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THE ROLE OF THE PROSECUTOR AND ATHENIAN LEGAL PROCEDURE (Dem. 21.10)

In the opening chapters of his speech against Meidias, Demosthenes calls for two laws to be read to the court; the first (21.8) has to do with the implementation of *probolai* at a meeting of the *ekklesia* in the precinct of Dionysos regarding offences concerning the festival (*i.e.*, the city Dionysia) [1]. The second law concerns a particular offence which, if committed during one of the festivals named in the law, could be remedied with a *probole*. Results culled from investigation of the second law – if genuine – provide important information regarding the role of the prosecutor and the character of Athenian legal procedure. *Probole* is a legal remedy that can initiate a trial in a *dikasterion*; most scholars now believe that the entire process, from the initiatory stage through the subsequent (but not required) courtroom prosecution, should properly be called *probole*; I adhere to that view and shall not argue it anew here, although certain portions

[1] The following works will be cited by abbreviation: Drerup 1898 = E. Drerup, *Über die bei den attischen Rednern eingelegten Urkunden*, «Jahrbücher für classische Philologie», Suppl. 24, pp. 221-366; Harris 1989 = E. Harris, *Demosthenes' Speech against Meidias*, «HSCPh» 92, pp. 117-136; Harris 1992 = E. Harris, *Review of MacDowell 1990*, «CPh» 87, pp. 71-80; Harrison 1971 = A.R.W. Harrison, *The Law of Athens*, II, Oxford; Humbert 1959 = *Contre Midias*, in J. Humbert - L. Gernet (éds.), *Démosthène Plaidoyers Politiques*, t. 2, Paris; Lipsius 1905 = J.H. Lipsius, *Das attische Recht und Rechtsverfahren*, I, Leipzig; MacDowell 1990 = D.M. MacDowell, *Demosthenes Against Meidias (Oration 21)*, Oxford; Morrow 1960 = G.R. Morrow, *Plato's Cretan City*, Princeton; Weil 1877 = H. Weil, *Les Plaidoyers Politiques de Démosthène*, I, Paris.

of the following discussion (*e.g.*, about the case of Menippos against Euandros in Dem. 21.175-77) may be regarded as additional support for it [2].

The law cited at Dem. 21.10 runs as follows; the text and translation is that of MacDowell 1990:

> Εὐήγορος εἶπεν· ὅταν ἡ πομπὴ ᾖ τῷ Διονύσῳ ἐν Πειραιεῖ καὶ οἱ κωμῳδοὶ καὶ οἱ τραγῳδοί, καὶ ἐπὶ Ληναίῳ ⟨ἡ⟩ πομπὴ καὶ οἱ τραγῳδοὶ καὶ οἱ κωμῳδοί, καὶ τοῖς ἐν ἄστει Διονυσίοις ἡ πομπὴ καὶ οἱ παῖδες καὶ ὁ κῶμος καὶ οἱ κωμῳδοὶ καὶ οἱ τραγῳδοί, καὶ Θαργηλίων τῇ πομπῇ καὶ τῷ ἀγῶνι, μὴ ἐξεῖναι μήτε ἐνεχυράσαι μήτε λαμβάνειν ἕτερον ἑτέρου, μηδὲ τῶν ὑπερημέρων, ἐν ταύταις ταῖς ἡμέραις. ἐὰν δέ τις τούτων τι παραβαίνῃ, ὑπόδικος ἔστω τῷ παθόντι, καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ τῇ ἐν Διονύσου ὡς ἀδικοῦντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται.
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> Euegoros proposed: when the procession takes place for Dionysos in Peiraieus and the comedies and the tragedies, and the procession at the Lenaion and the tragedies and the comedies, and at the city Dionysia the procession and the boys and the revel and the comedies and the tragedies, and at the procession and the contest of the Thargelia, it is not to be permitted to distrain or to seize another thing from another person, not even from overdue debtors, during those days. If anyone transgresses any of this, let him be liable to prosecution by the victim, and let there be *probolai* of him in the Ekklesia in the precinct of Dionysos as an offender, in the same way as is laid down about the other offenders.

Scholars have generally thought that a sound tradition lies behind the law and I agree with that assessment in general [3]. In an appendix to this essay, I take up three issues that are relevant to the question

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[2] Most recently, the hegemonic view has been articulated by MacDowell 1990, p. 16, and G. Rowe, *The Charge against Meidias*, «Hermes» 122 (1994), pp. 55-63 (with full bibliographic citation of nineteenth century proponents of one view and the other). The *opinio minor* is articulated by Harris 1989, pp. 130-131, and 1992, pp. 73-74. For an assessment of the arguments on both sides of the question, see my forthcoming study of prosecutors and Athenian legal procedure.

[3] That the law rests on a sound tradition is the opinion of Lipsius 1905, p. 212 n. 118; Humbert 1959, p. 23 n. 1; and MacDowell 1990, p. 230; it is defended by Foucart, *Rev. Phil.* 1877, pp. 168-181; Weil 1877, p. 118; and Drerup 1898, pp. 300-303. The spuriousness of the law is argued by A. Westermann, *De litis instrumentis, quae exstant in Demosthenis oratione in Midiam, commentatio*, Leipzig 1844, p. 21.

of the law's authenticity but need not concern us here; a further problematic detail, relevant to that question and apparently unnoticed before, will be taken up shortly.

A kernel of the law is apparent from Demosthenes' summation of the two laws (those cited in cc. 8 and 10) in the following section [4]:

> Ἐνθυμεῖσθε, ὦ ἄνδρες δικασταί, ὅτι ἐν τῷ προτέρῳ νόμῳ κατὰ τῶν περὶ τὴν ἑορτὴν ἀδικούντων οὔσης τῆς προβολῆς, ἐν τούτῳ καὶ κατὰ τῶν τοὺς ὑπερημέρους εἰσπραττόντων ἢ καὶ ἄλλ᾽ ὁτιοῦν τινος λαμβανόντων ἢ βιαζομένων ἐποιήσατε τὰς προβολάς. οὐ γὰρ ὅπως τὸ σῶμ᾽ ὑβρίζεσθαί τινος ἐν ταύταις ταῖς ἡμέραις, ἢ τὴν παρασκευὴν ἣν ἂν ἐκ τῶν ἰδίων πορίσαιτό τις εἰς λειτουργίαν, ᾤεσθε χρῆναι, ἀλλὰ καὶ τὰ δίκῃ καὶ ψήφῳ τῶν ἑλόντων γιγνόμενα τῶν ἑαλωκότων καὶ κεκτημένων ἐξ ἀρχῆς τὴν γοῦν ἑορτὴν ἀπεδώκατε εἶναι.
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> Notice, men of the jury, that, whereas the previous law [21.8] specified *probole* against those committing offences concerning the festival, *in this one* [21.10] *you created probolai also against those exacting overdue payments or taking anything else from a person or using violence*. So far from thinking it right that insolent treatment should be inflicted during those days on anyone's person or on the preparations made by anyone out of his own resources for a liturgy, you actually decided to allow property belonging to successful prosecutors by vote of the jury to remain in the hands of the original owners who have lost their cases, at least for the duration of the festival.

The summation is no doubt tendentious (note the mention of the victimized liturgist – Demosthenes has enucleated the law cited in c. 8 so as to depict his own case); nonetheless, it is clear that the law cited at 21.10 forbade violent acts against debtors during festivals. That Demosthenes at the end of the summation focuses on one particular type of debtor, viz., the one who owes a payment to a successful prosecutor, surely looks ahead to the case of Menippos vs. Euandros which is reported later in the oration (175-177) and which provides important information on penalty protocols in *probole*. Before I turn to consideration of that case, however, the problematic

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[4] MacDowell's 1990 text with translation slightly modified (my italics); see A. Chaniotis in E. Harris - L. Rubenstein, *The Law and the Courts in Ancient Greece*, London 2004, for the meaning of the two verbs used in the expression τὰ … *γιγνόμενα* τῶν ἑαλωκότων καὶ *κεκτημένων*.

detail of the law mentioned earlier must be examined since it is directly related to the role of the prosecutor and the Menippos/Euandros episode.

After declaring distraining and seizure against debtors during festivals to be unlawful, the law (21.10) continues: ἐὰν δέ τις τούτων τι παραβαίνῃ, *ὑπόδικος ἔστω τῷ παθόντι, καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ* τῇ ἐν Διονύσου ὡς ἀδικοῦντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται («If anyone transgresses any of this, *let him be liable to prosecution by the victim, and let there be probolai of him in the Ekklesia* in the precinct of Dionysos as an offender, in the same way as is laid down about other offenders») [5]. Few scholars have commented on the italicized portion; MacDowell, however, interprets it in this way, that «the victim may bring a private case (δίκη) claiming compensation or damages» and that προβολαί are «distinct from ὑπόδικος τῷ παθόντι: a *probole* was a public accusation which could be brought by any citizen, not merely by the victim» [6]. This is difficult: it is odd for a law to offer more than one procedure for the same offence; if there were an alternative remedy, a different law would provide it [7]. That fundamental objection, coupled with ambiguities of syntax, suggests the possibility of other interpretations.

Ambiguities: first, if MacDowell's interpretation were correct, we might expect ἤ rather than καί as the connective between τῷ παθόντι and προβολαί; secondly, the dative τῷ παθόντι is not a «dative of agent», but rather a dative of advantage or interest (*i.e.*, «the creditor is liable to prosecution for the advantage [or "in the interest"] of the victim») – whether the victim is, additionally, the agent or not is a matter of interpretation [8]; thirdly, I note that the law does not say

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[5] MacDowell's 1990 text and translation; my italics.

[6] MacDowell 1990, p. 235. MacDowell seems to contradict his own interpretation of the two clauses when he treats (1990, p. 395) the trial at which Menippos won compensation as a *probole*.

[7] See M.H. Hansen, *Eisangelia in Athens: A Reply*, «JHS» 100 (1980), p. 94 and n. 10.

[8] R. Kühner - B. Gerth, *Ausführliche Grammatik der Griechischen Sprache*, II.1, Berlin, 1898, pp. 417-420 (nr. 423.17) and 422-423 (nr. 423.18c); in the latter section, the authors treat the dative with passive expressions which are «apparently» (*scheinbar*) used with the same meaning as ὑπό plus the genitive; they continue: «Er bezeichnet auch hier die Person, in deren Interesse eine Handlung vollzogen wird; dass dies zugleich

explicitly who is to bring a *probole* – and I further note that the law does not explicitly provide a remedy for the victim. Accordingly, I suggest two possible interpretations regarding *probolai* for the kind of offences mentioned in Dem. 21.10. According to the first, *probolai* were to be brought by the victim «for his own advantage» or «in his interest»; in the event that the victim's leg (or arm, nose, or neck, etc.) had been broken when the creditor distrained upon him, then of course a brother-in-law might bring the *probole* for him. According to the second interpretation, *probolai* were to be brought by a volunteer «for the advantage» or «in the interest» of the victim. In each case, there is but one remedy and the victim might receive compensation; nevertheless, such a *probole* was a public remedy – which is extraordinary.

The *cruces* of the problem are whether the victim in Dem. 21.10 could claim compensation or damages from the creditor who is ὑπόδικος τῷ παθόντι (whether the victim himself brought the *probole* or a volunteer brought it for him) and if so, whether that transaction would render the remedy a private one. MacDowell assumes a positive answer for both questions and also assumes two remedies are involved, a *dike* and a *probole*. There are no grounds for those assumptions. For the reasons that I offered in the preceding paragraph (that laws usually if not always provide one remedy for the same offence, and the ambiguities of syntax that support other interpretations), I have maintained that there is but one remedy provided in the law and that that remedy is a public one, *probole*. If either of my interpretations is correct (either the victim brings the case or a volunteer does so for him), then a conventional understanding of public actions must be altered: an award to a victim is not to be restricted to private remedies; consequently, either Athenian legal procedure is more fluid than is usually thought, or else the offence of distraining upon a debtor during a festival was considered so heinous that the law made an exception in this instance and permitted compensation for the victim. The phrase ὑπόδικος τῷ παθόντι requires further investigation.

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die die Handlung hervorrufende Person selbst ist, ist formell nicht angedeutet». It remains possible, then, that the dative might be simply one of advantage or interest.

ὑπόδικος τῷ παθόντι

While the adjective ὑπόδικος appears not infrequently in the orators [9], the phrase ὑπόδικος τῷ παθόντι elsewhere appears in that corpus only at Isokr. 20.2. There the speaker is considering different remedies for different kinds of assault; he has first pointed out how carefully the lawgivers have composed the laws that offer protection to the body; only in the case of *graphai* and *dikai* for offences to the body did they allow exemption from court fees (*parakatabolai*) so that everyone might have the opportunity to pursue the wrong in court. He continues: «Furthermore, while [in this alone] of the other charges is the doer liable to prosecution for the victim's advantage (Ἔπειτα τῶν μὲν ἄλλων ἐγκλημάτων αὐτῷ τῷ παθόντι μόνον ὁ δράσας ὑπόδικός ἐστιν), yet in the case of *hybris*, as it is a matter of community concern, anyone of the citizens who volunteers is permitted to bring an indictment before the *thesmothetai* and come before you». Here, *context* clearly reveals, by precise contrast with the voluntary prosecutor of the *graphe hybreos*, that the agent of assault in a *dike aikeias* is liable for prosecution by the victim and for the victim's benefit. Is this always the case? Does the dative of the person following ὑπόδικος always imply agency? An examination of variant forms used in forensic context in Plato's *Nomoi* in which the offender is ὑπόδικος τῷ ἐθέλοντι instead of ὑπόδικος τῷ παθόντι is instructive.

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[9] The adjective appears 24 times in the corpus of the ten orators (14 times in Demosthenes) but only twice with a dative (Dem. 21.10 and Isokr. 20.2); commonly the adjective appears with a genitive of the charge (X is liable to a prosecution for Y offence) and most frequently the charge is the giving of false testimony (10 times). Plato uses the term 13 times in the *Nomoi*, and some of these instances are examined above. The adjective is rare in fourth century inscriptions (omitting restorations): IG II^2 1241, 39 (a phratry lease in which the renter is ὑπόδικος if he does x, y, or z) and 2492, 9 (deme lease: ἐὰν δέ τις εἴπει ἢ ἐπιψηφίσει παρὰ τάσδε τὰς σ-/υνθήκας, πρὶν τὰ ἔτη ἐξελθεῖν τὰ τετταράκοντα, εἶν-/αι ὑπόδικον τοῖς μισθωταῖς τῆς βλάβης); the adjective makes an interesting appearance in the first Salaminian arbitration decree of 363/362: *Agora*, 19 L 4a.95-97: … ἐὰν δέ τις εἴπει ἢ ἄρχων ἐπιψηφίσει τούτων τι καταλ[ῦ]-/[σ]αι ἢ τρέψει ποι ἄλλοσε τὸ ἀργύριον, ὑπεύθυνον εἶναι τῶι γένει ἅπαντι καὶ τοῖς ἱερεῦσι κατὰ ταὐτὰ καὶ ἰδίαι ὑπό-/δικον καὶ τῶι βουλομένωι Σαλαμινίων. In this last case, I presume that if any volunteer won an award of damages (cf. IG II^2 2492) «privately», *i.e.*, on his own initiative, he would hand it over to the *genos*; these cases (*diadikasiai*) would be heard by the *basileus* (*AP* 57.2).

Before proceeding further, I should say that in using examples from Plato's treatise, I am not suggesting that the personae and procedures of his fictitious Cretan city can be a paradigm for assumed Athenian counterparts; rather, observation of his idiom might be heuristic and suggestive of ways to understand the language of the law that has been inserted into Demosthenes' text. With that caveat in mind, I first note that Plato's ὁ ἐθέλων resembles ὁ βουλόμενος who also appears in his *Nomoi*; both characters function in ways similar but not identical to the voluntary prosecutor in Athens [10]. Oddly, from the perspective of a standard view of Athenian procedure according to which the volunteer prosecutor does *not* receive compensation for the injuries of a victim (as, *e.g.*, in a *graphe hybreos*), Plato's ὁ ἐθέλων and ὁ βουλόμενος sometimes *do* win damages that are targeted for the victim; and sometimes damages are entirely out of the question. I note the following examples:

(1) *Nomoi*, 868D, 868E, and 869A: Each of the three offences mentioned in these passages concerns a family member who in a fit of rage has killed another (a father or mother has killed a child, a husband or wife has killed the other, a brother or sister has killed a sibling): if any of the killers should return after undergoing purification and three years of exile and subsequently disobey the prohibitions against sharing the family hearth and taking part in the family's common ritual, then ὑπόδικος ἀσεβείας γιγνέσθω τῷ ἐθέλοντι [11].

(2) *Nomoi*, 932d: «If a parent who is maltreated is unable to report [the offence], a free man upon learning [of it] is to report the matter to the magistrates or else he is to be [marked as] base and ὑπόδικος τῷ ἐθέλοντι βλάβης (ἐὰν δέ τις ἀδυνατῇ κακούμενος φρά-

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[10] See Morrow 1960, pp. 274-278; on p. 276 n. 80, he virtually equates the expressions γραφέσθω ὁ βουλόμενος and ὑπόδικος ἔστω τῷ ἐθέλοντι. The term ὁ ἐθέλων was not invented by Plato; ὁ ἐθέλων appears as a prosecutor in numerous inscriptions outside Attika (*e.g.* in Thasos: IG XII 8, 267, 16 and XII Suppl. 348, 10). See L. Rubinstein, *Volunteer Prosecutors in the Greek World*, «Dike» 6 (2003), pp. 87-113.

[11] The «crucial» datives for the three cases are as follows. At 868d: ὁ δὲ ἀσεβῶν τε περὶ ταῦτα καὶ ἀπειθῶν ὑπόδικος ἀσεβείας γιγνέσθω τῷ ἐθέλοντι. At 868e: ἀπειθῶν δὲ ὁ γεννήτωρ ἢ ὁ γεννηθεὶς ἀσεβείας αὖ ὑπόδικος γιγνέσθω τῷ ἐθέλοντι. At 869a: – ἐὰν δέ τις ἀπειθῇ, τῷ τῆς περὶ ταῦτα ἀσεβείας εἰρημένῳ νόμῳ ὑπόδικος ὀρθῶς ἂν γίγνοιτο μετὰ δίκης. The dative in the last instance is different; if τῷ … νόμῳ is not attached to the verb ἀπειθῇ (thereby leaving ὑπόδικος «absolute»), then τῷ … νόμῳ may be a «dative of judgment» («he is ὑπόδικος in the view of the law, etc.»).

ζειν, ὁ πυθόμενος τῶν ἐλευθέρων ἐξαγγελλέτω τοὶς ἄρχουσιν ἢ κακὸς ἔστω καὶ ὑπόδικος τῷ ἐθέλοντι βλάβης)».

(3) *Nomoi*, 846b: «If any of the magistrates is thought to judge a penalty without fair-mindedness, he is to be liable to the injured party for twice the amount; and ὁ βουλόμενος is to bring the wrongdoings of the magistrates in turn into the public courts for each of the charges (ἐὰν δέ τις τῶν ἀρχόντων δοκῇ μετ᾽ἀδίκου γνώμης κρίνειν τὰς ζημίας, τῶν διπλασίων ὑπόδικος ἔστω τῷ βλαφθέντι· τὰ δὲ αὖ τῶν ἀρχόντων ἀδικήματα εἰς τὰ κοινὰ δικαστήρια ἐπανάγειν τὸν βουλόμενον ἑκάστων τῶν ἐγκλημάτων)».

Clearly ὁ ἐθέλων in each of the three paired cases listed under no. 1 is a volunteer prosecutor and it is difficult to render ὑπόδικος ἀσεβείας γιγνέσθω τῷ ἐθέλοντι as «the offender is to be liable to a prosecution for *asebeia* for the advantage [or "in the interest"] of the volunteer prosecutor» – the penalty for *asebeia* in Plato's Cretan city is imprisonment of one sort or another and how is that a benefit to the voluntary prosecutor [12]? On the other hand, the penalty *is* advantageous to the victimized family and serves a private rather than communal interest since the offending kinsman, if convicted, will be kept from hearth and home of kin and from the concomitant polluting of them (he does not pollute the community since he is purified – it is the special nature of his former offence, the killing in anger of a family member, that makes him specifically a pollutant of his family). Concomitantly, it is clear that in each case the volunteer prosecutor is being used as a substitute *kyrios* since the victims – the family members who are visited by the killer – are either too vulnerable to pollution to enter court (and so be under the same roof as the kin-killer) or else legally incompetent to do so. In these cases, then, there is a special reason for the requirement that the lawbreaker be ὑπόδικος … τῷ ἐθέλοντι. The dative signifies the agency of the prosecutor only «by accident»; insofar as ὁ ἐθέλων is a substitute for a family member, the prosecution is «in his interest».

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[12] For the «honorable atheist», the penalty is confinement to a «house of correction» (*sophronisterion*) for a minimum of five years but death upon a second conviction (*Nomoi*, 909a); for exploiting the piety of others for his own profit, the penalty is solitary confinement for life (*Nomoi*, 908a)

In the instance cited under nr. 2, ὁ ἐθέλων is again a voluntary prosecutor. Here again it is difficult to understand how the offender could be liable to trial for damages «for the advantage [or "in the interest"] of the prosecutor (ὑπόδικος τῷ ἐθέλοντι βλάβης)». The damages are surely awarded to the parent who has been maltreated and not to the prosecutor; the latter steps in to represent the parent who is unable to make a report. This is not said in Plato's law, but certainly it must be the case. Indeed, it is tempting to see ὁ ἐθέλων here acting as a surrogate family member, just as in the cases cited under nr. 1; the offender in nr. 2 is liable for damages «in the interest» of the prosecutor (acting as *kyrios*, so to speak, of the victim) [13]. The surrogate activity of the prosecutor is self-evident in nr. 3, where the magistrate is liable to prosecution for the advantage of the injured party (the man who received an unfair verdict), and ὁ βουλόμενος is to bring the case. The third case explicitly conveys what is implicit in the other cases: that the offender (the magistrate who has imposed unfair penalties) is liable to prosecution for the advantage [or «in the interest»] of the injured party (ὑπόδικος ἔστω τῷ βλαφθέντι), in this particular instance, for twice the amount of the unfair penalty, but *a volunteer will bring the cases* (τὰ δὲ αὖ τῶν ἀρχόντων ἀδικήματα εἰς τὰ κοινὰ δικαστήρια ἐπανάγειν τὸν βουλόμενον ἑκάστων τῶν ἐγκλημάτων) [14]. Here, ὑπόδικος ἔστω τῷ βλαφθέντι does not imply that the injured party brings the case; ὁ βουλόμενος does it for him [15].

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[13] ὁ ἐθέλων in the *Nomoi* often appears as a surrogate for the victim or for kinsmen who fail to carry out their obligations rather than as a representative of the public domain: thus, in addition to the instances cited above, at 871b, 878d, and 955a2; but he is a representative of public interests at 907e, 909c, and 955a6. ὁ βουλόμενος, on the other hand, but for his exceptional activity at 846b (see discussion above), always represents public interests in the *Nomoi*.

[14] Cf. *Agora*, 19 L 4a.95-97 and the brief interpretation proposed at the end of n. 9 above.

[15] It is not clear whether Morrow 1960, p. 278, thinks that both the victim and *ho boulomenos* can bring the case: «the suit against a judge for false judgment … may be brought by "whoever wishes" (ὁ βουλόμενος), not merely by the injured party». I understand the αὖ of τὰ δὲ αὖ τῶν ἀρχόντων ἀδικήματα … not as additional, but, with δὲ, «in turn» signifiying that after the magistrate has become liable to prosecution for the advantage of the injured party, *ho boulomenos* picks up the ball and brings the case into court, perhaps at the end of the year, when all the complaints have been «handed in», at the *euthynai* of the magistrates.

To return now to the provision of the law inserted at Dem. 21.10 in which the troublesome phrase appears: ἐὰν δέ τις τούτων τι παραβαίνῃ, ὑπόδικος ἔστω τῷ παθόντι, καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ τῇ ἐν Διονύσου ὡς ἀδικοῦντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται. Earlier I suggested that either the victim brought a *probole* for compensation of his injuries or else a volunteer may have brought the case to win the compensation for him. While the Platonic example cited under nr. 3 comes closest to the pattern of words in the law and so suggests a linguistic paradigm for the law inserted at Dem. 21.10, viz., that a volunteer prosecutor could bring the case for the distrained-upon debtor, yet there is an important difference: the law (Dem. 21.10) does not make explicit who the prosecutor is; it does not say, *e.g.*, «and let there be *probolai* of him for any volunteer (καὶ προβολαὶ αὐτοῦ τῶι βουλομένωι ἔστωσαν)» [16]. So the Platonic case cannot serve as a model for the procedure depicted in the law – but it can serve to show how Attic idiom works: that ὑπόδικος with a dative does not require the dative of the person to be the agent of the prosecution. I conclude that the phrase ὑπόδικος τῷ παθόντι does not in itself imply that the offending creditor is liable to prosecution by the debtor; probably it is best to understand the omission of the prosecutor as a brachyology, «the offender is liable to prosecution for the advantage of the victim and there are to be *probolai* of him *at the disposal of the victim*».

As in the case of ὁ ἐθέλων, there may have been a special reason why ὁ παθών and not ὁ βουλόμενος is the prosecutor of the distraining creditor in the law inserted at Dem. 21.10: the restriction may have functioned for the protection of the debtor. Presumably not every debtor would want to proceed with a *probole*; a debtor may have had many creditors and a public announcement of his presence in Athens (even though he may not have been *atimos*) could make him fair game for any creditor to distrain upon him on a non-festival day as he awaited trial. Accordingly, the restriction of the prosecutor to the victim may have been designed to fend off undesirable public-

[16] Quite importantly, the law inserted at Dem. 21.10 does not say, «and let there be *probolai* of him for any volunteer among the legally competent Athenians» – importantly, because we know from a later episode in Dem. 21 (c. 175) that foreigners could bring *probolai* (just as one might expect, during festivals that attracted visitors from elsewhere); the absence of the ready-to-hand expression is an indication of authenticity.

ity and trial in the event that a volunteer prosecutor (perhaps in collusion with other creditors) decided to pursue the offending creditor against the debtor's wishes.

The proof of the pudding comes in the case of Euandros vs. Menippos (Dem. 21.175-177) – a foreigner who brings a *probole* against another foreigner for distraining upon him as a debtor during the Mysteries – and who wins damages from him in the trial that followed – not a *dike*, but a *probole*.

Menippos vs. Euandros: Penalty Protocols and Compensation

Demosthenes at the end of his summation of the two laws at 21.11, by focusing on one particular type of debtor, viz., the one who owes a payment to a successful prosecutor, looks ahead, as has already been mentioned, to the case of Menippos vs. Euandros (Dem. 21.175-177). The episode has baffled commentators, especially as they try to explain its ending. The background is as follows: Euandros of Thespis had won a conviction against Menippos of Karia in a mercantile suit; the court had awarded two talents to Euandros and Menippos had not yet handed over the sum. Both men were present at the Mysteries (and Demosthenes tells us that the law about the Mysteries is the same as that for the Dionysia – presumably this is the law that prohibited distraining upon debtors or using violence during festivals) and it was on that occasion that Euandros laid hold of Menippos. The latter responded by bringing a *probole* and the *ekklesia* condemned Euandros. Demosthenes narrates the results of the ensuing trial, addressing the judges in the current trial as if they were the very same judges who had voted to condemn Euandros [17]:

> εἰσελθόντα δ᾽εἰς τὸ δικαστήριον ἠβούλεσθε μὲν θανάτῳ κολάσαι, τοῦ δὲ προβαλομένου πεισθέντος τὴν δίκην τε πᾶσαν ἀφεῖναι ἠναγκάσατε αὐτόν, ἣν ἠρήκει πρότερον (ἦν δὲ δυοῖν αὕτη ταλάντοιν), καὶ προσετιμήσατε τὰς βλάβας, ἃς ἐπὶ τῇ καταχειροτονίᾳ μένων ἐλογίζετο αὑτῷ γεγενῆσθαι πρὸς ὑμᾶς ἄνθρωπος. εἷς μὲν οὗτος ἐξ ἰδίου πράγματος, οὐδεμιᾶς

[17] MacDowell's 1990 text and translation.

ὕβρεως προσούσης, ὑπὲρ αὐτοῦ τοῦ παραβῆναι τὸν νόμον τοσαύτην ἔδωκε δίκην.

And when he came into court for trial, you were ready to impose the death penalty, and, when the prosecutor [lit.: the one who brought the *probole*] was persuaded out of that, you required Euandros to forfeit the whole of the award made to him in the previous case, amounting to two talents, and awarded damages against him in addition, the amount which the other man [Menippos] reckoned he had incurred in connection with your court while waiting here in consequence of the vote. That's one man who, as a result of a private matter, not involving any insolence, paid so severe a penalty simply for transgressing the law. (Dem. 21.176-177)

Two problems call for attention. One is not directly related to the issue of compensation but must be discussed first, namely, what kind of penalty procedure is involved here? And secondly, if Menippos does receive compensation, then is this a *dike* and not a *probole* – *i.e.*, did Menippos follow up the conviction by the *ekklesia* with a *dike blabes* (?) instead of «the second half» of a *probole*?

Penalty Protocols

Regarding the first problem, the episode of Menippos vs. Euandros must be set against the background of the penalty procedure in *probole*. Our evidence rests almost entirely on Demosthenes' case against Meidias. Demosthenes anticipates two votes, one on the verdict, and the other on the penalty [18]. He mentions penalties a number of times in the speech and on the first occasion implies that the penalty is to be assessed, «what he should suffer or pay» (25); later he mentions death or confiscation of property as possibilities (152): «But as far as I'm concerned, in the first place I don't have a low opinion of you, or suppose that you'll fix his penalty at anything less than a payment which will make the man cease his insolence; that is preferably death, or else loss of all his property (ἐγὼ δὲ πρῶτον μὲν οὐδὲν ἀγεννὲς ὑμῶν καταγιγνώσκω, οὐδ' ὑπολαμβάνω τιμήσειν οὐδενὸς ἐλάττονος τούτῳ ἢ ὅσον καταθεὶς οὑτοσὶ παύσεται τῆς

[18] Dem. 21.151. Harrison 1971, p. 63 n. 4, for interpretation.

ὕβρεως· τοῦτο δ᾽ἐστὶ μάλιστα μὲν θάνατος, εἰ δὲ μή, πάντα τὰ ὄντα ἀφελέσθαι)» [19]. Harrison has pointed out that insofar as Meidias will have proposed a lesser penalty, viz., a monetary fine, three penalties are implied [20]. How can Demosthenes waffle between two penalty proposals – or appear to offer the *dikastai* a choice of two (added to which the defendant's proposal will be a third) – if he has already attached a penalty proposal to his complaint, as may have been usual in the case, *e.g.*, of *graphai* [21]? Scholars have offered different explanations: (1) *probolai* differed from *graphai* in that the prosecutor in the former type of case did not submit a penalty proposal until after the *dikastai* had voted on the question of guilt; (2) the presupposition of the first explanation is incorrect: even in *graphai* that were assessed in court, the prosecutor was not required to propose a

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[19] Trans. of MacDowell 1990. A penalty of death is urged elsewhere in the speech: 21.70, 102, 118, and 152.

[20] Harrison 1971, p. 64 n. 2, referring to Dem. 21.152.

[21] In *graphai* which require the penalty to be assessed in court (*agones timetoi*), the prosecutor would have included the penalty proposal in the indictment; while he might present the indictment (and hence the penalty proposal) in the course of his first speech, he would «formally» present the proposal after the question of guilt was decided; the defendant would then propose another and the *dikastai* would choose between the two. The evidence for the inclusion of the penalty proposal in the indictment is slight but difficult to ignore: (1) Aristoph. *Wasps*, 894-897: ἐγράψατο / Κύων Κυδαθηναιεὺς Λάβητ᾽Αἰξωνέα / τὸν τυρὸν ἀδικεῖν ὅτι μόνος κατήσθιεν / τὸν Σικελικόν. τίμημα κλῳὸς σύκινος («Dog of Kydathenaion indicts Labes of Aixone for wrongdoing because he consumed by himself the Sicilian cheese. Penalty: a fig-wood collar»). (2) Dein. 2.12: οὐκ ᾽Αριστογείτων ἐστὶν ὦ ᾽Αθηναῖοι, ὁ κατὰ τῆς ἱερείας τῆς ᾽Αρτέμιδος τῆς Βραυρωνίας καὶ τῶν οἰκείων αὐτῆς τοιαῦτα γράψας καὶ ψευσάμενος, ὥσθ᾽ὑμᾶς, ἐπειδὴ τὴν ἀλήθειαν ἐπύθεσθε παρὰ τῶν κατηγόρων, πέντε ταλάντων τιμῆσαι τούτῳ, ὅσονπερ ἦν ἐπὶ τῇ τῶν παρανόμων γραφῇ τίμημ᾽ἐπιγεγραμμένον («Was it not Aristogeiton, Athenians, who made a proposal containing such lies against the priestess of Brauron and her kinsmen that you, when you learned the truth from his accusers fined him five talents – the very sum that was registered as the penalty in the indictment for illegal proposals»). (3) D.L. 2.40: τάδε ἐγράψατο καὶ ἀντωμόσατο Μέλητος Μελήτου Πιτθεὺς Σωκράτει Σωφρονίσκου ᾽Αλωπεκῆθεν· ἀδικεῖ Σωκράτης, οὓς μὲν ἡ πόλις νομίζει θεοὺς οὐ νομίζων, ἕτερα δὲ καινὰ δαιμόνια εἰσηγούμενος· ἀδικεῖ δὲ καὶ τοὺς νέους διαφθείρων. τίμημα θάνατος. L. Rubinstein, *Litigation and Cooperation*, «Historia», Einzelschriften, 147 (2000), p. 70 n. 136, adduces *AP* 48.4: a complainant at a magistrate's *euthynai* would write on a tablet his own name, the magistrate's name, the offence, and *timema*. Penalty proposals were probably required when private suits were lodged: the size of the court was determined by the amount of compensation being sought (*AP* 53.3); the amount of time allowed for speeches may also have been thus determined (*AP* 67.2).

penalty until after a guilty verdict; the «waffling» between one penalty proposal and another is no sure indication that a *probole* is underway; (3) the prosecutor in a *probole* (*i.e.*, the trial that followed the *ekklesia*'s vote) was not permitted to suggest a penalty; the court fixed the penalty [22]. The last proposal is not manageable, given the number of *dikastai* and so can be discarded at the outset; accordingly, either the first or second explanation must be correct. Since there is evidence (though slight) for the inclusion of the penalty in a *graphe* (i.e., the written indictment) and no reason to maintain that the inclusion or non-inclusion of a penalty proposal in the indictment would be left to the discretion of the prosecutor, the first explanation is probably correct: *probolai* differed from *graphai* in that a penalty proposal for the former was not included in the complaint whereas it was included in the latter. Demosthenes «waffles» between one penalty proposal and another because he need not formulate the proposal until after the court has voted on the guilt of Meidias.

Returning now to the Menippos/Euandros episode, it seems that Demosthenes has telescoped the phases of the trial so that he depicts only the penalty procedure after Euandros had been pronounced guilty: «And when he came into court for trial, you were ready to impose the death penalty, and, when the prosecutor was persuaded out of that …» (21.176, tr. MacDowell 1990). If there is a true basis for Demosthenes' account and if Menippos has not made a formal proposal before the penalty procedure, then we can speculate that he ended his first speech with a rousing peroration in which he may have suggested the extreme penalty («Death is too light a penalty for Euandros' egregious offence during the celebration of the most holy Mysteries!»). The *dikastai* may then have responded positively and loudly («Death for Euandros!»). Or perhaps the number of hollow ballots (*i.e.*, guilty votes), when counted and announced, presented such a stunning landslide victory for the prosecutor that the *dikastai* stood up and roared, «Death for the Thespian!» Meanwhile, the defendant sends friends or members of his family

[22] The third view is reported by Lipsius 1905, p. 218 n. 137, and ascribed to Böckh and Bake; Harris 1989, p. 130, takes the second view; the first view is Lipsius', and he is followed by Harrison 1971, p. 64, and MacDowell 1990, p. 16.

over to Menippos, begging him for a lesser penalty, perhaps promising that Euandros will drop his two talent claim on Menippos if only he withholds himself from asking for the extreme penalty. Menippos «is persuaded out» of the death penalty and then makes his proposal [23].

Compensation

We are now at the point in the case where the question of compensation is at issue: «And when he came into court for trial, you were ready to impose the death penalty, and, when the prosecutor was persuaded out of that, *you required Euandros to forfeit the whole of the award made to him in the previous case, amounting to two talents* (τὴν δίκην τε πᾶσαν ἀφεῖναι ἠναγκάσατε αὐτόν, ἣν ἠρήκει πρότερον (ἦν δὲ δυοῖν αὕτη ταλάντοιν), *and awarded damages against him in addition* (καὶ προσετιμήσατε τὰς βλάβας), the amount which the other man [Menippos] reckoned he had incurred in connection with your court while waiting here in consequence of the vote» (21.176, tr. MacDowell 1990, ital. mine). Demosthenes' language is tendentious and non-technical. What acts on the part of the prosecutor, defendant, and *dikastai* can explain his colorful diction?

The *dikastai* have no power to require a defendant to remit a debt; nor is there any suggestion, in the law cited in 21.10, that the *dikastai* are permitted to vote an additional penalty, payable to the prosecutor, as damages to compensate expenses for a prosecutor awaiting trial. What, then, did the *dikastai* do? Surely they voted on Menippos' proposal for one sum of money. He may have explained his assessment as consisting of two parts: (1) an amount of two talents, the sum he owed Euandros from the previous suit and (2) an additional sum, covering his expenses while in Athens awaiting trial. But he need not have offered such a transparently true rationale: the audience of *dikastai* will know perfectly well that Menippos is a debtor (why else does he bring his *probole*?) and they will know the

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[23] A last minute supplication and apparent (or requested) change in penalty proposal is attested in a number of other cases that are not *probolai*; these instances ([Dem.] 59.5-6.8, 47.43, 53.18, and 58.69) do not require us to think that a penalty proposal had not been part of the writ (or decree in the case of 47.43); it only means that it was possible to change the penalty proposal before the vote on the penalty.

sum is enormous (how could Euandros leave the detail of two talents out of his defense?); moreover, that Menippos is a foreigner will also be known – he will have expenses to pay while tarrying in Athens – and the man is apparently penniless. So it is conceivable that Menippos offered a different rationale for the enormous penalty: «What a humiliation for a poor man to suffer at the hands of a wealthy man during that sacred celebration of the Mysteries!». The lion's share (two talents) of the huge sum that Menippos wins and that Euandros now owes Menippos will cancel out the huge sum (two talents) that Menippos had owed Euandros; and the latter could pay the residue (per diem expenses for the innkeeper, etc.), probably on the spot, to Menippos. Demosthenes' language depicts the *consequences* of the enormous award (the cancellation of debt plus cash to pay an inn-keeper) that Menippos demanded and won, not the literal proposal that Menippos made and certainly not any kind of verbatim proposal composed by the *dikastai*, compelling Euandros «to forfeit the whole of the award made to him in the previous case, amounting to two talents, and awarded damages against him in addition».

Was the money paid to Menippos or the treasury? I have assumed the former in my explanation of Demosthenes' language and indeed, I think there can be no other answer to the question. A penalty of two talents (plus whatever other sum) paid to the treasury could not have as a consequence the remittal of Menippos's debt to Euandros. Is this prosecution, then, a *dike blabes* and not a *probole*? Menippos, acting as prosecutor in the *dikasterion*, is designated *ho probalomenos*; the sum he won has not been doubled – as it would have been in a *dike blabes* where the offender committed his act intentionally (Dem. 21.43 and cf. 23.50) [24]. Moreover, the *dikastai* have supposedly urged the death penalty and Menippos has been persuaded out of that (21.176) – the only *dike* that permits that penalty is intentional homicide. Accordingly, Menippos has clearly won the award – not for a *dike* but for a *probole*. Probably only this provision among the laws on *probole* (the one concerning violent acts against debtors during a festival, as at 21.10) required the victim to bring a *probole* and permitted him to win the award for himself.

[24] See MacDowell 1990, pp. 253-254.

Is this an exceptional instance of a prosecutor winning compensation for himself – or is the category of «public remedy» more fluid than is generally held in modern literature? Surely the latter. Yet Harrison over thirty years ago pointed out how «untidy» it is to draw a distinction between public and private suits on the basis of «the destination of the damages or penalty and cataloguing as public those suits where the penalty was a fine paid to the state or loss of liberty, status, or life inflicted on the defendant, and as private those where the penalty, whether simple restitution or restitution with an added punitive element, went to the wronged plaintiff» [25]. He listed numerous instances where defendants convicted by *dikai* paid to the state a penalty equal to the plaintiff's claim, or where prosecutors using public remedies received a part of the penalty, or «γραφαί, such as those ἀδίκως εἱρχθῆναι ὡς μοιχόν, βουλεύσεως, and ψευδεγγραφῆς, the main effect of which, if the defendant was convicted, was to release the plaintiff from bondage or from a payment (though there may of course have been a penalty attached as well) …» [26]. The γραφὴ βουλεύσεως (attested at *AP* 59.3) is most relevant to the law inserted in Dem. 21.10; in part of a decree of the *boule* of 324/323, it is recorded that «if the magistrates in charge of the dockyards in the archonship of Hegesios, when the city recovers the oars, do not copy onto the stele [that information], or if the secretary of the Eleven does not wipe out from the debt of Sopolis the money that has accrued from the oars in accordance with the provisions decreed by the *boule*, each of them is to owe 3,000 dr. to the treasury and Sopolis and his kinsmen are to have at their disposal a [*graphe*] *bouleuseos* [for the recovery] of the money that is the price for the oars which the city has recovered from Sopolis or his relatives» (IG II^2 1631, 385-398) [27]. One could argue that the compensation proposed for Sopolis

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[25] Harrison 1972, p. 78 with n. 2.

[26] Harrsion 1972, p. 78.

[27] IG II^2 1631, 385-398: … ἐὰν δὲ οἱ τῶν νεωρί-/ων ἄρχοντες οἱ ἐφ' Ἡγησίου ἄρχοντ-/ος παραλαβούσης τῆς πόλεως τ-/οὺς κωπέ[α]ς μὴ ἀναγράψωσιν εἰς τ-/ὴν στήλην ἢ ὁ γραμματεὺς τῶν ἕνδεκα / μὴ ἀπαλείψει ἀπὸ τοῦ ὀφλήματος τοῦ Σωπ-/όλιδος τὸ γιγνόμενον τῶν κωπέων κατὰ / τὰ ἐψηφισμένα τῆι βουλῆι, ὀφειλέτω ἕκαστος / αὐτῶ⟨ν⟩ : XXX: δραχμ : τῶι δημοσί καὶ ἔστω Σωπόλιδι / καὶ τοῖς Σωπόλιδος οἰκείοις τῆς βουλε-/ύσεως τοῦ ἀργυρίου τῆς τιμῆς τῶν / κωπέων, ⟨ὧν⟩ ἂν ἡ πόλις παρειληφῦα εἶ / παρὰ Σωπόλιδος καὶ τῶν οἰκείων τῶν / Σωπόλιδος·

and his relatives here is a result of the specific order of the decree and not a part of the law that set out the terms for the *graphe bouleuseos*; but a consequence of that argument is that a decree can override a law and that seems highly unlikely.

Conclusions

To conclude: examination of the two clauses ὑπόδικος ἔστω τῷ παθόντι, καὶ προβολαὶ αὐτοῦ ἔστωσαν has shown that *probole* for the specific offence of distraining upon a debtor during a festival provided that the victim be both the prosecutor and recipient of compensation. The conjunction of public prosecution and personal compensation is not unique in Athenian law but is, instead, illustrative of the fluidity of Athenian legal remedies evident elsewhere in the system. While bits of the law cited at Dem. 21.10 may be corrupt, the two clauses (but for the probably corrupt third person imperative) under discussion in this essay represent a sound and even vigorous tradition of Athenian law.

Appendix One
The Authenticity of the Law on «probole» Inserted at Dem. 21.10

Three objections have been raised regarding the law's authenticity. I repeat answers that have been given to the last two and I suggest a different answer to the first. None of the objections is a blow to the law's authenticity; nonetheless, the law is corrupt.

The Third Plural Imperative ἔστωσαν

The form is unusual: while it was in use in fifth century literary texts and is the common form in the manuscripts of Thucydides [28], it is

[28] MacDowell 1990, p. 228, nicely provides the literary evidence.

first attested in an inscription of 352/351(IG II^2 204, 47-48: καθελόντωσαν) and next appears in a deme decree twenty years later (SEG 28, 103, 43: ὀφειλόντωσαν, with καταγιγνωσκόντων in the preceding line) [29]. The mid-to-late fourth century appears to have been a transitional stage into Hellenistic usage according to which terminal -τωσαν replaces -ντων. It is difficult to maintain that a -τωσαν imperative could have appeared in an inscribed law as early as the first half of the fourth century – the period during which we might assume that the proposer of the law, Euegoros, may have been active [30]. But the *inscribed* law is not extant; it is perfectly conceivable that a Hellenistic scribe, when he was copying out the law prohibiting seizure during festivals from a reliable collection of laws, used the form that was current in his own day and wrote that into the manuscript of Demosthenes; accordingly, the appearance of the -τωσαν imperative is a blow not to the authenticity of the law, but to its integrity – the law is corrupt [31]. (When we find a corrupt word in a manuscript of Aiskhylos' *Agamemnon*, we do not conclude that the text is a forgery; we have a corrupt tradition.)

The Timing and Place of the Meetings of the «ekklesia» Following the Different Festivals Mentioned in the Law

The city Dionysia occurred in the ninth month (Elaphebolion), the rural Dionysia in Peiraieus in the sixth (Poseidion), the Lenaion in the seventh (Gamelion), and the Thargelia in the eleventh (Thargelion). Since *probolai* are to be made in the *ekklesia* in the precinct of Dionysos against offenders who distrain upon festival-goers «in the same way as is laid down about the other offenders» (καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ τῇ ἐν Διονίσου ὡς ἀδικοῦντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται), the law inserted at Dem. 21.10 implies the existence of other laws regarding offenders at these festivals. The implied or hypothetical laws may have been similar to the one cited in section 8 – but not exactly like it (*i.e.*, the

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[29] L. Threatte, *The Grammar of Greek Inscriptions II Morphology*, Berlin 1996, p. 463.
[30] Evidence cited by MacDowell 1990, pp. 230-231.
[31] *Pace* Harris 1992, p. 76.

meeting of the *ekklesia* is not tied to «the day after the Pandia»): for surely a man who accuses an offending creditor, *e.g.*, at the celebration in Peiraieus, is not to wait three months before delivering his *probole* (to say nothing of a man who is wronged at the Thargelia who must wait ten months, well into the following year) [32]. Accordingly, the hypothetical laws, if they followed the pattern of the law cited in section 8, would have provided for *probolai* at a meeting of the *ekklesia* after each particular festival ended. Since, however, the precise dates for neither the Dionysia in Peiraieus nor the Lenaion are known, it is not possible to identify epigraphical instances (or restorations) of meetings ἐν Διονύσου (or ἐν τῶι θεάτρωι) with meetings that took place after those festivals. It is possible, of course, that the follow-up meeting did not take place ἐν Διονύσου and some scholars have suggested that those words have entered the text as a gloss [33].

The Idiosyncratic (?) Presence of the Thargelia in the List of Festivals

The Thargelia is idiosyncratic here because it was a festival of Apollo and not of Dionysos; moreover, while it was a venue for dithyrambic choruses, it was not one for dramatic contests. Drerup's solution to the problem appears best [34]. First he noted the change in clausal pattern when the Thargelia is introduced: the three previous festivals are announced in the format, «whenever there are *pompe et alia* at x-festival» whereas the fourth festival is introduced in the older mss. with the name of the month in the nominative case preceded by the article (ὁ Θαργηλιών); this was emended by Wolff to the genitive of the festival name (Θαργηλίων) and the emendation has been accepted by later editors. Drerup, on the other hand, suggested that the mss. reading ὁ Θαργηλιών did not arise, as earlier textual critics had thought, from dittography of Θ (so that ΘΘ became ΟΘ), but rather the loss of ΘΑ in an original ΚΑΘΑ ΘΑΡΓΕΛΙΩΝ was responsible for

[32] Weil 1877, p. 118.
[33] MacDowell 1990, p. 235; Weil 1877, p. 118.
[34] Drerup 1898, pp. 301-303.

the corruption; accordingly, the hypothesized original wording could be rendered: «whenever the procession *et alia* take place at x, y, and z festivals, just as at the Thargelia, it is not to be permitted …» [35]. Drerup's emendation restricts the law inserted at Dem. 21.10 to festivals of Dionysos and implies that a law already existed about seizing property at the Thargelia [36]. This is perfectly consistent with Demosthenes' statement at 21.175 where, in speaking of the same law (against seizing property), he says, «The law about the Mysteries is the same as this one about the Dionysia, and was enacted later than it».

[35] Lipsius 1905, pp. 212-213 n. 118, thinks the word order speaks against Drerup's emendation; the objection is not justifiable.

[36] Drerup's emendation also allows for a potentially universal correspondence between the «first tribunal» and the specific festival where the offence occurred (cf., *e.g.*, And. 1.111, where the meeting under discussion concerns offences committed during the Mysteries: ἡ γὰρ βουλὴ ἐκεῖ καθεδεῖσθαι ἔμελλε κατὰ τὸν Σόλωνος νόμον, ὃς κελεύει τῇ ὑστεραίᾳ τῶν μυστηρίων ἕδραν ποιεῖν ἐν τῷ Ἐλευσινίῳ); since, however, it is difficult to believe that post-festival meetings would always take place at sanctuaries belonging to the god so recently celebrated, the correspondence between tribunal and festival deity is likely an accident of preservation – viz., that a law regarding festivals of Dionysos has been preserved.