Abstract: “Paragraphe, Exceptio, and Modern Civil Procedure: How to get out of a Lawsuit”

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Ancient Athenian law is not particularly noted for its professionalism or attentiveness to strictly legal arguments, as readers of Plato or Aristotle can attest. Classical Roman law made significant advances in many fields, including technical rules of procedure. Today’s contemporary American legal system has the benefit of documents such as the Federal Rules of Civil Procedure.

Despite their distinct origins, histories, and traditions of these three legal systems, they share some common elements, including the recognition that judicial resources should not be wasted on frivolous lawsuits, allowing a process by which cases can be dismissed prior to trial. At Athens, this took the form of a paragraphe, a sort of counter indictment filed by the defendant against the plaintiff. At Rome a defendant could add an exceptio to the formula defining the pleading for any number of reasons, which, if accepted by the presiding magistrate, could lead to dismissal of the lawsuit. In present day US courts, defense counsel can make a motion to dismiss to close a case prior to trial.. For Athenian law, our sources are the speeches of Isocrates and Demosthenes. For classical Roman law, we have the Institutes of Gaius the Jurist. And I will use the Federal Rules of Civil Procedure as a reference for modern law.

The project will focus on the Athenian paragraphe and compare it with the Roman and modern American procedures. This comparison will assist us in our conceptualization of the ancient Athenian practice, and help demonstrate that despite long gaps in time, certain constants remain in the practice of private law, such as procedures that attempt to discourage frivolous law suits.