most famous and the only detailed case of *euthyna* procedure in sources of the classical period. In several chapters of both speeches *On the False Embassy*, the case is clearly presented as εὐθύνα<sup>40</sup>. However,

<sup>37</sup> This is in accordance with MacDowell's view (cf. 2000, p. 18) that «the word εὐθύνα in *Atb. Pol.* 48.4-5, like the word γραφή elsewhere, is used in a narrower sense for the charge as well as in a wider sense for the whole procedure».

<sup>38</sup> Cf. Hansen (1976), pp. 28-30; see for example Aischin. 2.139 the use of the term εισαγγεῖλαι in the phrase ἠθέληκός με εισαγγεῖλαι παραπρεσβεύσασθαι;

<sup>39</sup> See Harris (1989, p. 130) and his review article (1992, esp. pp. 73-74) on MacDowell's commentary on Demosthenes speech *Against Meidias*. *Contra* MacDowell (1990, esp. p. 16) believes that *probole* includes apart from the first stage, a preliminary hearing before the *Ekklesia*, the hearing before the court; for an account of conflicting scholarly opinions about the legal procedure of *probole* which the speech of Demosthenes *Against Meidias* may represent see Harris (1989, p. 130 n. 32).

<sup>40</sup> Dem. 19.17: ἥσπερ εἰσὶν αἱ νῦν εὐθύναι; Dem. 19.132: εἰς δὲ τὸ δικαστήριον εἰσελθόντας τὰς ὑπὲρ τούτων εὐθύνας δικάσοντας; Aischin. 2.178: μόνος τὰς εὐθύνας

if we approach *euthyna* as a divisible model this would make more sense from a procedural point of view of what happened between Demosthenes, Timarchos and Aischines from 346 to 343.

Starting with the case *On the False Embassy* we have to present some details concerning the case. The accusation by which Demosthenes brought Aischines to court concerns Aischines' duty as a member of the Second Athenian Embassy to King Philip II of Macedonia (Skirophorion 347/346). The purpose of the mission was to negotiate a peace-treaty between Athens and Macedonia, a treaty which actually was signed in 346 BC and called the *Peace of Philokrates*.

When the Second Embassy returned to Athens from the mission to Pella in Skirophorion (around the 12<sup>th</sup>-13<sup>th</sup>) they gave their reports first to the Boule on the 13<sup>th</sup> of Skirophorion and then to the Assembly on the 16<sup>th</sup> of Skirophorion. After Aischines' encounter with Demosthenes before the Boule, the Boule produced a guarded *probouleuma* for initiating the report of the Second Embassy to the Assembly <sup>41</sup>. In this *probouleuma*, the Boule had no praise for the ambassadors, since the disagreement between Aischines and Demosthenes was now obvious, and the Boule wanted to be safe in case Demosthenes attacked Aischines during his *euthyna* <sup>42</sup>. During the meeting of the Assembly the political climate was particularly favourable for Aischines, since the only option for the Athenians at this time was to rely on Aischines' assurances that Philip would conclude the Third Sacred War as they expected, saving the Phoki-

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δίδομι, with Dem. 19.182: εἰ μόνος τῶν ἐν τῷ δήμῳ λεγόντων λόγων εὐθύνας ὑφέξει; Dem. 19.256: τὰ νῦν συμβεβηκότα πάντ' ἐπὶ ταῖς εὐθύναις ταυταισὶ δαμονίας τινὸς εὐνοίας ἔνδειγμα τῇ πόλει γεγενῆσθαι; Dem. 19.334: οὐχὶ κοινωνεῖ ταῖς νῦν εὐθύναις; Aischin. 2.96: ταύτης τῆς πρεσβείας οὐ κατηγορεῖς μου διδόντος τὰς εὐθύνας; Dem. 19.103: νῦν δὲ διὰ τὴν ὑμετέραν εὐθθειαν καὶ πραότητα εὐθύνας δίδωσι. We can also add some other references which can be regarded as implicit: Dem. 19.69 (ἐν οἷς εὐθύνας ἔμελλον δώσειν τῶν πεπραγμένων); Dem. 19.81 and 82; Dem. 19.211, where the whole story about the *euthynai* of the Second embassy before the *logistai* is given by Demosthenes; and Aischin. 2.182: οὐδ' ὑπεύθυνος ὢν ἀρχῆς ἐκινδύνευσεν. *Contra* see Aischin. 2.139: ἠθέληκός με εἰσαγγεῖλαι παραπρεσβεύσασθαι.

<sup>41</sup> See Dem. 19.32: ΜΑΡΤΥΡΙΑ. ΠΡΟΒΟΥΛΕΥΜΑ. Ἐνταῦθ' οὐτ' ἔπαινος οὐτε κλήσις εἰς τὸ πρυτανεῖόν ἐστι τῶν πρέσβων ὑπὸ τῆς βουλῆς.

<sup>42</sup> Cf. Aischin. 2.121, where Aischines claims that Demosthenes did propose honours for the Second Embassy, but this allegation does not seem believable; see also Harris (1995), pp. 91-93.

ans<sup>43</sup>. At the meeting of the 16<sup>th</sup> of Skirophorion the members of the Third Embassy were elected. Demosthenes chose to decline service on the Third Embassy, since he was at odds with his colleagues and their policy, a fact that became obvious in that particular Ekklesia meeting. The Ekklesia re-elected all the other men from the Second Embassy as ambassadors, including Aischines, for another embassy to Philip, both because the *demos* was so far pleased with the results of their mission<sup>44</sup> and because the Athenian *demos* did not have time to spare in order to change any of the ambassadors, especially the leading figure of Aischines, despite his open rupture with Demosthenes. Shortly after the meeting of the Ekklesia on the 16<sup>th</sup> of Skirophorion, Demosthenes thought that it was the right time to create an open breach with Aischines, to remove him from the rest of the peace-process and eventually to start his attack on the peace, by denouncing his fellow ambassador before the *euthynoi*. For that reason, initially, he asked to be the first to give accounts of the Second Embassy before the λογισταί, where Aischines also appeared with a crowd of witnesses in order to annul this procedure saying – according to Demosthenes – that Demosthenes had already submitted to scrutiny and he was no longer liable to scrutiny<sup>45</sup>. In this instance, we find a double manoeuvre operated by Demosthenes and a counter-manoeuve operated by Aischines: Demosthenes wants to complete the process in order to place himself in a position of advantage; he intends to give his accounts and therefore firstly himself to be judged clean and secondly to be in a position to attack others. Thus, Demosthenes initiates the procedure of *euthyna* at a convenient time for himself, in order to force Aischines to submit his account along with Demosthenes' account and subsequently to make possible a charge against Aischines. The implication of this passage (sc. Dem. 19.211) is that the participation

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<sup>43</sup> It is highly revealing of the political climate that, according to Demosthenes, during that Ekklesia of 16<sup>th</sup> of Skirophorion Philokrates in association with Aischines passed a decree in order to consolidate the peace and alliance with Philip and to promote a sort of settlement for the Third Sacred war (see Dem. 19.47-50).

<sup>44</sup> Cf. Harris (1995), p. 94.

<sup>45</sup> Cf. Dem. 19.211: ... προσελθὼν Αἰσχίνης οὕτωσὶ τοῖς λογισταῖς ἔχων μάρτυρας πολλοὺς ἀπηγόρευε μὴ καλεῖν ἔμ' εἰς τὸ δικαστήριον ὡς δεδωκότ' εὐθύνας καὶ οὐκ ὄνθ' ὑπεύθυνον.

of one of the ambassadors in the procedure of accounting may force the rest of the ambassadors to be checked together <sup>46</sup>.

On the other hand, Aischines is trying to slow the process down; Aischines' strong desire was to avoid the conflict and so to avoid *euthyna* at least at that particular moment. It is possible that in view of Aischines' confidence in the peace and in Philip's promises, he actually believed that the peace would deliver advantages and that his own popularity would rise; so Aischines may have had his own motives to delay <sup>47</sup>.

The final result of this preliminary showdown between Aischines and Demosthenes over the rendering of accounts was a clear win for Demosthenes: the λογισταὶ accepted the proposals of Demosthenes and the procedure of λόγος started immediately. In λόγος, the examination of financial matters, first Demosthenes, and then Aischines and the other ambassadors presented a written declaration saying that they did not receive and spend public money apart from the travel expenses. Obviously, λόγος was not the part of the examination, where Demosthenes had chosen to attack Aischines, though in his charge he usually accuses Aischines of bribery. Before the departure of the Third Embassy (between the 17<sup>th</sup> and the 21<sup>st</sup> of Skirophorion) in the part of εὐθύνοι, both Demosthenes and Timarchos, one of his political associates, had declared their intention to prosecute and had actually handed in a written complaint to the *euthynos* of the tribe of Οἰνηίς, to which the deme of *Kothokidai* (Κοθωκίδαί) belonged <sup>48</sup>. For a mission as urgent as an embassy, in

<sup>46</sup> For a comment on this passage (sc. Dem. 19.211) see Harrison (1971), p. 210 n. 2.

<sup>47</sup> Cf. Lys. 30.5: ... ἀλλ'οἱ μὲν ἄλλοι τῆς αὐτῶν ἀρχῆς κατὰ πρυτανείαν λόγον ἀποφέρουσι, σὺ δέ, ὦ Νικόμαχε, οὐδὲ τεττάρων ἐτῶν ἠξίωσας ἐγγράψαι, ἀλλὰ μόνῳ σοὶ τῶν πολιτῶν ἐξεῖναι νομίξεις ἄρχειν πολὺν χρόνον, καὶ μήτε εὐθύνας διδόναι. If we can trust Lysias at this particular point, Nikomachos avoided a *euthyna* for his duty as ἀναγραφεὺς τῶν νόμων for four years, but that was an extraordinary office with special procedure followed for renewal, and probably the Ekklesia was directly involved. However, it is problematic how it was possible for a case which was originally introduced during the term of office of a magistrate to be renewed during a different magistrate's term of office.

<sup>48</sup> For the complex and inconclusive situation of one or multiple prosecutors see Rubinstein (2000), p. 91 ff.; in [Dem.] 59.120-125 and 126 the original conclusion that Theomnestos was the prosecutor and Apollodoros his *synegoros* (see chs. 14, 16) becomes complicated, since Apollodoros undertakes tasks of a prosecutor; there is un-

order to avoid delay, there would be a provision of the law so that an ambassador could leave Attica, after submitting his accounts to the λογισταί, even if a written charge had already been given to the εὔθυνοι<sup>49</sup>. The fact that Demosthenes does not accuse Aischines of illegal participation in the Third Embassy after he himself and Timarchos have laid down their charges, proves that the procedure of *euthyna* could not prevent the participation of an accused ambassador in a subsequent mission<sup>50</sup>.

The involvement of Timarchos in the prosecution offered Aischines a good chance to attack: his reputation, particularly for male prostitution, was allegedly well known. Timarchos, if we are to believe Aischines, was a notorious figure, and, for the time being, this was sufficient for Aischines' defence. So Aischines could begin his counter-procedure, firstly in the Ekklesia or the Boule, where he made it clear that he would indict Timarchos with an ἀντιγραφὴ δοκιμασίας (ἐπαγγελία δοκιμασίας). The next step was the final presentation by Aischines of an ἀντιγραφὴ δοκιμασίας against Timarchos, in written form, handed to the *thesmothetai*<sup>51</sup>. The case was brought to court in the late summer of 346 or early in 345<sup>52</sup>; Dem-

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fortunately no evidence relating to the number of accusations that could be lodged in *euthynai* or the number of prosecutors. In the case of more than one accusation it is still unclear how εὔθυνοι were processing these accusations and how they were determining which one would go to court; for cases of one person as ὁ γραψάμενος, see Aischin. 1.1., 2.14, 2.148, 3.62; [Dem.] 7.43; Dem. 18.222, 18.223, 20.96; [Dem.] 56.20; Dem. 57.8; [Dem.] 58.34, 59.5; Is. 3.2, 11.31; Isok. 20.2, 15.89; *contra* the cases of two or more γραψάμενοι in Dem. 20.100, 145 cannot be easily rejected; for the prosecutors of case *Against Leptines Law* see Vince *et al.* (1930-1949), I, p. 489; for Demosthenes' and Timarchos' activation of *euthyna* procedure against Aischines see also Aischin. 1.1 (first argument): Ἐπανηκούσης δὲ τῆς πρεσβείας, γράφονται παραπρεσβείας Αἰσχίνην Δημοσθένης τε ὁ ῥήτωρ καὶ Τίμαρχος Ἀριζήλου Σφήττιος ... and Aischin. 2 (first argument): Ὡς οὖν ἐπανάκων ἐκ τῆς ὑστέρας πρεσβείας τῆς ἐπὶ τοὺς ὄρκους, ἐγράψαντο παραπρεσβείας Αἰσχίνην Δημοσθένης τε καὶ Τίμαρχος.

<sup>49</sup> Harris (1995), p. 201 n. 39.

<sup>50</sup> However, in that case the embassy could not have gone ahead, because a formal, full procedure of *euthyna* could cause an unwanted delay; this was a practice similar to the brief *dokimasia* which was implemented after the election of envoys. Cf. Mosley (1973), pp. 39 and 42 n. 7, citing Lys. 26.20 as a possible example of *dokimasia* of envoys; see also Briant (1968), pp. 21-22.

<sup>51</sup> For the procedure against Timarchos see Harrison (1971), pp. 204-205.

<sup>52</sup> About the dating of Timarchos' case see Harris (1985), pp. 376-386, and (1995), pp. 102, 202 n. 52; Wankel (1988), pp. 383-386.



osthenes may well have been a *synegoros* of Timarchos in this trial. The trial of Timarchos resulted in his *atimia*: Aischines had thus ridded himself of a major political opponent, and furthermore, had frightened off any other potential prosecutors. Aischines' credibility shot up, and Demosthenes became wary of proceeding against him straight away.

After this trial, the prosecution of Aischines lay solely in the hands of Demosthenes; Demosthenes would have needed to re-activate the *euthyna* which he finally did, introducing a *graphe* and certainly not an *eisangelia*<sup>53</sup>; this should probably have been immediate, but, given the flexibility of the Athenian legal system<sup>54</sup>, may not have been for two years. Demosthenes' case against Aischines depended on the negative impression of the peace between Athens and Philip, a situation Demosthenes had been awaiting for the past three years. Several incidents, two trials in particular, paved the way for his attack: firstly, the execution of Antiphon, allegedly an agent of Philip<sup>55</sup>, and, secondly, the death penalty passed on Philokrates, *in absentia*, after the *eisangelia* which Hypereides brought against him<sup>56</sup>. If we can trust Dem. 19.280-281 and *schol.*<sup>57</sup>, it seems likely that in this same period the general Proxenos was accused, and convicted, of failure to help the Phokians. Finally, during the conflict between Athens and Delos over the administration of the island's sanctuary, Athens appointed Aischines as her representative before

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<sup>53</sup> Cf. Dem. 19.103 (see above n. 35); see also Pollux, 8.45-46: ... εὐθυνα δὲ κατὰ τῶν ἀρξάντων ἢ πρεσβευσάντων ἦν ... ἰδίως δὲ ἢ κατὰ τῶν πρεσβευτῶν γραφὴ παραπρεσβείας ἐλέγετο.

<sup>54</sup> If, however, Demosthenes had been one of the original prosecutors, he would simply have left the *euthyna* procedure against Aischines in a state of suspension, and renewed it three years later, with a *graphe*; however, it is really problematic how one could have suspended a case if the defendant was necessary to be ὑπεύθυνος for all this period and not able to undertake any public office.

<sup>55</sup> Cf. Dem. 18.132-133.

<sup>56</sup> Cf. Aischin. 2.6, 3.79; Dem. 19.116; Hyp. 4.29; Dein. 1.28; Meritt (1936), pp. 399-400, ll. 45-50, 111-115.

<sup>57</sup> See Dem. 19.280-281 and *schol.* (cf. Dilts *schol.* 493); the reference to Proxenos here is particularly indirect and uncertain, based mainly on the *scholion*. It concerns an offence which may be connected either with his unsuccessful operations around Euboia at that time (346-343) or his failure to help the Phokians or even this might be connected with the general failure of the Peace of Philokrates (see also MacDowell [2000], p. 325).

the Amphiktyonic Council; for some reason, however, his appointment was cancelled by the Areopagos, and Hypereides took his place.

When the case came to trial, it followed the normal procedure of public cases for an *agon timetos*: the hearing lasted a full day and comprised the speech of prosecution, the speech of the defence, the speeches of *synegoroi* and, if the defendant was found guilty, further speeches by the litigants proposing possible penalties.

## 2. CONCLUSION

While references to the activity of *euthynoi* and generally to accounting procedure seem to have been found in 6<sup>th</sup> c. BC onwards<sup>58</sup> and also we come across to inscriptions which make references to *logistai*, the evidence is so sparse to ascertain a conclusion concerning the organisation of the overall institution of *euthyna* in the 5<sup>th</sup> c. BC. What we can conclude from the evidence with relative safety about the role of *logistai* in 5<sup>th</sup> c. BC is that we have a board of thirty *logistai*, who may have chosen from the councillors and their job was to keep accounts of the allied tribute and the sacred monies<sup>59</sup>; a fragment of Eupolis discussing the *logistai* in 5<sup>th</sup> c. means nothing

<sup>58</sup> Cf. IG I<sup>2</sup> 1 and Meiggs - Lewis (1969), nr. 14 (late sixth c. BC): ἐς δεμόσιοι[ν] ἐσπράτεν δὲ τὸν ἄρχο[ν]τα, ἐὰν [δὲ] μὲ, εὐθ[ύ]νεσθαι; see also the decree of Skambonidai IG I<sup>3</sup> 244.B7-10 (possibly before 462 BC): καὶ ἀποδόσο: παρὰ τὸν εὐθυνον: τὸ καθεκον ... and 15-21: ἵσθι ἂν τον κοινον: μὲ ἀποδοσιν: παρὰ τὸν εὐθυνον ...; and the decree of Anake see IG I<sup>3</sup> 133.18-19 (434/433 BC): [---τοῖν Ἄ]νάκοιιν ἔ εὐθυνός[θον] μ[υ]ρίαις δραχμαῖς ἡέκαστος: ἡοι δὲ εὐθ[ύ]νοι καὶ ἡοι πάρηεδροι κατ[α]γιγνο[σ]κόντων ...; for more documents referring to *euthyna* see Piérart (1971), pp. 543-547. Inscriptions of Athens referring to the *logistai* (5<sup>th</sup> c. BC): IG I<sup>3</sup> 369.54-55: [τάδε ἐλογίσαν]το ἡοι λογισταῖ[ι] ἐν τοῖς τέτ[ε]ραρσιν ἔτεσιν ἐκ Παναθηναίων ἐς [Παναθήνια ὄφελ]όμενα ... (year 426/425-423/422); IG I<sup>3</sup> 41.65-66 (Cataldi): ζεμιότο αὐτόν: ἡοι λογιστ[ι]||[ι]; l. 66 γραφέ[σθον] τὸν ἄρχοντα ἡόταμι||[π]ερ ... (year 446/445).

<sup>59</sup> Inscriptions of Athens referring to the *logistai* (5<sup>th</sup> c. BC): ATL 2, lists 1.1-4, 2.1 and 3.1 (see also above n. 58): [τάδε ἐλογίσαν]το ἡοι λογισταῖ[ι] ἐν τοῖς τέτ[ε]ραρσιν ἔτεσιν ἐκ Παναθηναίων ἐς [Παναθήνια ὄφελ]όμενα ... (year 426/425-423/422); IG I<sup>3</sup> 41.65-66 (Cataldi): ζεμιότο αὐτόν: ἡοι λογιστ[ι]||[ι]; l. 66 γραφέ[σθον] τὸν ἄρχοντα ἡόταμι||[π]ερ ... (year 446/445); SIG<sup>3</sup> 667: καὶ περὶ πάντων ἂν ὠικονόμηκεν ἀπενήνοχεν λόγους εἰς τὸ μητρώιον καὶ πρὸς τοὺς λογιστάς καὶ τὰς εὐθύνας ἔδωκεν ... (year 161/160).

specific and Aristophanes' *Birds* (318) seems to comment only on the pedantic way of making their duty <sup>60</sup>.

However, it is expected that accounting as a procedure of democratic Athens has been progressively changed until the second half of 4<sup>th</sup> c. BC. In 403/402 after the revision of the laws we may have a reorganization of the institution of *euthyna*. It has already been shown by Piérart that in the 5<sup>th</sup> c. BC *euthyna* was expanded and gradually became a procedure comprised of the two stages, the one of the *logistai* and the one of the *euthynoi*, until the end of 5<sup>th</sup> c.

An important source of the end of 5<sup>th</sup> c. is Patrokleides' decree as quoted by And. 1.78. Studying this decree we find no direct reference to the job of *logistai* and this is quite odd; even more the *euthynoi* are presented to conduct the auditing (possibly the second stage of *euthyna*) in the *logisteria* (that means the office of the *logistai*), but this perhaps can be explained if we regard the *logisteria* as the original place of accounting in Athens. On the other hand from three important texts of the second half of 4<sup>th</sup> c., particularly *Ath. Pol.* 54.2, Aisch. 3.23 and Dem. 18.117 (see above n. 14) and even from inscriptions of the 4<sup>th</sup> c. <sup>61</sup> the job of *logistai* is very well confirmed. According to these texts a board of ten *logistai* together with ten *synegoroi* were chosen by lot among all Athenian citizens to check financial accounts of retiring magistrates within thirty days after the expiration of their office. Moreover, another board of *logistai* selected by lot from the members of the Boule conducted audits on financial matters each *prytany*.

In regard to the duty of *euthynoi* in 4<sup>th</sup> c. Athens we are able to deduce some conclusions based mainly on *Ath. Pol.* 48.4-5, And. 1.78, and some inscriptions <sup>62</sup>. First of all there was a board of ten *euthynoi*, who were selected by lot from the members of

<sup>60</sup> Eurpolis, fr. 223 (Kock): ἄνδρες λογισταὶ τῶν ὑπευθύνων χορῶν; Ar. *Birds*, 318: Ἄνδρε γὰρ λεπτῶ λογιστὰ δεῦρ' ἀφίχθον ὡς ἐμέ.

<sup>61</sup> Inscriptions of Athens referring to the job of *logistai*: IG I<sup>3</sup> 369.54-55: [τάδε ἐλογί-σαν]το οἱ λογισταὶ ἐν τοῖς τέτ[α]ρσιν ἔτεσιν ἐκ Παναθηναίων ἐς [Παναθηναία ὄφελ]όμενα ... (year 426/425-423/422); IG I<sup>3</sup> 41.65-66 (Cataldi): ζεμιότο αὐτόν· οἱ λογιστ[ι]ῖ; l. 66 γραφέ[σθον τὸν ἄρχοντα ἡόταμι][π]ερ ... (year 446/445); SIG<sup>3</sup> 667: καὶ περὶ πάντων ὄν ὠικονόμηκεν ἀπενήνοχεν λό[γ]ους εἰς τὸ μητρώιον καὶ πρὸς τοὺς λογιστὰς καὶ τὰς εὐθύνας ἔδωκεν ... (year 161/160).

<sup>62</sup> See above n. 18.

the Boule, each representing a tribe. In addition another group of twenty *paredroi* was chosen by lot two for each *euthynos*, in order to assist them for conducting the examination procedure.

Summing up from the various sources discussed, it becomes clear that *euthyna* procedure in 4<sup>th</sup> c. Athens may be a preliminary investigative procedure comprised of the stages of the *logistai* and the *euthynoi*. Following this introductory investigation if a complaint arises, this is handed to the *euthynos* who is doing a preliminary checking of the charge. Although the *euthynos* gives a decision about the charge, this decision is not final; lastly the various cases are referred to the appropriate authorities, the private suits to the Forty, the public to the *thesmothetai*. The involvement of the *euthynos* ends when he passes the case to the magistrate, while the *thesmothetai* act as presiding magistrates; however, it is not suggested that the *thesmothetai* themselves act also as prosecutors. To have a final judgement, what is needed more is the accuser to reactivate the accusation with a separate legal action (*dike*, *graphe*, *eisangelia*), which is handed in to the Forty (*dike*) and the *thesmothetai* (*graphe*, *eisangelia*); the action pursued by the accuser depends on the nature of the allegation and the procedure which is more suitable for him. As regards especially to public suits, we can say that for various reasons a case may be not activated by the accuser, in other words the *thesmothetai* do not receive an independent accusation by the accuser; thus, the case may be suspended for a period of time or permanently.

This reconstruction fits to the overall character of the legal system of the 4<sup>th</sup> c. BC, which imposed an active role for jury-courts; powers possessed by individuals in 5<sup>th</sup> c. were transferred to juries in the 4<sup>th</sup> c.<sup>63</sup>

This procedure becomes obvious from a careful analysis of the case *On the False Embassy*, which is used as a case study, since it is not only the most important *euthyna* procedure found in classical literary sources, but it is also a case which is presented in detail. The only way of reaching as safe conclusions as possible was to look very carefully at the sources available, namely *Ath. Pol.*, And. 1.78,

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<sup>63</sup> Cf. MacDowell (1978), p. 172.

quoting Patrokleides decree together with the two speeches of Demosthenes and Aischines *On the False Embassy*.

The concept of *euthyna* as a preliminary procedure may be an aid in understanding the nature of other special procedures such as *probole*, *apagoge* etc. and in appreciating the function of *euthyna* in the overall Athenian legal system.

#### ABBREVIATIONS

- Aischin. 1 Aischines' speech *Against Timarchos*.  
 Aischin. 2 Aischines' speech *On the Embassy*.  
 Aischin. 3 Aischines' speech *Against Ktesiphon*.  
 Dem. 18 Demosthenes' speech *On the Crown*.  
 Dem. 19 Demosthenes' speech *On the Embassy*.

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