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*Mysis, Phasis, and the Role of the Boule (I.Eleusis 138)*

Among the regulations promulgated in the Law on the Mysteria (*I.Eleusis* 138, c. med. s. IV a.) is one that concerns violations of preliminary initiation (μύησις), which all candidates had to undergo before they could participate as μύσται in the festival of the Mysteria (lines A.27-29, *stoichedon*):<sup>1</sup>

ἐάν δέ τις μῆ[ι E]ὐμολ[πιδῶν ἢ Κηρύκων οὐκ ὦν ε]ιδῶς, ἢ ἐάν προσάγη τις  
 μησόμε[νον .....<sup>23</sup>.....τοῖ]-  
 [ν] Θεοῖν, φαίνεν δὲ τὸμ βολόμενο[ν Ἀθηναίων, καὶ ὁ βασι]λεὺς εἰσαγέτω εἰς  
 τὴν Ἡλιαίαν κα[.....<sup>26</sup>.....αὖ]-  
 [τ]ῷ βουλευέτω ἢ βολῆ ὡς ἀδικῶντος·

The μύησις, an essential preparation for the candidate's initiation in the Mysteria, could only be administered by a member of the Eleusinian γένη, the Eumolpidae and the Kerykes.<sup>2</sup> A candidate who omitted this rite and attempted to enter the sanctuary was subject to a penalty of death.<sup>3</sup> Thus an imposter who performed the ritual committed a grave impiety; and culpability for this crime extended also to any person who brought the candidate to such an imposter (the lacuna has the likely sense: ἢ ἐάν προσάγη τις μησόμε[νον πρὸς τινα οὐκ ὄντα τῶν γενῶν τοῖ]ν Θεοῖν). The regulation can be translated as follows:<sup>4</sup>

If anyone initiates in the knowledge that he does not belong to the Eumolpidae or the Kerykes, or if anyone brings someone to be initiated [by someone who is not a member of the clans of the] Two Goddesses, any Athenian who wishes is to reveal (the offender) and let the Basileus introduce it into the Heliaia, and [- - - - - about him] as a wrongdoer let the Boule deliberate.

The judicial procedure in the event of such a violation was *phasis*, whereby any Athenian can file an action of *phasis* ("showing") with the Basileus, who then must introduce the *phasis* into the Heliaia.<sup>5</sup> The advantage of this procedure for the complainant is that if the charge is successful, he receives one half of

To A. C. Scafuro I am very grateful for her valuable comments and discussion of a draft of this article. Of course I alone am responsible for the views expressed here.

1. On preliminary initiation see Clinton 2008.

2. Cf. *I.Eleusis* 19.C.3-31 (= *IG* I<sup>3</sup> 6): μῆν δὲ ἢ[οἱ ἄν ἡεβ- vel θέλ]οσι Κερύκων καὶ Εὐ[μολπιδῶν].

3. As happened to two Acarnanian young men; Acarnanes duo iuvenes per initiorum dies non initiati templum Cereris imprudentes religionis cum cetera turba ingressi sunt. facile eos sermo prodidit absurde quaedam percunctantes, deductique ad antistites templi, cum palam esset per errorem ingressos, tamquam ob infandum scelus interfecti sunt (Livy 31.14.7-8). Here *templum* signifies τὸ ἱερόν "sanctuary", *antistites templi* probably ἐπιμεληταὶ τῶν Μυστηρίων, and *non initiati* must mean ἀμύητοι, "not having received preliminary μύησις," since they were attempting to take part in the main initiation at Eleusis.

4. As translated partially by MacDowell 1991, 198.

5. On the procedure see MacDowell 1991, who surveys the ancient evidence and history of modern scholarship, and Wallace 2003, who shows that *phasis* could take different forms according to the various laws on particular crimes.

the defendant's penalty, as usually happened in cases of *phasis*,<sup>6</sup> which of course can be a powerful incentive to report the crime, while the advantage for the state is that it extends its surveillance of wrongdoing far beyond the scope of its main officials responsible for supervising the *Mysteria*, the *Basileus* and the *Epimeletai*. This increased surveillance is especially useful in connection with *myesis*, because the crimes usually take place in the absence of these officials, whose normal supervision is limited to the time and the physical areas of the performance of the *Mysteria*.

In the editio princeps I considered, as merely possible, the restoration κἀ[ν ἀλῶ ζημιότω ἢ Ἡλιαία καὶ περὶ αὐτῶ], but did not include it in the text as probable, since it was vague about any penalty that the *Heliaia* should impose.<sup>7</sup> G. Stumpf pointed out that in addition to being vague it was confusing, as it left open the possibility that the *Boule* could reduce the size of the penalty imposed by the *Heliaia*. In its place he proposed a formula of *eisangelia*, on the model of Nikophon's Law on Silver Coinage (*SEG* XXVI 72.32-34), for impeaching a magistrate: ἐὰν δέ τις [τῶ]ν ἀρχόντων μὴ ποιῆι κατὰ τὰ γεγραμμένα, εἰσαγγελλέτω μὲ]ν ἐς τὴν βολὴν Ἀθηναίων ὁ βολόμενος οἷς [ἔξεστιν]: ἐὰν δὲ ἀλῶ, ὑπαρχέτω μὲν αὐτῶι πεπαῦσθ[αι ἀρχον]τι καὶ προστιμάτω αὐτῶ[ι] ἢ βολὴ μέχρι [Ἡ δραχμῶν]. Stumpf proposed: φαίνεν δὲ τὸν βολόμενον [Ἀθηναίων, καὶ ὁ βασι]λεὺς εἰσαγέτω εἰς τὴν Ἡλιαίαν κα[τὰ τὸν νόμον: ἐὰν δὲ μὴ ἐσάγη, περὶ αὐτῶ] βολεύετω ἢ βολὴ ὡς ἀδικῶντος.<sup>8</sup> However, this restoration also presents difficulties. Besides being one letter too long (a defect, indicating possibly an incorrect restoration, but not necessarily), it needlessly interjects the procedure of *eisangelia* into the midst of a statute specifying *phasis*.<sup>9</sup>

Stumpf based his restoration of a form of *eisangelia* on the consideration that in this law it is striking "am Ende jeder Bestimmung, die die Pflichten der Amtsträger im Zusammenhang mit dem Kult regelt, auch die Strafen für deren Pflichtversäumnis festgelegt sind," with reference to lines 36-37.<sup>10</sup> However, the text of lines 36-37 does not describe a parallel case: ἐὰν δὲ ὁ βασι[λ]εὺς καὶ οὖς χρή] μετ' αὐτῶ ἐπιμελεῖσθαι μὴ ζημιῶσιν τὸς ἀκοσμῶντας κ[ατὰ τὸν νόμον ἢ ἐὰ] [ν μὴ ἐπι]θῶσιν κατὰ τὸ εἶκος, εὐθυπέ[σθω ΗΗΗ δραχμαῖς] ἱεραῖς τοῖν Θεοῖν ἕκαστος αὐτῶν. If the *Basileus* and the *Epimeletai* do not impose fines for disorderly conduct appropriately according to the law, they are simply to be fined a certain amount; there is no mention of an *eisangelia*. What, on the other hand, is indeed a parallel action is the procedure described at lines 31-33: τοῖς δὲ ἐπιμελητ[αῖ]ς εἶναι ζημιῶν τὸς ἀκοσμῶντας μέχρι [..δραχμῶν· ἐ]ὰν δὲ μείζονος δοκῆι ζημίας ἄξιος εἶναι, εἰσάγε[ιν] τούτος εἰς τὴν Ἡλι[α]ίαν προσκαλεσαμένος κατὰ τὸν νόμον. Here the *Epimeletai* (and surely also the *Basileus*) are to introduce such individuals into the *Heliaia*—an action similar to the one above in the case of *phasis* for impiety—yet there is no punishment specified for them if they disregard their duty to introduce accused individuals into the *Heliaia*. Thus there is no basis in this law for expecting an *eisangelia* formula as a remedy for failure to introduce wrongdoers into the *Heliaia*. What is assumed in both cases is that *eisangelia*, the procedure for impeaching officials, is always available as an option and does not need to be stated (though of course it could be stated, as in Nikophon's Law on Silver Coinage).<sup>11</sup>

6. This was true in many attested instances of *phasis* but not all; cf. Wallace 2003, 175-176. There seems to be no obvious reason why it would not have been used for cases of impiety concerning the *Mysteria*.

7. Clinton 1980, 279-280 (*SEG* XXX 61; *Agora* XVI 56).

8. Stumpf 1988, 223-226.

9. Scafuro (2010, 41) was puzzled by this insertion of an *eisangelia*; cf. Maffi 2010, 50.

10. Stumpf 1988, 225-226.

11. On its role in Nikophon's Law cf. MacDowell 1991, 193-194.

A serious problem with Stumpf's restoration is that it assigns no role to the Heliaia. The person accused of impiety in the procedure of *phasis* disappears; he is replaced by the Basileus, whose fate is to be decided by the Boule: "..... und der Basileus soll (die Phasis) entsprechend dem Gesetz in die Heliaia einführen. Wenn er nicht einführt, soll die Bule über ihn zu Rat sitzen als über einen, der unrecht handelt."<sup>12</sup> Nothing is stipulated to be done about the person who committed the impiety! The law provides no instructions. This of course is unsatisfactory. However, a very important positive contribution of Stumpf's analysis is that it has put the discussion about the lacuna on the right track, in showing that a clear distinction must have been made in the text between the roles of the Heliaia and Boule.

It is clear from the preserved text that as a result of the action by the Heliaia the status of the accused is that of an ἀδικῶν. The Boule now has to deliberate about him only as an ἀδικῶν. Its deliberation therefore will be concerned with an appropriate penalty, not about the accused's guilt or innocence; that has already been decided by the Heliaia. Therefore the appropriate restoration of its role should be: καὶ ἂν τούτο καταγιγνώσκει, περὶ αὐτῷ, βουλευέτω ἢ βολὴ ὡς ἀδικῶντος. "And if (the Heliaia) finds him guilty, the Boule is to deliberate about him as a wrongdoer." This restoration fits the space of 26 letters exactly.<sup>13</sup>

As a help in understanding this procedure, the *phasis* described in Nikophon's Law on Silver Coinage (*SEG* XXVI 72), lines 23-26 provides a parallel:

τῶν δὲ φανθέ[ντων, ὀπό]σα μὲν ἄν ᾗ ἐντὸς δέκα δραχμῶν, κύριοι ὄ[ντων οἱ ἄ]ρχοντες διαγιγνώσκουσιν, τὰ δὲ ὑπὲρ [δ]έ[κ]α [δραχμᾶς], | ἐσαγόντων ἐς τὸ δικαστήριον.

For all those denunciations which are up to ten drachmai the magistrates [are to be] competent to give a verdict; for those over ten [drachmai] let them bring them into the law court ... (trans. MacDowell 1991, 193).

If the revealed goods (τῶν φανθέ[ντων]) are worth up to 10 drachmai, the case is to go to the appropriate magistrates (specified earlier in lines 18-23), and they are to decide the verdict (διαγιγνώσκουσιν);<sup>14</sup> for those involving goods above 10 drachmai the magistrates are to introduce them into the court for the next step, which is not described but must be parallel to the case concerning a lesser value, namely to render a verdict (διαγιγνώσκουσιν).<sup>15</sup> The same route was followed in the procedure for our case of impiety: The magistrate, in our case the Basileus, introduces the matter into the court. The Heliaia produces a decision (διαγιγνώσκει), but in our case, if the decision is to καταγιγνώσκειν, a further step is required—deliberation by the Boule, necessarily on the punishment for the defendant who now has been determined by the court to be ἀδικῶν. Thus the court decides on the defendant's innocence or guilt; if they find him

12. Stumpf 1988, 226.

13. Both verbs are in present tense, as also εἰσάγειν; cf. *IG* II<sup>2</sup> 1629.233-242, *IG* II<sup>3</sup> 1, 370.71-72, *I.Eleusis* 85.39-43.

14. On the use of this term for the decision of a court cf. (e.g.) Antiph. 6.3: Ὁ μὲν οὖν ἄγων ἐμοὶ μέγιστος τῷ κινδυνεύοντι καὶ διωκομένῳ. ἡγοῦμαι μέντοι γε καὶ ὑμῖν τοῖς δικασταῖς περὶ πολλοῦ εἶναι τὰς φονικὰς δίκας ὀρθῶς διαγιγνώσκουσιν, μάλιστα μὲν τῶν θεῶν ἕνεκα καὶ τοῦ εὐσεβοῦς, ἔπειτα δὲ καὶ ὑμῶν αὐτῶν. *Lys.* 7.22: καίτοι εἰ <ὅτε> φῆς μ' ἰδεῖν τὴν μορίαν ἀφανίζοντα τοὺς ἐννέα ἄρχοντας ἐπήγαγες ἢ ἄλλους τινὰς τῶν ἐξ Ἀρείου πάγου, οὐκ ἂν ἐτέρων ἔδει σοι μαρτύρων· οὕτω γὰρ ἂν σοι συνήδεσαν ἀληθῆ λέγοντι, οἵπερ καὶ διαγιγνώσκουσιν ἔμελλον περὶ τοῦ πράγματος. *Aesch. In Tim.* 32: «δοκιμασίαν μὲν», φησίν, «ἐπαγγειλάτω Ἀθηναίων ὁ βουλόμενος, οἷς ἔξεστιν», ὑμᾶς δ' ἤδη κελεύει περὶ τούτων ἐν τῷ δικαστηρίῳ διαγιγνώσκουσιν.

15. Nikophon's Law does not mention a further step involving the Boule. The reason may be that this case concerning the certification of coins was fairly straightforward for a jury-court to decide and assign an appropriate penalty.

guilty, the case moves on to the Boule for deliberation (the text appears to preclude the possibility of the Boule reversing the decision of the court). Assignment of this task to the Boule most likely had to do with the Boule's traditional role of, and expertise in, overseeing the Mysteria:<sup>16</sup> it met in the Bouleuterion in the Eleusinian sanctuary during the festival, and also in the City Eleusinion on the day after the festival, in both venues, in addition to dealing with other administrative matters, hearing complaints about serious infractions; moreover, it seems that the Boule played a role in all cases of impiety, even relatively minor ones.<sup>17</sup> Though limited to imposing a monetary penalty up to 500 drachmai (most likely irrelevant in our case concerning a grave impiety), the Boule's action is not the final one; it undoubtedly remits the results of its deliberation to a *dikasterion*, with instructions for a trial and imposition of a higher penalty, or it enacts a *probouleuma* for the Ekklesia to decide the case or issues a *psephisma* with similar instructions to a *dikasterion*. In short, the *κατάγνωσις* by the Heliia is a preliminary verdict, and the Boule's recommendation is also preliminary; the final decision will be made by the Ekklesia or a *dikasterion*. The process is somewhat similar to an *εισαγγελία* brought to the Ekklesia, which passes it on to the Boule, which decides the case or sends it to a *dikasterion*.<sup>18</sup>

The Boule was also involved in the procedure of *phasis* for crimes other than impiety; in some cases they may have been the court of first instance; but we do not have descriptions of the entire processes.<sup>19</sup> The procedure for our case of impiety is similar to the procedure in Nikophon's Law for cases above ten drachmai, in that the magistrate introduces the *phasis* to the *dikasterion*, but differs in that the court in the coinage case apparently makes the final decision. According to Wallace such differences in the action of *phasis* are not surprising; the procedure differed according to the category of the case:<sup>20</sup>

Although exiguous, extant evidence discourages the belief that in the fifth century *phasis* was a single legal procedure that was later adapted to new uses. Rather, in different legal contexts and from time to time, the Athenians stipulated that something be "shown." MacDowell rightly said that the evidence does not clearly indicate the defining characteristics of *phasis* as a single action. For it was not.

This happens to be the only attested instance of *phasis* used for impiety;<sup>21</sup> otherwise *phasis* only occurs in a list of the procedures available as options for a charge of impiety: τῆς ἀσεβείας κατὰ ταῦτ' ἔστ' ἀπάγειν, γράφεσθαι, δικάζεσθαι πρὸς Εὐμολπίδας, φαίνειν πρὸς τὸν βασιλέα (Dem. 22.27). Other instances of *phasis* involve showing (φαίνειν) an object or property, but persons could also be shown.<sup>22</sup> In our case, in which an imposter is alleged to have practiced *myesis*, the damage has been done to the city in its relation to the Two Goddesses but also to the person on whom false *myesis* has been performed, for he or she has either been refused participation in the Mysteria for this reason, or, even worse, may have participated illegitimately. In addition to the imposter, the harmed person may well have been *shown* to the court.

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16. *I.Eleusis* 28a.40-42, 30.27-29 (= *IG* I<sup>3</sup> 32); Rhodes 1972, 35, 93-95, 127-129, 159-160. On the Boule as a source of expertise in the manifold affairs of the Polis and its highest deliberative institution cf. Esu 2024, 43-61.

17. Cf. (e.g.) *I.Eleusis* 28a.57-59; *IG* II<sup>2</sup> 1362.14-18 (ἄν δὲ ἐλεύθερος εἶ, θοάξει αὐτὸν ὁ ἱερεὺ[ς] μετὰ τοῦ δημάρχου πεντήκοντα δραχμαῖς<sup>ρ</sup> καὶ παραδώσει τοῦνομα αὐτοῦ τῶι βασιλ[εῖ] καὶ τεῖ βουλεῖ κατὰ τὸ ψήφισμα τῆς βου[λ]ῆς καὶ τοῦ δήμου τοῦ Ἀθηναίων.); Rhodes, *Boule*, 150-151.

18. On this procedure for an *eisangelia* brought to the Ekklesia see Hansen 1975, 21-28; Rhodes 1979, 111-112.

19. MacDowell 1991, 190-191 (*Ar. Eq.* 300-302), 191-192 (*Isoc.* 18.6), 192-193 (*Isoc.* 17.42).

20. Wallace 2003, 170-181.

21. Discussed briefly by MacDowell 1991, 197-198.

22. MacDowell 1991, 187-194; Wallace 2003, 169, 172-173, 175, 178-180.

As noted above, the main reason for employing *phasis* in these actions to remedy certain types of impiety during the Mysteries was most likely that it would be a powerful tool for increasing the scope of the surveillance needed to detect such crimes.

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