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Apophasis (Special Investigations)

SUMMARY

Apophasis refers to an investigation into serious threats to the Athenian democracy, especially treason and bribery, although there is some evidence for it being used for lesser offenses. This investigation involved several branches of the Athenian government: the Assembly, the Areopagus, and the People's Court. This procedure, an innovation of the later 4th century BCE, began with an investigation conducted by the Areopagus, which would issue a report. The report was called an *apophasis* (ἀπόφασις). Eventually, the whole procedure – investigation, report, prosecution – came to be known by this term. When the Areopagus issued its report on suspected treason or bribery, it included a recommendation, either to prosecute certain parties or not to. If the Areopagus recommended prosecution, the Assembly would appoint prosecutors, and the matter would be tried before the People's Court. The different institutions seem to have served to balance each

other, and we hear of several cases in which the Areopagus recommended conviction, but the Assembly or People's Court acquitted the defendant.

INTRODUCTION

Apophasis (ἀπόφασις) refers to a report issued by the Areopagus after the Areopagus had investigated a matter of bribery or treason (see, for example, Din. 1.1). But this report was merely one part of an involved process of investigation and prosecution that involved the Areopagus, the Assembly, and the People's Court. The best evidence for this procedure comes from Dinarchus' speech prosecuting Demosthenes for allegedly having taken bribes from Harpalus, a Macedonian (Din. 1.1). In this speech, Dinarchus concisely describes the procedure for an *apophasis*, and describes how the different institutions of the Athenian government worked together. He begins by saying that, "The council of the Areopagus is bound, gentlemen, to follow one of two methods in making all its reports (τὰς ἀποφάσεις πάσας)" (Din. 1.50). He spends a couple of sentences criticizing Demosthenes, then returns to characterize the current proceedings: "Compare the present case, where you have both a decree [ψήφισμα, passed by the Assembly – CWB] which authorized the council's inquiry [the 'council' here is the Council of the Areopagus – CWB], and accusers, elected by the people [χειροτονήσαντος τοῦ δήμου, referring again to a vote by show of hands in

the Assembly – CWB], who are now giving the jury [οἱ δικάσται, in the People’s Court – CWB] an account of the crimes” (Din. 1.51).

APHOPHISIS FIRST APPEARS IN THE LATER 4TH CENTURY

In a speech delivered in 323 BCE, Dinarchus refers to a decree, moved in the Assembly by Demosthenes, that that Areopagus should investigate a matter of bribery “as was its traditional right” (ὡς αὐτῇ πάτριόν ἐστι) (Din. 1.4; source for date: Hansen, 292). But we do not have much other evidence that the Areopagus regularly investigated matters of bribery. When Aristotle describes the Areopagus’ duties in the 4th century, he says that, “Trials for deliberate murder and wounding are held in the Areopagus, and for causing death by poison, and for arson” (Aristot. *Ath. Pol.* 57.3; Dem. 23.22).

There is however some evidence for the Areopagus issuing reports to the Assembly apart from the procedure we call *apophasis*. Sometime before 343 BCE, we hear of the Areopagus reporting to the Assembly on the matter of some dwellings on the Pnyx (Aeschin. 1.81; source for date: Harris, *Aeschines and Athenian Politics*).

But this is not called an *apophasis*, and does not seem to have been similar to the later procedure. In fact, none of the evidence from oratory before the second half of the 4th century mention *apophasis* (this includes the orators

Andocides, Isaeus, Antiphon, Lysias, Isocrates, Lycurgus, and Aeschines). Demosthenes uses the term several times, (Dem. 18.60, Dem. 37.21, Dem. 37.34, Dem. 41.1, Dem. 41.2, Dem. 41.11, Dem. 41.12, Dem. 41.14, Dem. 41.17, Dem. 41.25, Dem. 41.26, Dem. 41.27, Dem. 41.28, Dem. 41.30, Dem. 47.45), but in each case he seems to use the word generically, “an account”, such as someone might give when returning from a voyage, or (often) when itemizing an estate so the inheritance can be settled.

In Demosthenes speech “On the Crown,” delivered in 330 BCE (Dem. 18; source for date: *OCD*³), he mentions two events that might be the first instances of *apophasis*, although he does not use the term. Demosthenes mentions a man named Antiphon (not the orator Antiphon) who had been exiled from Athens, and then apprehended at the port of the Piraeus; he was acquitted, either by the People’s Court or by the Assembly, but the Areopagus investigated the matter and secured his conviction (Dem. 18.133). Then, Demosthenes describes how Aeschines, having been selected to be an ambassador by the Assembly, was investigated by the Areopagus, which “rejected him as a traitor” (ἀπήλασεν ὡς προδότην) (Dem. 18.134). There is some reason to think that these might be the first attested instances of the procedure we call *apophasis*. Dinarchus, in a speech seven years later, mentions the case of Antiphon and says that he was tortured and killed as a result of the Areopagus’ *apophasis* (ἔστρέβλωσαν Ἀντιφῶντα καὶ ἀπέκτειναν οὗτοι τῇ τῆς βουλῆς ἀποφάσει πεισθέντες) (Din. 1.63). He

then says that Demosthenes himself had been instrumental in giving this authority to the Areopagus, citing the cases not only of Antiphon, but also of a descendant of the hero Aristogiton, and a man named Charinus (Din. 1.63). So we can conclude that the procedure probably came into existence before 330, and came to be referred to as *apophasis* before 323 BCE (source for dates: Hansen, 292).

Apophasis invoked for cases of treason, bribery, and attempts to overthrow the democracy, but also for lesser crimes

In Dinarchus' speech against Demosthenes, part of an *apophasis*, the orator's rhetoric suggests that the trial was about more than bribery (the actual accusation; see Din. 1.1), but was about the security of the Athenian democracy. Dinarchus says that anyone who would defend Demosthenes is an enemy of Athens: "And whenever anyone comes forward to speak for him, bear in mind that he who does so, even if not involved in the reports [ἀποφάσεσιν] we are about to hear, is hostile to the constitution, unwilling to see punished those who take bribes against the people and anxious that the general protection of your persons, for which the Areopagus is responsible, should be abolished and every right in the city overwhelmed" (Din. 1.112). According to Dinarchus, the Areopagus investigated the question of bribery because any case of Macedonians bribing prominent Athenians would put the city in danger (Din. 1.34).

Apophasis was also used in cases when the city itself was thought to be in danger from some external enemy. Antiphon was the subject of *apophasis* because, after being exiled as a spy and saboteur for the Macedonians, he was caught back in Athens (Dem. 18.132; Din. 1.63). A man named Polyuctus of Cydantidae was the subject of an *apophasis* because he had made suspicious trips to Megara (although he was cleared of all suspicion when it was discovered that he had relatives there) (Din. 1.58). And Charinus was exiled, after an *apophasis*, on a charge of treason (ἐπὶ προδοσίᾳ) (Din. 1.63).

In a brief passage, however, Dinarchus mentions some lesser offenses that were first brought before the Areopagus and then referred to a jury – a defendant who robbed the captain of a ferry-boat, someone fraudulently collecting five drachmas (a public subsidy for attending the theater), and a member of the Areopagus who was given a portion of meat from a public sacrifice (a benefit of service on the Areopagus) who sold the portion illegally (Din. 1.56).

THE PROCEDURE

Dinarchus says that either the Areopagus or the Assembly could initiate an *apophasis*: “The council of the Areopagus is bound, gentlemen, to follow one of two methods in making all its reports (τὰς ἀποφάσεις). What are these methods? Its inquiry is made either on its own initiative or in obedience to the people’s instructions” (Din. 1.50). In

at least one case, that of Antiphon, the Areopagus initiated an *apophasis* after the man had been acquitted by the people (Dem. 18.133; Din. 1.63). In the trial of Demosthenes, the People (ὁ δῆμος) passed a decree asking the Areopagus to investigate the question of bribery and to issue an *apophasis* (Din. 1.4; Din. 1.7; Din. 1.58); because Din. 1.4 mentions “the People passing a lawful decree” (ψηφισαμένου γὰρ τοῦ δήμου δίκαιον ψήφισμα), we can be sure that he is speaking of the Assembly.

Once an *apophasis* was begun, the Areopagus conducted an investigation. In a fragmentary speech by Hyperides, from the trial of Demosthenes, the orator says, “The reporting of the names of the recipients [of bribes – CWB] it [*i.e.* the Assembly – CWB] assigned to the Areopagus, who gave these men’s names to the people” (Hyp. 5.f9; the text of this speech is badly damaged, and some parts have had to be reconstructed through inference, comparison with other sources, and educated guessing). Dinarchus says that Demosthenes himself had moved in the Assembly that the Areopagus investigate the question of bribery: “When, moreover, you, Demosthenes, and many others had proposed in a decree that the Areopagus, according to its traditional right, should hold an inquiry to discover if any of them had received gold from Harpalus, the Areopagus began its investigation (ζητεῖ)” (Din. 1.4). Any subsequent action would then depend on the outcome of the Areopagus’ report (Din. 1.1).

After the Areopagus issued its report, the *apophasis* itself, it could recommend that the defendant be tried before a jury. Dinarchus describes the sequence of events: “In the case of Polyeuctus of Cydantidae, when the people instructed the Council of the Areopagus to inquire whether he was accompanying the exiles to Megara and to report back after the investigation, it reported that he was doing so. You chose accusers as the law prescribes: Polyeuctus came into court and you acquitted him, on his admitting that he was going to Megara to Nicophanes who, he said, was married to his mother” (Din. 1.58). Here, the Areopagus reported that the man had gone to Megara with some exiles, and was thus suspected of treason. Because of this report, accusers were chosen to prosecute the case before a court.

It seems that the Assembly had to vote on whether to take a case to court as a result of the Areopagus’ *apophasis*. In a speech prosecuting Aristogiton, in a trial resulting from an *apophasis* (see Din. 2.1), Dinarchus says of the defendant that “he has been found by the Council of the Areopagus to have taken bribes against your interests... and the People have, by a show of hands, handed him over to you [the jury – *cwb*] to be punished” (ὅτι τούτου κατέγνωκεν ἡ βουλή δῶρα λαμβάνειν καθ’ ὑμῶν... τούτου καταχειροτονήσας ὁ δῆμος παραδέδωκεν ὑμῖν τιμωρήσασθαι) (Din. 2.20). At the same time that the Assembly voted on whether to send a defendant to be tried in front of a jury, it would also elect, by show of hands, one

or more prosecutors to present the case against the defendant. Hyperides mentions chosen accusers (τοῖς ἡρημένοις κατηγοροῖς) (Hyp. 5.f9). At Din. 1.58, the orator tells the people of Athens that “you chose accusers as the law prescribes” (κατηγοροὺς εἴλεσθε κατὰ τὸν νόμον); and at Din. 1.51 he mentions “accusers, elected by the people, who are now giving the jury an account of the crimes” (καὶ κατήγοροι χειροτονήσαντος τοῦ δήμου, παρ’ ὧν νῦν οἱ δικασταὶ τὰ δικάσματα πυνθάνονται).

It is clear that the ultimate decision – to punish the defendant or not to – was in the hands of the jury. Dinarchus mentions many cases of defendants who were found guilty by the Areopagus’ *apophasis*, but subsequently acquitted by a jury (Din. 1.5759). Among them was Polyeuctus, whom the Areopagus found to have made suspicious trips to Megara to visit some men who had been exiled from Athens. But, Dinarchus reminds the jury, “Polyeuctus came into court and you acquitted him, on his admitting that he was going to Megara to Nicophanes who, he said, was married to his mother. So you did not consider that he was doing anything strange or reprehensible in keeping in touch with his mother’s husband who was in difficulties, or in assisting him, so far as he could, while he was banished from the country” (Din. 1.58).

THE ADVANTAGE OF A COMPLEX SYSTEM OF INVESTIGATION

The case of Polyeuctus illustrates the advantage of the complex procedure of investigation that came to be called *apophasis*. By having the Areopagus investigate the facts of a case, and a jury decide on punishment, the Athenians considered themselves to have struck a balance between impersonal judgement and a more personal justice. Dinarchus says this explicitly. In his speech against Demosthenes, he explains why, in other cases, the jury overrode the findings of the Areopagus: “There is an explanation for this which you will easily follow. The council of the Areopagus, gentlemen, has its own method of inquiring into the cases which you assign to it and the crimes committed within its own body. Unlike yourselves – and you need not take offence at this – who are sometimes apt when judging to give more weight to mercy than to justice, it simply reports anyone who is liable to the charges in question or has broken any traditional rule of conduct, believing that if a person is in the habit of committing small offences he will more easily involve himself in serious crimes” (Din. 1.5455). He mentions a few examples of people found guilty by the Areopagus, and then turned over to the jury: “You tried these men and acquitted them. You were not thereby convicting the Areopagus of error but you were more concerned with sympathy than justice, and thought the punishment too severe for the offence which the defen-

dants had committed” (Din. 1.56). He concludes this explanation with the story of Polyeuctus (Din. 1.58), which he sums up by saying: “The report of the Areopagus... was not proved false; it was quite true, but the jury decided to acquit Polyeuctus. The council [of the Areopagus – CWB] was instructed to discover the truth, yet, as I say, the court decided whether it was a case for pardon” (Din. 1.59).

Dinarchus’s arguments are successful in suggesting that the procedure of *apophasis* – which involved the less democratic institution of the Areopagus and the more democratic Assembly and People’s Court – was flexible and potentially fair.



Christopher W. Blackwell

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