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## VOLUNTEER PROSECUTORS IN THE GREEK WORLD <sup>1</sup>

The theme of the present article is the role of the volunteer prosecutor in the Greek world outside Athens. Two fundamental questions will be raised here. The first is to what extent we may legitimately regard the volunteer prosecutor as a generally Greek phenomenon rather than as a primarily Athenian institution. The second is whether the institution of the volunteer prosecutor should be regarded as a specifically *democratic* institution. The evidence which will be considered consists of more than eighty attestations of volunteer prosecutors in inscriptions dating from the fifth century to ca. 100 B.C. <sup>2</sup>. The institution of the volunteer prosecutor lends itself particularly

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<sup>1</sup> This article is a preliminary study that will now form the point of departure for a larger-scale research project. The epigraphic dossier that forms the empirical basis of my investigation is as yet far from complete, but the material gathered so far is sufficiently large to permit discussion of the institution of the volunteer prosecutor in a broader Greek context. I should like to thank Prof. G. Thür and Dr. K. Harter-Uibopuu for inviting me to present this paper in Vienna under the auspices of the Austrian Academy of Sciences and for providing a stimulating forum for discussion. I am also grateful to Prof. M. Gagarin, Prof. P.J. Rhodes and Prof. A.C. Scafuro for their comments and suggestions on an earlier draft of this paper.

<sup>2</sup> This *terminus ante* is in many ways an artificial one. Its main justification is that, after the middle of the second century B.C. the majority of Greek *poleis* were under significant influence from Rome, which may have had a noticeable impact on the legal institutions and procedures as they operated within each community. The reality, of course, is that direct Roman influence on the legal and political systems began at different times in different regions, and with different degrees of intensity. Ideally, therefore, the *terminus ante* ought to be variable according to whether a community under investigation was located in, for example, Asia Minor, Boiotia, Athens, or Achaia.

well to a comparative study for the following reasons. First, the volunteer in his various terminological guises (for instance ὁ βουλόμενος, ὁ χρήζων and ὁ λείων) is attested, directly or indirectly, in at least forty-six different *poleis* in the classical and early Hellenistic periods<sup>3</sup>. Second, the geographical scope of the material is sufficiently wide to permit a discussion of what features, if any, may be interpreted as universally Greek, while at the same time allowing us to investigate phenomena that may be regarded as local variations on a general theme. Third, the investigation of similarities as well as differences in the ways in which volunteer prosecutors operated within the context of the legal systems in different *poleis* may also help to address the question whether the proliferation of the institution across the Greek world was a result, first, of direct Athenian influence during the classical period, and second, as far as the Hellenistic period is concerned, of a gradual development of what we may call a Greek procedural *koine*. It remains a problem that the inscriptions permit extensive comparison between individual legal systems only for the fourth century B.C. and later. However, local variations, particularly in the area of procedural terminology, may to some extent allow us to assess whether we are dealing with wholesale importation of an Athenian phenomenon, or whether the community in question had developed its own definition of the role of the volunteer on a basic model which may legitimately be regarded as more generally «Greek» than specifically Athenian.

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<sup>3</sup> The *poleis* concerned are, in alphabetical order, Aigiale (C2), Aitolian *Koinon* (C2), Arkesine (C4), Astypalaia (ca. 100 B.C.), Beroia (C2), Chios (C4), Delos (C3), Delphi (C5, 4, 3), Demetrias (ca. 100 B.C.), Elateia (C2), Elis (C4), Epidauros (C4, C2), Eretria (C2), Erythrai (C5), Gortyna (C3, 2), Halikarnassos (C5), Hierapytna (C2), Ialysos (C3), Iasos (?), Ilion (C3), Ios (C4), Ioulis (C4, C3/2), Itanos (C3), Koresos (C4), Kerkyra (C3/2), Kos (C4, C2/1), Lampsakos (C2), Lato (C3), Lebadeia (?), Lindos (C3), Magnesia on the Maiander (C2), Mantinea (C4), Messene (C3), Miletos (C3), Minoa (C5/4), Mylasa (C3), Nisyros (C3), Opous (C5), Oropos (C4), Paros (C5), Priene (C4/3), Rhodos (C2), Stymphalos (C4), Tegea (C4), Teos (C2), Thasos (C5, C4, C3, C2).

## 1. VOLUNTEER PROSECUTORS AND THE PROBLEM OF «THE UNITY OF GREEK LAW»

In his article *Die Bedeutung der Epigraphik für die griechische Rechtsgeschichte*, published more than thirty years ago, H.J. Wolff emphasised the importance of our epigraphical sources for the long-standing controversy over the concept of «Greek law»<sup>4</sup>. Only a comparative study of the inscriptions can move the debate forward in providing some of the answers to the questions that, for nearly half a century, have divided scholars over the problem of the unity of Greek law. Wolff stressed that only the evidence of the inscriptions would allow us to identify features that may have been common to Greek legal systems in general, as well as to establish the *limits* of unified Greek legal thought in, as he put it, the sometimes very different concrete manifestations of legal phenomena in our epigraphical sources.

However, the use of epigraphical material as a means of identifying similarities and differences between the legal systems of individual Greek *poleis* is not unproblematic. One central question raised by Wolff relates to the ways in which we may choose to account for and explain specific legal phenomena (procedural as well as substantive) that are attested in more than one *polis*. As pointed out by Wolff (1972, pp. 136-137), each time we encounter a set of apparently related or parallel legal institutions operating in more than one community, we have to choose between at least three different means of accounting for the similarities between them. We may interpret them as a manifestation of underlying legal principles that should be regarded as universally Greek. Or, secondly, the similarities may be explained as the result of the proliferation of particular legal institutions within an area controlled by a hegemonic *polis* such as Athens in the fifth and first half of the fourth century<sup>5</sup>. Or, as

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<sup>4</sup> Wolff (1972).

<sup>5</sup> Tod GHI 162 = Rhodes and Osborne GHI 40 may be cited as a possible example. This inscription, dating from the mid-fourth century B.C., contains the terms of the arrangement between Athens and at least three of the four *poleis* on the island of Keos (Karthaiia, Koresos and Ioulis). The measures that are intended to protect the supply of Keos ruddle to Athens are to be enforced through *endeixeis* and *phaseis*, and rewards for the initiators of such actions are stipulated in the sections relating to Koresos and

a third possibility, similar institutions attested in different *poleis* may be interpreted as the result of spontaneous, parallel developments that happened independently of each other in different *poleis* at different times.

Wolff's article was, to some extent, intended as a response to the sceptical approach to the question of the unity of Greek law as formulated by Moses Finley in 1963 (printed in a revised version in Finley [1975]). Finley, whose position has been widely shared by a succession of primarily Anglophone scholars in subsequent years, maintained that «Greek law» as a concept is problematic: the differences in legislation that can be detected in individual *poleis*, especially in regard to legal substance, are so pronounced that they cannot meaningfully be interpreted merely as local variations on a common Greek theme. Finley's argumentation was concerned primarily with matters of substantive law, and explicit challenges to his position have tended to focus on precisely those areas of substance on which Finley based his argumentation, that is, on attested legislation relating to property and sale, inheritance, marriage and the family generally<sup>6</sup>.

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Ioulis (lines 16-21, 28-30, and 36-37). The Koresian stipulation that the person responsible for an *endeixis* or a *phasis* should be granted *epheisis* at Athens suggests that, normally, the informer would be expected also to see the prosecution through (on this problem, see section 5 below), even if exceptions presumably had to be made for slave informers whose procedural capacity must be open to question. But although it might be tempting to interpret the mechanisms by which the legislation is to be enforced as an example of Athenian imposition of their own basic procedural principles on other communities, Rhodes and Osborne point out (2003, pp. 208-209) that important deviations both between the procedures stipulated for Koresos and Ioulis respectively, and between known Athenian procedures and those attested for the Kean *poleis* in the decree, suggest that «[i]t is more likely that Athenian and Kean law shared closely similar procedures than that the Athenians stipulated the procedure to be employed».

<sup>6</sup> The bibliography in this area is vast. Examples of comparative studies that note significant parallels between Athenian legislation and legislation attested for other *poleis* are Maffi (1991) on adoption at Gortyn and at Athens, Faraguna (2003) on public registration of sales of real estate in several classical and Hellenistic *poleis*, Modrzejewski (1981) on marriage, and Chaniotis (2004) on the modes of legal acquisition of property. But, as noted by Millett and Todd (1990, p. 11) the contributions that pose challenges, be they implicit or explicit, to Finley's position in regard to the concept of «Greek law», have been presented predominantly by scholars belonging to the continental European tradition. A notable exception is Sealey (1994), who takes issue with Finley's position on the questions of marriage, the epiklerate and inheritance.

However, other scholars, for example Millett and Todd (1990), have taken Finley's objections further. Observing that the legal system in any Greek *polis* necessarily operated within a wider political and social context and should therefore not be studied in isolation, and that there were deep constitutional differences between individual *poleis*, they urge that we must treat each legal system attested for a particular community on its own terms, not only in regard to questions of substantive law but also in matters relating to legal procedure and constitutional law more generally. As an example of the diversity which the modern scholar should expect to encounter in the Greek material they draw attention (1990, p. 10) to the emphasis in Athenian legislation on procedures and methods by which the *polis'* officials could be held accountable, suggesting in turn that the Athenians may have justified their priorities with the claim that «the function of the law in a democracy is to protect the weak against the excesses of the strong, and to prevent socially indefensible concentrations of landed property». They proceed by questioning the extent to which we should expect to find similar ideological concerns underpinning (or at least influencing) other legal systems such as that of oligarchic Thebes in the fifth century B.C. or Ptolemaic Egypt in the Hellenistic period.

There can be little doubt that caution is called for in any attempt to undertake comparative analyses of legal statutes as well as procedural structures as found in different communities in the Greek world. Nowadays, few scholars, if any, would probably deny that the wider constitutional context in which the courts were operating in each *polis* would have had a profound influence on the way in which legal disputes were conducted, and on the way in which legislation was not only created but also enforced in practice. It is also incontrovertible that there are considerable variations between attested *poleis* when it comes to matters of legal substance. Thus many scholars now agree that Gortynian laws on, for example, marriage and adoption differed from the legislation in force at Athens at least partly as a result of the different definitions of citizenship and the citizen in each of these two communities. On the other hand, Finley's rejection of the concept of «Greek Law» as a meaningful analytical tool, along with the current high level of interest in ancient democracy as a political system, has led to a marked concentration of the Anglophone debate in the area of Athenian law and its direct

relationship with Athenian democratic ideology. Indeed, the frequent emphasis on the uniqueness of Athenian democracy has in some ways become a further conceptual barrier to comparative studies not only of individual areas of substantive law but also of legal institutions and procedures as more generally «Greek»<sup>7</sup>.

In focussing on the institution of the volunteer prosecutor outside Athens it is my hope that a further dimension may be added to the debate on the concept of «Greek law». Although numerous aspects of legal procedures and principles have been studied from a comparative perspective in recent scholarship on Greek law, the role of the volunteer in the legal process as attested in a large body of epigraphical material from across the Greek world has yet to be explored and analysed.

## 2. «HO BOULOMENOS» AND ATHENIAN DEMOCRATIC IDEOLOGY

*Ho boulomenos* is regarded, entirely justifiably, as a hall-mark of Athenian democracy. Among the three Solonian measures that the author of the Aristotelian *Athenaion Politeia* regards as the «most democratic» he mentions the opportunity granted to the volunteer to «exact vengeance on behalf of those who have suffered wrong»<sup>8</sup>. In modern scholarship *ho boulomenos* is frequently represented as the cornerstone of the Athenian democratic constitution, both when he acted as a proposer of decrees in the context of the assembly and when he pursued public actions in the democratic courts. After all, what could be more democratic than the principle of allowing any citizen, regardless of wealth and social standing, to pursue legal ac-

<sup>7</sup> The exception is the study of early Greek law, in which scholars have been much more willing to discuss and compare procedures across the Greek world, and in this area the differences in approach between continental and Anglophone scholars are far less pronounced. See *e.g.* Osborne (1997) and Gagarin (1997).

<sup>8</sup> 9.1: δοκεῖ δὲ τῆς Σόλωνος πολιτείας τρία ταῦτ'εἶναι τὰ δημοτικώτατα: πρῶτον μὲν καὶ μέγιστον τὸ μὴ δανείζειν ἐπὶ τοῖς σώμασιν, ἔπειτα τὸ ἐξείναι τῷ βουλομένῳ τιμωρ[εῖν] ὑπὲρ τῶν ἀδικουμένων, τρίτον δὲ (ᾧ καὶ) μάλιστα φασιν ἰσχυκέναι τὸ πλῆθος, ἢ εἰς τὸ δικαστή[ριον] ἔφε[σις]: κύριος γὰρ ἂν ὁ δῆμος τῆς ψήφου, κύριος γίγνεται τῆς πολιτείας.

tions against those in a position of power and to hold them to account for any abuse of that power before a court manned by his fellow citizens? Although most scholars are aware of the existence of volunteer prosecutors in *poleis* other than Athens, *ho boulomenos* is still regarded by many as a primarily Athenian phenomenon. Thus, in his book *The Litigious Athenian*, Matthew Christ argues (1998, p. 118) that

While Athens was by no means the only Greek *polis* to encourage private citizens to bring prosecutions on behalf of the state, volunteer prosecution came to occupy a position of importance in democratic Athens that was without parallel in the rest of the Hellenic world.

It is of course hard to challenge the assertion that the importance of volunteer prosecutors was greater at Athens than anywhere else in the Greek world. The surviving evidence from *poleis* other than Athens makes it impossible, in my view, to either confirm or dismiss a statement of this kind. The inscriptions do not provide sufficient information from the communities outside Athens to allow us to compare the degree of importance that the institution had within each community. In most instances the inscriptions allow us only to establish the existence of the institution within a given *polis*. And for the most part, the epigraphical material provides us with a single, or at best two, three or four individual examples of the procedural contexts in which the volunteer could become involved in the administration of justice within that particular community.

The Athenians themselves, certainly, were adamant that the principle of allowing *ho boulomenos* to initiate legal actions in order to safeguard the interests of the community was a particularly democratic phenomenon. Lykourgos, for example, is explicit in linking the role of the volunteer prosecutor with the democratic constitution of Athens:

For the three most important things that preserve and uphold the democracy and the prosperity of the *polis* are, firstly, the order imposed by the laws, secondly the vote of the *dikastai*, and, thirdly, the procedure which brings the crimes before the court. It is the role of the law to state what it is forbidden to do, of the prosecutor to inform on those who have become liable to the penalties stated by the laws, and of the judge to punish those who have been brought to his attention by both

of these, so that neither the law nor the vote of the judge has any power without the person who hands the criminals over to them.<sup>9</sup> (Lyk. 1.3-4)

The prosecutor Diodoros, who delivered Dem. 22 against Androtion, went so far as to claim that citizens of a criminal disposition would do anything in their power to overturn the democracy, because only that constitution imposed limitations on the behaviour of the powerful, presumably through the opportunity given to ordinary citizens for calling the city's officials to account:

For the *demos*, led astray by them, may make many mistakes, and they themselves may try either to overthrow the democracy completely (for in oligarchies it is not possible to criticise those in power, even if there are some who live even more perverted lives than Androtion) or to encourage the people to be as bad as possible, in order that they may become as similar to themselves as possible.<sup>10</sup> (Dem. 22.32)

While there is no reason to question Lykourgos' claim that the role of the volunteer prosecutor was perceived by the Athenians as essential for upholding the laws of the community and for preserving the democratic institutions, the statement made in Dem. 22 is an obvious example of an Athenian claim to uniqueness which is blatantly exaggerated. I hardly need to mention that it is contradicted flatly by the surviving evidence from other *poleis*, including those that were definitely not democratic. In our surviving epigraphical material from *poleis* that were definitely *not* democratic, the examples of fines and accounting procedures imposed on high-ranking officials are legion.

<sup>9</sup> τρία γὰρ ἔστι τὰ μέγιστα, ἃ διαφυλάττει καὶ διασώζει τὴν δημοκρατίαν καὶ τὴν τῆς πόλεως εὐδαιμονίαν, πρῶτον μὲν ἢ τῶν νόμων τάξεις, δεύτερον δ' ἢ τῶν δικαστῶν ψῆφος, τρίτον δ' ἢ τούτοις τὰδικήματα παραδιδούσα κρίσις. ὁ μὲν γὰρ νόμος πέφυκε προλέγειν ἃ μὴ δεῖ πράττειν, ὁ δὲ κατήγορος μηνύειν τοὺς ἐνόχους τοῖς ἐκ τῶν νόμων ἐπιτιμίαις καθεστῶτας, ὁ δὲ δικαστὴς κολάζειν τοὺς ὑπ' ἀμφοτέρων τούτων ἀποδειχθέντας αὐτῶ, ὥστ' οὐθ' ὁ νόμος οὐθ' ἢ τῶν δικαστῶν ψῆφος ἄνευ τοῦ παραδώσοντος αὐτοῖς τοὺς ἀδικοῦντας ἰσχύει.

<sup>10</sup> πολλὰ γὰρ ἂν τὸν δῆμον ὑπ' αὐτῶν ὑπαχθέντ' ἐξασμαρτεῖν, κάκεινους ἦτοι καταλύσαι γ' ἂν πειράσθαι τὸ παράπαν τὸν δῆμον (ἐν γὰρ ταῖς ὀλιγαρχίαις, οὐδ' ἂν ὦσιν ἔτ' Ἀνδροτιώνος τινες αἰσχίον βεβιωκότες, οὐκ ἔστι λέγειν κακῶς τοὺς ἄρχοντας), ἢ προάγειν ἂν ὡς πονηροτάτους εἶναι, ἴν' ὡς ὁμοίωτατοι σφίσιιν ᾧσι.



What is more, the principle of holding such officials to account through legal procedures goes back almost as far in time as our evidence will take us<sup>11</sup>.

However, although the principle of official accountability may be regarded as fairly universal within the Greek world as a whole, we may still expect to find significant differences in the way that it was imposed and operated in each *polis*, depending on its wider constitutional context. There is, arguably, a difference between a system in which officials are accountable only to other officials or to the members of a narrowly defined political élite on the one hand and, on the other, a system in which all members of the citizen body are entitled to initiate a legal procedure against people in a position of power. The existence of a penalty imposed for official misconduct as evidenced in an inscription does not necessarily tell us whether we are dealing with one or the other.

### 3. ENFORCING OFFICIAL ACCOUNTABILITY: CHAINS OF RESPONSIBILITY

It is a problem that many of our inscriptions provide no information on how fines on officials are to be imposed and through whose agency. Sometimes the texts simply impose obligations on officials and stipulate the penalties they are to incur if they fail to carry out the instructions. One example of this is provided by IPArk 2 (Tegea, C5/4), which, famous as it may be, is fairly typical of many of our early inscriptions from the Greek world outside Athens<sup>12</sup>. In this law, the *hieromnamon* is obliged to *inphorbien*, if he becomes aware of a *hieres* contravening the limitations on the number of animals he is allowed to rear. If the *hieromnamon* fails to act, he is fined one hundred drachmas and is accursed. What the inscription does not tell us is how that penalty is to be imposed in practice. The editors

<sup>11</sup> E.g. *I.v. Olympia*, 2 (= Buck 61, SEG 41, 391, C6 or early C5), GHI 2 (Dreros, C7).

<sup>12</sup> Indeed, the Athenians themselves often did not state explicitly by what procedure or through whose agency penalties were to be imposed on officials who failed to comply with the stipulations of particular enactments.

suggest that a procedure brought by a volunteer prosecutor may be envisaged, but this remains a conjecture<sup>13</sup>.

In other instances, however, the inscriptions provide us with a picture of a «chain» in which penalties incurred by officials are to be enforced by yet other officials. What is of particular interest in the present context is to establish where and how such chains may end. The evidence of three Thasian inscriptions may be adduced here in order to illustrate the problem: IG XII 8, 265 (C4); IG XII 8, 267 (C3) and IG XII Suppl. 347 (shortly after 400 B.C.).

IG XII 8, 265 imposes obligations on the prospective lessee of the «Garden of Herakles» to keep the land clean from dung (*kopros*). The text runs as follows:

The garden of Herakles at the gate is to be leased on the following terms. The lessee shall present the ground around the gates, where dung has been deposited, in a clean state. If anyone deposits dung on the land, the bucket shall belong to the lessee of the garden, and if he whips the slave he shall not be liable for punishment. The *agoranomos* and the priest of Asklepios serving at any one time must see to it that the lessee presents the land in a clean state. If they do not see to this, they shall themselves owe a *bemibekton* per day that shall be sacred to Asklepios. The *apologoi* are to prosecute them or owe the fine themselves. The lessee shall owe a *bekte* per day to the priest and the *agoranomos*.<sup>14</sup>

We can sum up the mechanisms by which this particular enactment is to be enforced as follows. In order to ensure that the obligations

<sup>13</sup> τὸν Ἱερὸν πέντε καὶ εἴκοσι οἷς νέμεν καὶ ζευγος καὶ αἴγα· εἰ δ' ἂν καταλλάσσει, ἰνφορβισμόν ἔναι· τὸν Ἱερομνάμονα ἰνφορβίην· εἰ δ' ἂν λεύτον μὲ ἰνφορβίε, Ἡεκτόν δαρχμάς ὄφλὲν ἰν δάμον καὶ κάταρπον ἔναι. Thür and Taeuber (1994, p. 19) comment that «Die an den *Damos* fallende Strafe wird wohl nicht von einem Amtsträger verhängt, sondern kann vermutlich von jedem beliebigen Bürger gerichtlich durchgesetzt werden. Details werden hierüber allerdings nicht mitgeteilt».

<sup>14</sup> ἐπὶ τοῖσδε ἐκδέδοται [ὁ κῆπος ὁ] Ἡρακλέος ὁ πρὸς [τῆ] πύλῃ. ὁ ἀναιρηθημένος τὸν κῆρον τὸ χωρίον καθαρὸν παρέξει [τὸ περὶ τὰς] πύλας, ὅπου ἢ κόπρος [ἐξ-εβάλλ]ετο. ἢν δὲ τις ἐγβάλλῃ [κὸπρον ἐς] τὸ χωρίον, εἶναι τὸ ἄγγος τοῦ ἀναιρηθημένου τὸν κῆρον, τὸν δὲ] δοῦλον μαστιγῶσαντα ἀθώϊον εἶναι. ὅπως δὲ τὸ χωρίον καθαρὸν παρέχη, ἐπιμέλεσθαι τὸν ἀγορηνόμον καὶ τὸν ἱερέα τοῦ Ἀσκληπιοῦ τοὺς ἐκάστοτε ἐόντας· ἢν δὲ μὴ ἐπιμέλωνται, ὀφείλουν αὐτοὺς τῆς ἡμέρης ἐκάστης ἡμικτον ἰρὸν τῷ Ἀσκληπιῷ· δικάζεσθαι δὲ τοὺς ἀπολόγους ἢ αὐτοὺς ὀφείλουν· τὸν δὲ ἀναιρηθημένον τῷ [ἰ]ρεῖ καὶ τῷ ἀγορανόμῳ ἕκτην ὀφείλουν τῆς ἡμέρης.

are met, the *agoranomos* together with the priest of Asklepios are given responsibility for making the lessees comply with the terms of the lease, and if they fail in this duty they will incur a personal fine of a *hemibekton* per day. The *apologoi*, in turn, are made responsible for initiating legal actions through which the penalty is to be imposed on the two defaulting officials<sup>15</sup>, and if the *apologoi* fail to do this, they will now themselves be made to pay the fine. However, here the chain ends, as far as this inscription is concerned. We are left with the important but unanswered question: who was responsible for imposing the fine on the *apologoi*? This lack of information which leaves us unable to identify the final link in the chain is, unfortunately, very typical of our legal inscriptions in general, and any reconstruction of how such a chain may have ended will in such cases have to rest on conjecture.

As far as our Thasian inscription is concerned, we may not be entirely in the dark. Two other Thasian inscriptions mentioned above, IG XII 8, 267 and IG XII Suppl. 347, suggest that the chain may in fact have ended with the volunteer prosecutor, although he is not mentioned explicitly in IG XII 8, 265.

Let us first consider IG XII 8, 267. Lines 11-16 constitute an entrenchment clause to the main part of the enactment. If any individual proposes to cancel the enactment he is to incur a fine of a thousand drachmai to Apollo and a further fine of another thousand drachmai to the *polis*. The procedure by which the penalty is to be imposed must be initiated by the *apologoi* who will themselves be fined if they fail to take action, just as was the case in IG XII 8, 265. However, unlike the latter inscription, IG XII 8, 267 offers the further piece of information that, if the *apologoi* fail to initiate the prosecution as specified, the fine is to be imposed on them by a procedure initiated by their successors in office. This is an additional way of ensuring accountability, but as a safety measure it definitely has its limitations, particularly in *poleis* in which officials were recruited from a limited section of the citizen body. The smaller the pool from

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<sup>15</sup> That the actions initiated by the *apologoi* are directed against the *agoranomos* and the priest rather than against the original lessee is strongly suggested by the final clause of the enactment, since the lessee here is to pay a *hekte* per day to the *agoranomos* and the priest, which will in effect compensate them for the personal loss that they have incurred as a result of their inactivity.

which eligible officials were drawn, the higher the risk of intra-élite solidarity preventing the incoming officials from taking action against their predecessors. The lack of trust in the will and ability of successive boards of officials to hold each other accountable is probably one reason why the Thasian regulation in IG XII 8, 267 contains an additional safety measure. Prosecution against defaulting *apologoi* may be brought not only by future *apologoi* but also by *ho ethe-lon*<sup>16</sup>. That the active involvement of the volunteer prosecutor was seen as an essential means by which the statute could be enforced is clear especially from the reward of half of the fine promised to the individual who was successful in securing a conviction of the defaulting *apologoi*.

Likewise, in IG XII Suppl. 347 from ca. 400 B.C., an invitation is issued to *ho bolomenos* to prosecute the magistrates assigned to the Thasian *peraia* if these neglect their duty to initiate penal actions against people who contravene the terms of the law in question<sup>17</sup>.

From the two inscriptions just discussed it is legitimate to infer that the Thasians were very much aware of the possibilities offered by the institution of the volunteer prosecutor when it came to controlling the behaviour of citizens in positions of power. But as far as IG XII 8, 265 is concerned, in spite of the examples offered by IG XII 8, 267 and IG XII Suppl. 347, the involvement of volunteer prosecutors in actions concerning the garden of Herakles must still remain a conjecture, even if it is a very plausible one. Caution is required here, because it is quite clear from other inscriptions that such chains of responsibility can end in entirely different ways.

<sup>16</sup> μῆ [ἐξεί]ναι δὲ ὑπὲρ τούτων μηδενὶ μήτε εἰπεῖν μήτ' ἐπε[λθεῖ]ν ὑπὲρ λύσιος μή-  
τ' ἐπιψηφίσει ἀκρατέα εἶνα[ι ταῦ]τα τὰ ἐψηφισμένα. ὃς δ' ἂν παρὰ ταῦτα εἴπη ἢ ἐπ-  
έλθῃ ἢ ἐπιψηφίσει, τὰ τε δόξαντα ἄκυρα ἔστω καὶ χιλίους στατήρας ὀφειλέτω ἱε-  
ροῦς τῶι Ἀπόλλωνι τῶι Πυθίῳ, χιλίους δὲ τῆι πόλει. δικάσασθων δὲ οἱ [ἀπό]λογοι ἂν  
δὲ μὴ δικάσωνται, αὐτοὶ ὀφειλόντων, δικάσασθων δὲ ἀπόλογοι οἱ μετὰ τούτους αἰρε-  
θέντε[ς]· δικάσασθω δὲ καὶ τῶν ἄλλων ὁ ἐθέλων, καὶ ἂν ὁ ἰδιώτης νικήσῃ, μετεῖναι  
αὐτῶι τὸ ἥμισυ τῆς καταδί[κης].

<sup>17</sup> ἂν δὲ μηδὲς ἀπ[.....]ι, οἱ πρὸς τὴν ἡπειρον ἐπιτετραμμένοι δικάσασθων· ὅτ[ε]  
δ' ἂν νικήσωσι, τῆς πόλεως ἢ θωιῆ ἔστω πάσα· ἂν δὲ οἱ ἐπιτετραμμένοι μὴ δικάσωνται  
πυθόμενοι, αὐτοὶ τὴν θωιὴν διπλήσιν ὀφελόντων· δικάσασθω δὲ ὁ βολόμενος κατὰ  
ταυτά, καὶ τῆς θωιῆς τὸ ἥμισυ ἰσχέτω, καὶ τὴν δίκην οἱ δημιουργοὶ δόντ(ων) κατὰ τῶν  
ἐπιτετραμμένων κα(τὰ) ταυτά.

An inscription from fifth-century Chios (PEP *Chios*, 76 = Körner no. 62 [475-450 B.C.]) shows us an alternative end to the chain. The inscription as a whole is concerned with establishing the boundaries of an area known as Dophitis. In order to prevent the removal or destruction of boundary stones, the text imposes a fine of a hundred stateres and *atimia* on the perpetrator of such acts. We are not informed as to what legal procedure, if any, is to be brought against the criminal. The text simply establishes that the fine is to be collected by the *horophylakes*, who, in turn, are threatened with having to pay the fine themselves if they do not carry out their duty. The fine on the *horophylakes* is to be enforced by yet another group of officials, namely the «Fifteen». So far the pattern resembles the one attested in the Thasian inscriptions, but where we found some of the Thasian chains ending with the volunteer prosecutor, the Chians appear to have placed their trust in the gods as the ultimate instance of control. If the Fifteen fail to impose the penalty, they themselves are to be accursed, *eparei eston*<sup>18</sup>.

The curse as a legal instrument that aimed to ensure compliance by officials with the legislation of their communities is a widespread phenomenon both in the archaic and classical period. In some instances we find the curse used simply as a penalty additional to fines and/or *atimia*<sup>19</sup>, but in other instances, such as the Chian inscription, it appears that the curse connected with ultimate official responsibility operates as a parallel, but different, safety measure to that provided by the volunteer prosecutor in other *poleis*. I have to add that I have not yet surveyed in total the evidence for the use of the curse as a means of controlling the behaviour of *polis* officials, but even at this preliminary stage I shall venture the proposition that, in many legal contexts, the threat of prosecution by vigilant members of the community and the threat of the curse served fundamentally the same purpose. Each of the two provided its own answer to the question *Quis custodiet ipsos custodes*<sup>20</sup>?

<sup>18</sup> ἢν τίς τινα τῶν ὄρων τούτων ἢ ἐξέληι ἢ μεθέληι ἢ ἀφανέα ποιήσει ἐπ' ἀδικίῃ τῆς πόλεως ἑκατὸν σρατήρας ὀφειλέτω, κάτιμος ἔστω· πρηξάντων δ' ὀροφύλακες ἢν δὲ μὴ πρήξουσιν, αὐτοὶ ὀφειλόντων· πρηξάντων δ' οἱ πεντεκαίδεκα τὸς ὀροφύλακας ἢν δὲ μὴ πρήξουσιν, ἐπαρήι ἔστων.

<sup>19</sup> E.g. IPArk 2, lines 4-5 (cited in n. 13 above).

<sup>20</sup> A survey of the entire body of evidence for the curse as a measure of control imposed on *polis* officials, as well as the practice of holding officials accountable through

When considering the curse as an alternative to prosecutions brought by volunteer citizens it is no doubt safe to agree with Körner's assessment (1993, p. 233) that it was still taken seriously as a threat in the fifth century, and it is also likely that it may represent an older form of control and sanction imposed on high-ranking officials than the institution of the volunteer prosecutor. Thus, the latter may gradually have replaced the former in a number of communities during the classical period<sup>21</sup>. But can we go further than that? Is it reasonable to assume that the introduction of the volunteer prosecutor as the ultimate safety measure in a general process of ensuring official accountability is an indication that the community as a whole is developing in a democratic direction?

#### 4. HOW «DEMOCRATIC» WAS THE INSTITUTION OF THE VOLUNTEER PROSECUTOR?

As pointed out in section 2 above, the connection between the legal institution of the volunteer prosecutor and Greek (especially Athenian) democratic ideology has frequently been stressed in modern scholarship, and, as far as our sources are concerned, *Ath. Pol.* 9.1 is particularly important for establishing a link between the institution itself and a wider ideological framework in which it operated. Indeed, it is entirely reasonable to connect a gradual ideological development towards democracy with the decision to allow ordinary citizens to take legal action against officials in powerful positions. Here it might be objected that control of the *polis'* officials through application of the laws appears to have been a concern and a priority in all Greek *poleis* for which we have evidence, both in those that were democratic and in those that were not. However, as we have seen, there were several methods by which officials could be forced to operate in accordance with the laws, including most importantly control exercised by other officials and by the councils in each city.

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the agency of their successors in office, forms a central part of my wider research project.

<sup>21</sup> Teos is one example of a community in which this development may have taken place gradually over time (compare e.g. GHI 30 [C5] and Syll.<sup>3</sup> 578 [C2]).

Since alternative methods of control were indeed conceivable to the Greeks, the decision to invite any citizen who wished to take an active part in upholding and enforcing the laws may be interpreted by us in an ideological light, as it arguably was also by the author of the *Ath. Pol.*

On the other hand, if we go along with that interpretation, we face a problem. Firstly, there is at least one attestation of a *polis* with a non-democratic constitution, namely fifth-century Opous<sup>22</sup>, which invited the volunteer to act in connection with law-enforcement at the highest political level, that is, the protection of statutes passed by the legislative body of the *polis*. The famous Opountian law on the colonisation of Naupaktos (IG IX 1 [2], 3: 718 [C5]) contains a clause intended to prevent unauthorised alterations of the law. If anyone contravenes this clause, the archon is required, under the threat of *atimia* and confiscation of his property, to arrange for a court hearing within thirty days. Although we do not find the specific volunteer terminology used in this text, it is probably safe to assume, with Körner and others, that *ho enkaleimēnos* may be any Opountian citizen who wishes: there are no obvious restrictions stated in the text itself<sup>23</sup>. So although the institution of the volunteer prosecutor was indisputably a phenomenon central to the working of ancient Greek democracies in the classical period, the example from Opous indicates that the institution was not confined solely to that type of constitution.

Secondly, as a more general observation, the attempt to involve the entire citizen body in the task of enforcing the laws of the com-

<sup>22</sup> On the constitution of Opous see Pindar, *Ol.* 9.15 and Aristotle, *Politica*, 1287a5-8. See further Rhodes (1997, p. 147): «The law for the colony at Naupactus may be amended with the agreement of the *plethos* of the thousand at Opus and the *plethos* of the settlers in Naupactus: there is no sign of *probouleusis* from a council to an assembly, and despite the word *plethos* the figure of a thousand suggests a select body rather than one open to all citizens. Trial of offenders must be before a sizeable body, since there is to be a vote by ballot».

<sup>23</sup> Ὅσστις κα τὰ φεφαδεγότα διαφθείρει τέχνας καὶ μηχανᾶι καὶ μίαι, Ἡότι κα μὲ ἀνφοταίροις δοκέει Ἡοποντίον τε χιλίον πλέθαι καὶ Ναφπακτίον τὸν ἐπιφοίρον πλέθαι, ἄτιμον εἶμεν καὶ χρέματα παματοφαγεῖσται· τὸνκαλειμένοι τὰν δίκαν δόμεν τὸν ἀρχόν, ἐν τριάροντ' ἀμάραις δόμεν, αἱ κα τριάροντ' ἀμάραι λείπονται τὰς ἀρχᾶς· αἱ κα μὲ διδοῖ τὸι ἐνκαλειμένοι τὰν δίκαν, ἄτιμον εἶμεν καὶ χρέματα παματοφαγεῖσται, τὸ μέρος μετὰ φοικιατᾶν.

munity is not particularly democratic *per se*. Anyone familiar with the conditions prevailing in the former DDR will probably agree with the view that STASI, although it involved a huge part of civil society as potential informants, was anything but a democratic feature. Ancient Greek dictators and oligarchs, too, relied on all members of the community to inform on each other in order to achieve stability within the *polis*. Consider, for instance, the admonition attributed to Nikokles of Salamis by Isokrates in his pamphlet *Nikokles*, 53:

Do not keep silent if you see any who are disloyal to my rule, but expose them; and believe that those who aid in concealing crime deserve the same punishment as those who commit it.<sup>24</sup>

Nikokles' admonition, it is true, is more a threat than an invitation, more like a stick than a carrot. The main incentive for his subjects to act in accordance with his instruction appears to be the statement that people who fail to expose unlawful behaviour may, if detected in the act of withholding information, incur a penalty corresponding to that imposed on the criminals themselves.

That the method of the stick for involving ordinary members of the community in law enforcement was not a figment of Isokrates' imagination is suggested by an inscription from fourth-century Chios, PEP *Chios*, 1 = LSCG 116. The preamble of the law strongly suggests that the law was passed before Alexander the Great's reforms of the Chian constitution in 334 or 332<sup>25</sup>; the text thus belongs to the period when the constitution of Chios was an oligarchy. It is clear from the law that its enforcement depended in part on action by any member of the community who witnessed a breach of its stipulations. However, there is one important feature that distinguishes it from other laws which seek the active involvement of the citizen body in bringing transgressions to the attention of the authorities. The person who fails to lodge a denunciation, expressed with the verb *kateipein*, before the *basileis* will himself incur a penalty of five

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<sup>24</sup> μὴ κατασιωπήσατε, ἂν τινὰς ὁράτε περὶ τὴν ἀρχὴν τὴν ἐμὴν πονηροῦς ὄντας, ἀλλ' ἐξελέγχετε, καὶ νομίζετε τῆς αὐτῆς ζημίας ἀξίους εἶναι τοὺς συγκρύπτοντας τοῖς ἀμαρτάνουσιν.

<sup>25</sup> See Rhodes (1997, pp. 228-231).



*stateres*<sup>26</sup>. Thus, we can hardly classify this denunciator as a «volunteer»: his position as the initiator of a penal process resembles, rather, that of a *polis* official as we have observed them in the inscriptions from Tegea and Thasos discussed earlier. It may well be that it is possible to regard the use of a threat, rather than a reward, to involve ordinary members of the community in the process of law enforcement as a specifically non-democratic measure. So far I have failed to find any obvious parallels to this law. By contrast, the more conventional method of using the carrot to encourage potential informers to come forward is found in an inscription from fifth-century Thasos, Körner no. 70.

This text, according to some scholars, may be read in the context of the period of oligarchic rule in Thasos, although this point is still disputed. The enactment encourages information on planned revolutions against the Thasian government from all members of the community, including slaves, and in order to spur the informants into action, a considerable reward is offered in return for any information that turns out to be well-founded<sup>27</sup>.

So far we may conclude that efforts to involve ordinary citizens (and sometimes also non-citizens) in the process of law enforcement is not confined to democracies. On the other hand, there may be pronounced differences in the level of involvement expected from and, indeed, permitted to private citizens in the legal process itself. To return to my STASI parallel: although the aim of that organisation was to make ordinary people inform on each other, the informants certainly did not have the duty or, indeed, the privilege of participating actively in any legal actions following from their information. They would, in other words, have no control whatsoever over the

<sup>26</sup> [ἐπὶ Τ]ελλέος π[ρ]υτάν[ε]ος. βολῆς [γ]νώμη. [ἐν τ]οῖς ἄλσεσιν [μὴ ποιμ]αίνεν μηδὲ κοπρ[ε]όε[ιν] ἦν δὲ ποιμαίνη [ἢ ὕ]φορβῆ ἢ βοκολῆι. [ὁ ἰ]δὼν κατειπάτω πρ[ὸς] τὸς βασιλέας ἀγν[ώ]ως πρὸς τὸ θεῶ· τῶι δὲ π[οι]μαίνοντι ἢ ὕφορβέοντι ἢ βοκολέοντι ἢ [μ]ικτον ἴθυνα ἔστω κατὰ κτήνος ἕκαστον· ἦν δὲ κοπρεῶων ἀλίσκηται, πέντε στατήρας ὀφειλέτω ἀγνῶς πρὸς τὸ θεῶ· ἦν δὲ ὁ ἰδὼν μὴ κατεῖπει, πέντε στατήρας ὀφειλέτω ἱερ[ῶ]ς τῶι θεῶι· τ[αὐ]τ[α] γράψαι ἐν τοῖς ἄλσεσιν· σκεῦα ἐκ τῶ ἱερ[ῶ] μὴ ἔχ[ε]ρην τὰ ἱερά· [ἦν δ'] ἐ[χ]φέρη ἀρεστήριον ὀφείλ[ε]ν [τ]ὸν δὲ [ἰ]δόντα πρὸς τὸς βα[σ]ιλ[ε]ας κατειπέν· ἦν δ[ὲ] μὴ κατεῖπει πέντε στατήρας ὀφείλεν ἱερός τῶι θεῶι.

<sup>27</sup> Ὅς ἂν ἐπανάστασιν βουλευομένην ἐπὶ Θάσῳι κατεῖπει καὶ φανῆι ἐόντα ἀληθέα, χιλίος στατήρας ἐκ τῆς πόλεως ἰσχέτω· ἦν δὲ δόλος κατεῖπει, καὶ ἐλεύθερος ἔστω· ἥμ[ι] πλέος ἢ εἰς κατεῖπωσι, τριηκόσιοι κρινόντων δίκην δικάσαντες.

precise way in which their information would be used. Similarly, we shall have to decide, in relation to the Greek material, whether we are dealing with a process in which the informer's involvement continues right through the hearing before the court or whether his role ends with the act of lodging the information. This question presents a fundamental methodological problem related to procedural terminology, which was commented on by Hans Julius Wolff (1972) in the article referred to in section 1. It is of crucial importance for us to be aware of and, if possible, to map out variations in the use of procedural terms: a procedural designation attested in the context of two or more communities may in fact have covered different procedural realities and a different level of involvement by the volunteer informant, ranging from mere denunciation to the authorities to actual personal engagement as a prosecutor.

## 5. FALSE FRIENDS: LOCAL VARIATIONS IN PROCEDURAL TERMINOLOGY

In the inscriptions, the terminology indicating the role of the volunteer falls in two distinct groups. One group of procedural terms shows us conclusively that actual prosecution by the volunteer is envisaged: these are the verbs *hyperdikeisthai*, *krinesthai*, *dikazesthai*, *enkalein* or *enkaleisthai*, *graphesthai*, *katagorein*, *epexienai*, *egdikazesthai*, *euthynein*, *diokein* and *molein*. The active assistance rendered by the volunteer, particularly in third-party prosecutions, are designated by two further verbs indicating pleading, namely *syndikein* and *proistanai*. The verb *katiaraiein*, attested in an Elean context, is also conventionally translated as «to bring a legal action» and may be counted as belonging to this first group.

The second group is far more problematic. It consists of the following verbs, all of which contain as their core verbs meaning «showing» or «denouncing»: *endeiknyein*, *katadeiknyein*, *phainein*, *apophainein*, *imphanai*, *emphanizein*, *kateipein*, *eisangellein*, *prosangellein*, *katangellein*, *peuthein*, and *exagoreuein*. Finally, we have two attestations of *apagein*, clearly meaning arrest by the volunteer. Some of these terms are attested in Athenian procedural contexts: *endeixis*, *phasis*, *eisangelia* and *apagoge* all refer not only to the act

of denouncing unlawful behaviour but also to the involvement by the informant as prosecutor in the actual court hearing following from the information he has provided. The difficulty is that, when we find such terminology used in non-Athenian contexts, we cannot at all be sure that these procedural designations refer to the same procedural realities as they do at Athens. The inscriptions from Chios and Thasos, discussed in section 4 above and cited in notes 26 and 27 (PEP *Chios*, 1 = LSCG 116 and Körner no. 70), may serve to illustrate this problem.

In both of these texts the verbs used for the act of denunciation are *kateipein*, which in the Thasian inscription is combined with *phainein*. *Phainein*, as just mentioned, is known from Athenian procedural terminology, where *phasis* normally appears to have involved active pleading by the person who had lodged the information. However, neither the Thasian nor the Chian law specify the denunciator's active involvement in any legal process. What is the main issue in both is the procurement of information, and there is no indication as to how such denunciations are to be processed in a court of law, or by whom. To be sure, the Thasian law contains the condition that the reward is payable «if the information is true», which implies that its veracity is to be established through some form of legal procedure. However, an additional clause of the Thasian inscription may be taken to indicate that the informer was *not* expected to take an active part in any court procedure following from his information. It is envisaged that several individuals may have acted as denunciators, and it was left to the court to decide, in a separate procedure, who among them had the best claim to the reward promised in return for information.

A parallel to this clause can be found at Athens. In the wake of the denunciation (*menysis*) of the profanation of the Mysteries in 415 as described by Andokides in his speech *On the Mysteries*, 27-28, a host of people laid claim to the reward promised for any information on the affair. The rival claims to the reward was eventually decided through a *diadikasia* heard by the courts, and what is interesting is that none of the people who were rewarded appears to have taken an active role in the prosecutions following from the *menyseis*. If we go by this parallel, it would appear that the Thasian use of *phainein* does not necessarily imply a procedure in which the denunciator would be expected also to act as prosecutor.

The Thasian use of the verb *phainein*, then, constitutes the first warning against the assumption that there is an exact correspondence in meaning between Athenian procedural terminology and that used in other *poleis*. But it gets worse. If we accept that the verb *kateipein* in Körner no. 70 signifies the simple act of informing, without assuming the involvement of the denunciator in the actual prosecution, we have to contend with an instance of conflicting procedural terminology within Thasos itself, for in Körner no. 66, which like Körner no. 70 dates from the fifth century, *ho kateipon*, who has to pay a court deposit, is apparently not only expected but also required to follow up his denunciation with a court action<sup>28</sup>.

Similar problems arise in regard to the use of the terms *eisangelia* with its cognate verb *eisangellein* and *menysis* with its cognate *menyein*. An Arkesinian inscription, IG XII 7, 4 dating from the fourth or early third century, concerns a priestess who is rewarded for having lodged an *eisangelia* concerning the behaviour of certain women within the sanctuary<sup>29</sup>. The role of the female denunciator here suggests that *eisangelia* in this context denotes the simple act of providing information rather than an actual legal procedure as we know it from Athens. As far as the verb *menyein* is concerned, an inscription from third century Delphi suggests that here an act of *menysis* by a man and a woman actually led to a legal action in which at least the man (possibly also the woman) participated actively in the prosecution<sup>30</sup>. Again we are presented with a deviation

<sup>28</sup> καὶ ἔκτην κατ'ἀμφορέα ἕκα[στον ὀφελέτω ἱρὴν τῆι Ἀθηναίηι τῆι Πολιόχῳι καὶ τῶι Ἀπόλλωνι τῶι Πυθίῳι κ]αὶ τῶι κατειπόντι ἐτέρῃν· ἀπενγνάτω ὁ [κατειπὼν τὴν ἀπενγύην] παρὰ τριηκοσίοισιν κατάπερ τῶν βιαίων·

<sup>29</sup> [θε]ο[ί]· ἔδοξεν τῆι βουλῆι καὶ τῶι δήμῳι· Κυ[ ] ..... εἶπεν· Ἀπολλώνιος ἐπεστάτ[ε]ρ· ἐπειδὴ ἡ ἱερέα τῆς Δήμητρο[ς] τῆς δη[μ]οτε[λ]οῦς εἰσαγγέλλει πρὸς[ ] τοὺς πρ[ο]υτάνει[ς] περὶ τὸ ἱερὸν τῆς Δή[μ]ητρο[ς] ὅτι αἱ γυναικες εἰσιούσαι ... α ..... ἐν τῶι ἱερῶι καὶ ὅτι [εἰ ἔτι] τοῦ[τ]ο γένοιτο ἐν τῶι ἱερῶι [δεινὰ ἄ]ν [εἴη] Ἀρκεσινεῦσιν [ἀ]σε[β]οῦσιν οὕτως πρὸς τοὺς θεοὺς - - - - - εου - -

<sup>30</sup> FD III 2, 205 (273 B.C.): ἔδοξε τοῖς ἱερομνήμοσιν· ἐπειδὴ Κεφαλίῳν Μεγαρεῦς καὶ Βοῖδι[ο]ν Μεγαρική, μηνύσαντες τάληθῆ τῶι [θ]εῶι Διοπείθῳν Ἀθηναίον ἔχοντα τὰ ἱερά χρήματα τοῦ Ἀπόλλωνος [τοῦ Πυ]θίου τάλαντα ὀκτώ, καὶ ἐγδικασαμένου Κεφαλί[ωνος] καὶ Βοῖδίου ἐν τοῖς ἱερομνήμοσιν, καὶ [κ]αταγνόντων τῶν ἱερομνημόνων, καὶ ὄντος ἐν τῶι ζυγάστρωι Διοπείθου[ς] ὀφε[ί]λων τῶι θεῶι τάλαντα ὀκτώ, ἔδωκαν οἱ ἱερομνήμονες] Κεφαλίῳν καὶ Βοῖδ[ί]ῳι Μεγαρεῦσιν καὶ ἐκγό[νοις αὐτῶν] καὶ Οἴκιδι Ἀργείῳι προδικίαν καὶ ἀσφάλειαν ...

from Athenian usage in regard to the term *menyein*: at Athens the act does not seem to have involved prosecution by *ho menysas*, while in the Delphic inscription it did. A usage similar to the Delphic one may be attested in IK *Smyrna*, 573 in the oath to be taken by the Magnesians at Sipylos upon their admission as citizens of Smyrna <sup>31</sup>.

There are thus pronounced variations in the meaning of procedural terms that at first seem deceptively familiar to the legal historian who is used to working with Athenian material. When we are confronted with procedural verbs belonging to the second group listed at the beginning of this section, only the context provided by each of the inscriptions in which the volunteer is mentioned will allow us to establish exactly what his role was within the legal process as a whole. The next step in my current project is to produce a systematic overview of these procedural terms and their local usage, as far as the evidence of the inscriptions will permit.

## 6. VOLUNTEER PROSECUTORS IN A WIDER GREEK PERSPECTIVE

Such variations in the use of procedural terminology attested in the classical and Hellenistic inscriptions may suggest, in turn, that the volunteer as a participant at various stages and levels of the legal process is not to be interpreted as a legal institution that was developed in Athens and later directly copied, voluntarily or involuntarily, by *poleis* elsewhere in the Greek world. Rather, it appears to have been a widespread, if not universal, Greek phenomenon. The fact that we find the institution attested in the Peloponnese, Delphi and Opountian Lokris in the classical period, that is outside the sphere of direct Athenian influence, contributes further to that impression.

<sup>31</sup> IK *Smyrna*, 573 (245-243 B.C.): καὶ πολιτεύσομαι μεθ' ὁμοιοῦς ἀστασιάστως κατὰ τοὺς Σμυρναίων νόμους καὶ τὰ ψηφίσματα τοῦ δήμου καὶ συνδιατηρήσω τὴν τε αὐτονομίαν καὶ δημοκρατίαν καὶ τὰλλα τὰ ἐπικεχωρημένα Σμυρναίοις ὑπὸ τοῦ βασιλέως Σελεύκου μετὰ πάσης προθυμίας ἐμ παντὶ καιρῶι, καὶ οὔτε αὐτὸς ἀδικήσω αὐτῶν οὐθένα οὔτε ἄλλωι ἐπιτρέψω οὐθενὶ κατὰ δύναμιν τὴν ἐμὴν καὶ ἐάν τινα αἰσθάνωμαι ἐπιβουλεύοντα τῆι πόλει ἢ τοῖς χωρίοις τοῖς τῆς πόλεως, ἢ τὴν δημοκρατίαν ἢ τὴν ἰσονομίαν καταλύοντα, μὴγύσω τῶι δήμωι τῶι Σμυρναίων καὶ βοιθηθῶ ἀγωνιζόμενος μετὰ πάσης φιλοτιμίας, καὶ οὐκ ἐγκαταλείψω κατὰ δύναμιν τὴν ἐμαυτοῦ·

On the other hand it is also important to note that, in spite of local variations, there are certain structural similarities in regard to the basic functions of the volunteer that appear in *poleis* across a large part of the Greek world. The use of the volunteer prosecutor as a participant in legal actions directed against the *polis'* officials is attested in at least 30 inscriptions from 24 different *poleis*, ranging from Beroia, Thasos and Lampsakos in the north to Mylasa, Astypalaia and Hierapytna in the south, and from the Aitolian *koinon* in the west to Magnesia on the Maiander in the east<sup>32</sup>. Only fourteen of these *poleis* were under direct Athenian domination in the fifth and fourth centuries B.C., so the assumption that this method of holding officials to account was spread gradually from Athens to the rest of the Greek world is not particularly plausible. I think it is more likely that the use of the volunteer prosecutor in matters concerning the conduct of officials may be regarded as a common Greek procedural principle, although the concrete manifestation of it within different *poleis* at different times may take very different forms. Equally significant is the considerable role played by volunteers in procedures that relate directly to sanctuaries and the responsibilities of the priests who are in charge of cult practices. Again the volunteer in this capacity is attested in numerous *poleis* across those parts of the Greek world for which we have classical and early Hellenistic evidence.

A further observation is that, even in those regions where we know that the Athenians exercised considerable influence on the administration of justice within each of their subject *poleis*, the evidence suggests that the institution of the volunteer prosecutor was *not* just an automatic replication of a primarily Athenian phenomenon. Even if it could be demonstrated that the role of the volunteer as we find him operating in, say, fifth-century Thasos and Erythrai was defined largely along Athenian lines, we find some important variations on the general theme that indicate, at the very least, significant local adaptations of the institution as such. One type of variation concerns the way in which different communities dealt with the two

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<sup>32</sup> *Aigiale*, *Arkesine*, *Astypalaia*, Beroia, Delphi, Demetrias, Elis, Epidauros, *Erythrai* (Asia Minor), Gortyn, Hierapytna, *Iasos*, *Ilion*, *Ioulis*, Itanos, *Lampsakos*, Lato, *Lindos*, Magnesia (Mai), *Mylasa*, *Nisyros*, *Priene*, *Teos*, *Thasos*. The *poleis* in italic type-face were under Athenian dominance during C5 and/or C4 B.C.

most important problems that were connected with the role of the volunteer prosecutor. First, the need to strike a balance between providing incentives for the citizens to volunteer as prosecutors and the desire to prevent the damaging effects of groundless prosecutions. Second, the need to prevent volunteers from dropping their prosecutions in return for a bribe. The Athenian response to these two problems is well known: the withdrawal of a public action was punished with a fine of a thousand drachmai and partial *atimia*; and the prosecutor who failed to gain 20% of the votes incurred a similar penalty. If we turn our attention to the *poleis* of Miletos, Erythrai, Thasos and Delos, we can see very clearly that these communities, too, recognised the same problems as the Athenians, but that each of them proposed its own solution.

If we turn first to Miletos, we find a regulation that seems pleasantly familiar: if *ho diokon* fails to receive a certain proportion of the votes, he incurs a penalty, but here the similarity ends<sup>33</sup>. Where the Athenian prosecutor faced a fine of a fixed sum payable to the public treasury, his Milesian counterpart had to pay half of whatever he had entered as the *timema* on the writ. Another notable departure from the Athenian regulation is that the person at the receiving end of the action is entitled to half of the penalty, presumably as compensation. While it is highly likely that the penalty imposed on the prosecutor who failed to gain a specified number of votes had been adopted directly from Athens, the Milesians certainly added their own local touch: I have not found evidence for compensation payable to the defendant in any other source so far. But as far as making the prosecutor's penalty depend on the size of the *timema* is concerned the Milesians may have been inspired by the regulations applying at Erythrai, just around the corner, as it were.

In *I.v. Erythrai*, 2 (C5) we are not dealing with a penalty for gaining less than a certain proportion of the votes, but for abandoning a legal action. Here the defaulting prosecutor is to pay, not a fixed fine, but «whatever he would have obtained if he had won the ac-

<sup>33</sup> *I.Milet*, I 3, 37 (223/222): ἐὰν δὲ ὁ διώκων μὴ μετ[αλάβ]ῃ [τὸ πέμπτον μέρος] τ[ῶ]ν ψήφων, ἀποτεισάτω τὸ ἥμισυ το[ῦ] τιμ[ή]ματος... τὸ μὲν τῆς πόλεως, τὸ δὲ τοῦ ιδιώτου. While the restoration τὸ πέμπτον μέρος is entirely plausible, it is not at all certain, and the editors of the text may have been guided primarily by the general similarity of the regulation to the rules that we know applied at Athens.

tion», that is half of the *timema* he had added to his writ<sup>34</sup>. The intention of this clause was probably to reduce the temptation for the prosecutor to drop the action in return for a bribe, and that on a progressive scale. The higher the *timema* proposed as a penalty for the defendant, the higher the bribe a defendant would have to pay in order to compensate the defaulting prosecutor for the fine. Compared to the Athenian «flat-rate» sanctions, the Erythraian one comes across as a good deal more ingenious and imaginative. On that basis I also think it would be wrong to interpret the Erythraian institution of the volunteer prosecutor as just another Athenian procedural import.

If we move to the opposite corner of the Athenian empire, to fifth century Thasos, we find yet another solution to the problem in Körner no. 60 (cited in n. 28). Here we find that the volunteer prosecutor (*kateipon* in a pleading capacity) is to pay a deposit (*apengyato*), which he will presumably forfeit if he fails to see the action through. As Körner points out, this deposit resembles the Athenian *parastasis* that was payable in a certain range of public actions; yet the terminology used at Thasos is different, and, if Körner is right in his identification of «The 300», it was payable directly to the court. While, regrettably, we do not know the size of the Thasian deposit, we have a parallel example from independent Delos of a deposit which may have been quite substantial, namely the entire *misthos* payable to the court<sup>35</sup>. What is interesting about this deposit is that it appears to have been refunded to the prosecutor *only* if the defendant was convicted. Thus, the deposit will have served a dual purpose. It would have deterred both the prosecutor with a genuine case from withdrawing his action *and* the prosecutor, who might be tempted by the reward, from chancing it all on a prosecution that he was not sure he could win. In the Delos example we are, again, dealing with an institution that shows some similarities with the Athenian one, but also some highly significant differences.

<sup>34</sup> ἦν δ' ἔκχωρηι ὁ διώξας, ὀφελέτω ὅπερ οἱ νικῶντι γίνεται, καὶ τοῦτο διώξιν ἔναι κατὰ ταῦτά.

<sup>35</sup> ID 1-2, 509 (Delos, 230-220?): ... καὶ ἐξέστω εἰσαγγέλλειν τῷ βουλομένῳ τῶμ πολιτῶν πρὸς τοὺς ἀγορανόμους· οἱ δὲ ἀγορανόμοι εἰσαγγόντων τὰς εἰσαγγελίας ταύτα[ι]ς εἰς τοὺς τριάκοντα καὶ ἓνα ἐν τῷ μηνὶ ἐν ᾧ ἂν εἰσαγγελθεῖ· τὸν δὲ μισθὸν τῷ δικαστηρίῳ παραβαλλέσθω ὁ εἰσαγγείλας· ἐὰν δὲ ὀφλει, τὸν τε μισθὸν ἀποτεισάτω τῷ παραβαλομένῳ καὶ τοῦ γεγραμμένου ἐπιτιμίου τὰ δύο μέρη, τὸ δὲ τρίτον μέρος τῷ (δ)ημοσίῳ ...



## 7. VOLUNTEER PROSECUTORS OUTSIDE ATHENS: SOME PRELIMINARY CONCLUSIONS

The variations in the roles and functions of the volunteer prosecutors observable in the material *as well as* the functional and structural similarities detectable in the institution in *poleis* across a considerable section of the Greek world bring us closer to an answer to some of Wolff's questions that I referred to at the beginning of this article. I think that, on the basis of the considerable local variations on a common theme as well as the geographical spread of the evidence, we can rule out the proposition that the principle of involving ordinary citizens as active participants in penal proceedings was an essentially Athenian phenomenon that was spread through the Aegean during the fifth and fourth centuries. This does of course not mean that we should rule out heavy direct Athenian influence on the working of the institution in some *poleis* within the Athenian sphere of power in the classical period. Just as there seems to be a growing consensus among modern scholars that democracy was not a specifically Athenian invention, some democracies were undeniably introduced within the Athenian empire as copies of and controlled by the Athenian *demos*.

How the institution of the volunteer prosecutor developed and spread throughout the Greek world is more difficult to answer. The similarities in the basic functions of the institution suggest that we are not dealing with spontaneous and independent developments in different *poleis* that took place during the archaic and classical periods. I would suggest that, rather than looking for a single place of origin, we may find that the development as well as the spread of the institution came about as a result of continuous legal interaction between the Greek members of different *poleis*, particularly in the context of the administration of justice as it took place within the large Panhellenic sanctuaries such as Delphi and Olympia, both of which provide us with some quite early attestations of volunteer prosecutors. However, other types of inter-*polis* relationships, from trade agreements to alliances, may also have been essential for the proliferation of the institution.

If we assume that voluntary adoption of the principle of volunteer prosecution was the main means by which it was spread rather than force and domination exercised by a single power, we may in

turn move towards another conclusion that concerns the question of the unity of Greek law. Voluntary adoption of a procedural instrument of law enforcement across a wide range of very different *poleis* with very different constitutions suggests to me the existence of a set of certain underlying procedural principles that the Greeks applied in the context of penal actions, which in turn made participation by the volunteer prosecutor desirable, if not essential.

In this respect it is important to note that the Greeks did not perceive the volunteer prosecutor as the only means of enforcing penal legislation and holding officials accountable. They clearly conceived of alternative means of achieving these aims in the form of the curses on officials as in Chios, and of prosecution by other officials, as we observed it in Thasos. This means that the adoption of the volunteer prosecutor as an important agent in the penal process must in some cases at least have been the result of a conscious decision on the part of the community concerned, not just a default option. As such it does give us one of the keys to understanding some underlying common Greek principles of justice. Whether these principles were also in some ways connected with the political principles that underpinned the democratic constitutions in the Greek world is a difficult question to answer. For the time being I shall go no further than to conclude that while there could be *hoi boulomenoi* without democracy, I think the Greeks would have found it impossible to think of a democracy without *hoi boulomenoi*.

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