



Policing Major Crimes in Classical Athens: Eisangelia and other Public Procedures

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Policing Major Crimes in Classical Athens: *Eisangelia* and Other Public Procedures

Introduction.

The Athenians of the Classical period were very concerned about misconduct by officials and other serious threats to public security. To police these crimes, the Athenians created several different legal procedures. To verify qualifications for office, they instituted the *dokimasia* of magistrates¹. During their term of office, all officials had their conduct reviewed and subject to approval every prytany. If the Assembly voted against an official, he would be removed from office by *apocheirotomia* and possibly prosecuted in court (ps. Aristot., *Ath. pol.*, 43.4). Accountants appointed by the Council also checked the accounts of officials every prytany (ps. Aristot., *Ath. pol.*, 48.3). At the end of their term of office, all magistrates had to submit their accounts to a review by public accountants, and anyone who wished could bring an action against a magistrate before one of the *euthynoi* (ps. Aristot., *Ath. pol.*, 54.2; Aeschin., *In Ctesiph.* III.12-27). For those who addressed the Assembly, there was a special action called the ‘examination of speakers’ (*dokimasia rhetoron*), who could be prosecuted if a speaker had been a male prostitute, had mistreated his parents, had not performed his military service or thrown away his shield, or who had squandered his inheritance (Aeschin., *In Timarch.* I.28-32)². The Council could initiate investigations into crimes (Andoc., *De myst.* I.36: *zetein.* Cf. 65), issue a report (*IG I³.102*, lines 39-47: *apophasis*), and recommend various courses of action. In the fourth century, the Areopagus could initiate an investigation either on its own initiative or on the order of the Assembly (Dinarch., *In Demosth.* I.50-51). The Council also received charges against officials who did not obey the laws and could vote about their guilt. If they considered the defendant guilty, they would transfer the case to a court (ps. Aristot., *Ath. pol.*, 45.2) (see *infra*, p. 79, Section 8). The state also offered rewards for inform-

¹ Ps. Aristot., *Ath. pol.* 45.3; 55.2-4 with FEYEL, 2009, p. 148-197. We would like to thank Mirko Canevaro and David Lewis for reading over a draft of this essay and for offering valuable suggestions.

² On this procedure see MACDOWELL, 2005.

ants who provided evidence about crimes that led to prosecutions in court (Andoc., *De myst.* I.27-29, 45; *IG II²*.1128, l. 35-37) (see *infra*, p. 64, Section 3). There were several public actions that could be brought against those who threatened public safety by treason (*graphe prodosias*) (Xenoph., *Hell.* 1.7.22; Poll., 8.40)³ or through cowardice in the military (*deilias*)⁴. For important cases, the Assembly could pass a decree to hold a trial at one of its meetings (see Aeschin., *In Ctesiph.* III.4 with Section 2, *infra*, p. 56). For the most serious crimes there was also a special procedure called *eisangelia* for attempting to overthrow the democracy, treason, and speaking in the Assembly after receiving bribes (see *infra*, p. 41, Section 1, and p. 77, Section 7).

In a book published in 1975, Mogens Herman Hansen collected the evidence for *eisangelia*. He argued that there were two main types of this procedure, *eisangelia* to the Assembly and *eisangelia* to the Council, both created by Cleisthenes. He then assembled a catalogue of the cases brought under these two procedures, one hundred and thirty for the former and fourteen for the latter. His study was part of a larger agenda about the transition from the sovereignty of the people during the fifth century to the sovereignty of the courts in the fourth century. Though parts of this study have been criticized, no scholar has yet reviewed all the cases in Hansen's catalogue and examined the evidence for these cases⁵. The main aim of this essay is to show that fewer than twenty of the cases that Hansen labels 'eisangelia to the Assembly' are similar to the type of *eisangelia* described by Hyperides in *For Euxenippus* (III.7-9), that most of these cases were brought through other procedures, that only five of the fourteen cases that Hansen calls 'eisangelia to the Council' are reliable and that the label 'eisangelia to the Assembly' is misleading and inaccurate. The findings of this essay also undermine Hansen's larger views about the evolving relationship of the Council, Assembly and courts and show that democracy and the rule of law always went hand in hand both in the fifth century and in the fourth century.

This essay is divided into nine parts. The first part examines the evidence for the basic features of *eisangelia* to the court as described by Hyperides in

³ HANSEN, 1975, p. 49 claims that the *graphe prodosias* is known only from Pollux, but this is not true as the Xenophon passage reveals.

⁴ On the *graphe deilias* (Aeschin., *In Ctesiph.* III.175), which covered cases of not reporting for duty (*astrateia*), leaving one's position in the line (*lipotaxion*), deserting the fleet and throwing away one's shield (Andoc., *De myst.* I.74), see HARRIS, 2013 a, p. 217-222, correcting HAMEL, 1998 b.

⁵ RHODES, 1979 made a few criticisms of HANSEN, 1975, but in an arbitrary and unsystematic way. He did not attempt to examine the two catalogues and accepted many of Hansen's classifications of individual cases. ROBERTS, 1982, p. 15-19 follows Hansen without question as does TODD, 1993, p. 113-115 («The best discussion of the law is that of Hansen»). HAMEL, 1998 a and LODDO, 2019 accept most of Hansen's classifications.

his *For Euxenippus* (III) and Lycurgus in his *Against Leocrates* and then the evidence of the lexica. The second part examines trials in the Assembly and shows that they do not conform to these features. These trials were held in accordance with the decree of Cannonus or by a decree of the Assembly. The third part examines the use of the noun *eisangelia* as a synonym for *menysis* (denunciation) and the verb *eisangellein* as a synonym for *menyein* (to denounce) and demonstrates the flaws in a narrowly lexical analysis of terms. The fourth part shows that several cases Hansen considers *eisangeliai* to the Assembly actually arose from *euthynai* of officials. The fifth part examines several cases listed by Hansen that were actually brought through legal procedures other than *eisangelia*. The sixth part studies the cases listed by Hansen for which the evidence does not permit us to determine which type of procedure was followed. The seventh part lists the cases in which the sources clearly indicate that the accuser used the same procedure of *eisangelia* as that used by Polyeuctus against Euxenippus and by Lycurgus against Leocrates. The eighth part examines *eisangelia* to the Council against officials and is the contribution of Alberto Esu. The ninth and final part summarizes the main findings of this essay and draws out their implications for our understanding of the Athenian legal system and the relationship between democracy and the rule of law in Classical Athens. This is the joint work of Alberto Esu and Edward Harris.

1. *The Evidence for the Law about Eisangelia to the Court about Serious Offenses.*

Before examining individual cases it is necessary to examine the evidence for the various forms of *eisangelia* starting with the passages in the orators. It is important to start with the contemporary evidence of the orators, the Aristotelian *Constitution of the Athenians* and Theophrastus and to examine these passages in context. After establishing the basic features as attested in the orators, one can turn to the passages in the lexica. If there is any contradiction between the contemporary evidence and the evidence in the lexica, the former should be given precedence. One should not excerpt passages from each type of source and attempt to combine the information found there without evaluating the reliability of each source in context, which is what Lipsius, Hansen and Rhodes do⁶.

The most extensive quotations of the law are found in Hyperides' speech *For Euxenippus* (III.4-9). Hyperides begins his speech by stating that cases of

⁶ LIPSIVS, 1905-1915, p. 176-213, HANSEN, 1975, p. 12-36 and RHODES, 1972, p. 162-171. HARRISON, 1971, p. 51 claims that because of the «paucity of their direct evidence from the orators the evidence of the grammarians is important» but does not analyze the latter in detail and fails to note the errors contained in the lexica.

eisangelia were in the past brought against prominent politicians on serious charges and lists, Leosthenes, Callistratus, Philon of Anaea, and Theotimus. These men were charged with betraying ships or the city and not giving their best advice to the people (Hyper., *Pro Eux.* III.1). All these men fled before trial and so did many others indicted on this charge (Hyper., *Pro Eux.* III.2)⁷. Nowadays, however, average people are indicted for trivial offenses, which have nothing to do with the law about *eisangelia* (Hyper., *Pro Eux.* III.3). This clearly implies that the law covered specific offenses and could not be brought against any action the accuser considered a threat to the community. This passage also indicates that these trials were all held in court.

Further on in the speech, Hyperides argues that Euxenippus was not a public speaker (*rhetor*) and could not therefore be convicted through this procedure (§ 30)⁸. As MacDowell rightly observes, «in the Euxenippus case Hyperides takes pains to argue that, whereas the law says ‘... being an orator, says what is not best for the Athenian people ...’, Euxenippus was not an orator when he recounted his dream and therefore was not guilty of the offence. This implies that in an *eisangelia* case a man was not guilty unless he had done one of the things listed in the law about *eisangelia*. No doubt it could be disputed whether Euxenippus was an orator or not; but that would not be worth disputing if it had been permissible to bring an *eisangelia* against Euxenippus even if his offence was not one listed in the law»⁹.

After this preface, Hyperides goes into more detail about the law. It is important to place the quotations from the law in context because the context supplies important information about the procedure¹⁰.

4. καίτοι, ὧ ἀνδρες δικασταί, ἐπὶ τῶν δημοσίων ἀγῶνων οὐ χρῆ τοὺς δικαστὰς πρότερον τὰ καθ’ ἕκαστα τῆς κατηγορίας ὑπομένειν ἀκούειν, πρὶν ἂν αὐτὸ τὸ κεφάλαιον τοῦ ἀγῶνος καὶ τὴν ἀντιγραφὴν ἐξετάσωσιν εἰ ἔστιν ἐκ τῶν νόμων ἢ μή· οὐ μὰ Δία οὐχ ὥσπερ ἐν τῇ κατηγορίᾳ Πολύδευκτος ἔλεγεν, οὐ φάσκων δεῖν τοὺς ἀπολογουμένους ἰσχυρίζεσθαι τῷ εἰσαγγελτικῷ νόμῳ, ὃς κελεύει κατὰ τῶν ῥητόρων αὐτῶν τὰς εἰσαγγελίας εἶναι περὶ τοῦ λέγειν μὴ οὐ τὰ ἄριστα τῷ δήμῳ, οὐ κατὰ πάντων Ἀθηναίων. 5. ἐγὼ δὲ οὔτε πρότερον οὐδενὸς ἂν μνησθεῖην ἢ τούτου, οὔτε πλείονος οἶμαι δεῖν λόγους ποιεῖσθαι περὶ ἄλλου τινὸς ἢ ὅπως ἐν δημοκρατίᾳ

⁷ RHODES, 1972, p. 168 suggests that these men attended their trials but fled before the verdict, but this is rightly rejected with good arguments by WHITEHEAD, 2000, p. 35-36. Cf. HANSEN, 1975, p. 35-36.

⁸ For the debate over the meaning of the term see HARRIS, 2013, p. 190-192.

⁹ MACDOWELL, 1978, p. 86.

¹⁰ HANSEN, 1975, p. 12 includes only the direct quotations from the law but does not include the earlier section, which provide evidence against his view about the initiation of *eisangeliai*.

κύριοι οἱ νόμοι ἔσσονται, καὶ αἱ εἰσαγγελίαι καὶ ἄλλαι κρίσεις κατὰ τοὺς νόμους εἰσίσαιεν εἰς τὸ δικαστήριον. διὰ τοῦτο γὰρ ὑμεῖς ὑπὲρ πάντων ἀδικημάτων, ὅσα ἔστιν ἐν τῇ πόλει, νόμους ἔθεσθε χωρὶς περὶ ἐκάστου αὐτῶν. 6. ἀσεβεῖ τις περὶ τὰ ἱερά· γραφαὶ ἀσεβείας πρὸς τὸν βασιλέα. φαῦλος ἔστι πρὸς τοὺς ἑαυτοῦ γονεῖς· ὁ ἄρχων ἐπὶ τούτου κάθηται. παράνομά τις ἐν τῇ πόλει γράφει· θεσμοθετῶν συνέδριον ἔστι. ἀπαγωγῆς ἄξια ποιεῖ· ἀρχὴ τῶν ἔνδεκα καθέστηκε. τὸν αὐτὸν δὲ τρόπον καὶ ἐπὶ τῶν ἄλλων ἀδικημάτων πάντων καὶ νόμους καὶ ἀρχὰς καὶ δικαστήρια τὰ προσήκοντα ἐκάστοις αὐτῶν ἀπέδοτε. 7. ὑπὲρ τίνων οὖν οἴεσθε δεῖν εἰσαγγελίας γίνεσθαι; τοῦτ' ἦδη καθ' ἕκαστον ἐν τῷ νόμῳ ἐγράψατε, ἵνα μὴ ἀγνοῆ μηδεὶς· 'ἐάν τις,' φησί, 'τὸν δῆμον τὸν Ἀθηναίων καταλύη' εἰκότως, ὧ ἄνδρες δικασταί· ἢ γὰρ τοιαύτη αἰτία οὐ παραδέχεται σκῆψιν οὐδεμίαν οὐδενὸς οὐδ' ὑπομοσίαν, ἀλλὰ τὴν ταχίστην αὐτὴν δεῖ εἶναι ἐν τῷ δικαστηρίῳ· 8. ἢ 'συνίη ποι ἐπὶ καταλύσει τοῦ δήμου ἢ ἐταιρικὸν συναγάγη, ἢ ἐάν τις πόλιν τινὰ προδῶ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατιάν, ἢ ῥήτωρ ὧν μὴ λέγη τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων'· τὰ μὲν ἄνω τοῦ νόμου κατὰ πάντων τῶν πολιτῶν γράψαντες (ἐκ πάντων γὰρ καὶ τὰδικήματα ταῦτα γένοιτ' ἄν), τὸ δὲ τελευταῖον τοῦ νόμου κατ' αὐτῶν τῶν ῥητόρων, παρ' οἷς καὶ τὸ γράφειν τὰ ψηφίσματα. 9. ἐμαίνεσθε γὰρ ἄν, εἰ ἄλλον τινὰ τρόπον τὸν νόμον τοῦτον ἔθεσθε ἂν οὕτως· εἰ τὰς μὲν τιμὰς καὶ τὰς ὀφελείας ἐκ τοῦ λέγειν οἱ ῥήτορες καρποῦνται, τοὺς δὲ κινδύνους ὑπὲρ αὐτῶν τοῖς ἰδιώταις ἀνεθήκατε. ἀλλ' ὅμως Πολύευκτος οὕτως ἔστιν ἀνδρεῖος, ὥστε εἰσαγγελίαν διώκων οὐκ ἔφη δεῖν τοὺς φεύγοντας τῷ εἰσαγγελτικῷ νόμῳ χρῆσθαι.

«4. Furthermore, men of the court, in public trials the judges should refuse to listen to the individual sections of the accusation until they examine the main issue in the trial and the written reply (*antigraphē*) to see whether they are in accordance with the laws or not. But not, by Zeus, as Polyeuctus stated in his accusation, asserting that the defendant should not rely on the law about *eisangelia*, which permits an *eisangelia* to be brought against public speakers (*rhetores*) for making speeches, not against all Athenians. 5. I would never mention anything before this nor do I think it more important to discuss anything else than the need for laws to be binding in a democracy, and that cases of *eisangelia* and other trials take place in court according to the laws. This is why you enacted separate laws about each and every crime that occurs in public life. 6. Suppose that someone commits impiety in religious matters: there are public actions for impiety before the *basileus*. If he mistreats his parents, the Archon presides. Someone makes illegal proposals in the city: there is the college of the *thesmothetai*. He does something that deserves arrest: the magistracy of the Eleven has been established. And in a similar way you have provided laws, officials and courts appropriate to each offense. 7. So in what cases then do you think an *eisangelia* should be brought? You have already specified this in detail in the law, to leave nobody in doubt. 'If anyone,' it says, 'seeks to overthrow the Athenian people'. Naturally, men of the court, such a charge

allows no procedural delay whatsoever, not even an affidavit for postponement, but must be heard in the court as soon as possible. 8. ‘Or if he gets together anywhere with a view to overthrow of the people, or assembles an association; or if anyone betrays a city or ships or an army or fleet; or says things, as a speaker, not in the best interests of the Athenian people and takes money for doing so’. When you wrote the above parts of the law you made them applicable to all citizens, as these crimes that all of them might commit; but the law’s last part refers to the speakers themselves, those who also propose decrees».

What is significant is that Hyperides compares *eisangelia* to other public procedures such as the public action against impiety (*graphe asebeias*), the public action against harming parents (*graphe kakoseos goneon*), the public action against illegal decrees (*graphe paranomon*), and the arrest of wrongdoers to the Eleven (*apagoge kakourgon*)¹¹. In each of these cases, a volunteer prosecutor initiated the case by presenting a summons to appear before a magistrate or by arresting the defendant¹². When the two met before the magistrate, the accuser drew up a written indictment containing his name, the name of the defendant, the procedure followed and the substantive charges against the defendant following the terms of the statute¹³. The defendant then replied by submitting his reply (5, ἀντιγραφὴν: cf. § 31). Hyperides states that the accuser in the case against Euxenippus should have done the same (§ 5). This indicates that the person who brought an *eisangelia* for overthrowing the democracy, treason or accepting bribes for giving bad advice followed the same basic procedure as the accusers in other public cases. There is no evidence in this passage that an *eisangelia* was initiated in the Assembly and the comparison with other public charges rules out this possibility¹⁴.

Later in the speech Hyperides (*Pro Eux.* III.29-30) recalls how he brought an *eisangelia* against Philocrates.

τοῦτον εἰσαγγείλας ἐγὼ ὑπὲρ ὧν Φιλίππῳ ὑπερέτει κατὰ τῆς πόλεως, εἶλον ἐν τῷ δικαστηρίῳ, καὶ τὴν εἰσαγγελίαν ἔγραψα δικαίαν καὶ ὡς περὶ ὁ νόμος κελεύει. ῥήτορα ὄντα λέγειν μὴ τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνοντα καὶ δωρεὰς παρὰ τῶν τάναντία πραττόντων τῷ δήμῳ’.

«I brought an *eisangelia* against this man for the actions he did for Philip against the city and convicted him in court, and I wrote a just indictment for the

¹¹ HANSEN, 1975, p. 12-21 and RHODES, 1972, p. 162-171 fail to notice this aspect of Hyperides’ discussion.

¹² See HARRISON, 1971, p. 85-94 on initiating legal actions.

¹³ On the plaint see HARRIS, 2013 b.

¹⁴ Pace WHITEHEAD, 2000, p. 175 who asserts without evidence that the proceedings against the defendants mentioned in Hyperid., *Pro Eux.* III.2 «had been formally initiated in the *ekklesia*».

eisangelia as the law orders: ‘being a public speaker he did not give the best advice for the Athenian people taking money and gifts from those who were acting against the people’».

This passage confirms the point that the way to initiate an *eisangelia* against overthrowing the democracy, treason and bribery of public speakers was to submit a written indictment following the terms of the law about the procedure. This is also confirmed by a passage in the *Against Leocrates* (137), in which the prosecutor Lycurgus says that he could have included the charge in his plaint that the defendant betrayed the statue of his father dedicated in the temple of Zeus Soter. Here too the method of initiating a case is by a written indictment. Nothing in these passages is said about initiating an *eisangelia* by a decree of the Assembly. Besides, if an *eisangelia* was initiated by a decree, how could there be a written reply by the defendant? What form would this take? According to Hyperides, the case initiated by an *eisangelia* was then tried before judges (*dikastai*) in court (§ 5: εἰσάσιν εἰς τὸ δικάστηριον; § 6: δικάστηρια; § 7: δεῖ εἶναι ἐν τῷ δικάστηρίῳ)¹⁵. It is also clear from the *eisangelia* Lycurgus brought against Leocrates that this case was tried in court (Lycurg., *Or. in Leocr.* 4, 9, 149). Nothing is said about a trial on this charge in the Assembly. In fact, the discussion of the law rules out this possibility.

There is not as much information about the procedure of *eisangelia* in Hyperides’ speech *For Lycophron*. The defendant Lycophron has been charged with seducing married women. The accuser Ariston has submitted a written indictment with the charges (§ 3-4, 12) and claims that Lycophron is overthrowing the democracy by violating the laws (§ 12)¹⁶. In his indictment, Ariston claims that Lycophron was making many women stay indoors and grow old unmarried. In his reply to the charges, Lycophron denies that he has seduced any women (§ 13). He also argues that Ariston should have brought a regular public action (*graphe*) before the *thesmothetai*. He is probably referring to the public action against seduction (*graphe moicheias*) (ps. Aristot., *Ath. pol.* 59.3)¹⁷. The reason why he chose an *eisangelia* instead is that with this action he runs no risk (§ 12: cf. § 8). As we will see in the discussion of the evidence from the lexica, Pollux (8.52) interpreted this statement to mean that the accuser in an *eisangelia* was not penalized if he did not gain one-fifth

¹⁵ In his presentation of Hyperid., *Pro Eux.* III.7-8, HANSEN, 1975, p. 12 deliberately suppresses this key phrase in 7 and does not quote section 5.

¹⁶ Pace HANSEN, 1975, p. 25 and WHITEHEAD, 2000, p. 112 there is no reason to believe that the discussion of the charges in the Assembly (Hyperid., *Pro Lycophr.* II.3) formed part of the legal procedure. It is clear that the formal procedure was initiated by a written indictment and not by a decree.

¹⁷ See WHITEHEAD, 2000, p. 130.

of the votes in the way accusers were in normal public actions¹⁸. It has been argued that this interpretation is unnecessary and a comparison has been made with other passages (Andoc., *De myst.* I.6; Lys., 'Υπ. Ἀριστοφ. χρημ. XIX.3; Antiph., *De caede Her.* V.6-7; Aeschin., *De falsa leg.* II.159), which state that in trials defendants run the risk of serious punishment whereas accusers run no risk¹⁹. But these passages are not similar to *Pro Lykophr.* II.12 because here Lycophron is explaining why Ariston chose to bring an *eisangelia* rather than a regular public action. The explanation only makes sense if there was a difference between the penalties for accusers in each type of action. There are no grounds to question the interpretation of Pollux.

As we have seen with *Pro Euxenippus*, it is clear that the accuser who brought an *eisangelia* had to claim that the defendant's actions fit into one of the three categories enumerated in the law: 1) subversion of the democracy, 2) treason against the military, and 3) not giving the best advice after receiving bribes. As MacDowell observes, «it appears that Lykophron was accused by Ariston by *eisangelia* of subverting the democracy; it was alleged that he had seduced a married woman and thus had undermined the marriage customs of Athens. It seems strange to call such an act subversion of the democracy. The reason for calling it so must have been that an *eisangelia* could not be brought unless the charge was one of those listed in the law about *eisangelia*»²⁰.

The two speeches of Hyperides, *For Lykophron* (§ 20) and *For Euxenippus* (§ 14 and 18), Demosthenes *Against Leptines* (XX.79), and the speech of Lycurgus *Against Leocrates* (§ 27, 45, 78, 91, 121, 131, and 150) explicitly state that the penalty for conviction on a charge of *eisangelia* was death. There is no mention of an alternative or of any assessment of the penalty (*timesis*). In fact, Aeschines (*In Ctesiph.* III.252) clearly states that if one more vote had gone against Leocrates, he would have been put to death, which clearly implies that there was just one vote at the trial and therefore no assessment of the penalty²¹. Hansen arbitrarily rejects this unambiguous evidence and claims that there was an assessment based on several cases of trials held by *eisangelia*²². As we will

¹⁸ For the penalties of one thousand drachmas and a ban on bringing public actions see HARRIS, 2006, p. 405-422 and HARRIS, 2019 a, p. 93-97 with detailed refutation of SATO, 2015, CARAWAN, 2019 and HANSEN, 1991, p. 192.

¹⁹ See WHITEHEAD, 2000, p. 124 following an unconvincing suggestion of Scafuro.

²⁰ MACDOWELL, 1978, p. 186. See also HANSEN, 1975, p. 106.

²¹ For the correct interpretation of this passage see BIANCHI, 2002, refuting SULLIVAN, 2002.

²² HANSEN, 1975, p. 33-35, followed by WHITEHEAD, 2000, p. 147. The cases in which Hansen claims death was not the penalty are cases 96 (Cephisodotus: Demosth., *In Aristocr.* XXIII.167), 101 (Timotheus), and 126 (Menesaichmos). See below for analysis showing that none of these cases is *eisangelia* to the court.

see in the following sections, not a single one of these cases can be securely identified as a case of *eisangelia*, and several were clearly brought through other procedures²³.

We can sum up the conclusions from a study of the evidence from Hyperides' *For Euxenippus* and *For Lycophron*, which is confirmed by evidence from Lycurgus' *Against Leocrates*. First, an *eisangelia* against subversion, treason, and bribery of public speakers was a public case initiated in the same way as other public cases, that is, by issuing a summons to the defendant and submitting a written indictment to the appropriate magistrate. Second, a case of *eisangelia* was tried in a court (*dikasterion*) before judges (*dikastai*). Third, the law about this type of *eisangelia* covered three types of crimes: attempts to overthrow the democracy, treason against the city and its armed forces, and not giving the best advice to the people after taking bribes. The speeches *For Lycophron* and *For Euxenippus* of Hyperides and *Against Leocrates* of Lycurgus do not mention any other substantive categories covered by the procedure. Fourth, there appears to have been no penalty for an accuser who did not gain one-fifth of the votes. Fifth, the punishment for conviction was death, and there was no assessment of the penalty.

Next it is important to examine the contemporary evidence for *eisangelia* to the Council before examining the passages in the lexica, which discuss both of these kinds of *eisangelia* and other forms.

Ps. Aristot., *Ath. pol.* 45.2: κρίνει δὲ τὰς ἀρχὰς ἢ βουλὴ τὰς πλείστας, καὶ μάλισθ' ὅσαι χρήματα διαχειρίζουσιν· οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἦν ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις· ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον, ἐὰν αὐτῶν ἢ βουλὴ καταγνῶ.

«(Sc. The Council) judges most of the magistracies, especially those that handle money. The judgment is not binding but can be transferred to the court. It is permitted also for private individuals to bring an *eisangelia* against any official whom they wish for not following the laws. There is a transfer for these cases also to the court if the Council votes to condemn».

This type of *eisangelia* is clearly different from the previous type of *eisangelia* both on procedural and substantive grounds (see in general *infra*, p. 79, Section 8)²⁴. In terms of procedure, the case is initiated by a charge brought by

²³ LIPSIVS, 1905-1915, p. 191 believed that there was an assessment before around 350, but this was changed to death after this time.

²⁴ RHODES, 1972, p. 170-171 fails to see the substantive distinction between *eisangelia* to the courts and *eisangelia* to the Council.

a private person or a member of the Council to the Council, which then votes to condemn or acquit. If the vote goes against the defendant, the case is then transferred to the court²⁵. In the previous type of *eisangelia*, the case is initiated in the normal way by bringing a charge before a magistrate, followed by a single trial in court without a preliminary vote. In terms of substance, this procedure can only be used against officials for the offense of not following the laws. In other words, they are charged with violating their oath to rule in accordance with the laws (Xenoph., *Mem.* 1.1.18). In the previous type of *eisangelia*, the charges can be brought against private individuals for subversion and treason and are brought against speakers (as opposed to officials) in the Assembly for taking bribes and not giving the best advice. The two types of *eisangelia* are strongly differentiated.

We can now turn to the two passages in the lexica about this form of *eisangelia*.

The first is found in the lexicon of Pollux (8.52-53).

ἡ δ' εἰσαγγελία τέτακται ἐπὶ τῶν ἀγράφων δημοσίων ἀδικημάτων. κατὰ τὸν νόμον τὸν εἰσαγγελτικὸν ... (ἀμφοτέρως γὰρ λέγουσιν), ὃς κεῖται ... περὶ ὧν οὐκ εἰσὶ νόμοι, ἀδικῶν δέ τις ἀλίσκεται ἢ ἄρχων ἢ ῥήτωρ, εἰς τὴν βουλὴν εἰσαγγελία δίδοται κατ' αὐτοῦ, κἄν μὲν μέτρια ἀδικεῖν δοκῆ, ἢ βουλὴ ποιεῖται ζημίας ἐπιβολήν, ἂν δὲ μείζω, παραδίδωσι δικαστηρίῳ. τὸ δὲ τίμημα, ὃ τι χρὴ παθεῖν ἢ ἀποτίσαι. ἐγίνοντο δὲ εἰσαγγελίαι καὶ κατὰ τῶν καταλύοντων τὸν δῆμον ῥητόρων, ἢ μὴ τὰ ἄριστα τῷ δήμῳ λέγοντων, ἢ πρὸς τοὺς πολεμίους ἄνευ τοῦ πεμφθῆναι ἀπελθόντων ἢ προδόντων φρούριον ἢ στρατιάν ἢ ναῦς, ὡς Θεόφραστος ἐν τῷ πρώτῳ περὶ νόμων. ὅτι δὲ ὁ εἰσαγγεῖλας καὶ οὐχ ἑλὼν ἀζήμιος ἦν, Ὑπερείδης ἐν τῷ ὑπὲρ Λυκόφρονος φησίν. καίτοι γε ὁ Θεόφραστος τοὺς μὲν ἄλλας γραφᾶς γραψαμένους χιλίας τ' ὀφλισκάνειν, εἰ τὸ πέμπτον τῶν ψήφων μὴ καταλάβοιεν, καὶ προσατιμοῦσθαι, τοὺς δὲ εἰσαγγέλλοντας μὴ ἀτιμοῦσθαι μὲν, ὀφλεῖν δὲ τὰς χιλίας. ἔοικε δὲ τοῦτο διὰ τοὺς βραδῖως εἰσαγγέλλοντας ὕστερον προσγεγράφθαι.

«The *eisangelia* has been arranged for unwritten public offenses. According to the law about *eisangelia* (for both are said), which has been enacted for offense about which there are not any laws, but if someone, either an official or a public speaker, is caught committing an injustice, the procedure of *eisangelia* is provided against him, and if he is considered to have be guilty of a moderate offense, the Council imposes a fine for a penalty, but if a greater offense, the Council hands him to the court, and there is an evaluation for what he must suffer or pay. There were also *eisangeliai* against speakers who overthrew the democracy, or against those who did not give the best advice to the people, or

²⁵ One should not translate the term *epheasis* as «appeal». See PELLOSO, 2016.

who went away to the enemy without being sent, or betrayed a fort, the army or ships, as Theophrastus states in the first book of *On the Laws*. Hyperides in *For Lycophron* states that the person who brought an *eisangelia* and did not convict did not incur a penalty. And yet Theophrastus states that those who brought other public actions owe one thousand drachmas if they do not take one fifth of the votes and are also punished with *atimia*, but those who bring an *eisangelia* do not incur *atimia*, but owe one thousand drachmas. This seems to have been added later because it was easy to bring an *eisangelia*».

The passage clearly distinguishes between two kinds of *eisangelia*, one to the Council about unwritten crimes and the other against speakers who subvert the democracy and do not give good advice and against treason. Pollux does not state where the latter cases were tried but later in the entry classifies *eisangelia* as a public charge similar to other *graphai* (τοὺς μὲν ἄλλας γραφὰς γραψαμένους ... τοὺς δὲ εἰσαγγέλλοντας ...). The first part about the Council contains several errors. First, it states that *eisangelia* to the Council concerned ‘unwritten public crimes’, but the Aristotelian *Constitution of the Athenians* (45.2) states explicitly that it was brought against officials for not following the laws. One should add that the possibility of bringing an unwritten offense would go against the prohibition against using unwritten laws (Andoc., *De myst.* I.87, 89). It would also violate the oath of the judges to judge in accordance with the laws of Athens²⁶. Second, Pollux states that this form of *eisangelia* could be brought against officials and public speakers (ἢ ἄρχων ἢ ῥήτωρ), but the Aristotelian *Constitution of the Athenians* (45.2) limits the application of this form of *eisangelia* to officials. Pollux on the other hand is aware of the power of the Council to impose fines up to five hundred drachmas without referring the case to a court (ps. Demosth., *In Everg. et Mnes.* XLVII.43) and the requirement to submit cases involving larger penalties to the courts. The second part of the entry cites *On the Laws* of Theophrastus and lists the same basic categories found in Hyperides’ *For Euxenippus* (§ 7-8): 1) subversion of the constitution, 2) treason, and 3) not giving the best advice, but diverges in two details. This version limits charges of subversion to public speakers and does not include the part about public speakers taking bribes. Theophrastus does not state where trials about the second kind of *eisangelia* were held, but does not mention the Assembly. Pollux, following Theophrastus, does not say that the second form of *eisangelia*, which was a public action tried in court, covered unwritten crimes. As we saw above, Pollux cites Hyperides (*Pro Lykophr.* II.8 and 12), who implies no penalty for frivolous prosecution in *eisangelia*. Pollux appears to imply that according to

²⁶ On the Judicial Oath see HARRIS, 2013 a, p. 101-137.

Theophrastus there was no loss of the right to bring public actions, but there was a fine of one thousand drachmas, which was imposed later because it was too easy to bring an *eisangelia*. Some scholars have claimed that this new penalty was imposed before 338 or 330 on the basis of a passage in Demosthenes (*De cor.* XVIII.250), who mentions that after Chaeronea he was brought to court by the procedure of *eisangelia* and that none of the accusers gained a share of the votes²⁷. Yet as Bonner and Smith rightly note, «Demosthenes' statement does not necessarily imply a fine. It may be that he merely mentions the failure of the of his opponents to obtain one-fifth of the votes in order to show how overwhelming his victories had been»²⁸. In fact, the manuscripts of *On the Crown* do not have 'one-fifth' of the votes, but only 'a share' of the votes, but the argument still holds. If the information given by Pollux does come from Theophrastus, the most we can state is that the penalty of one thousand drachmas was added by the time the latter wrote *On the Laws*.

An examination of the entry in Pollux clearly demonstrates how the lexica can contain reliable information and both minor and serious errors. The statement about *eisangelia* to the Council against 'unwritten crimes' is contradicted by the contemporary evidence of the Aristotelian *Constitution of the Athenians* and is clearly not reliable. What is important is that the information found in Hyperides is in full agreement with the information found in the *On the Laws* of Theophrastus.

We can now turn to the entry *εἰσαγγελία* in the *Lexicon Rhetoricum Cantabrigiense* (p. 74 l. 4-16).

κατὰ καινῶν καὶ ἀγράφων ἀδικημάτων. αὕτη μὲν οὖν ἡ Καικιλίου δόξα. Θεόφραστος δὲ ἐν τῷ τετάρτῳ περὶ νόμων φησὶ γενέσθαι ἕαν τις καταλύῃ τὸν δῆμον ῥήτωρ ἢ μὴ τὰ ἄριστα συμβουλευῆ χρήματα λαμβάνων, ἢ ἕαν τις προδιδῷ χωρίον ἢ ναῦς ἢ πεζὴν στρατιάν, ἢ ἕαν τις εἰς τοὺς πολεμίους ἀφικνήται ἢ μετοικῆ παρ' αὐτοῖς ἢ στρατεύηται μετ' αὐτῶν ἢ δῶρα λαμβάνῃ. συνομολογεῖ δὲ τοῖς ὑπὸ Θεοφράστου ἢ κατὰ Θεμιστοκλέους εἰσαγγελία, ἣν εἰσήγγειλε κατὰ Κράτερον Λεωβώτης Ἀλκμαίωνος Ἀγρυλῆθεν. ἔνιοι δὲ τῶν ῥητόρων εἰώθεσαν καλεῖν καὶ τὰ μὴ μέγала ἀδικήματα εἰσαγγελίαν. ἔστι δ' ὅτε ἐμβάλλοντες τοὺς συκοφαντούμενους εἰσήγγελλον, ὡς μὲν Φιλόχορος, χιλίων καθεζομένων, ὡς δὲ Δημήτριος ὁ Φαληρεὺς, χιλίων πεντακοσίων. Καικίλιος δὲ οὕτως ὠρίσατο.

«*Eisangelia*. (sc. A procedure) against new and unwritten offenses. But Theophrastus in the fourth book of *On the Laws* says that (this procedure) is available if some public speaker overthrows the democracy or does not give the

²⁷ See for example HANSEN, 1975, p. 30.

²⁸ BONNER, SMITH, 1930, p. 297-298.

best advice after taking money, or if someone betrays a place, or ships, or the land army, or if someone goes or lives with them or serves in the army with them or takes bribes. The *eisangelia* against Themistocles, which, according to Craterus, Leobotes, the son of Alcmeon from Agryle, brought agrees with Theophrastus. Some orators were accustomed to call also not very important offenses (*sc.* subject to) *eisangelia*. Sometimes launching an attack they used to bring an *eisangelia* against those falsely accused as Philochorus states, before one thousand sitting (*sc.* in judgment) or as Demetrius of Phaleron, before one thousand five hundred. Caecilius is thus set apart».

This lengthy entry requires close scrutiny. First, the lexicon makes a distinction between the ‘opinion’ of Caecilius, who believed that *eisangelia* was brought against unwritten offenses, and the evidence of Theophrastus in *On the Laws*, who contradicted this (there is a clear contrast implicit in the μέν ... δέ) and listed three specific areas, the same basic ones found in Hyperides *For Euxenippus* and in the quotation from Theophrastus in Pollux²⁹. Like Pollux, this lexicon states that charges of subversion could be brought only against public speakers, but adds the detail about taking bribes for speakers who do not give good advice. This lexicon also adds a phrase about bribery for those who commit treason, an element missing in the other sources and in Lycurgus *Against Leocrates*. The author of this entry sides with Theophrastus against Caecilius by citing the plaint of Leobotes against Themistocles, but this evi-

²⁹ LIPSIIUS, 1905-1915, p. 184-185 sees the contradiction but tries to resolve it by claiming that in the late fifth century there was no limit to the type of cases brought under *eisangelia*: «Der Ausdruck der Stelle gibt damit zugleich den Beweis, daß damals, d. i. im drittlezten Jahrzehnt des fünften Jahrhunderts, der Kreis der durch Eisangelie verfolgbaren Handlungen noch nicht fest begrenzt war. Für diese Zeit hat daher eine gewisse Berechtigung die Definition des Rhetors Kaikilios, der die Eisangelie gegen noch nicht dagewesene und vom Gesetz nicht vorgesehene Vergehen gerichtet erklärte». Lipsius does not observe the problems with this view and that the author of the lexicon appears to reject it. He also does not notice the contradiction with the evidence of Pollux. As we will see, none of the cases Lipsius cites for the late fifth century is ever called an *eisangelia* aside from some which are actually cases of *menysis*. RHODES, 1972, p. 164, nt. 1 claims that any law about *eisangelia* before 410 could be called a *nomos eisangelitikos* and that «the revision of the laws at the end of the fifth century probably resulted in the compilation of a list of offences which at that time were eisangelitic, and which we may call the νόμος εισαγγελτικός». This is nothing but guesswork and supported by no evidence. Moreover, the review (*dokimasia*) of the laws between 410 and 399 did not work this way. Laws were submitted to the Assembly for review, and those laws approved by the Assembly were written on stelae. This process rules out any possibility of such a compilation of offences from different statutes. For the procedure see CANEVARO, HARRIS, 2012, p. 110-116. For a detailed refutation of the attempt of HANSEN, 2016 to defend the authenticity of the document at Andoc., *De myst.* I.83-84 about this procedure see CANEVARO, HARRIS, 2016-2017, p. 33-47. Both DILTS, MURPHY, 2018, p. VI and LIDDEL, 2020, p. 79 have endorsed our analysis and rightly reject Hansen’s attempt to defend the document’s authenticity.

dence raises more questions. Further down in the entry, the opinion of Caecilius is ‘set apart’, which appears to mean that his opinion is at odds with the other evidence. The sentence about *eisangelia* used for minor crimes appears to derive, directly or indirectly, from Hyperides *For Euxenippus* (III.3). The information about *eisangelia* and sycophants does not find a parallel in the contemporary sources. There was a public charge against sycophants, and a *probole* could also be brought against sycophants. Once more, the information about *eisangelia* being used against ‘unwritten crimes’ is regarded with skepticism and contradicted by the evidence of Theophrastus. What is important to observe is that the author of this lexicon appears to disagree with the opinion of Caecilius, an author who wrote in the first century BCE. His main interests were stylistic as is attested by the titles of his works³⁰. His two historical works concerned the history of his native Sicily (*FGrHist* 183, *fr.* 1=Athen., 272 f and *fr.* 2=Athen., 466 a). As we will see in *infra*, p. 79, Section 8, Caecilius preserved two documents about the trials of Antiphon, which are certainly forgeries, containing many mistakes about legal procedure and terminology. His information is clearly not reliable here, which is why Pollux rejects it and marks it out as at variance with other sources. One should clearly prefer the evidence of the contemporary writer Theophrastus, who was an expert on legal matters. We should also observe that in regard to unwritten crimes, this lexicon does not give the same information as Pollux. Finally, one should note that there is also in this work some information about *eisangelia* in the entry πρόστιμον, where it is stated that if an accuser in an *eisangelia* did not gain one fifth of the votes, the judges made an evaluation of the penalty (οἱ δικασταὶ τιμῶσιν). This is contradicted by the evidence in Hyperides, which states that there was no penalty, and the information in Theophrastus, who states that the penalty was fixed at one thousand drachmas sometime later. This is important because it demonstrates how the information in the lexica can be very unreliable.

The next passage comes from the lexicon of Harpocration.

Σν. εισαγγελία: δημοσίας τινὸς δίκης ἐστὶ, τρία εἶδη εισαγγελιῶν. ἡ μὲν γὰρ ἐπὶ δημοσίοις ἀδικήμασι μεγίστοις καὶ ἀναβολὴν μὴ ἐπιδεχομένοις, καὶ ἐφ’ οἷς μήτε ἀρχὴ καθέστηκε μήτε νόμοι κείνται τοῖς ἄρχουσι καθ’

³⁰ See RHYS ROBERTS, 1897 and OFENLOCH, 1907. The titles of his works are: *The Art of Rhetoric*, *On Figures of Speech*, *On the Sublime*, *How the Attic Style Differs from the Asian*, *On the Style of the Ten Orators*, *Essay on Lysias*, *A Comparison of Demosthenes and Cicero*, *A Comparison of Demosthenes and Aiskhenes*, *On Demosthenes: Which of His Speeches are Genuine and Which False*, *Against the Phrygians*, *Demonstration that Every Phrase of Elegant Language Has Been Spoken*, and *On Things Said by Orators in Accordance with or Contrary to History*.

οὓς εἰσάξουσι, ἀλλὰ πρὸς τὴν βουλὴν ἢ τὸν δῆμον ἢ πρώτη κατάστασις γίνεται καὶ ἐφ' οἷς τῶ μὲν φεύγοντι, ἐὰν ἀλῶ, μέγιστα ζημίαι ἐπίκεινται, ὁ δὲ διώκων, ἐὰν μὴ ἔλῃ, οὐδὲν ζημιούται πλὴν ἐὰν τὸ ε' μέρος τῶν ψήφων μὴ μεταλάβῃ τότε γὰρ χιλίας ἐκτίνει. τὸ δὲ παλαιὸν καὶ οὗτοι μείζονως ἐκολάζοντο. ἑτέρα δὲ εἰσαγγελία λέγεται ἐπὶ ταῖς κακώσεσιν. αὗται δ' εἰσι πρὸς τὸν ἄρχοντα, καὶ τῶ διώκοντι ἀζήμιοι, κὰν μὴ μεταλάβῃ τὸ ε' μέρος τῶν ψήφων. ἄλλη δὲ εἰσαγγελία ἐστὶ κατὰ διαιτητῶν. εἰ γὰρ τις ὑπὸ διαιτητοῦ ἀδικηθεῖη, ἐξῆν τοῦτον εἰσαγγέλλειν πρὸς τοὺς δικαστάς, καὶ ἀλοὺς, ἡτιμοῦτο. Ἰσαῖος μέντοι περὶ τοῦ Ἀγνίου κλήρου τὸ αὐτὸ πρᾶγμα εἰσαγγελίαν καὶ γραφὴν ὠνόμασεν.

Sv. Eisangelia. This is a type of public suit. There are three kinds of *eisangeliai*. There is one (*sc.* kind) for the most serious public crimes which do not allow for delay and for which there is not a magistracy or laws established according to which they (*i.e.* magistrates) will introduce them, but to the Council or to the Assembly there is a first hearing and for which on the one hand, the most serious punishments are established for the defendant if he is convicted, and on the other the accuser, if he does not convict is not punished except if he does not gain one fifth of the votes for then he pays a fine of one thousand (*sc. drachmai*). In the past these were also punished more harshly. Another type of *eisangelia* is said to be for charges of maltreatment. These were brought before the archon, and carried no penalty for the accuser even if he did not gain one fifth of the votes. Another type of *eisangelia* was against (public) arbitrators. If someone was wronged by an arbitrator, it was possible to bring an *eisangelia* before the judges, and if convicted, he lost his rights. Nevertheless Isaeus in *On the Estate of Hagnias* calls the same thing an *eisangelia* and a *graphe*.

There are five serious problems with this entry³¹. First, Hyperides (*Pro. Eux.* III.7-8) states that *eisangelia* is like all other public actions: the law assigns jurisdiction over certain offences to certain officials and implies that cases were brought before the *thesmothetai*. This contradicts the statement in Harpocration that *eisangelia* could be brought for crimes not assigned to a magistrate. Second, Hyperides states that the law covers three specific areas. In early part of his speech he criticizes cases because they were not brought against actions that fell under these rubrics. If one brings an *eisangelia* against any actions even those not listed in the laws, this criticism would make no sense. When Lycurgus admits that the actions of Leocrates do not fall under any of the specific categories listed under the general rubric of 'treason' he still follows the law by stating that the actions of Leocrates fall under the general rubric of 'treason'. If *eisangelia* could be used against any actions, this argument would not be necessary³². Third, Harpocration

³¹ For references to earlier discussions of this entry see CASELLA, 2018, p 108-111.

³² This point is well made by HANSEN, 1981, p. 91-93. Cf. MACDOWELL, 1978, p. 184 quoted above.

states that *eisangelia* had an initial phase in the Council or Assembly. This was clearly not true for *eisangelia* to the court because Hyperides clearly implies that *eisangelia* was initiated in the same way as other public actions, that is, by presenting a plaint to a magistrate or board of magistrates³³. As we will see *infra*, p. 77 in Section 7, in every case of *eisangelia* securely attested the trial was in court, and there is no evidence for a preliminary stage in the Assembly. Fourth, the evidence about the penalty for the prosecutor who did not gain one-fifth of the votes in an *eisangelia* is different from the evidence given in Hyperides' *For Lykophron*, but in agreement with Pollux about the later penalty. On the other hand, Harpocration states that the penalty for not gaining one-fifth of the votes was more harsh in the past, which is contradicted by the evidence of Hyperides and Theophrastus and is clearly unreliable. Fifth, there was a general principle in Athenian law that there could be no punishment without law, that is, one could not bring a legal action against a defendant for an action not listed in the laws. This was codified in 403 by the law forbidding any magistrate to follow an unwritten law, that is, a law that had not been enacted by the Assembly and inscribed on a stele (*Andoc.*, *De myst.* I.86). In sum, the evidence in the first part of the entry in Harpocration is contradicted by contemporary evidence and is clearly not reliable.

The most important point arising from this examination of the lexica is that there is no reliable evidence for *eisangelia* brought against 'unwritten crimes'. Pollux states this category was only for cases brought to the Council, but this is contradicted by the Aristotelian *Ath. Pol.* 45.2. The statement of Pollux is also not consistent with that of Harpocration, who says that such charges could be brought to the Council and the Assembly 'in the first instance'. The entry of Harpocration also contains errors about the penalties for frivolous prosecution. Finally, it is clear that the author of the *Lexicon of the Ten Orators* rejects the opinion of Caecilius, an author writing after the Classical period, and sides with the opinion of Theophrastus though perhaps not for the best reasons. One cannot refer to any uniform tradition about unwritten crimes in the lexica³⁴. These sources contradict each other and make several mistakes. Their information cannot be trusted when contradicted by contemporary evidence.

Before examining the cases in Hansen's catalogue, it is important to make another methodological point. Two problems with Hansen's analysis (which

³³ RHODES, 1972, p. 166 accepts the statement of Harpocration that «ἡ πρώτη κατάστασις could be made to the *boule* or *ekklesia*) but does not examine the statement in context and does not observe the contradiction with the information given by Hyperides.

³⁴ This fallacy is committed by RHODES, 1972, p. 162-164 and RHODES, 1979, p. 107, who does not examine the information of the lexica separately and in context, two flaws that completely undermine his analysis.

he shares with Lipsius and Rhodes to some extent) are his tendency to assume that every time one finds the verb in a text, the passage must be referring to the *eisangelia* law found in Hyperides' *Pro Euxenippus* and his habit of assuming that every case of treason found in the sources must be a case of *eisangelia*³⁵. But it is clear that the verb can be used in the sense of 'give information' or 'denounce' without any connection to this procedure and that trials for treason could be brought by other procedures³⁶. In the speech of Lysias *Against Eratosthenes* (I.20), the litigant Euphiletus uses the verb to recount how his slave girl reported (εἰσαγγείλειε) to Eratosthenes. In another speech of Lysias (*In Theomn. I X.1*), another litigant uses the verb to describe how Lysitheus denounced (εἰσήγγελλε) Theomnestus for speaking before the people after having thrown away his weapons. This charge was not one of those listed in the law about *eisangelia*, which included only attempts to overthrow the democracy, treason and accepting money for speaking against Athenian interests. The speaker is clearly using the verb to refer to a prosecution under the law about the scrutiny of speakers (*dokimasia rhetoron*) (Aeschin., *In Timarch. I.28-32*). Thucydides (1.116.3; 3.3.3) uses the verb as a passive participle to mean 'reported' or 'announced' without any implications of legal procedure. In Xenophon's account of the conspiracy of Cinadon (*Hell. 3.3.5*), the verb is used for the report made by the informer to the Ephors (ἐρομένων δὲ τῶν ἐφόρων πῶς φαίη τὴν πράξιν ἔσεσθαι, εἶπεν ὁ εἰσαγγεῖλας). This report leads to the arrest and execution of Cinadon (Xenoph., *Hell. 3.3.9*). In the famous law about charcoal from Delos dated (*ID, n. 509*) the verb (lines 16-18: ἐξέστω εἰσαγγέλλειν τῶι βουλομένωι τῶμ πολιτῶν πρός τοὺς ἀγορανόμους) is used to denote denunciations made to the *agoranomoi* about violations of the law, and the noun (εἰσαγγελίας) is used to denote accusations about such violations brought before the court of the thirty-one³⁷. In another decree from Delos dated to the early third century BCE about keeping the area in front of the temple of Dionysus and the *temenos* of Leto clean (*SEG XXIII.498=LSCG, n. 53*), there is a provision about enforcement using the verb to denote accusations made to the Council (lines 11-13: ἐξουσίαν εἶναι τῶι λαβόντ[ι] | καὶ ἀπάγειν καὶ εἰσαγγέλλειν πρό[ς] | τὴν βουλὴν). In a decree from Amorgos dated to the early fourth century or the early third century BCE (*IG XII, 7.4*), the verb is used to denote a report or denunciation (line 5: εἰσαγγέλλει) made by a priestess of Demeter to the *prytaneis* apparently about

³⁵ HANSEN, 1981, p. 89-90 attempts to respond to this criticism but does not include several non-technical uses of the term.

³⁶ RHODES, 1979, p. 103 makes this point but only mentions Lys., *In Theomn. I X.1* and Isac., *De Hagn. XI.6, 15* and does not analyze other passages. Cf. HANSEN, 1981, p. 89-90.

³⁷ For a similar use of the verb see *IG IV², 1.68, lines 35-36* (partly restored), 46 (restored).

impiety committed in a shrine (lines 10-11: [ἀ]σε[βου]σιν ...) (cf. *OGIS*, n. 669, line 39: μηκέτι ἐξεῖναι τούτῳ εἰσαγγέλλειν κατηγοροῖ).

As we will see *infra*, p. 64, Section 3, the verb *eisangellein* and the noun *eisangelia* can also be used as a synonym of the verb μὴνύειν and the noun μήνυσις in Andocides' *On the Mysteries* and in Lysias' *Against Agoratus*. This means that every time one finds the verb *eisangellein* in a text, one needs to examine the context to determine its meaning and the specific type of legal procedure to which it refers.

2. Trials in the Assembly.

In thirteen of the cases listed in Hansen's catalogue of *eisangelia* to the Assembly (cases 1, 2, 62, 63, 66, 69-72, 75, 76, 80, 81) the sources state that there was a trial in the Assembly but do not use the term *eisangelia* to describe the proceedings. The evidence for the trial of Hipparchus in the Assembly is late and questionable (Lycurg., *Or. in Leocr.* 117) (case 3), and the evidence for the trials of Callisthenes (Aeschin., *De falsa leg.* II.30) and Ergophilus (Demosth., *De falsa leg.* XIX.180) (cases 85 and 86) lacks specific details about the procedure. Hansen does not include the trial of Phocion and others at a meeting of the Assembly in 319 (Plut., *Phoc.* 34-35), a point to which we will return.

For the vast majority of cases, trials were held in the courts, but according to Aristotle in the *Politics* (1298 a) the deliberative part of the state, that is, the Council and Assembly, has authority in matters pertaining to sentences of death and exile, confiscation of property and the accountability of officials. There is evidence for trials in the Assembly in other Greek communities. In 424 BCE after the oligarchs in Megara seized control and recalled the exiles from Pegai, they conducted a military review and selected one hundred men whom they suspected of collaborating with the Athenians. Even though there was an oath sworn about reconciliation, the leaders forced the people to pass judgment on these suspects by an open vote (ψῆφον φανεράν), and after they were condemned (κατεγνώσθησαν), they were put to death (Thuc., 4.74.2-3)³⁸. The trial clearly took place in the Assembly. When King Agis returned to Sparta in 418 BCE after concluding a truce with the Argives, the Spartans and their allies thought that he had thrown away an opportunity for victory (Thuc., 5.60.1-3). The Argives were also disappointed in their commander Thrasyllus and started to stone him outside the city, but he took refuge at an altar. They then confiscated his property, which suggests a verdict in the Assembly by the whole community (Thuc., 5.60.4-6). After Agis returned to Sparta, the

³⁸ On the meaning of *me mnesikakein* in this passage see JOYCE, 2015.

Spartans proposed to raze his house to the ground and to impose a fine of one hundred thousand drachmas (Thuc., 5.63.1-2). Agis convinced the Spartans to allow him to redeem himself by a 'good deed,' that is, a military victory (Thuc., 5.63.3). If he did not win they could do with him as they pleased. The Spartans put off the fine, but passed a law (ἔθεντο νόμον), which was unprecedented for them: they elected ten Spartans to accompany him as advisors, without whose consent he could not retreat from enemy territory (Thuc., 5.63.4). Here it is clear that the same body that tried Agis was the body that passed the law, which would have been the Assembly. This means that the trial of Agis also took place in the Assembly³⁹. There are several passages in Herodotus in which kings or others are tried in the Assembly. Cleomenes appears to have been charged with bribery for not capturing Argos and acquitted before the Assembly (Herodot., 8.82.1-2), and the friends of Cleombrotus may have warned him about a trial before the people for allowing the Thebans to escape (Xenoph., *Hell.* 6.4.4-5)⁴⁰. On the other hand, Leotychidas was tried twice in court (Herodot., 6.72.2; 85.1). At Eresus in the 330s or 320s the Assembly held a trial of former tyrants⁴¹.

At Athens, the law of Cannonus authorized trials for treason in the Assembly and set the penalty of death confiscation of property with one-tenth given to Athena (Xenoph., *Hell.* 1.7.20, 34). Later in the fifth century, Aristarchus was tried for betraying the fort at Oenoe in the Assembly through this procedure (case 63) (Thuc., 8.98; Xenoph., *Hell.* 1.7.28)⁴².

In other cases, however, it was possible to create an *ad hoc* procedure for a trial in the Assembly by decree. The best known example of such a trial is the case against the generals after the battle of Arginousai in 406⁴³. The generals had instructed the trierarchs to rescue those shipwrecked and to recover the dead, but a storm prevented them, and many Athenians drowned. On their return to Athens, the generals made a report to the Council about the storm. Timocrates proposed that the generals should be imprisoned and handed over to the Assembly for trial. The Council accepted this proposal (Xenoph., *Hell.* 1.7.3: μετὰ δὲ ταῦτα ἐν τῇ βουλῇ διηγοῦντο οἱ στρατηγοὶ περὶ τε τῆς

³⁹ See DAVID, 1985, p. 138.

⁴⁰ See DAVID, 1985, p. 139.

⁴¹ See IG XII, 2.526 C, fr. 2 (front face), lines 39-40 (δικ[αν] ... ἐγκαλημένων ἐν τῷ δά[μω] with HEISSERER, 1980, p. 27-78.

⁴² HANSEN, 1975, p. 83, following LIPSIUS, 1905-1915, p. 183, observes that «the word *eisangelia* or its derivatives are not used, but the trial must be classified as an *eisangelia* because it is mentioned by Euryptolemos as a precedent for the *eisangelia* against the generals in 406». This argument is completely undermined by the fact that the trial of the generals was not a case of *eisangelia*. See what follows.

⁴³ For detailed commentary with references to earlier discussions see KELLY, 2019, p. 201-235.

ναυμαχίας καὶ τοῦ μεγέθους τοῦ χειμῶνος. Τιμοκράτους δ' εἰπόντος ὅτι καὶ τοὺς ἄλλους χρὴ δεθέντας εἰς τὸν δῆμον παραδοθῆναι, ἡ βουλὴ ἔδῃσε). The Council was acting on its power to imprison individuals accused of wrongdoing (Demosth., *In Timocr.* XXIV.144)⁴⁴. The Council did not prescribe any procedure at this point about a trial. It is clear that the Council placed the matter of the generals on the agenda of the next meeting of the Assembly. There is no indication that it was making any recommendation. There is also a clear distinction made between the case of the generals and the case involving Erasinides about embezzlement, which was tried in court.

At the meeting of the Assembly, many speakers attacked the generals. The word *κατηγόρου* is used, but this need not mean a formal accusation at this point. These are speeches made in the course of a normal debate in the Assembly. In the context of this debate, the generals replied to the criticisms but rather briefly (*οἱ στρατηγοὶ βραχέως ἕκαστος ἀπελογήσατο*). Xenophon (*Hell.* 1.7.5) adds that they were not given the amount of time to speak in accordance with the law (*οὐ γὰρ προυτέθη σφίσι λόγος κατὰ τὸν νόμον*)⁴⁵. At the next meeting of the Assembly, Callixeinus argued that these speeches were in effect their answers to the charges. They also provided witnesses that the storm prevented the recovery of the bodies (Xenoph., *Hell.* 1.7.6).

At this point, several people volunteered to act as sureties (*ἐγγυῶσθαι*) for the generals, which would allow them to leave prison until the next meeting (Xenoph., *Hell.* 1.7.7). There was then a formal vote to delay a final decision until the next meeting (*ἔδοξε δὲ ἀναβαλέσθαι εἰς ἑτέραν ἐκκλησίαν*) and an order given to the Council to propose a *probouleuma* at the next meeting about how to judge the generals (*τὴν δὲ βουλὴν προβουλεύσασαν εἰσενεγκεῖν ὄτω τρόπῳ οἱ ἄνδρες κρίνουντο*). This would appear to indicate that what had happened so far is not part of a trial, which would take place at the next meeting. This turns out to be a key point, because at the next meeting Callixeinus claims that the previous meeting of the Assembly afforded the generals a chance to make their defence. Euryptolemus objects to this argument on the grounds that the amount of time was not sufficient. It is important to note what is implicit in this decree of the Assembly, namely, that the Assembly

⁴⁴ There is therefore no reason to follow HANSEN, 1975, p. 40-41 that imprisonment before trial occurred only in cases of *eisangelia*.

⁴⁵ OSTWALD, 1986, p. 438-439, followed by KRENTZ, 1989, p. 160-161 and GISH, 2012, p. 178-179, translates the phrase «for in conformity with the law no opportunity was given to them to make a speech». This is rightly rejected by KELLY, 2019, p. 212. The translation makes no sense because Xenophon is drawing attention to something that was unusual. One can add that the phrase *κατὰ τὸν νόμον* clearly goes with the adjoining word *λόγος* and not with the phrase *οὐ γὰρ προυτέθη* from which it is separated by several words.

has the right to ask the Council to create an *ad hoc* judicial procedure to try people in the Assembly. This is similar to the request of the Assembly in the Eretria decree (340s) in which the Assembly creates a crime (*IG* II³.399, l. 9-11: ἐὰν] | δέ τις τοῦ λοιποῦ χρόνου ἐπιστρα[τεύσει ἐπὶ Ἐρέ]]τριαν ἢ ἐπ' ἄλλην τινὰ τῶν συμμαχί[δων πόλεων) and a penalty (*IG* II³.399, l. 12-15: θάνατον αὐτοῦ] | κατεγνώσθαι καὶ τὰ χρήματα δημόσια εἶναι καὶ τ]ῆς θεοῦ τὸ ἐπιδέκατον· καὶ εἶν[αι τὰ χρήματα αὐτοῦ] | ἀγώγιμα ἐξ ἀπάσων τῶν πόλεω[ν τῶν συμμαχίδων), then invites the Council to introduce a proposal about how to enforce this rule and impose this penalty (*IG* II³.399, l. 6-9: περὶ μὲν τῶν ἐπιστρ[ατευσάντων ἐπὶ τ]ῆ]ν χώραν τὴν Ἐρετριέων τὴν βουλ[ὴν προβουλεύσα]]σαν ἐξενε[γ]κεῖν εἰς τὸν δῆμον εἰ[ς τὴν πρώτην ἐκκ]λησίαν, ὅπως ἂν [δ]ίκην δῶσιν κατὰ [τὰς σπόνδας). It is also crucial to note that no one objected to the Assembly's right to create an *ad hoc* procedure for trying people in the Assembly.

Between the two meetings the Apaturia took place, and Theramenes had the relatives of the victims dress in mourning (Xenoph., *Hell.* 1.7.8). In Diodorus (13.101-102) this takes place in the Assembly at the final meeting. At the meeting of the Council certain people allegedly bribed Callixenus to accuse the generals (Καλλιξενον ἔπεισαν ἐν τῇ βουλῇ κατηγορεῖν τῶν στρατηγῶν). Is this a formal accusation or just an attack on the generals? If it is a formal accusation, the previous charges in the Assembly cannot have been formal accusations. At the next meeting of the Assembly, Callixenus introduced the motion of the Council as instructed by the Assembly at the previous meeting (Xenoph., *Hell.* 1.7.9). Like many decrees of the Assembly, this proposal starts with a clause of justification (ἐπειδὴ) giving the grounds for the proposal (ἐπειδὴ τῶν τε κατηγορούντων κατὰ τῶν στρατηγῶν καὶ ἐκείνων ἀπολογουμένων ἐν τῇ προτέρῃ ἐκκλησίᾳ ἀκηκόασι). This is a key part of the proposal because it claims that the defendants have had the right to answer the charges at the previous meeting. This is of course misleading because no formal charges had been made at the previous meeting⁴⁶. There was only a discussion of the matter on the agenda. After Callixenus made his proposal in the Assembly, Euryptolemus threatened to bring a *graphe paranomon* (Xenoph., *Hell.* 1.7.12). Later in the debate, Euryptolemus states that if the Athenians try the generals following the proposal of Callixenus, they will be violating the law requiring that no citizen be put to death without a trial (Xenoph., *Hell.* 1.7.25: τούτους ἀπολλύντες ἀκρίτους παρὰ τὸν νόμον)⁴⁷.

⁴⁶ KELLY, 2019, p. 215 does not comment the phrase and fails to observe the sleight of hand.

⁴⁷ For this law see Lys., *Κατὰ τῶν σιτοπ.* XXII.2; Demosth., *In Aristocr.* XXIII.27, 36 with HARRIS, 2013 a, p. 241-243. Cf. *IG* I³.40, lines 8-10. CARAWAN, 2010, p. 37 claims that «Euryptolemos cannot point to any language in law that expressly bars or preempts Kallixenos' procedure», but

Before this, Euryptolemus reminds the Assembly that in a normal trial the day would be divided into three parts: one for the accusation, one for the defendant, and one part to vote about guilt or innocence (Xenoph., *Hell.* 1.7.23. For a similar description of the day in a public trial see Aeschin., *In Ctesiph.* III.197)⁴⁸. For this reason Socrates who was one of the *prytaneis* presiding that day refused to put the motion to the vote because he found it illegal (Xenoph., *Hell.* 1.7.15)⁴⁹.

Hansen has claimed that the trial of the generals in the Assembly was a case of *eisangelia* for three reasons: 1) the generals were removed by *apocherrotomia*; 2) the Council was involved, and 3) the case was tried by the people⁵⁰. There are several decisive objections against Hansen's view. First and above all, the noun *eisangelia* and the verb *eisangellein* are not found in the accounts of Xenophon and Diodorus. Second, the actions of the general do not fit into any of the categories of the *eisangelia* law (Hyper., *Pro Eux.* III.7-8; *Lex. Cant.*, sv. εἰσαγγελία; Poll., 8.52): 1) attempting to overthrow the democracy, 2) treason, that is, betraying forts or military units to the enemy, and 3) taking money for not giving the best advice to the people. Third, the motion of Callixeinus must be an *ad hoc* procedure because if Callixeinus were following an established law, there would be no need to specify the manner of voting. For instance, when the accuser indicated the procedure selected in his plaint, he did not need to set out the steps to be followed because they were already established by law. It also appears that there is no secret ballot because everyone was to be given one pebble and to place it in one urn or the other. The proposal also sets the penalty; if Callixeinus were following an established law, the penalty would have been fixed (or a *timesis*), and there would have been no need to specify it. Fourth, if Callixeinus were following an established legal procedure, no one could accuse him of proposing an illegal decree⁵¹. On the other hand, because the procedure was an *ad hoc* measure created by a decree, it is easy to see how Euryptolemus could bring a *graphe paranomon* and why Socrates found the decree illegal.

these passages show that this view is mistaken. LIPSIUS, 1905-1915, p. 185-186 believed that the trial was a case of *eisangelia*, but rightly observed that the decree proposed was illegal.

⁴⁸ For proposals to delete this phrase see KELLY, 2019, p. 226-227, but there is no reason to doubt the phrase, which has a parallel in Aeschin., *In Ctesiph.* III.197. The order of speeches and the vote are reversed in a *hysteron proteron*. For the legal debate about the meaning of the law against executing people without trial see HARRIS, 2013, p. 241-243.

⁴⁹ It is unclear whether Socrates was the *epistates* at the meeting or only one of the *prytaneis*. For the evidence and discussion see KELLY, 2019, p. 218-222, who believes that Socrates was *epistates*.

⁵⁰ HANSEN, 1975. p. 84-86, following LIPSIUS, 1905-1915, p. 185-186.

⁵¹ The fact that the proposal was illegal is confirmed by other sources. See Xenoph., *Mem.* 1.1.18; Plato, *Apol.* 32 b-c; *Gorg.* 473 e.

After Euryptolemus threatened to bring a charge against the proposal of Callixeinus, the people then shouted that the Assembly should be able to do whatever it wishes (Xenoph., *Hell.* 1.7.12). No one challenged the right of the Assembly to pass a motion creating a legal procedure for a trial in the Assembly. The objection is that this motion violates rules about procedure, not about the powers of the Assembly. Euryptolemus did not argue that the trial cannot take place in the Assembly because the Assembly does not have the power to try such cases (Xenoph., *Hell.* 1.7.12-13).

The main objection of Euryptolemus is that the procedure proposed in this *ad hoc* measure should follow standard legal procedure but does not (Xenoph., *Hell.* 1.7.23-25). This also makes it clear that this is an *ad hoc* procedure, not one according to established law. In standard procedure, the day is divided into three parts and the defendant receives one third to answer the charges. This objection is also made in Xenophon's account of the previous meeting of the Assembly. The important matter is that the incident reveals that the Assembly could create an *ad hoc* trial by decree just as Aeschines (*In Ctesiph.* III.4) says.

In his account of the trial of Phocion, Plutarch (*Phoc.* 34-35) provides a detailed account of another trial held according to a decree in 318⁵². Phocion had gone to meet Alexander and Polyperchon in Phocis, but the Athenians passed a decree proposed by Hagnonides denouncing him and sent an embassy to join them (Plut., *Phoc.* 33.1-7). Phocion and his associates were arrested and sent back to Athens (Plut., *Phoc.* 34.1). Plutarch appears to be drawing on a source favorable to Phocion and hostile to Athenian democracy, which claims that the meeting of the Assembly was filled with foreigners and slaves, but the account of the legal procedure appears to be accurate. The magistrates convened a meeting of the Assembly in the theater of Dionysus. The letter of the king was read out, which accused Phocion and his associates of treason, but granted the Athenians as free and independent the right to try their own citizens (Plut., *Phoc.* 34.2-3). Hagnonides then read a decree according to which the Assembly was to vote about the guilt of Phocion and the others by show of hands (Plut., *Phoc.* 34.4). Because this was an *ad hoc* procedure created by a decree, the method of voting had to be specified. Some asked for a clause to be added ordering the torture of Phocion before his execution, but Hagnonides refused (Plut., *Phoc.* 35.1). The reason of Hagnonides for rejecting this rider is interesting: he considers it awful and barbarous, but does not believe that the Assembly does not have the power to enact such a proposal about a trial. The proposal of Hagnonides was then put to the vote and approved

⁵² This trial is not discussed by LIPSIVS, 1905-1915, p. 176-211, BONNER, SMITH, 1930, p. 294-309, RHODES, 1972, p. 162-171, HANSEN, 1975, RHODES, 1979.

(ἐπικυρωθέντος δὲ τοῦ ψηφίσματος), and the vote to condemn the defendants followed (τῆς χειροτονίας ἀποδοθείσης ... κατεχειροτόνησαν αὐτῶν θάνατον: Plut., *Phoc.* 35.2). It is important to note that the vote to enact the decree for the trial and the vote at the trial were formally separate: the decree created the procedure for the trial, and the vote about guilt was taken later. The condemned were then led to the prison and ordered to drink hemlock (Plut., *Phoc.* 36.1-4). After Phocion's death, another decree was passed that his body be carried outside the boundaries of Attica and that no Athenian should light a fire at his funeral (Plut., *Phoc.* 37.2). This was the standard penalty for traitors (Xenoph., *Hell.* 1.7.20-23), but once more the Assembly voted an *ad hoc* measure to impose a punishment on an individual. This incident is similar to the trial of the generals in several ways and shows that the practice of arranging trials by decree continued into the late fourth century.

Demosthenes (*De falsa leg.* XIX.276-281) reports another trial by decree, which is probably to be dated to 387/6 (cases 69-72)⁵³. In his case against Aeschines, Demosthenes (*De falsa leg.* XIX.276) recalls men condemned for their conduct on embassies and has a decree read out. By the terms of this decree, several men were sentenced to death (Demosth., *De falsa leg.* XIX.277). One was Epicrates who had earlier helped to restore the democracy. Demosthenes (*De falsa leg.* XIX.278) reads a clause from this decree: «Because they conducted their embassy contrary to their instructions (παρὰ τὰ γράμματα)». One should note that as in the case of the decree of Callixeinus, the language follows the formula of a decree (ἐπειδή) and not that of an indictment. Demosthenes then compares the conduct of these ambassadors with the conduct of Aeschines and his colleagues. Demosthenes (*De falsa leg.* XIX.279) next quotes other clauses: «And they were proved to have made false reports to the Council» and «telling lies about the allies and receiving gifts». Finally Demosthenes (*De falsa leg.* XIX.280) repeats that Epicrates was punished despite helping to restore the democracy. A fragment of Philochorus reveals that along with Epicrates, three others were condemned because they did not remain for their trial (*FGrHist* 328, fr. 149 a)⁵⁴.

There are several other examples of trials in the Assembly, which may have also been instituted by a decree. In the same speech, Demosthenes (*De falsa leg.* XIX.31, 137, 191) recalls that Timagoras was charged with taking bribes

⁵³ LIPSIUS, 1905-1915, p. 188-189 also believes that this was *eisangelia*. For the date see HARRIS, 2020-2021, p. 41-45.

⁵⁴ For discussion see HARDING, 2006, p. 165-177 though his date of 392 for the trial is questionable. HANSEN, 1975, p. 87-88, followed uncritically by MACDOWELL, 2000, p. 323 believes that this was a case of *eisangelia*, but the term is not found in Demosthenes' account of the trials.

from the Great King, sentenced to death in the Assembly (§ 31: Τιμαγόραν, οὐδὲ θάνατον κατεχειροτόνησεν ὁ δῆμος) and executed (cf. Xenoph., *Hell.* 7.1.33-38) (case 82)⁵⁵. The trial must be dated around 367. Apollodorus (ps. Demosth., *C. Timoth.* XLIX.9-24) reports that Timotheus was turned over to the Assembly for trial on a serious charge made by Callistratus and Iphicrates (§ 9: ἐπὶ κρίσει δὲ παρεδέδοτο εἰς τὸν δῆμον αἰτίας τῆς μεγίστης τυχῶν), but acquitted (case 80)⁵⁶. His treasurer Antimachus was also tried in the Assembly and condemned to death with confiscation of his property (ps. Demosth., *C. Timoth.* XLIX.10: κρίναντες ἐν τῷ δήμῳ ἀπεκτείνετε καὶ τὴν οὐσίαν αὐτοῦ ἐδημεύσατε) (case 81)⁵⁷. Thrasybulus of Kollytus is also reported to have been tried twice in the Assembly (Demosth., *In Timocr.* XXIV.134: δις δεθέντα καὶ κριθέντα ἀμφοτέρας τὰς κρίσεις ἐν τῷ δήμῳ) (case 75)⁵⁸. There is also evidence for a trial and acquittal of Pheidias in the Assembly reported by Plutarch (*Per.* 31.2-3), but it is difficult to evaluate the reliability of this information. The earliest attested trial in the Assembly is the accusation of Miltiades for deceiving the people by Xanthippus reported by Herodotus (6.136.1: Ξάνθιππος ὁ Ἀρίφρονος ὃς θανάτου ὑπαγαγὼν ὑπὸ τὸν δῆμον ἀπάτης εἵνεκεν Μιλτιάδεα ἐδίωκε). This appears to have been brought by the 'old law' mentioned by Demosthenes (*Adv. Lept.* XX.100, 135), which provided for the death penalty against those who deceived the Athenian people (case 2)⁵⁹.

In each one of these cases the noun *eisangelia* and the verb *eisangellein* are not found, and the procedure does not conform to the procedural and substantive features of the form of *eisangelia* followed in the cases *For Euxenippus*, *For Lycophron*, and *Against Leocrates*. These trials show that the Assembly retained the authority to try serious crimes from very early in the fifth century as it appears also to have done in Megara, Argos and Sparta. All this evidence demon-

⁵⁵ Pace HANSEN, 1975, p. 92, followed uncritically by MACDOWELL, 2000, p. 221, there is no reason to believe that this was a case of *eisangelia*, which did not cover cases involving the conduct of ambassadors while abroad. This was covered by the *graphe parapresbeias*. Cf. LIPSIVS, 1905-1915, p. 188.

⁵⁶ Pace LIPSIVS, 1905-1915, p. 189 and HANSEN, 1975, p. 91 there is no reason to believe that this trial in the Assembly were cases of *eisangelia*. The term is not used by Apollodorus to describe the proceedings.

⁵⁷ Pace LIPSIVS, 1905-1915, p. 189 and HANSEN, 1975, p. 91-92 there is no reason to believe that this trial was a case of *eisangelia*. Note that this term does not occur in sources for the trial.

⁵⁸ Pace LIPSIVS, 1905-1915, p. 189 and HANSEN, 1975, p. 89 there is no reason to believe that this trial was a case of *eisangelia*. Note that this term does not occur in sources for the trial.

⁵⁹ For this view see LIPSIVS, 1905-1915, p. 180-181. There is no need to associate this law with the *eisangelia* mentioned at ps. Demosth., *C. Timoth.* XLIX.67, which is probably an allusion to the *proboule* against those who did not fulfill promises (ps. Aristot., *Ath. pol.* 43.5). RHODES, 1981, p. 527 is very confused about this procedure.

strates that when Aeschines (*In Ctesiph.* III.4) refers to trials by decree, he must be referring to trials in the Assembly initiated by a decree. Hansen claims that the Assembly lost the right to try cases of treason around 360, but the case of Phocion demonstrates that this view is mistaken.

3. *Denunciations.*

The most numerous examples of what Hansen calls *eisangelia* to the Assembly are the denunciations of those who profaned the Mysteries and of those who mutilated the Herms in 415 BCE. The first set (n. 13-42) are those accused of profanation of the Mysteries by Pythonicus and others; the second set (n. 43-60) are those accused of mutilating the Herms. These forty-eight cases make up over a third of the cases in Hansen's catalogue of *eisangelia* to the Assembly⁶⁰. As we will see none of these cases has anything in common with the kind of legal procedure described in Hyperides' speech *For Euxenippus*, followed by Lycurgus in his prosecution of Leocrates, and discussed by Theophrastus.

Andocides (*De myst.* I.14, 27: cf. Isocr., *De big.* XVI.6) uses the verb εἰσαγγέλλειν to refer to denunciations made by Pythonicus, but the term needs to be placed in context⁶¹. When the expedition against Sicily was about to sail, Pythonicus stated in the Assembly that Alcibiades had performed the Mysteries in his house and that a slave would confirm his testimony (*Andoc.*, *De myst.* I.11). Alcibiades denied the accusation, but the *prytaneis* went and found the slave named Andromachus, who after receiving immunity said that Alcibiades, Nicides, Meletus and others had performed the Mysteries. He also named some other slaves (*Andoc.*, *De myst.* I.12). Andocides then says that some were arrested and executed, while others fled abroad and were condemned to death *in absentia* (*Andoc.*, *De myst.* I.13). It is not stated whether those executed were tried in court, but this appears to be the procedure in similar cases. Andocides (*De myst.* I.14) calls Diognetus to testify and asks him if he was a member of the investigating committee (*zetetes*) when Pythonicus denounced (εἰσήγγειλεν) Alcibiades in the Assembly, and he says that he was. He then asks him if he knew that Andromachus denounced (μηνύσαντα) the events in the house of Poulytion. In the following sections Andocides (*De myst.* I.15, 16, 17, 18, 19, 25, 26) recounts several more denunciations. The term is always μῆνυσις. These denunciations were separate from the trial in court (*Andoc.*, *De myst.* I.17).

After recounting these denunciations, Andocides (*De myst.* I.27-28) returns to the rewards given to those who made denunciations (περὶ μηνύτριων), which had

⁶⁰ LIPSIVS, 1905-1915, p. 182 also considers these cases examples of *eisangelia*, but claims that the law about the procedure was very broad in its application at this time.

⁶¹ For the use of *adeia* in this case see ESU, 2021.

been fixed at 1,000 drachmas by a decree of Cleonymus and 10,000 drachmas by a decree of Peisander. There was a dispute between these later informers and Pythonicus, who claimed to have been the first one to make a denunciation (εἰσαγγελῖαι), and Androcles. The Assembly decided to have the dispute (διαδικάσαι) heard in the court of the *thesmothetai*, who were to hear the denunciations (τὰς μηνύσεις) that each of these men denounced (ἐμήνυσε)⁶². It is clear from this passage that Andocides is using the term εἰσαγγελῖαι as a synonym for the term μηνύειν, which means «to denounce». As we saw in the first section, there are several parallels for this use of the term εἰσαγγέλλειν. The procedure followed by Pythonicus cannot be identical with the procedure Polyeuctus brought against Euxenippus or the procedure brought by Lycurgus against Leocrates. First, Pythonicus did not initiate the charge in a plaint submitted to a magistrate. Second, there is no evidence that accusers in this kind of *eisangelia* ever received a reward. Third, the charge in the case was impiety (*asebeia*) (cf. Thuc., 6.53.1: ἀσεβούντων; IG I³.422, lines 226; 426, line 101, 177; 427, line 1) and not one of the charges covered by the procedure of *eisangelia* in the cases against Euxenippus or Lycophron: overthrowing the democracy, treason, or failing to give the best advice in the Assembly after taking bribes⁶³. One should also note that in his account of the events surrounding the scandals of 415, Thucydides (6.27.2-3, 6.53.2) always mentions denunciations and those who denounce, not those who bring a case in court by *eisangelia*⁶⁴.

Andocides (*De myst.* I.37, 43) also uses the verb εἰσαγγέλλει and the noun εἰσαγγελῖα for the denunciations made by Diocleides⁶⁵. Diocleides reported to the Council that he had seen around three hundred men going from the Odeum to the orchestra on the night when the Herms were mutilated (Andoc., *De myst.* I.39). After returning from Laurion, he heard about the rewards for information (§ 40: μῆνυτρα). He extorted money from Euphemus and Andocides in return for not denouncing them, then reneged on his promise. Andocides (*De myst.* I.42) explains that this was how Diocleides came to denounce them (μηνύσων). As a reward for this denunciations, Diocleides was

⁶² For the procedure of *diadikasia* see MACDOWELL, 1978, p. 103-108, 145-147, 163-164.

⁶³ At Andoc., *De myst.* I.36 Peisander states in the Council that there was a plot to overthrow the democracy but does not follow by using the procedure of *eisangelia*. Instead he controversially proposes to torture citizens to obtain evidence.

⁶⁴ According to Thucydides (6.28.2), some claimed that the profanation and the mutilation were done for the purpose of overthrowing the democracy, but this was not the formal charge brought against the guilty.

⁶⁵ Cf. MACDOWELL, 1978, p. 183, who observes about *eisangelia* and *menysis* that «sometimes the two words (or the verbs *eisangellein* and *menyein*) were used as interchangeable synonyms for the act of giving information».

given a crown and awarded a dinner in the *prytaneion*, rewards not given to prosecutors in public cases (Andoc., *De myst.* I.45). Once more it is clear that Andocides is using the verb εἰσαγγέλλει and the noun εἰσαγγελία as synonyms for μηνύει and μήνυσις.

Hansen also claims that Diocleides was accused by an *eisangelia* for making a false denunciation (case 61) even though the accounts of Andocides (*De myst.* I.37-69), Thucydides (6.60.2-4), and Plutarch (*Alc.* 20.8, 21) do not use the vocabulary associated with this procedure. Diocleides was summoned to the Council and confessed. Andocides (*De myst.* I.66) implies that the Assembly voted to hand him over to the court, which condemned him to death. Hansen claims that this was a case of *eisangelia* because Diocleides «is put on trial in accordance with a decree passed by the people»⁶⁶. But the offense of Diocleides does not fit any of the categories of the law about *eisangelia*. Diocleides was clearly tried according to the law about denunciations, which required that those who made true statements be given immunity but those who made false statements be put to death (Andoc., *De myst.* I.20)⁶⁷.

The verb *eisangellein* is also used as a synonym of *menyein* in the denunciations of Agoratus (Lys., *In Agor.* XIII.50), (case 67)⁶⁸. According to the speaker of *Against Agoratus* the case began when several generals and taxiarchs were opposed to the peace proposals Theramenes brought back from Sparta in 405/404 (Lys., *In Agor.* XIII.12-16). Theramenes therefore constructed a plot against the generals and taxiarchs and persuaded Agoratus to become an informer against them but to appear reluctant so as to make his statements credible (Lys., *In Agor.* XIII.18-19: μηνυτήν, μηνυτής, μηνύειν, μήνυσις, ἐμήνυσε). Theocritus informed the Council that there was a plot but declined to name the conspirators (Lys., *In Agor.* XIII.20-22). Members of the Council were sent to arrest Agoratus in the agora, but Nicias and Agoratus became a suppliant at the altar, but was later persuaded to leave the altar (Lys., *In Agor.* XIII.29). Agoratus then listed the names of the conspirators in the Council (Lys., *In Agor.* XIII.30-31). The Assembly then met in the theater in the Mounychia, where Agoratus repeated his denunciation (Lys., *In Agor.* XIII.32: μήνυσις). The Assembly then passed a decree to have those denounced tried in a court of two thousand, but the Thirty came to power soon after and had the men tried in the Council (Lys., *In Agor.* XIII.34-35). Later in the speech the judgment of the Thirty is read out and a phrase from the judgment is quoted: «because it appeared that he gave true information» (Lys., *In Agor.*

⁶⁶ HANSEN, 1975, p. 82.

⁶⁷ MACDOWELL, 1978, p. 181, followed by EDWARDS, 1995, p. 168, believes that the law was no longer in effect in 400/399, but this may read too much into the imperfect tense of the verb.

⁶⁸ This case is discussed by RHODES, 1972, p. 164-165.

XIII.50: ἔδοξε τᾶληθῆ εἰσαγγεῖλαι). We find the same use of the verb in the account of Menestratus (Lys., *In Agor.* XIII.55-56). Menestratus was denounced by Agoratus, then was brought to the meeting of the Assembly in Mounichia at which he was given immunity. Menestratus then «denounced» several and reported others (μηνύει ... καὶ προσαπογράφει). The Thirty then released (ἀφείσαν) Menestratus like Agoratus because he was judged to have «made a true declaration» (δόξαντα τᾶληθῆ εἰσαγγεῖλαι). It is clear in both cases that the verb εἰσαγγεῖλαι is a synonym of μηνύειν and has nothing to do with serving as a prosecutor. The speaker is discussing the grounds for the release of Agoratus and Menestratus because they gave true information, not discussing a formal legal charge brought by each⁶⁹. One must recall that the law about informants stated that if an informant gave false statements, he would be put to death (Andoc., *De myst.* I.20). It is clear that because the men Agoratus denounced were found guilty, his statements were confirmed, and he was therefore absolved from suspicion (ἀφείθη). In the following section the speaker states that this evidence shows that Agoratus «denounced» those convicted (Lys., *In Agor.* XIII.51: ἐμήνυσε). One never finds this language used to describe successful prosecutors in court. Just as in the cases concerning the Mysteries and the Herms, the verb *eisangellein* is clearly used as a synonym of *menyein*⁷⁰.

Hansen claims that «the trial must be classified as an *eisangelia* partly because it is instituted by the Council and partly because it is submitted to a court by a decree of the Assembly»⁷¹. This is not convincing first because the Council only received denunciations but did not initiate legal proceedings (see also *infra*, p. 79, Section 8) and because we have seen in the previous cases that the Assembly could order other types of cases such as impiety to be tried in court.

This means that cases n. 13-61 and 67 or 50 cases out of Hansen's catalogue of 130 cases are not examples of the kind of *eisangelia* brought against Euxenippus and Leocrates but are cases of denunciations, which led to trials in court on a charge of impiety or on another charge. The finding that the noun *eisangelia* can be used as a synonym for *menysis* and the verb *eisangellein*

⁶⁹ RHODES, 1972, p. 165 completely misunderstands the use of the verb εἰσαγγεῖλαι as a synonym of μηνύειν and claims «the man who was first arrested to face a charge of conspiracy was transformed by turning state's evidence into the prosecutor of his victims». Rhodes does not take account of the context of the statement about giving true information. There is no reason to read any rhetorical sleight of hand into the text, whose meaning is clear as it stands if one reads it in context. *Pace* Rhodes one cannot use this passage as evidence for the role of the Assembly in legal charges of treason brought under *eisangelia*.

⁷⁰ HANSEN, 1975, p. 86 rightly notes that the «word εἰσαγγεῖλαι (50) does not prove that this trial is an *eisangelia*» and that Agoratus «cannot technically be described as ὁ εἰσαγγέλλων» but does not see the implications for the use of the verb as a synonym of *menyein*.

⁷¹ HANSEN, 1975, p. 86.

as a synonym for *menyein* has major implications for two passages in the Aristotelian *Constitution of the Athenians*. In one passage, the *Constitution of the Athenians* (43.4) states that the *prytaneis* place on the agenda of the *kyria ekklesia* several items and at this meeting those who wish make *eisangelias* (τὰς εἰσαγγελίας ... τοὺς βουλομένους ποιεῖσθαι). As we noted in the analysis of Hyperides *Pro Euxenippo* (III.7-8), prosecutions on *eisangelia* against tyranny, overthrowing the democracy, treason and bribery of speakers were initiated like all other public actions, that is, by filing charges before officials, that is, the *thesmothetai*.

These *eisangeliai* at the *kyria ekklesia* should therefore be denunciations to the Assembly like those made by Pythonicus and Androcles in 415⁷². These *eisangeliai* to the Assembly, which are denunciations, may therefore be identical with the *eisangeliai* mentioned in the chapter about the *thesmothetai*, who introduce them to the Assembly (ps. Aristot., *Ath. pol.* 59.2). These are listed alongside *probolai*, which were brought at special meetings of the Assembly and involved a vote of censure against certain types of offenders but did not lead to a trial in court⁷³. These denunciations might lead to trials in court as they did in 415. As in the case of Pythonicus and Androcles, the Assembly might vote rewards for these denunciations. The *eisangeliai* in these passages should therefore not be seen as a preliminary stage in the type of *eisangelia* followed by Hyperides against Philocrates, Poyeuctus against Euxenippus, and by Lycurgus against Leocrates. They are each a separate and distinct type of legal procedure.

4. *Trials from Euthynai*.

A small number of the cases (n. 5, 65, 73, 100, 101) listed by Hansen are explicitly called *euthynai* in the sources. In almost all the evidence for these cases the term *eisangelia* is not found. Before examining these cases, it is important to recall the basic features of the *euthynai* procedure. According to the *Constitution of the Athenians* (54.2), all officials after their term of office had to submit their accounts to ten accountants (*logistai*) and their assistants (*synegoroi*) (cf. Aeschin., *In Ctesiph.* III.13-23)⁷⁴. The accountants could bring three kinds of charges before a court: 1) embezzlement (*klope*), 2) bribery (*dora*), and 3) ‘injustice’ (*adikion*) which is probably mismanagement of pub-

⁷² In his commentary on this passage RHODES, 1981, p. 524-525 merely summarizes what he wrote in RHODES, 1972, p. 162-171 and does not see the similarity with the use of the word *eisangellein* in Andocides *On the Mysteries*.

⁷³ On the procedure of *probole* see HARRIS, 2019 b.

⁷⁴ For discussion see RHODES, 1981, p. 579-580.

lic funds. For the first two offenses, the penalty was ten times the amount, but for the last only the amount involved. The Council also selected by lot ten auditors (*euthynoi*), one per tribe, and two assessors (*paredroi*) for each auditor. If anyone wishes to bring a private or a public charge against a magistrate, he writes his name, that of the defendant, the name of the offense, and the amount of the fine or damages sought. If the auditors considers the charges proven, he handed a public charge to the *thesmothetai* and a private charge to the Forty (ps. Aristot., *Ath. pol.* 48.3-5). There are three major differences between trials arising from *euthynai* and *eisangelia* for major offences. First, *euthynai* covered embezzlement by public officials whereas *eisangelia* did not. Second, *euthynai* related only to public officials, but an *eisangelia* could also be brought against public speakers in the Assembly and against private individuals plotting to set up a tyranny or overthrow the democracy. Third, trials arising from *euthynai* could impose fines, but there is no indication that a trial initiated by *eisangelia* could result in a fine.

Case 5 is the prosecution of Cimon, which the Aristotelian *Constitution of the Athenians* (27.1) explicitly calls *euthynai*. The trial is also mentioned twice by Plutarch (*Cim.* 14-15; *Per.* 10.5) who says that the trial took place before judges elected by the people, that the charge was treason and that Cimon was acquitted. Hansen argues that the involvement of the Assembly points to *eisangelia* to the Assembly⁷⁵, but in other cases in which accusers or defenders are elected by the Assembly, there was a trial in court. Take for example the election of accusers at the trials arising out of the Harpalus scandal (Dinarch., *In Aristogit.* II.6) or the defenders elected in cases of public charge of passing an inappropriate law⁷⁶.

Case 65 is the trial of Anytus for the loss of the Athenian position at Pylos. Hansen claims that this was an *eisangelia* to the Assembly⁷⁷, but both Diodorus (13.64.6) and the Aristotelian *Constitution of the Athenians* (27.5) state that the case was tried in court, and the *Lexica Segueriana, Glossae rhetoricae* (p. 236, l. 3-7 sv. δεκάξις) calls the trial *euthynai*.

Case 73 is a prosecution of Ergocles (Lys., *In Ergocl.* XXVIII). The speaker of *Against Ergocles* (Lys., *In Ergocl.* XXVIII.5) clearly indicates that the trial arose from *euthynai* because he states that the Athenians voted that Ergocles should provide an account of money (τὰ χρήματα ὑπογράψαι) received from the cities and that the officials with him should sail back to render accounts

⁷⁵ HANSEN, 1975, p. 46, 71.

⁷⁶ For the election of defenders in cases against an inappropriate law see Demosth., *Adv. Lept.* XX.146-153 with CANEVARO, 2016 on the procedure, refuting HANSEN, 1979-1980, which is followed uncritically by KREMMYDAS, 2010.

⁷⁷ HANSEN, 1975, p. 84.

(εὐθύνας δώσαντας). Submitting an account of money received was the first part of the *euthynai* procedure (ps. Aristot., *Ath. pol.* 54.2). Later in the speech, the accuser states that Ergocles will not try to defend himself about his term of office (ἀρχῆς), which also points to *euthynai*, which pertained to actions of an official during his term of office (Lys., *In Ergocl.* XXVIII.12. For the link between the terms *arche* and *euthynai* see Demosth., *De cor.* XVIII.117). The charges in the speech also concern mismanagement of funds (Lys., *In Philocr.* XXIX.2: κακῶς διαθεῖς τὰ τῆς πόλεως) and embezzlement of public funds (Lys., *In Ergocl.* XXVIII.7: ἀφῆρηνται; Lys., *In Philocr.* XXIX.5: ὑφρημένον. Cf. Lys., *In Ergocl.* XXVIII.1, 3, 5, 16), which was one of the areas covered by *euthynai* but not by the *eisangelia* procedure, which covered only bribery. Hansen claims that the case was heard in the Assembly, but the speaker only refers to some statement made in the Assembly the day before and not to a decree or formal charge (Lys., *In Ergocl.* XXVIII.9)⁷⁸. The speaker does not indicate the function of this meeting, and there is no reason to believe that it had anything to do with this case⁷⁹. Speakers at trials sometimes refer to statements made in the Assembly, which have no procedural connection with the case. Ergocles was punished with death and confiscation of property (Lys., *In Philocr.* XXIX.2; Demosth., *De falsa leg.* XIX.180)⁸⁰.

Cases 100, 101 and 102 were brought by Aristophon after the battle of Embata (356/5). Isocrates (*Antid.* XV.129; cf. Dinarch., *In Demosth.* I.14) explicitly states that Timotheus was tried at his *euthynai* and fined an enormous sum. Isocrates also implies that Iphicrates and Menestheus were acquitted by the same procedure. Note that Isocrates mentions the accounts presented by Menestheus (τὸν δ' ὑπὲρ τῶν χρημάτων λόγον), which clearly points to the *euthynai* procedure. Dionysius of Halicarnassus (*De Lys.* 12) calls the trial both *eisangelia* and *euthynai*, but as the passage of Isocrates, a contemporary, shows, the latter is the correct description. Hansen believes that these cases must be *eisangeliai* because they are initiated after *apochirotonia*, but as we have seen above, other procedures were possible after *apochirotonia*.

⁷⁸ HANSEN, 1975, p. 88. TODD, 2000, p. 287 appears to be unaware of Hansen's analysis but claims that the case was an *eisangelia* because «Lysias 28 is addressed apparently to the Assembly ("Men of Athens" throughout)», but this argument is not convincing because this address is also found in speeches addressed to a court. See MARTIN, 2006. Todd misses all the evidence for *euthynai*.

⁷⁹ TODD, 2000, p. 290 nt. 5 states «the precise function of this meeting is unclear, but it evidently paved the way for for Ergocles' present trial». Todd does not explain how the meeting could have played this role or why it was necessary.

⁸⁰ In his analysis of the trial, HANSEN, 1975, p. 88 claims that «trierarchs were not magistrates», but this is not true. See Aeschin., *In Ctesiph.* III.19.

5. Trials on Various Procedures.

Several trials in Hansen's catalogue were tried under different procedures than *eisangelia* to the court or *eisangelia* to the Council (cases 61, 111, 125, 127). As we saw *supra*, p. 64, Section 3, Diocleides was not condemned by the procedure of *eisangelia*, but according to the law about false denunciations (case 61).

Case 111 involves the arrest, torture and execution of Anaxinus of Oreus. According to Aeschines (*In Ctesiph.* III.223-224), Demosthenes arranged the arrest of Anaxinus, who was doing some shopping for Olympias. Demosthenes then had Anaxinus tortured twice and next moved a decree calling for his death, which was clearly passed because Aeschines says that Demosthenes 'killed' him, that is, caused his death⁸¹. In his reply Demosthenes (*De cor.* XVIII.137) alludes to the incident but twice calls Anaxinus a spy and claims that Aeschines met with him. The case is similar to that of Antiphon, who was an Athenian who had lost his citizenship and was arrested by Demosthenes in his house, but released after Aeschines' objections (Demosth., *De cor.* XVIII.132-133). The Areopagus investigated, arrested Antiphon, and had him tortured. Antiphon presumably confessed under torture and was executed. There is no mention of a trial in either case. Hansen calls this a case of *eisangelia* to the Assembly and claims that Anaxinus is arrested «and brought before the Assembly where Demosthenes proposes and carries a decree that Anaxinos, if found guilty, be sentenced to death»⁸². This reads words into the text of Aeschines, who states only that Demosthenes 'proposed to punish him with death' (ἔγραψε ἀντὸν θανάτῳ ζημιῶσαι). In other words, the decree called for the execution of Anaxinus. In the eyes of Demosthenes and the Assembly there was no need for a trial because a confession had been obtained by torture. The Assembly had the power to sentence foreigners who were considered enemies to death. Xenophon (*Hell.* 1.5.19; cf. Paus., 6.7.4-7) reports that the Athenians had voted the death penalty for Doreius of Rhodes, and his language implies a decree of the Assembly, not a trial in court. Thucydides (2.67.4) reports that the Athenians put to death Spartan ambassadors sent to the Great King and arrested in Thrace «without a trial» (ἄκριτους). There is also the case of Arthmius of Zeleia, who was declared *atimos* (without rights) and an enemy by a decree of the Assembly⁸³.

⁸¹ For the use of the verb *apokteinein* to mean «to cause death» see HARRIS, 2006, p. 391-404.

⁸² HANSEN, 1975, p. 103. In note 6 Hansen adds «on the assumption that the Athenians have conducted the trial constitutionally, this information implies that the Assembly has decreed that Anaxinos be put on trial and that the case be submitted to a court». This is mistaken because the law forbidding that anyone be put to death without a trial clearly only applied to Athenians but not to those with whom the Athenians were at war.

⁸³ On Arthmius see Demosth., *Philipp.* 3 IX.41-43; *De falsa leg.* XIX.271; Aeschin., *In Ctesiph.* III.258; Dinarch., *In Aristog.* II.24-25 with MEIGGS, 1972, p. 508-512, ERDAS, 2002, p. 180-185.

In case 125 (Demosth., *C. Phorm.* XXXIV.50-51) the charge is making additional loans on security and not handing over to creditors securities (after presumably defaulting on loans) against an unnamed citizen. The term must refer to a denunciation in the Assembly, not to an *eisangelia* to the court for tyranny, treason or bribery of speakers. Hansen thinks that this case was tried in court because «you» are the same persons, but this could be Athenians in the Assembly. The second person plural used in trials can be used of Athenians in general, that is, in the Assembly. One wonders if the litigant is inventing a precedent to strengthen his argument for a harsh punishment. The statement is very odd because the charge is a private one, and the penalty is death. This passage is very suspect.

Hansen thinks that the procedure against Agathon (ps. Demosth., *In Aristogit.* I XXV.47) must be *eisangelia*: «it is clear that the Assembly had been involved in the preparatory phase, for which reason the trial should be classified as an *eisangelia* to the Assembly», but admits that *apophasis* is a possibility, but two other *eisangeliai* are mentioned here and *eisangelia* are more common⁸⁴. Hansen is probably right to say that the case was tried in court because of the courts being mentioned in the following section (§ 48). Hansen omits the proposal of Aristogeiton to have Agathon tortured, which shows that he was a metic or a foreigner. What Aristogeiton did at the Assembly was similar to other proposals to have foreigners tortured and was clearly not part of a legal procedure or a way of initiating an *eisangelia*. Nothing in the passage indicates the nature of the crime or the procedure. The speech is a forgery composed in the Hellenistic period, but the author was familiar with the speeches of Demosthenes and other orators and may have found some information in a source not preserved⁸⁵.

6. *Insufficient Evidence.*

In twenty-eight cases, almost one quarter of those listed by Hansen (cases n. 7-9, 10, 68, 74, 77-78, 79, 83, 84, 90, 91, 92, 93, 95, 97, 98, 99, 103-108, 113, 114, 126) there is insufficient evidence to identify the procedure followed by the accuser. One should note that in the evidence for almost all of these cases one does not find the terms *eisangelia* or *eisangellein*.

Cases 7-9 are the trials of the generals who returned after an unsuccessful campaign on Sicily. Thucydides (4.65.3) states that the Athenians punished two generals, Pythodorus and Sophocles, with exile, and punished Euryme-

⁸⁴ HANSEN, 1975, p. 127.

⁸⁵ For the evidence against authenticity see HARRIS, 2018, p. 193-229.

don with a fine. The reason for the verdict was that when it was possible for them to take control of affairs in Sicily, they were persuaded by bribes to withdraw. This charge does not fit the charges of *eisangelia*, which only included betraying military forces to the enemy, and the statutory punishment, which was death. Thucydides does not identify the procedure, but the generals were probably charged with bribery at their *euthynai* (see *supra*, p. 68, Section 4) or on a public charge of treason (*graphe prodosias*).

Case 10 is the exile of Thucydides (5.26.5). The historian only says that he was in exile for twenty years but does not give the reason for his exile. Two ancient lives state that he was charged with treason and found guilty, but the information given by the ancient biographers is often invented on the basis of inferences from the texts of their works. Hansen admits that the sources do not indicate the nature of the procedure and admits that *euthynai* is a possibility⁸⁶. It is also possible that Thucydides did not return to Athens after his command in Thrace from fear that he would be prosecuted as the general Demosthenes did after his defeat in Aetolia (Thuc., 3.98.5) and Iphicrates after his failure to capture Amphipolis⁸⁷.

Case 68 involves a prosecution of Adeimantus by Conon. Demosthenes (*De falsa leg.* XIX.191) states that Conon and Adeimantus served together as generals and that Conon prosecuted Adeimantus but does not identify the procedure used against him. Adeimantus was the only Athenian general released by Lysander after Aegospotamoi (Xenoph., *Hell.* 2.1.32). Demosthenes mentions this case along with two others in which one colleague prosecuted another colleague. Hansen believes that one of these cases was an *eisangelia* (case 82) but, as shown above, this was a trial in the Assembly. Hansen admits «a γραφή προδοσίας cannot be ruled out»⁸⁸.

Case 74 is an accusation brought against the general Dionysius mentioned by Demosthenes (*De falsa leg.* XIX.180) who states that Dionysius harmed the city scarcely less than Aeschines by betraying the Thracian Chersonese and the fortresses there. He says that Dionysius and others were either put to death or paid large fines. Dionysius must be the general who was operating in this area around 388 (Xenoph., *Hell.* 5.1.26). Hansen classifies this trial as an *eisangelia* on the grounds that the others who are mentioned in this passage, Ergophilus (case 86), Cephisodorus (case 96), Timomachus (case 91), and Ergocles (case 73), were tried by *eisangelia*. This is true for Timomachus, but not for Ergophilus and Ergocles (*euthynai*: see *supra*, p. 69-70). In the case of Cephisodorus, the evidence does not indicate what procedure was followed.

⁸⁶ HANSEN, 1975, p. 74.

⁸⁷ See Demosth., *In Aristocr.* XXIII.132 with HARRIS, 1989.

⁸⁸ HANSEN, 1975, p. 87. KAPPELLOS, 2009, follows Hansen in calling this a case of *eisangelia*.

This case could be either a *graphe prodosia* (which would explain the death penalty) or a *euthynai* (which would explain the large fine).

Cases 77 and 78 were brought against two generals who knew about the uprising of Melon against Leontiades in Thebes. One was put to death, and the other fled before trial and was sentenced to exile (Xenoph., *Hell.* 5.4.9-10 and 19). Xenophon does not indicate the nature of the procedure, but Plutarch (*Pelop.* 14.1) indicates the trial took place in court. Hansen argues that because the trial took place in the middle of the Attic year during the winter, they must have been deposed by *apochairotonia*, which would point to *eisangelia*, but there is no decisive evidence. We have also seen that a trial following an *apochairotonia* was not necessarily an *eisangelia*.

Case 79 involves the Treasurers of Athena and the Treasurers of the Other Gods. According to Demosthenes (*In Timocr.* XXIV.136) these officials were placed in prison when the Opisthodomus burned down during their term of office. Hansen claims that this must be a case of *eisangelia* because defendants were placed in prison before trial only in cases of *eisangelia* and *apagoge/endeixis*. But this is not true because for the cases involving the Mysteries and the Herms in 415 some defendants were placed in prison before their trials (Thuc., 6.60.1). An offense linked to the burning of a religious building does not fall under one of the three areas covered by *eisangelia* for serious crimes. Hansen does not mention the scholia on the passage, which give alternative versions but explain the crime as embezzlement, which was also not covered by the law on *eisangelia*. On the other hand, this might have been a case of *eisangelia* to the Council because it involved officials and their duties.

Cases 83 and 84 concern the prosecutions of Callistratus and Chabrias by Leodamas for the loss of Oropos to the Thebans in 366/365 (Diod., 15.76). Aristotle (*Rhet.* 1364 a 19-23) and Plutarch (*Demosth.* 5) mention the trial, but do not identify the procedure and the charges though Plutarch says the trial took place in court. Demosthenes (*In Mid.* XXI.64) mentions the trial of Chabrias on a capital charge and mentions Philostratus as one of the accusers, who was probably only a *synegoros*⁸⁹. The argument Hansen advances for the use of *eisangelia* is entirely speculation: «The loss of Oropos must have caused great excitement in Athens. With our knowledge of how the Athenians reacted in such a situation we may suppose that the Assembly suspended Kallistratos and Chabrias immediately and had them put on trial by *eisangeliai*. It is most unlikely that the Athenians patiently postponed putting their politicians on trial until the turn of the year»⁹⁰. This leads him to dismiss *euthynai* as a possibility, but one cannot rule out a *graphe pro-*

⁸⁹ HANSEN, 1975, p. 93.

⁹⁰ HANSEN, 1975, p. 93.

*dosias*⁹¹. One must also observe that Hansen provides no evidence for his chronology (loss of Oropos several months before summer 365).

Cases 90 (Autocles), 91 (Timomachus), 92 (Calippus), 93 (Timotheus), and 95 (Meno) are prosecutions brought by Apollodorus mentioned briefly at Dem. 36.53. Hyperides (*Pro Eux.* III.1-2) indicates that the prosecution of Timomachus was by *eisangelia*, but there is no information about the procedure used for the other trials. Hansen argues that the trial of Autocles must have been an *eisangelia* because the case was brought after an *apochheirotonia* (ps. Demosth., *C. Polycl.* L.12), but there is no reason to believe that all trials after an *apochheirotonia* were brought by an *eisangelia*. See the discussion of Cases 103-108, *infra*, p. 76. Hansen claims that because these two cases were cases of *eisangelia*, the others must have been tried by the same procedure, but nothing compels the identification.

Cases 97 and 98 are prosecutions against Aristophon and against Diopithes of Sphettos, which Hyperides says that he brought (*Pro Eux.* III.29). If the first trial is the same as a prosecution of Aristophon by Hyperides mentioned in a scholion to Aeschin. *In Timarch.* I.64, this trial was a *graphe paranomon*, but the scholion says that Aristophon was convicted at that trial whereas Hyperides states that in this trial Hyperides was acquitted by two votes. Hansen claims that Hyperides cites these trials as the proper use of *eisangelia*, but as Whitehead notes, this procedure is not mentioned in the previous sentences and nothing compels such a view⁹². One might add that Hyperides is discussing public prosecutions in general in this passage, not just *eisangelia*.

The evidence for case 99 is a decree of the Athenian Assembly (*IG* II³.399=*IG* II².125), which probably dates to around 343 BCE. Strictly speaking this is not a legal case, but an order. The decree sets the penalty of death and confiscation of property for marching against Eretria or any of the allied cities (lines 9-14)⁹³. Hansen admits that the term *eisangelia* is not found in the decree, but argues «since the case is opened by a decree of the Assembly authorizing the Council to draw up a provisional decree for the next Assembly, the trial should be classified as an *eisangelia* to the Assembly». There are several problems with this. First, there is no indication that the proposal to be submitted to the Assembly by the Council concerns a particular case involving specific individuals. The Assembly invites the Council to draw up a proposal for a general rule. Second, as we saw in a previous section, trials brought on

⁹¹ Compare the *Schol.* in Demosth., *In Mid.* XXI.64 (προδοσία).

⁹² WHITEHEAD, 2000, p. 232-233.

⁹³ HANSEN, 1975, p. 100 gives the date of 357/356 BCE, but this must be wrong. See KNOEPFLER, 1984.

the procedure of *eisangelia* were tried in court, not the Assembly. Third, there is no indication what proposals the Council introduced. They may have called for such cases to be tried in court under a specific procedure.

Cases 103-108 concern a board of *thesmothetai* who were deposed from office in 344/343. Ps. Demosthenes (*In Theocr.* LVIII.27-28) only reports that the board was deposed then later given their crowns back, that is, restored to office. Hansen notes that officials removed by *apochirotonia* were tried in court, but neither Demosthenes nor the *Constitution of the Athenians* (61.2) indicates what the charges were. Hansen claims that the trials resulting from the suspensions are *eisangeliai* to the Assembly⁹⁴. In his analysis of trials after an *apochirotonia*, Hansen lists the trial of Timotheus⁹⁵, but as we have seen above, this was not an *eisangelia* but a trial by decree in the Assembly. This means that there is no reason to assume that a trial after an *apochirotonia* was an *eisangelia*.

Case 113 is the prosecution of Autolyclus by Lycurgus (*Or. in Leocr.* 53). The sources for the case state that he was convicted but do not indicate the procedure (Lycurg., *Or. in Leocr.* 53: κατεψηφίσασθε; ps. Plut., *Vit. dec. or.* 843 d: εἶλε). Lycurgus states that he was convicted for sending his wife and children away during the panic after Chaeronea, which could have been considered treason at the time. Hansen believes that this must have been a case of *eisangelia* because Lycurgus uses it as a precedent for his prosecution of Leocrates by *eisangelia*⁹⁶. *Eisangelia* is a possibility.

The evidence for case 114 is only the title of a speech. The text of Dionysius of Halicarnassus (*De Dinarcho* 10) contains the following entry: ἀπολογία διαμαρτυρίας πρὸς τὴν Χάρητος εἰσαγγελία κατὰ Φειδιάδου γραμματέως. Blass appeared to assume that this passage contained the titles of two different speeches and posited a lacuna between Χάρητος and εἰσαγγελία. Hansen follows Sylburgius in emending εἰσαγγελία to εἰσαγγελίαν and claims this speech was a defense speech delivered in reply to a *diamartyria* brought in a case of *eisangelia*, for which there is no parallel. On the other hand, it is possible that Dionysius is referring to two different speeches, one a defense in a *diamartyria*, the other an *eisangelia*. As Hansen admits, it is possible that the *eisangelia* against was a case of *eisangelia* to the Council against an official (see *infra*, p. 79, Section 8).

⁹⁴ HANSEN, 1975, p. 102. SCAFURO, 2018, p. 207-209 believes that the *thesmothetai* may have brought a supplication before the Assembly, which then voted to restore their crowns without a trial. One should not however read too much into the language of supplication used here, which could also be used in court.

⁹⁵ HANSEN, 1975, p. 42.

⁹⁶ HANSEN, 1975, p. 104.

7. Securely attested cases of *Eisangelia*.

The first securely attested cases of *eisangelia* about subversion, treason and bribery of speakers date to the late 360s and are mentioned by Hyperides (*Pro Eux.* III.1-2: εἰσηγγέλλοντο): Timomachus (case 91), Leosthenes (case 88), Callistratus (case 87), Philon of Anaea (case 89), and Theotimus (case 94). All fled into exile before the trial. There is another use of the procedure in 359 by Euthycles against Cephisodotus (case 92). The next attested case is the prosecution of Philocrates by Hyperides in 343 (case 109)⁹⁷. Hansen notes that Aeschines (*In Ctesiph.* III.223-224) threatened to use the procedure against Demosthenes, but he never followed through (case 110). Hyperides (*Pro Eux.* III.3) also mentions three cases of *eisangelia* brought on trivial grounds: one against Agasicles for bribing the Halimousians to enroll him in their deme (case 115) and two more against Diognides (case 122) and Antidorus (case 123) for hiring flute girls at a higher price than allowed by law. Dinarchus (*In Demosth.* I.52) mentions an *eisangelia* for treason against Pistias (case 117). There are three speeches fully or partially preserved delivered in cases of this type of *eisangelia*: Hyperides' *For Lycophron*, *For Euxenippus*, and Lycurgus' *Against Leocrates* in 331 (case 121)⁹⁸. This makes a total of fourteen. Hansen misses one case of *eisangelia* reported by Dinarchus (*In Demosth.* I.58-59)⁹⁹. There are two titles of speeches by Dinarchus called *eisangelia* (case 116: Dion. Hal., *De Dinarcho* 10; case 117: Dion. Hal., *De Dinarcho* 10). This would make seventeen at most. One should note that the sources for all of

⁹⁷ HANSEN, 1975, p. 102 claims that this was initiated in the Assembly on the basis of Demosth., *De falsa leg.* XIX.116-117, but all this passage states is that Demosthenes made a comment about the case in the Assembly. This passage implies nothing about how the case was initiated. Besides Hyperides (*Pro Eux.* III.29) clearly states that he initiated the case by a regular indictment and convicted him in court. In the entry in the records of the *poletai* about the confiscation of Hyperides' property, MERRITT, 1936, p. 399-400 restores at lines 48-49 the phrase τῆς γραφῆς εἰς ἣν εἰσήγγειλεν αὐτὸν Ὑπερείδης τῷ δήμῳ. See however RHODES, 1979, p. 112, nt. 82, who observes that the corresponding passage in lines 113-115 reads κατὰ τὴν εἰσαγγελίαν ἣν εἰσήγγειλεν αὐτὸν Ὑπερείδης: [Γ]λαυκίππο· Κολ· and records a suggestion of David Lewis that one should restore Κολλυτεὺν in line 49. The analysis of *eisangelia* in this essay lends further support to the suggestion of Lewis. Rhodes also questions Merritt's restoration τῆς γραφῆς εἰς ἣν εἰσήγγειλεν in line 48 without providing a reason or an alternative, but his doubts are justified because one never finds the word *graphe* to denote the indictment in an *eisangelia*.

⁹⁸ For the date see HARRIS, 2013 a, p. 234, nt. 56.

⁹⁹ HANSEN, 1975, p. 30, 39-40, followed uncritically by WALLACE, 1989, p. 113, mistakenly calls this a case of *apophasis*, but the *apophasis* was only the report made by the Areopagus after its investigation, which was followed by a trial by *eisangelia* in court. See HARRIS, 2013 a, p. 293-294 with nt. 34.

these securely attested cases *eisangelia* about subversion, treason and bribery of speakers never state that these trials took place in the Assembly. The three speeches completely or incompletely preserved all address judges in court, and Hyperides (*Pro Eux.* III.1-3) implies that cases 87, 88, 89, 91, 94, 115, 122, and 123 took place in court. Hyperides (*Pro Eux.* III.29: εἶλον ἐν τῷ δικαστηρίῳ) states that case 109 was tried in court. Dinarchus (*In Demosth.* I.52) mentions a case of *eisangelia* against Pistias for treason by *eisangelia*, but because this was tried before two thousand, five hundred citizens, the case must have been tried in court and not before the Assembly¹⁰⁰. Dinarchus (*In Demosth.* I.58) also states that the case against Polyeuctus was tried in court¹⁰¹.

In case 92 Aeschines (*In Ctesiph.* III.171) alleges that Demosthenes' father-in-law Gylon betrayed Nymphaeon to the enemy and was an exile, not awaiting his trial (τὴν κρίσιν οὐχ ὑπομείνας), (case 64). Several manuscripts contain the phrase ἀπ' εἰσαγγελίας, but several important principle manuscripts omit the phrase, and Plutarch's paraphrase of the passage from Aeschines significantly does not mention *eisangelia*, only a charge of treason. Given the fact that there are no trials on *eisangelia* securely attested before 370, one should either prefer the manuscripts that omit the phrase or question the veracity of Aeschines' statement. In this same passage, Aeschines charges that Demosthenes violated the law by marrying a non-Athenian, squandered his inheritance, and accepted Persian gold (Aeschin., *In Ctesiph.* III.172-173)¹⁰². One should note the justified skepticism about these charges expressed by Plutarch (*Dem.* 4: οὐκ ἔχομεν εἰπεῖν εἴτ' ἀληθῶς εἶρηκεν εἴτε βλασφημῶν καὶ καταψευδόμενος). Finally, one should note the comment of the scholion on the passage, which states that it was possible for a defendant to depart into exile after the first «decision» that is, vote (ἐξῆν γὰρ φυγεῖν μετὰ τὴν πρώτην κρίσιν). This indicates that the author of the scholion thought the trial was a normal public action such as the *graphe prodosias*, in which there were two votes, one for guilt, the other for the punishment, and not an *eisangelia* for treason, in which there was only one vote and a fixed penalty of death.

There are prosecutions of Hegemon (case 120) and of Democles (case 128) by Aristogeiton mentioned in the first speech *Against Aristogeiton* attributed to Demosthenes (*In Aristogit.* I XXV.47), but this speech is a forgery composed in the Hellenistic period (case 120)¹⁰³. In addition, the speaker claims that

¹⁰⁰ HANSEN, 1975, p. 105-106 claims that because the charge is treason, the case must have been *eisangelia* to the Assembly, but the sources do not mention the Assembly.

¹⁰¹ Dinarchus does state that the accusers were elected, presumably by the Assembly.

¹⁰² HANSEN, 1975, p. 83-84 and LODDO, 2019, p. 128 do not take the context of the passage into account or Aeschines' bias and make no mention of Plutarch's justified doubts.

¹⁰³ See HARRIS, 2018, p. 193-229 with detailed refutation of the attempt of Hansen to defend the authenticity of the speech.

Aristogeiton accepted money to drop the case against Hegemon (ἀπέδoto) and implies he did the same with Democles. Demosthenes' prosecution of Callimedon by *eisangelia* was also withdrawn (Dinarch., *In Demosth* I.94), (case 129).

8. *Eisangelia to the Council: A re-examination of the evidence.*

One of the most important duties of the Athenian Council was the supervision of the several boards of public officials that ran the everyday administration of the *polis*¹⁰⁴. Several legal procedures for policing the conduct of magistrates in office started in the Council of Five Hundred or were brought to magistrates selected from within this body. The *dokimasia* (preliminary scrutiny) of prospective archons and councillors was initiated in the Council and then transferred to a lawcourt¹⁰⁵. Ten *logistai* (accountants) were selected by lot in the Council to check the accounts of magistrates each prytany (ps. Aristot., *Ath. pol.* 48.3). Finally, the *euthynoi*, magistrates in charge of presiding over the *euthynai* of officials, were also selected from within the Council¹⁰⁶.

Eisangelia to the Council was part of this set of accountability procedures and institutions designed to keep the magistrates in check and to punish officials' misconduct. Before examining the sources, it is important to identify the substantive terms, as well as the procedural features of *eisangelia* to the Council. The best contemporary source in this respect is the Aristotelian *Athenaion Politeia* (45.2), which at the section 45 outlines the powers of the Council (cf. *supra*, p. 41, Section 1 of this essay). The Aristotelian *Athenaion Politeia* singles out that substantive aspect of *eisangelia* to the Council, that is, the prosecution of officials misconduct (κρίνει δὲ τὰς ἀρχὰς ἢ βουλὴ τὰς πλείστας), especially magistrates who handled public funds (καὶ μάλιστα ὅσαι χρήματα διαχειρίζουσιν) in order to punish financial crimes, such as embezzlement and bribery. Unlike the procedure of *eisangelia* to court examined *supra*, p. 41, Section 1 of this essay (see Harris' discussion above), *eisangelia* to the Council could not be brought against private individuals for high crimes against the state such as treason, misleading the *demos*, and attempt to overthrow the de-

¹⁰⁴ RHODES, 1972; RHODES, LEWIS, 1997.

¹⁰⁵ FEYEL, 2009, p. 115-120.

¹⁰⁶ E.g. *IG* II².1629, 238-239, see PIÉRART, 1971; FRÖHLICH, 2005, p. 331-362 who shows that accountability of officials in front of whole body of the Council was particularly important in Classical Athens. During main meetings of Assembly (*ekklesia kyria*), one for each prytany, the Athenians took a vote (*epicheirotonia*) about the conduct of officials whether the magistrates were acting justly (ps. Aristot., *Ath. pol.* 43.2).

mocracy, but only against magistrates and officials (e.g. trierarchs) who broke one or more laws during their term of office.

Eisangelia to the Council was an elaborate and multi-layered legal procedure, which was strictly regulated by the law and involved several institutions, each one performing a specific role: the Council, different magistrates and the courts. This institutional design is common to many other procedure of Athenian constitutional law, such as for example, the lawmaking procedure (*nomothesia*), the accountability procedures for magistrates, and the *dokimasiai*. As in this kind of procedure, many institutional actors play a pivotal role, it is therefore methodologically important not to use brief and out-of-context mentions of the Council in an ancient account to identify that passage as a source for *eisangelia* to the Council. These passages need to be analyzed in the context of the sources and the subsequent phases (or not) of the legal procedure.

We can sum up the basic features of the procedure from a study of the Aristotelian *Athenaion Politeia*, and the Demosthenic speech *Against Timocrates*. *Eisangelia* to the Council thus could only be brought against officials for misconduct in office, that is, breaking the laws and disregarding decrees of the Assembly and the Council. The procedure started in the Council which took a vote and handed over the preliminary verdict (*katagnosis*) to the *thesmothetai* for a trial in a court. The instances of *eisangelia* to the Council should therefore be consistent with both the substance and procedure of the legal procedure.

Charges of *eisangeliai* to the Council against officials must have been common during the Classical period, yet the evidence for actual cases is not as abundant as one might expect if we consider the Athenian obsession for policing the behavior of their officials and curbing their power. In his catalogue of the attested cases of *eisangelia* to the Council, Hansen identifies 14 cases of this procedure for the period 419-356 BCE (n. 131-144). In addition, Hansen classifies the majority of these instances (10 out of 14) as ‘probable’ or ‘possible’ trials of *eisangelia* in the Council¹⁰⁷. This section reviews all the evidence for *eisangelia* to the Council in Hansen’s catalogue and shows the only four cases attested in the ancient sources are consistent with the information about *eisangelia* to the Council and to the substantive rationale of this legal procedure.

The occurrences safely attested in the sources about cases of *eisangelia* to the Council are nos. 131-133, 134, and 142 in Hansen’s catalogue. These cases are explicitly called *eisangeliai* to the Council, the charges are all consistent about misconduct against magistrates, and the procedure matches the account given in the Aristotelian *Athenaion Politeia*. Case 131-134 are four individual charges of embezzlement of public money against Ampelinus, Aris-

¹⁰⁷ On this classification see HANSEN, 1975, p. 66.

tion and Philinus and the *hypogrammateus* of the *thesmothetai* (Antiph., *De chor.* VI.35). Case 142 is a charge of betraying the fleet and deserting the fleet brought by Aristophon against some trierarchs after the battle of Peparethus in 361 (Demosth., *De cor. trier.* LI.8-9)¹⁰⁸. The last case of *eisangelia* to the Council is attested as part of extensive litigation between an anonymous trierarch and Theophemus whose account is recounted in the Demosthenic speech *Against Evergus and Mnesibulus* (XLVII), which is discussed in the Appendix and may be a case of *eisangelia* to the Council or just a denunciation to the Council. The other cases in Hansen's catalogue (135-137; 138; 139; 140; 141; 143) require close scrutiny. None of these cases conforms to the legal requirements of *eisangelia* to the Council, but they follow different types of procedures.

The evidence for cases 135-137 is found in two documents preserved in the *Life of Antiphon* in the ps. Plutarch, *Lives of the Ten Orators* (833 e-834 b). There is much evidence against the authenticity of these documents. There are thirteen grounds for declaring the decree a forgery. First, the verb in the enactment formula is incorrect (ἔδοξαν vs. ἔδοχσεν in the late fifth century BCE and later ἔδοξε). Second, the day of the prytany is given, which never occurs in decrees from this period¹⁰⁹. Third, the decree lacks the name of the archon, which is customary in this period. Fourth, the document uses the incorrect form of the phrase for bringing a defendant to court (ἀποδοῦναι εἰς τὸ δικαστήριον vs. εἰσάγειν; *IG I³.21* [450/449], line 50; 34 [448/447], lines 70-71; 41 [around 446/445], line 115; 68 [426/425], lines 47-48; 82 [421/420], line 28; 117 [407/406], lines 11-12; *IG II².1631* [323/322], lines

¹⁰⁸ This speech was delivered in the Council (Demosth., *De cor. trier.* LI.1). This is a difficult case because Demosthenes' account seems to imply that the Council could sentence the trierarchs to death. The Council could not inflict such a penalty. The Council only ordered that the trierarchs be put in prison (Demosth., *De cor. trier.* LI.8: νομίζοντες παρεδώκατ' εἰς τὸ δεσμωτήριον – cf. Demosth., *In Timocr.* XXIV.63), after having voted a verdict of guilty for betrayal and desertion (καταχειροτονήσαντες προδεδοκέναι τὰς ναῦς καὶ λελοιπέναι τὴν τάξιν). Aristophon acted as prosecutor when the case was transferred to a court (Demosth., *De cor. trier.* LI.9: καὶ κατηγορεῖ μὲν Ἀριστοφῶν, ἐδικάζετε δ' ὑμεῖς). The reference to ὑμεῖς is to be interpreted as «you, the *demos*» in court and not the Council, as is often the case in the Attic orators (cf. e.g. Demosth., *De cor.* XVIII.1; *De falsa leg.* XIX.1; *Adv. Lept.* XX.1; *In Mid.* XXI.1; *Adv. Androt.* XXII.4; *In Aristocr.* XXIII.1; *In Timocr.* XXIV.6; *In Aristog.* 1 XXV.8; *In Aristog.* 2 XXVI.1). The penalty is consistent with that for the crime of desertion and treason. There is no reason to emend the text as HANSEN, 1975, p. 118-119 does.

¹⁰⁹ See HENRY, 1977, p. 38. ROISMAN, WORTHINGTON, WATERFIELD, 2015, p. 92 see that the day of the prytany is never given in this period but claim that the text was copied from the archive and not the original stone. But this is to explain *ignotum per ignotius* because there is no evidence that the prescripts in copies in the archive in this period contained more information than those published on stone. And the introduction to the *katadike* actually states it was taken from the stele, not from a copy in the archive. This analysis of the document follows HARRIS, 2021, p. 465-474.

353-4). Fifth, the document uses a form of the third person plural imperative (προσκαλεσάσθωσαν) not found in decrees until after 350 BCE¹¹⁰. Sixth, the decree contains a phrase for «tomorrow» (ἐν τῇ αὐριον ἡμέρᾳ) never found in Athenian decrees¹¹¹. Seventh, the document uses a phrase about the defendants being present in court (ὅπως ἂν περὶ παρόντων γένηται ἡ κρίσις) never found in Athenian decrees. Eighth, the document contains a phrase about summons (ἐπειδὴν αἱ κλήσεις ἐξήκωσιν) never found in Athenian decrees. Ninth, the phrase about the itinerary of Antiphon to Sparta makes no geographical sense: they «sailed from the camp on an enemy ship and went on foot through Deceleia». On the one hand, Thucydides gives the clear impression that the ambassadors left from Athens, not from «the camp». The main camp of the Athenian army at this time was on Samos (Thuc., 8.21, 47-49). If the ambassadors went on a ship from Athens, they would have gone to a port on the Saronic Gulf and not to Deceleia, which was in the wrong direction. Tenth, the phrase about advocates and generals bringing the charges (κατηγορεῖν τοὺς εἰρημένους συνηγόρους καὶ τοὺς στρατηγοὺς καὶ ἄλλους, ἂν τις βούληται) has no parallel in Athenian legal procedure. Eleventh, the phrase for inflicting punishment (ὅτου δ' ἂν καταψηφίσηται τὸ δικαστήριον, περὶ αὐτοῦ ποιεῖν κατὰ τὸν νόμον) deviates from the standard phrase for this procedure (τιμᾶν with the addition of παθεῖν ἢ ἀποτεῖσαι)¹¹². Twelfth, the adjective Πελληνεὺς found in the document is not an Attic demotic, but the ethnic for the city of Pellene (*Syll.*³ 424, line 13). Thirteenth, the document calls on the *thesmothetai* to present the summons to the defendants (προσκαλεσάσθωσαν δ' αὐτοὺς οἱ θεσμοθέται), but in Athenian Law the duty of presenting the summons is never given to the *thesmothetai* but to the accuser (Demosth., *In Mid.* XXI.60; *C. Phorm.* XXXIV.13; *In Con.* LIV.29; ps. Demosth., *C. Boeot.* 2 XL.32; *In Everg. et Mnes.* XLVII.26, 45).

¹¹⁰ See THREATTE, 1996, 462-466. The earliest example is found at *IG II*³, 1.292 (year 352/351), lines 47-48 (καθελόντωσαν) although the rest of the text has the earlier form of the imperative (lines 31-32, 34-35, 36, 39-40, 48). The form is never found in public documents before this time. Herwerden and Blass reported in OFENLOCH, 1907, p. 91 saw the problem and proposed the emendation προσκαλεσάσθων, but this emendation assumes that the document is genuine.

¹¹¹ See for examples *IG I*³.63, line 9; 66, lines 24-25; 106, line 24; 110, line 25-26; 173, line 2. The phrase ἐν τῇ αὐριον ἡμέρᾳ is restored in *IG II*³.73, lines 43-44 and the phrase ἐς τὴν αὐριον ἡμέραν in *Agora XVI*.22, fr. b line 11, but the spelling αὐριον is without parallel in fifth century inscriptions, which makes the restorations very dubious. The phrase τῇ αὐριον ἡμέρᾳ is found in the so-called Themistocles Decree (*SEG XXII*.274, line 20), but this is now widely regarded to be a forgery. Cf. Demosth., *In Timocr.* XXIV.27 with CANEVARO, 2013, p. 110 for the standard form of the expression. Cf. CANEVARO, 2018, p. 81.

¹¹² For the evidence see HARRIS in CANEVARO, 2013, p. 228 and CANEVARO, 2013, p. 156. ROISMAN, WORTHINGTON, WATERFIELD, 2015, p. 97 do not see how the formula is not consistent with the standard language of decrees.

There are four grounds against the authenticity of the verdict found in the *Life of Antiphon* found in the *Lives of the Ten Orators*. First, When an accuser brought an accusation against a defendant, he made his charges in a plaint (*engklema*), which was given to the relevant official¹¹³. The indictment contained the name of the accuser with his patronymic and his demotic, the name of the procedure he was following and the name of the defendant with his patronymic and his demotic. The accuser then indicated what the defendant had done to violate the substantive provisions of the relevant statute. All the evidence in our sources about the plaint indicates that each plaint was brought against one individual, not two or more. Each defendant was accused separately and tried separately. In this document however two individuals are listed together, which is without parallel in the evidence for legal records of trials. Second, when a defendant was condemned and his property confiscated, anyone who wished could denounce (*ἀπογράφειν*) his property to the *poletai*, who then sold the property and gave the person who made the report a percentage of the sale price (ps. Aristot., *Ath. pol.* 47.2; 52.1). In this document however the word for reporting the property of those found guilty is *ἀποφῆναι*, not *ἀπογράφειν* (Demosth., *C. Nicostr.* LIII.2; *IG* II².1631, lines 365 ff.; 98, *Agora.XIX P 5*, lines 8-38)¹¹⁴. The property is to be reported to the demarch and not to the *poletai*. Third, when an Athenian law imposed the punishment of *atimia* on the descendants of a condemned defendant or grants privileges to a person and his descendants, the phrase is *ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου* (*IG* II³.320, lines 20-21) or *[ἄτιμον] ἔναι αὐτὸν καὶ παῖδας τὸς ἐχς [ἐκένο]* (*IG* II³.46, lines 27-28) or *ἄτιμος ἔστω καὶ οἱ παῖδες καὶ τὰ ἐκείνου* (Demosth., *In Aristocr.* XXIII.62). In grants of privileges to a person and his descendants the phrase is similar (*IG* I³.92, lines 11-12: *αὐτὸν καὶ τὸ[ς] παῖδας*; 110, line 15 [*καὶ τὸς ἐκγόνους αὐτῶ*]). One never finds the addition of the phrase *καὶ νόθους καὶ γνησίους*, which is otiose and unnecessary. Fourth, the relative clause in the final clause (*ἥπερ ἂν καὶ τὰ ψηφίσματα τὰ περὶ Φρυνίχου*) has no verb and the formula is inconsistent with that found in decrees of the late fifth century.

Case 138 in Hansen's catalogue is an epigraphically attested case of a legal procedure created by decree (*IG* I³.102=Rhodes, Osborne, n. 182). This interesting evidence because it shows how the Athenians were aware of the institutional complexity of their legal system and could involve several institutions in the judicial decision-making. The inscription records three honorary decrees passed at the same meeting of the Assembly in Spring 409 BCE

¹¹³ On the form of the plaint and its contents see HARRIS, 2013 b.

¹¹⁴ On the procedure of *apographe* see HARRISON, 1971, p. 211-217.

for those involved in the killing of Phrynichus, a prominent members of the Four Hundred¹¹⁵. The first probouleumatic decree (1-14) awards Thrasybulus a golden crown of 1,000 drachmas. The second and the third decrees are riders introduced in the Assembly, and include respectively a proposal of Diocles (14-38) to grant of citizenship to Thrasybulus and other honours to his associates, and a proposal of Eudikos (38-47) which prescribes a procedure in the Council to punish those who gave bribes for a honorary decree for Apollodorus. Hansen argues that the inscription attests a case of *eisangelia* to the Council against some anonymous citizens¹¹⁶.

It is important to review the content of the decree to identify the correct legal procedure. Eudikos' proposal in the Assembly instructs the Council to deliberate in the *bouleuterion* at the next session and to punish the offenders, and to vote to condemn them (καὶ κολάζειν, τῶν [δ]ορο[δοκεσάντων καταφ]ερισζομένεν) and to hand them over to a lawcourt as it seems best to the Council (καὶ ἐς δικασ[τέριον παραδιδῶσα]ν, καθότι ἄν δοκεῖ αὐτέ[ι]). The councillors are also to report what they know about the matter, and the decree invites anyone who wishes to give information to do so.

The involvement of the Council in punishing a case of bribery is should not be misinterpreted as a case an *eisangelia* to the Council. The decree in fact creates an *ad hoc* procedure to investigate and punish a crime against the *polis*. Eudikos is not following the standard legal procedure laid out in the *nomos eisangelitikos* or in any other Athenian law. Bribery for an honorary decree was a threat to the democratic decree-making and to the system of awarding honours of the *polis*. As in many other cases, the Assembly empowered by decree the Council to collect information and to punish the offenders according to the Council's normal powers, that is, to fine a citizen up to 500 drachmas or to hand over the case to a court, if the Council believed that defendant deserved a higher penalty. The *ad hoc* procedure created by Eudikos' decree is also not consistent with the *eisangelia* to the Council in terms of substance. The procedure could only be brought against magistrates for misconduct in office. This case should therefore not be considered an *eisangelia* to the Council, but a trial initiated by means of a decree of the Assembly.

Case 139 in Hansen's catalogue is the infamous trial against Cleophon held under the rule of the Thirty. The account of the trial and the execution of Cleophon is found in Lysias's speeches *Against Agoratus* (XIII.12) and *Against Nicomachus* (XXX.10-14). In 404 BCE Satyrus of Cephisia was a member of the oligarchic Council set up by the Thirty, and in this venue, falsely ac-

¹¹⁵ On the murder of Phrynichus cf. Thuc., 8.68; Aristot., *Pol.* 1305 b 27; Lycurg., *Or. in Leocr.* 112 with the discussion in TODD, 2020, p. 412-413, 416-417.

¹¹⁶ HANSEN, 1975, p. 115-116.

cused Cleophon of desertion (Lys., *In Agor.* XIII.12). Hansen lists this trial as an *eisangelia* to the Council because the charge was brought in the Council, but he does not exclude the possibility that the charge was introduced through an *apagoge* or an *endeixis*¹¹⁷. The trial of Cleophon, however, cannot be an *eisangelia* to the Council.

The most important ground against the identification with the *eisangelia* to the Council is that the trial was held according to an illegal procedure made up *ad hoc* by the Thirty. In the *Against Agoratus*, Lysias says that the supporters of the oligarchy rigged up a court (*In Agor.* XIII.12: δικαστήριον παρασκευάσαντες) and had him convicted and executed. Lysias' account of events is more detailed in the *Against Nicomachus* (see case 140, *infra*, p. 85). In this speech, Nicomachus is accused of being directly involved in drafting the unconstitutional legislation for putting Cleophon on trial. Lysias affirms that Satyrus convinced the Council to arrest him and to hand him over to a lawcourt, but being afraid that he would not be able to convict him, the councillors asked Nicomachus to invent a law which instructed the Council to adjudicate the case together with the judges (τὴν βουλὴν συνδικάζειν). Both the nature of the charge and the relevant procedure did not follow the standard rules of an *eisangelia* to the Council. The alleged charge against Cleophon, namely, desertion falls under the rubric of crimes prosecuted by the *eisangelia* to the Council only when it concerns officials and not to soldiers. There is no reliable piece of evidence that, at the moment of Satyrus' allegation, Cleophon was holding office and was therefore subject to being prosecuted for official's misconduct according to the *eisangelia* to the Council. The procedure used to prosecute Cleophon is also unparalleled and at odds Athenian law. Athenian constitutional law allowed the Council to inflict a penalty up to 500 drachmas or to transfer the case to a lawcourt, but the two bodies could not collaborate to decide in a court of law. Anyone familiar with Athenian judicial procedure knows that there is no parallel for such a kind of trial, which was obviously unconstitutional. Another important aspect showing the illegality of the trial is that the bouleutic oath forbade the Council to put to death an Athenian citizen¹¹⁸. The trial of Cleophon should be considered an exceptional case of abuse of Athenian law and a breach of the rule of law for political reasons as was often the case under the Thirty (Lys., *In Nicom.* XXX.14)¹¹⁹.

Lysias's speech *Against Nicomachus* (XXX) is also relevant for the next case, which is listed in Hansen's list of *eisangelia* to the Council (case 140)¹²⁰.

¹¹⁷ HANSEN, 1975, p. 116 nt. 2.

¹¹⁸ On the bouleutic oath see RHODES, 1972, p. 194-195; ESU, forthcoming.

¹¹⁹ For other misuses of Athenian legal procedures by the Thirty see ESU, 2021.

¹²⁰ HANSEN, 1975, p. 116-117.

The identification of the procedure with an *eisangelia* to the Council is based on very slim evidence taken in isolation, and the information in Lysias' speech points to a public case arising from an accusation at Nicomachus' *euthynai*¹²¹. It is important to summarize the historical background and to analyse the key passages of the forensic speech in the context of the legal case.

This speech was delivered in 400/399 in a case against Nicomachus who was a member of the board of *anagrapheis* in charge of republishing the Athenian laws. The republication of Athenian statutes was a long and complex process that started in 411/410 and went on until 405/404 when it was interrupted by the Thirty, and was finally concluded with the restoration of democracy in 403¹²². The case came to court in 399 and the charges against Nicomachus are introduced at the beginning of the speech. The accuser says that Nicomachus was instructed to write up the laws within four months, but instead he abused his office of *anagrapheus* and set himself up as lawgiver (*nomothetes*) and stayed in office for six years (Lys., *In Nicom.* XXX.2).

Hansen's case rests mostly on the interpretation of the passages at Lys., *In Nicom.* XXX.4-5 and 7. Hansen believes that *In Nicom.* XXX.4-5 rules out the possibility of *euthynai*, whereas the cursory mention of the Council at paragraph 7 hints at a preliminary hearing in the Council as part of the *eisangelia* to the Council¹²³. These two passages cannot be taken in isolation because they are part of a larger section (Lys., *In Nicom.* XXX.3-9) introducing the legal charges, the character evidence, Nicomachus' conduct in office, and the speaker's motivations for indicting Nicomachus. It is important to study closely the narrative of these key passages to identify the legal procedure.

At Lys., *In Nicom.* XXX.2-3, the speaker says that Nicomachus submitted his accounts for his first term of six years after the defeat at Aegospotami, which means before the Thirty took over. However, in the following section (§ 4), the speaker says that Nicomachus did not pay for his crimes (ἐπειδὴ ἐκέινων δίκην οὐ δέδωκεν), and makes a specious allegation that Nicomachus established again the same office of *anagrapheus* for himself (ὁμοίαν καὶ νῦν τὴν ἀρχὴν κατεστήσατο). The accuser's statement implies that no one accused Nicomachus of misconduct at his *euthynai* after his first term of office as *anagrapheus*, especially because he was to be reappointed to the same office by the restored democracy. At Lys., *In Nicom.* XXX.5, the accuser attacks Nicomachus's conduct in his second term of four years, and singles out three serious crimes for an

¹²¹ See also ORANGES, 2018, p. 51-61. The speech's entire title preserved in manuscripts is Κατὰ Νικομάχου γραμματέως εὐθυνῶν κατηγορία. There is no reason to follow THALHEIM, 1913, p. 302 in deleting part of the title. See CAREY, 2007, p. 267 who restores the manuscript's title in his Oxford Classical Text.

¹²² CANEVARO, HARRIS, 2012, p. 110-116.

¹²³ HANSEN, 1975, p. 117 nt. 2.

Athenian official: 1) Nicomachus abused his office by extending his term for an unusual long period (μόνω σοὶ τῶν πολιτῶν ἐξεῖναι νομίζεις ἄρχειν πολὺν χρόνον), 2) he did not submit his accounts, and 3) he did not follow the decrees and the laws (μήτε εὐθύνας διδόναι μήτε τοῖς ψηφίσμασι πείθεσθαι μήτε τῶν νόμων φροντίζειν).

Such allegations are consistent with the *euthynai* of magistrates, and indicate that these were the charges brought against Nicomachus at his *euthynai* at the end of his so-called ‘second term’ as *anagrapheus*. The final accounting of Athenian officials consisted of two parts: the first part concerned financial management, in which magistrates had to submit their account (*logos*) to the board of *logistai* who presented their assessment, supported by ten *synegoroi*, before the court. The judges had to vote whether the magistrate under examination was guilty or innocent and inflict the penalty fixed by law (ps. Aristot., *Ath. pol.* 54.2; Demosth., *De cor.* XVIII.117; *De falsa leg.* XIX.211). The second part of the *euthynai* procedure checked the magistrate’s general conduct. In this part of the procedure anyone who wished could bring a public suit against a magistrate’s illegal action to the board of *euthynoi* within thirty days after the examination of the accounts (Aristot., *Ath. pol.* 48.4-5). Nicomachus was very probably prosecuted before the *euthynoi* by the anonymous speaker of Lysias’ speech, and this hypothesis is consistent with the arguments used in the speech. The charges aim at depicting Nicomachus’s behaviour in office as incompatible with Athenian institutional practice and morality. Since he did not respect the basic requirements for an official for an extended period of time, the speaker goes so far as to accuse Nicomachus of *hybris*.

Finally, the involvement of the Council in the procedure must be clarified. At Lys., *In Nicom.* XXX.7, as part of a frequent forensic technique in Attic oratory, the accuser warns the judges not to listen to Nicomachus’ slander and anticipates that Nicomachus will accuse the speaker of having been one of the Four Hundred, as he had already announced in the Council (ἐὰν δ’ ἄρα ἐπιχειρή λέγειν ἅπερ ἐν τῇ βουλῇ, ὡς ἐγὼ τῶν τετρακοσίων ἐγενόμην). It seems pressing the evidence too far to read this passage as a mention of a preliminary hearing for an *eisangelia* in the Council. This might well have occurred during a heated debate in the Council or at Nicomachus’ final audit since the *euthynoi* were selected by lot from the councillors.

Case 141 is found in Lysias XXII (*Κατὰ τῶν σιτοπολῶν*). The *prytaneis* placed an item about the conduct of the grain-dealers on the agenda of the Council (Lys., *Κατὰ τῶν σιτοπ.* XXII.2; see ps. Aristot., *Ath. pol.* 44.1-2 for the *prytaneis* handing the agenda to the eleven *proedroi*). This is not a legal charge but a matter on the agenda of the Council to be discussed. There is a discussion with one member proposing that the grain-dealers be put to death without a trial. The grain-dealers were also summoned before the Council and

addressed the members (Lys., *Κατὰ τῶν σιτοπ.* XXII.9, 11). The speaker of *Against the Grain-Dealers*, who is clearly a member of the Council, objects to this proposal on the grounds that the Council should not get into the habit of doing this. The Council apparently had the power to put non-citizens to death although it was barred from executing citizens. The reasoning behind this argument is probably that such a procedure would discourage traders from coming to Athens. The speaker then proposed that the grain-dealers be tried according to the law, that is, in a regular court (κρίνειν τοὺς σιτοπώλας κατὰ τὸν νόμον). The Council then voted this proposal (Lys., *Κατὰ τῶν σιτοπ.* XXII.3: *πεισθείσης δὲ τῆς βουλῆς*). This clearly took the form of a decree of the Council ordering that the grain-dealers be tried in court. The speaker then brought a formal charge before the relevant official (§ 7: *κατηγορίαν*), and the case was tried in court before judges (§ 6, 7: *dikastai*).

This cannot have been a case of *eisangelia* to the Council on both substantive and procedural grounds. First, the charges were brought against foreigners (§ 5: *μέτοικος*) and not against Athenian officials. Second, there was no trial in the Council with a first vote to determine guilt and a second vote to determine the penalty. There was only a discussion about what to do and a decree of the Council to submit the case to court. Note that the speaker who addressed the Council and brought the charge in court says in the Council that the guilt of the grain-dealers has not been established (§ 2: *εἰ μὲν εἰσιν ἄξια θανάτου εἰργασμέμοι ... εἰ δὲ μηδὲν ἀδικούσιν*). One should not be misled by the term *κρίσις* at § 3; this refers to the decision of the Council to submit the case to court and is not a vote about the guilt of the grain-dealers.

Case 143 is the accusation of Pamphilus against Timarchus recounted in Aeschines' *Against Timarchus* (Aeschin., *In Timarch.* I.109-112). It is important to note that this speech was delivered by Aeschines against Timarchus for a *dokimasia rhetoron* in court, a legal procedure aimed at policing the public conduct of the *rhetores* in the Assembly¹²⁴. Sections 106-111 reviewed Timarchus' public service and aim to demonstrate that Timarchus was consistently corrupted and acted against the laws when holding a public office¹²⁵. At section 109-112, Aeschines recalls the conduct of Timarchus during his term as councillor in 361/360, when he and Hegesander, the treasurer of the goddess, allegedly stole 1,000 drachmas of public funds. The accusation was openly brought during a meeting of the Assembly by Pamphilus. Aeschines gives a vivid picture of the accusation, which is intertwined with explicit reference to Timarchus' improper sexual conduct (one of the legal allegations in the trial).

¹²⁴ On this speech see the commentary of FISHER, 2001.

¹²⁵ For a discussion of legal arguments in the trial and their relevance with the charges see BARBATO, forthcoming.

I will briefly summarize Aeschines' account of the events. In the Assembly, Pamphilus provided information about Timarchus's crimes, and advises the Assembly to order the Council (1) to expel Timarchus from his office of *bouleutes* (ἐκφυλλοφορήσασα), (2) to hand him over to a court (δικαστηρίῳ παραδῶ), and (3) to reward the Council if these actions were taken (ἐὰν μὲν ἡ βουλὴ καταγνοῦσα τουτουὶ ... δότε τὴν δωρεάν αὐτοῖς) (Aeschin., *In Timarch.* I.111). As a result, the Council met in the *bouleuterion* and in a first vote, called *ekphyllophoria* (vote by use of leaves), expelled Timarchus, who was however admitted again after a second vote by ballot (*psephoi*)¹²⁶. The Council then did not convict Timarchus and did not hand him over to a law-court (Aeschin., *In Timarch.* I.112). As a result, Aeschines clearly specifies that the Council did not obtain their reward¹²⁷.

Pamphilus' speech during the meeting of the Assembly indicates that he put forward a motion and the Assembly passed a decree ordering the Council to conduct an investigation and setting the course of action and the relevant honour for the Council in case Timarchus was found guilty of embezzlement of public money. Hansen duly noted this point, and rightly compared it with decree of Eudicus (case 138), which I have shown is a trial initiated by a decree of the Assembly. He opted nevertheless for an *eisangelia* to the Council, «because the responsibility to accept or reject the charge rests with the Council»¹²⁸. This interpretation encounters some important obstacles. First, as noted before in this essay, the mere involvement of an institution, whether a board of magistrate or a larger body, is not strong enough evidence to identify the judicial procedure, and reflects a procedural understanding of the nature of Athenian law. This point is especially important when the Council is involved because of the multifaceted roles of the Council in the Athenian administration. Here, the Council is only involved because one of his members was denounced in the Assembly and was asked by the Assembly to censure his conduct. Second, the procedure outlined in Aeschines' narrative does not follow the normal procedure for the *eisangelia* to the Council prescribed in the law but follows the *ad hoc* procedure proposed by Pamphilus in the Assembly and enshrined in the decree that was most likely passed. Pamphilus did not approach the Council and presented a plaint to the *prytaneis*. He instead has the Assembly pass a decree which outlines what the Council should do. An analysis of the votes taken in the Council shows the substantial differences

¹²⁶ On vote by use of leaves see the case of Cos *IG* XII, 5.595, lines 11-15.

¹²⁷ The Council regularly obtained a crown at the end of its term unless the councillors did not perform their duty according to the laws. Here, Aeschines implies that the failure of the Council to punish Timarchus and Hegesander was seen by the Athenians as an injustice. It is more likely that the Council did not find Timarchus guilty of any crime.

¹²⁸ HANSEN, 1975, p. 119 nt. 5.

between the case of Timarchus and the votes necessary in a case of *eisangelia* to the Council (ps. Demosth., *In Everg. et Mnes.* XLVII: see *supra*, p. 39-40, in the introduction). We do not have any additional information for the *ekphyllophoria* mentioned at Aeschin., *In Timarch.* 1.111, but this vote seems only concerned with the expulsion of an unworthy member of the Council, that is, a councillor who broke the bouleutic oath, and not with a vote about a conviction (*katagnosis*). This is also consistent with Harpocration who says that the *ekphyllophoria* was a bouleutic vote by use of leaves instead of ballots against one of its members who broke a law (Harpocr., *sv.* ἐκφυλλοφορήσαι)¹²⁹. The second vote of the Council reversed the decision taken with the vote by use of leaves (as marked by the opposition μὲν ... δὲ), and readmitted Timarchus as member of the Council (ἐξεφυλλοφόρησε μὲν αὐτόν, ἐν δὲ τῇ ψήφῳ κατεδέξατο). Unlike the second vote against the trierarch Theophemus in ps. Demosth., *In Everg. et Mnes.* XLVII, the second vote was not an assessment of the penalty, because the *ekphyllophoria* was not a conviction. The case against Timarchus should be considered a bouleutic procedure to keep in check its own members activated by a decree of the Assembly, which ordered the Council to expel and punish Timarchus.

This review of the cases listed by Hansen as examples of the procedure of *eisangelia* to the Council described in the Aristotelian *Constitution of the Athenians* (45.2) shows that only four of the cases in his list (cases no. 131-134) and possibly one more (case 142) are examples of this procedure. Cases 135-137 are found in a forged document; case 138 concerns bribery by private individuals; case 139 is an illegal procedure under the Thirty; case 140 is brought at *euthynai*; case 141 is brought against grain-dealers, and there is no preliminary vote in the Council; case 143 concerns membership in the Council and not a charge transferred to the court; and case 144 concerns a denunciation of a private citizen for holding state property and assaulting a trierarch.

9. Conclusion.

This essay has illustrated the flaws of a narrowly philological approach to the study of Athenian Law. One cannot study a legal institution or procedure by simply collecting all the instances of a single word and forcing all this evidence into one or two categories. As we have seen with *eisangelia* about subversion, treason, and the bribery of speakers and *eisangelia* to the Council, the term can be used to refer to different procedures in different contexts. In the

¹²⁹ For a review of the later byzantine lexicographical tradition of this vote and the conflation of *ekphyllophoria* and the so-called bouleutic ostracism see WEÇOWSKI, 2018, p. 14-15.

same way *eisangelia* about widows and *eisangelia* about arbitrators were also procedures used for different offences. Because the verb *eisangellein* could also be used a general term about providing information, the term could be used as a synonym for *menyein*. Moreover, this study shows the importance of studying each procedural term in conjunction with its substantive features¹³⁰. In each of these cases one can differentiate the type of *eisangelia* by examining what type of offences it was aimed at covering. Finally, if a case is attested in the sources, but the term *eisangelia* is not used to denote the procedure under which the case was brought, one should not assume that it was brought under this procedure, but consider alternative procedures as a possibility.

The first type of *eisangelia* was a public action brought against those who attempted to overthrow the democracy, who committed treason, or who did not give the best advice after taking bribes. The most reliable evidence for this procedure comes from Hyperides' *For Euxenippus* and *For Lycophron*, Lycurgus' *Against Leocrates*, and the work *On the Laws* by Theophrastus. Like all other public actions, this was initiated by bringing an indictment to the relevant magistrate, probably the *thesmothetai*. There is no reliable evidence showing that this kind of public action was initiated either before the Council or before the Assembly. This procedure differed from other public actions insofar as there was no penalty for the accuser who did not gain one-fifth of the votes. There is also no reason to believe that this type of *eisangelia* could be brought against 'unwritten crimes', in other words, offenses not contained in a specific statute. The evidence for this is found only in the lexica, which contain several errors, contradict each other on this point, and are at odds with the contemporary evidence. The penalty on this charge was death (Aeschin., *In Ctesiph.* III.252). In the securely attested examples of cases brought on this procedure there is never a mention of a fine (cf. *supra*, p. 77, Section 7). If the defendant fled into exile before the verdict, the sentence was not changed into exile¹³¹. The defendant merely avoided the penalty and could be executed if later caught as with conviction on other public charges.

Trials held in the Assembly were not cases brought by this form of *eisangelia*. These trials were held in the Assembly because the Assembly held the power to decide cases involving major crimes. In the case of foreigners, the Assembly might pass a decree calling for execution or place a bounty on the head of someone considered dangerous. In the case of citizens, the Assembly

¹³⁰ One of the flaws in his study of *eisangelia* is the mistaken assumption of HANSEN, 1975, p. 10, 14, 21, that Athenian law was procedural in its orientation. For detailed refutation and demonstration that Athenian laws covered both substantive and procedural issues see HARRIS, 2013, p. 138-174, 359-378. HANSEN, 2019, p. 467 with nt. 85 («Harris' important, and in my opinion convincing, analysis») has now admitted that he was wrong.

¹³¹ This point is well made by LODDO, 2019 against HANSEN, 1975.

would grant a trial either brought by the law of Cannonus against traitors and or a trial brought on an *ad hoc* basis by a decree. These kinds of trials go back to the early years of the democracy and were a possibility until 318 when Phocion and others were tried this way (*supra*, p. 56, Section 2). There was no shift of *eisangelia* from the Assembly to the courts as claimed by Hansen, building on Lipsius. Trials in the Assembly were not a form of *eisangelia*, and *eisangelia* against subversion, treason and the bribery of speakers was a procedure providing for a trial in court.

One should also distinguish this form of *eisangelia* as a public procedure from *eisangelia* to the Council. The latter was a procedure brought before the Council against officials who did not follow the law. The Council held a vote, but the decision was not final, and the case was transferred to a court for a final verdict (though there may have been the possibility of a fine less than five hundred drachmas, which might be challenged by the defendant). One should also keep separate the use of the word *eisangelia* and the verb *eisangellein* to denote denunciations made by informers (*supra*, p. 64, Section 3). These denunciations were different from the two forms of *eisangelia* mentioned above because the case would be sent to court, sometimes on the order of the Assembly and might be used for treason but also for crimes of impiety as in 415. This procedure was also different because the informer might be rewarded if his information turned out to be correct, that is, if the person denounced was convicted in court. There was no reward for the previous types of *eisangelia*. On the other hand, if the information did not turn out to be true, the informer would be put to death. This also did not apply to *eisangelia* to the court or *eisangelia* to the Council. The procedural differences went hand in hand with substantive differences.

Scholars have proposed different dates for the introduction of *eisangelia*. According to the Aristotelian *Constitution of the Athenians* (8.4) the Areopagus had the power to try those who conspired to overthrow the people by *eisangelia* according to a law enacted by Solon. Reasonable questions have been raised about the reliability of this information, but even if it is genuine, the evidence for trials in the early fifth century reveals that the Areopagus had lost the power to try such cases by the time of Cleisthenes¹³². Hansen argued that the law about *eisangelia* both to the Council and to the Assembly was created by Cleisthenes but revised in 411/410¹³³. Rhodes attributed the law to

¹³² For doubts about *eisangelia* in Solon's laws see HANSEN, 1975, p. 17-19. Rhodes believes that the trials in the early fifth century were tried by the Areopagus under this law, but this is contradicted by the sources, which state these cases were tried in the Assembly or in a regular court. For detailed refutation see HARRIS, 2019 c.

¹³³ HANSEN, 1975, p. 17, 19.

Ephialtes when the Areopagus allegedly lost its ‘additional’ powers¹³⁴. Thalheim, followed by Bonner and Smith, placed the enactment of the law about *eisangelia* around 410¹³⁵. Lipsius thought that there was a law about *eisangelia* in the fifth century introduced by Cleisthenes allowing accusations on any charges but this was changed to a law limiting the procedure to some specific charges in the middle of the fourth century¹³⁶.

Here one must distinguish between *eisangelia* to the court, *eisangelia* to the Council and trials in the Assembly. Trials in the Assembly clearly went back to the early part of the fifth century and may have had their origin in the broad powers of the Assembly in the Archaic period. *Eisangelia* to the Council is clearly attested as early as 419 in the speech of Antiphon *On the Chorister* (VI.12, 21-24, 35-39, 42-43, 49-50). It may go back to the early fifth century, but there is no reason to associate the procedure with Ephialtes. The supervision of officials was a traditional aspect of the Council’s powers. As for *eisangelia* to the court for subversion, treason, and bribery of speakers, there is no securely attested case before 365. One can postulate a date after which the procedure was introduced by an *argumentum e silentio*. First, the Paphlagonian slave, a parody of Cleon, uses every possible legal procedure against his enemies in Aristophanes’ *Knights*, but does not use *eisangelia* even though he accuses several persons of treason. Second, when Eurypotlemus argues that the Athenians should not try the generals after Arginusai by the decree of Callixeinos, he mentions the possibility of using the law of Cannonus or the law about treason and temple-robbers (Xenoph., *Hell.* 1.7.20-22), but does not mention the possibility of *eisangelia*¹³⁷. The best context into which to place this form of *eisangelia* is clearly after the Thirty who overthrew the democratic constitution, and whose reign led to the deaths of hundreds of Athenians¹³⁸. Two of the main concerns expressed in the law about *eisangelia*,

¹³⁴ RHODES, 1972. The view of Rhodes that Ephialtes enacted widespread reforms and limited the powers of the Areopagus is not convincing. For a detailed analysis of his uncritical use of the sources see HARRIS, 2019 c and ZACCARINI, 2018.

¹³⁵ THALHEIM, 1902 and 1906, BONNER, SMITH, 1930, p. 302-305. HANSEN, 1975, p. 17 thinks that the law about *eisangelia* was revised at this time. WANKEL, 1994 believes that the law must have been enacted before 405 BCE on the basis of alleged similarities of wording found in Aristophanes *Frogs*, 362 and 367, but the similarities are not that close.

¹³⁶ LIPSIVS, 1905-1915, p. 179, 191-192.

¹³⁷ Cf. LIPSIVS, 1905-1915, p. 187: «Aber auch auf jenes Gesetz hätte Eurypotlemos sich nicht beziehen können, hätte damals bereits ein Eisangeliegesetz in der durch Hypereides bekannten Fassung bestanden, die in ihren zweiten Paragraphen den Verrat behandelt!».

¹³⁸ HANSEN, 1975, p. 17 claims that the clause about betraying ships and cities «presupposes the existence of an empire». This is not convincing, but one might add that Athens revived its territorial ambitions during the Corinthian War.

subversion and treason, are the same concerns found the decree of Demophantus, which was enacted after the Thirty and granted citizens the power to kill those caught overthrowing the democracy or committing treason¹³⁹.

Hansen believed that there was a gradual shift from popular sovereignty to the sovereignty of the courts after 403 BCE and that the change from trials for *eisangelia* in the Assembly to trials for *eisangelia* exclusively in the courts was part of this general shift in the locus of sovereignty¹⁴⁰. This essay has demonstrated that there was no such change in the procedure for *eisangelia* for overthrowing the democracy, treason and bribery of public speakers. There is no reliable evidence for this procedure before the 360s, and trials in the Assembly created by decree were still a possibility in 330 (Aeschin., *In Ctesiph.* III.4) and took place in 318 BCE (see *supra*, p. 56, Section 2). The shift postulated by Hansen did not exist and therefore cannot be used to support his assumption about a shift of sovereignty from the Assembly to the courts.

But there are other, more general objections against this view. As Harris showed in an essay published in 2016, the Athenians believed in democracy and the rule of law in both the fifth and the fourth centuries BCE¹⁴¹. This essay has shown that the basic features of the rule of law such as 1) equality before the law for citizens, 2) no person above the law, that is, accountability of officials, 3) accessibility of laws, 4) fairness in procedure (defendants informed about charges before the trial and given time to respond, impartial judges, and decision by fixed and consistent rules) existed in the fifth century and continued into the fourth century. The procedures for *nomothesia* enacted around 403 BCE did not shift sovereignty away from the Assembly to the courts, but strengthened the power of the people by placing it on a firmer basis¹⁴². Hansen claims that this view of the rule of law is anachronistic and derives from the work of Albert Dicey and Tom Bingham; this is not true and seriously distorts the views of Harris¹⁴³. As Harris observed in his book *The Rule of Law in Action in Democratic Athens*, these principles are present in our sources for Classical Athens¹⁴⁴. To state that his view of the rule of law is 'etic' is quite false; it is the Athenian conception of the rule of law. On the other hand, Harris

¹³⁹ On the decree of Demophantus enacted after the Thirty see Lycurg., *Or. in Leocr.* 125-127 and Demosth., *Adv. Lept.* XX.159 with HARRIS, 2013-2014.

¹⁴⁰ HANSEN, 1975, p. 52-56. A similar view is found in OSTWALD, 1986.

¹⁴¹ HARRIS, 2016.

¹⁴² See CANEVARO, 2015 for a summary of the procedures for *nomothesia*.

¹⁴³ HANSEN, 2018, p. 29.

¹⁴⁴ See HARRIS, 2013, p. 4-10 with citation of ancient sources. See also CANEVARO, 2017 on the rule of law as a measure of legitimacy in the Greek city state, which shows that the concept is not anachronistic when applied to the ancient Greek world.

also drew attention to areas where modern and ancient views of the rule do not overlap, especially in regard to slavery and to the use of torture¹⁴⁵.

Hansen claims that his view of the rule of law is ‘emic’, but this is also not true. Hansen bases his view that the Athenian people were no longer sovereign in the fourth century BCE because sovereignty had passed to the *nomothetai*, ‘a selected body different from the *demos* in the *ekklesia*’, and was no longer in the hands of the Assembly¹⁴⁶. This statement is also not true because, as Canevaro and Esu shows, the *nomothetai* were not different from the Assembly, but was the name for a special session of the Assembly convened to enact laws (*nomoi*).

There are several passages clearly indicating that the *nomothetai* were a special session of the Assembly. The first passage comes from a passage of Aeschines (*In Ctesiph.* III.38-40) about the procedure for the annual review of the laws¹⁴⁷.

38. ἀλλ’ οὐκ ἔχει ταῦθ’ οὕτως: μήθ’ ὑμεῖς ποτε εἰς τοσαύτην ἀταξίαν τῶν νόμων προβαίητε, οὔτε ἡμέληται περὶ τῶν τοιούτων τῷ νομοθέτῃ τὴν δημοκρατίαν καταστήσαντι, ἀλλὰ διαρρήδην προστέτακται τοῖς θεσμοθέταις καθ’ ἕκαστον ἐνιαυτὸν διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους, ἀκριβῶς ἐξετάσαντας καὶ σκεψαμένους εἴ τις ἀναγέγραπται νόμος ἐναντίος ἐτέρῳ νόμῳ, ἢ ἄκυρος ἐν τοῖς κυρίοις ἢ εἴ που εἰσὶ νόμοι πλείους ἐνὸς ἀναγεγραμμένοι περὶ ἐκάστης πράξεως. 39. κἄν τι τοιοῦτον εὐρίσκωσιν, ἀναγεγραφότας ἐν σανίσιν ἐκτιθέναι κελεύει πρόσθεν τῶν ἐπωνύμων, τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας. τὸν δ’ ἐπιστάτην τῶν προέδρων διαχειροτονίαν διδόναι τῷ δήμῳ, καὶ τοὺς μὲν ἀναιρεῖν τῶν νόμων, τοὺς δὲ καταλείπειν, ὅπως ἂν εἷς ἢ νόμος καὶ μὴ πλείους ἐκάστης πράξεως. καὶ μοι λέγε τοὺς νόμους.

Νόμοι

40. Εἰ τοίνυν, ᾧ ἄνδρες Ἀθηναῖοι, ἀληθὴς ἦν ὁ παρὰ τούτων λόγος καὶ ἦσαν δύο κείμενοι νόμοι περὶ κηρυγμάτων, ἐξ ἀνάγκης οἶμαι, τῶν μὲν θεσμοθετῶν ἐξευρόντων τῶν δὲ πρυτάνεων ἀποδιδόντων τοῖς νομοθέταις, ἀνήρητ’ ἂν ὁ ἕτερος τῶν νόμων, ἦτοι ὁ τὴν ἐξουσίαν δεδωκὼς ἀναιρεῖν ἢ ὁ ἀπαγορεύων.

¹⁴⁵ See HARRIS, 2013, p. 10-11.

¹⁴⁶ HANSEN, 2018, p. 24-25. Hansen claims that Demosth., *In Timocr.* XXIV.25 indicates that the *nomothetai* were a select committee, but the passage indicates nothing of the sort. The only passages that suggest that the *nomothetai* were a body separate from the Assembly come from inserted documents at Demosth., *In Timocr.* XXIV.20-23, 27 and 33, which CANEVARO, 2013, p. 94-113 has shown to be forgeries. HANSEN, 2016 attempts to defend the authenticity of the document at Demosth., *In Timocr.* XXIV.20-23, but his arguments are refuted in detail by CANEVARO, 2018. HANSEN, 2019 merely repeats some of the arguments made in HANSEN, 2016 without adding new points. See CANEVARO, 2020.

¹⁴⁷ This analysis of Aeschin., *In Ctesiph.* III.38-40 draws on CANEVARO, ESU, 2018, p. 132-135 with some additional points.

«38. But this is not the situation. May you never get to the point of having so much chaos in your laws! Nor was the lawgiver who established your democracy careless about such matters. On the contrary, it has been explicitly ordered for the *thesmothetai* every year to revise the laws every year in front of the people (*i.e.* in the Assembly) after carefully examining and determining if any law has been inscribed contrary to another law, or an invalid law is found among the valid laws, or if there are more than one law inscribed about each action. 39. And if they they find any such thing, the law orders them to write (*sc.* these laws) on boards and place them in front of the Eponymous Heroes, that the *prytaneis* hold a meeting of the Assembly, writing on (or: labelling the meeting) ‘lawgivers’ (*nomothetai*), that the *epistates* of the *proedroi* hold a vote between two alternatives (*diacheirotonia*) in front of the people (*i.e.* in the Assembly) to annul some laws and to leave others in place so that there is one law and not more about each action.

Laws

40. If then, Athenian men, the argument of these men is true, and there were two laws enacted about announcements (*sc.* in the theater), I think that if the *thesmothetai* found the laws and the *prytaneis* gave them to the *nomothetai*, one or the other of the laws would have been annulled, either the one giving the right to announce (*sc.* the award in the theater) or the one forbidding it».

It is important to examine the complete passage so as to analyze the key phrase in context and to retain the readings of the manuscripts unless one can show that they are erroneous. All the primary manuscripts read ἐπιγράψαντας νομοθέτας, but Dobree emended the text to read ἐπιγράψαντας νομοθέταις. A close study of the passage will show that the emendation is unnecessary and creates problems that the text of the manuscripts does not encounter. Schöll also deleted τῷ δήμῳ in the phrase διδόναι τῷ δήμῳ. In his Teubner text of the speech, Dilts prints ἐπιγράψαντας νομοθέταις but retains διδόναι τῷ δήμῳ. There is no reason to accept Schöll’s emendation because it is clear in § 38 (διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους) that the task of reviewing the laws took place in the Assembly.

Aeschines (*In Ctesiph.* III.38) makes it clear that the entire procedure of ‘correcting’ the laws takes place in the Assembly (διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους). There is no mention of a two-phase procedure, the first phase taking place in the Assembly and a second phase taking place in another venue. This point is repeated in the next section where Aeschines (*In Ctesiph.* III.39) that the *epistates* of the *proedroi* give to the people the choice of voting for one of two proposals (διαχειροτονίαν διδόναι τῷ δήμῳ)¹⁴⁸. Second, it is important to examine the following section after the laws are read out¹⁴⁹. Aeschines

¹⁴⁸ This is rightly noted by CANEVARO, ESU, 2018, p. 133-134.

¹⁴⁹ Neither PIÉRART, 2000 nor RHODES, 2003 take Aeschin., *In Ctesiph.* III.40 into account. This passage confirms the view of Piérart and disproves the view of Rhodes.

(3.40) states that if there were two laws contradicting each other, the *thesmothetai* would have found the contradictory laws, the *epistates* would have given the to the *nomothetai*, and one of the two laws would have been annulled. Aeschines is restating what he said in the previous sections: the *thesmothetai* are to find contradictory laws, the *prytaneis* schedule a meeting about the laws, the *epistates* is to hold a vote about the laws, and one law is annulled and the other confirmed. In both sections there are three actions described (in the second account the role of the *proedros* of the *epistatai* is omitted). There is one difference in the two accounts: in the first, the *proedroi* give the decision about the contradictory laws to the people (§ 38: διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους, § 39: διαχειροτονίαν διδόναι τῷ δήμῳ); in the second, the decision is given to the *nomothetai*. The apparent conflict between the two accounts is probably the reason why Schöll wanted to delete τῷ δήμῳ at § 39, but the role of the Assembly is specified in § 38. The solution should be obvious: the Assembly and the *nomothetai* were identical.

We can now return to the phrase τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας (§ 39). Dobree, followed by Victor Martin and Guy de Budé in the Budé edition and Charles Darwin Adams in the Loeb edition, emended the text to τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέταις, which they respectively translated «les prytanes convoquereont l'Assemblée et mettront à l'ordre du jour la nomination des nomothètes» and «the prytanes are required to call a meeting of the assembly, writing at the head of the call, for 'nomothetai'». In a footnote Adams states that the *Nomothetai* were a special commission chosen among the jurors of the year, which appears to depend on the forged document at Demosth., *In Timocr.* XXIV. 20-23. As Marcel Piérart has observed, however, there is nothing wrong with the Greek text, which can be translated «les prytanes convoqueront une assemblée intitulée 'nomothètes'»¹⁵⁰. He then believes that the *nomothetai* organized themselves like an assembly («rien ne permet de penser qu'ils aient pu s'organiser autrement que comme une assemblée dirigée par des proédres»). To support his interpretation, however, he cites the document inserted at Demosth., *In Timocr.* XXIV.33, but unfortunately, as Canevaro has shown, this document is a forgery, and the information found in it unreliable¹⁵¹. For some reason or other, Piérart did not read the passage of Aeschines before the key phrase, which shows that the procedure of voting about the laws was carried out by the Assembly. He also does not compare the information in § 38-39 and in § 40, which demonstrates that the Assembly and the *nomothetai* carried out the very same role in the procedure of reviewing the laws and must therefore be

¹⁵⁰ PIÉRART, 2000, p. 235.

¹⁵¹ CANEVARO, 2013, p. 102-104.

identical. The key phrase must mean that the *prytaneis* were to call a meeting of the Assembly and to write on the summons «meeting of the *nomothetai*» to designate that at this meeting the function of the Assembly was to vote on laws (*nomoi*) instead of decrees (*psephismata*).

Rhodes challenged Piérart's interpretation of the phrase τὸς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας: «the accusative here could well be (just as Dobree's dative has been thought to be) a way of saying 'putting *nomothetai* on the agenda', and there is no reason to think that it must 'labeling it (*sc.* an assembly of) *nomothetai*'»¹⁵². If one does not read the rest of the passage in which the phrase is found, one might possibly believe Rhodes, but the previous section and the following section clearly assign to the Assembly and the *nomothetai* the same function in the review of the laws, indicating that they are identical, which makes Piérart's interpretation superior. Rhodes also assumes that the *nomothetai* and the Assembly are two separate bodies, but if they are, how do their roles differ? Rhodes does not say, and Aeschines' words indicate that they were the same. There are other objections to the translation of Rhodes. The translation of Piérart does not supply any words that are not in the Greek text; there is nothing in the text of Aeschines equivalent to the phrase 'on the agenda'. Finally, the verb for publishing the agenda by the *prytaneis* is προγράφειν, (ps. Aristot., *Ath. pol.* 43.3), not ἐπιγράφειν. The author of the scholion on the passage clearly interpreted the verb ἐπιγράφειν in a similar way (οἰονεὶ ὑποβαλόντας).

Second, even though the document at Demosth., *In Timocr.* XXIV.33 adduced by Piérart is not reliable evidence, a passage from the *Lex. Seg., Gloss. rhet.*, N p. 282, l. 14-17 *sv.* νομοθέται confirms his view of the key phrase and is fully in accord with the implications of Aeschines' account of the procedure¹⁵³.

καὶ οἱ τοὺς νόμους εἰσηγούμενοι νομοθέται καλοῦνται, καὶ ἐκκλησία τις Ἀθήνησι νομοθέται καλεῖται, οἱ τοὺς εἰσφερομένους ἔδοκίμαζον νόμους, καὶ δι' ὧν οἱ ἀσύμφοροι ἐλύοντο.

«Those who enacted the laws are called *nomothetai*, and the Assembly at Athens is called *nomothetai*, who vetted the laws introduced, and through whom inexpedient ones were removed».

Third, there is another passage not cited by Piérart, which also confirms the view that the meetings of the *nomothetai* were special meetings of the As-

¹⁵² RHODES, 2003.

¹⁵³ Even though PIÉART, 2000, p. 236 cited this passage, it is completely ignored by RHODES, 2003.

sembly. In his speech *Against Timarchus* Aeschines (I.117-118) clearly places the role of legislating (νομοθετεῖν) in the hands of the Athenian people sitting in the Assembly.

117. ἔστι δ' ὁ μὲν πρότερός μοι λόγος προδιήγησις τῆς ἀπολογίας ἧς ἀκούω μέλλειν γίγνεσθαι, ἵνα μὴ τοῦτο ἐμοῦ παραλιπόντος ὁ τὰς τῶν λόγων τέχνας κατεπαγγελλόμενος τοὺς νέους διδάσκειν ἀπάτη τινὶ παραλογισάμενος ὑμᾶς ἀφέληται τὸ τῆς πόλεως συμφέρον. ὁ δὲ δεύτερος ἐστὶ μοι λόγος παράκλησις τῶν πολιτῶν πρὸς ἀρετὴν. ὄρω δὲ πολλοὺς μὲν τῶν νεωτέρων προσεστηκότας πρὸς τῷ δικαστηρίῳ, πολλοὺς δὲ τῶν πρεσβυτέρων, οὐκ ἐλαχίστους δὲ τῆς Ἑλλάδος συνειλεγμένους ἐπὶ τὴν ἀκρόασιν· 118. οὐδὲ μὴ νομίζετ' ἐμὲ θεωρήσοντασ ἦκειν, ἀλλὰ πολὺ μᾶλλον ὑμᾶς εἰσομένους, εἰ μὴ μόνον εὖ νομοθετεῖν ἐπίστασθε, ἀλλὰ καὶ κρίνειν τὰ καλὰ καὶ τὰ μὴ καλὰ δύνασθε, καὶ εἰ τιμᾶν ἐπίστασθε τοὺς ἀγαθοὺς ἄνδρας, καὶ εἰ θέλετε κολάζειν τοὺς ὄνειδη τὸν ἑαυτῶν βίον τῇ πόλει κατασκευάζοντασ. λέξω δὲ πρῶτον πρὸς ὑμᾶσ περὶ τῆσ ἀπολογίασ.

«117. The first of these points is an anticipation of the defence which I hear he is about to offer, for I fear that if I neglect this topic, that man who professes to teach the young the tricks of speech may mislead you by some artifice, and so defraud the state. My second point is an exhortation of the citizens to virtue. And I see many young men present in court, and many of their elders, and not a few citizens of other states of Hellas, gathered here to listen. Do not imagine that they have come to look at me. 118. Nay, rather have they come to find out about you, whether you not only know how to make good laws, but also are able to distinguish between good conduct and bad; whether you know how to honor good men; and whether you are willing to punish those who make their own life a reproach to the city. I will first speak to you about the defence».

Aeschines reminds the court that there are foreigners watching the trial who have come to see if they Athenians know how to enact good laws and to honor good men. In this section, the second person plural clearly refers to the Athenians in general, not just the judges. Their role in enacting laws is placed next to their voting honors for good men, which was in the power of the Assembly.

Fourth, there is a passage in Demosthenes' speech *Against Leptines* (XX.93-94), which also demonstrates the meetings of the *nomothetai* were a special meeting of the Assembly. Demosthenes describes the procedure for enacting laws in which the proposals are placed at the Monument of the Eponymous Heroes and are read out at meetings of the Assembly (cf. Demosth., *In Timocr.* XXIV.25). These are procedures involving all Athenians. Demosthenes then states that the purpose of these measures is to ensure that each Athenian (ἕκαστος ὑμῶν) has the opportunity to study them at leisure «and then enact (νομοθετῆ) those that are just and in the public interest». «Each

Athenian» must be all Athenians, not just a select few, because all Athenians had the opportunity to read and hear the laws.

These four pieces of evidence clearly demonstrate that the meeting of the *nomothetai* was a special session of the Assembly. The main argument of Hansen for a shift from the sovereignty of the Assembly to the sovereignty of the courts is therefore based on a demonstrably false assumption, contradicted by the evidence, and is untenable. Hansen also claims that the Areopagus took over the main responsibility for the enforcement of the laws in 403 BCE, but his evidence for this is found in a document that Canevaro and Harris have shown is a forgery¹⁵⁴.

This essay has also contributed to the debate about the concept of sovereignty in classical greek democracy. In a valuable essay, John Kenyon Davies argued that the concept of sovereignty is not applicable to ancient Greece and showed that such a concept is charged with political and legal ideas that are the product of the Medieval and Early Modern development of European states¹⁵⁵. More recently, Pasquino has convincingly shown that one should replace the concept of sovereignty in classical Athens with the concept of ‘divided power’, that is, a community in which no institution had a superior position in the constitutional system. As a result, one should examine the ways in which power was horizontally divided among several different institutions¹⁵⁶.

The procedures created to police major crimes should not be analyzed in the context of a system in which one institution was sovereign. Just like the *nomothesia* procedure, the procedures of *eisangelia* to the court and *eisangelia* to the Council show that the Athenians never decided to shift democratic power from the Assembly to the courts after 403 BCE. Instead, these procedures should be viewed as manifestations of the institutional complexity of Athenian democracy, which developed multi-layered procedures, regulated by relevant laws and discursive practices, through which the *demos* could rule and impose discipline on its actions. There never was a debate about the locus of sovereignty in classical Athens because popular power and the rule of law were understood as two complementary aspects of democracy, that is, the people ruled itself following the laws and the relevant procedures through different institutions. The various legal procedures created to implement democratic control over popular power did not attempt to promote one institution as sovereign. The aim of these procedures was to divide popular power among dif-

¹⁵⁴ HANSEN, 2018, p. 25 with nt. 8 relies on the document at Andoc., *De myst.* I.84, which HANSEN, 2016, claims is genuine. The arguments of Hansen have been refuted in detail in CANEVARO and HARRIS, 2016-2017, which bring additional evidence against authenticity. Hansen’s analysis has therefore been firmly rejected by DILTS, MURPHY, 2018, p. VI and LIDDEL, 2020, p. 79.

¹⁵⁵ DAVIES, 1994.

¹⁵⁶ PASQUINO, 2010. On divided power in the Greek *polis* see ESU, forthcoming.

ferent institutions working together in political and legal decision-making. No institution could claim supremacy over the deliberative process and legal system. Each institution had a specific task to perform and specific institutional knowledge to carry it out. The Assembly always had the power to judge cases or to order other institutions (especially the courts) bring persons accused of crimes to trial. Yet to the courts was delegated the task of enforcing the law about *eisangelia* for major crimes because this was the best venue to apply the written statutes and where formal procedures were implemented to hold fair trials, present legal evidence and to keep to the point in proving legal charges. In a similar way, the Council, which supervised boards of officials, had the task of punishing official misconduct through the procedure of *eisangelia* to the Council. This demonstrates that there was not one locus of sovereignty, whether it was the *nomothetai* or the courts, which had precedence over all other institutions and that the law did not limit the power of the people in any democratic institutions. Popular power was always central yet at the same time divided among different institutions that worked together according to laws and legal procedures that regulated the ways the Athenians made decisions in the Assembly, in the courts and in the Council.

Finally, the analysis of the sources in this essay reveals an important aspect of the procedures for public cases in Athens. It has been claimed that the variety of different procedures was aimed at providing access to the legal system for citizens of different social statuses and abilities and not at creating different procedures for different substantive offenses¹⁵⁷. The analysis here has shown that this claim does not account for the different procedures for policing major crimes and official misconduct. The procedure of *eisangelia* to the courts for subversion, treason and bribery of public speakers was for the first two offenses directed at all citizens. By contrast, the procedure of *eisangelia* to the Council was directed at public officials, especially those handling money. The procedure of *euthynai* was directed at all officials after leaving office and for the first part of the procedure was directed at financial accountability, an area not covered in *eisangelia* to the court. The procedure of the *dokimasia* of public speakers was directed at only this category and covered specific disqualifications. The procedure of denunciation (*menysis*) could be used for a large range of offenses but was only preliminary to a trial in court on a specific charge. This procedure also offered rewards for information; there were no rewards for information in public cases. Finally, the Assembly exercised a broad jurisdiction over major crimes on an *ad hoc* basis, but rarely exercised

¹⁵⁷ For the view that the variety of procedures ensured access see Demosth., *Adv. Androt.* XXII.25-28 with OSBORNE, 1985. For detailed refutation see CAREY, 2004 and HARRIS, 2006, p. 373-390.

this power. This was clearly considered a default option if other procedures were not considered appropriate. The reason why the Athenians created these different procedures was not to facilitate access to the system of justice, which was provided by the principle of equality before the law, but to provide different means to police major crimes as a way of protecting public safety.

Appendix.

Eisangelia to the Council and the case in ps. Demosth., In Everg. et Mnes. XLVII.

Hansen lists the information given by a trierarch to the Council about Theophemus of Euonymon (ps. Demosth., *In Everg. et Mnes.* XLVII.41-43 as a case of *eisangelia* to the Council of the type described in the *Constitution of the Athenians* (45.2) (case 144). To understand the procedure in this case, it is necessary to place the trierarch's actions in context. During the archonship of Agathocles (357/356) (ps. Demosth., *In Everg. et Mnes.* XLVII.44), Charidemus proposed in the Assembly that the trierarchs of that year recover naval equipment from the previous trierarchs who had not returned the equipment they had received from the state so that the fleet could depart (ps. Demosth., *In Everg. et Mnes.* XLVII.20-21; cf. 44). A law of Periander assigned the responsibility of drawing up lists of missing equipment to the symmories (ps. Demosth., *In Everg. et Mnes.* XLVII.21). One trierarch, who was the *epimeletes* of his symmory, was ordered to recover equipment (ps. Demosth., *In Everg. et Mnes.* XLVII.21-22). On the list given to his symmory were the names of Demochares and Theophemus, who were also members of the symmory. An official gave these names to the trierarch (ps. Demosth., *In Everg. et Mnes.* XLVII.22, 26). The trierarch provides the decrees and witnesses to prove his statements (ps. Demosth., *In Everg. et Mnes.* XLVII.24). The trierarch began by confronting the two men, but when they refused to comply, he summoned them to court and won a judgment against each one (ps. Demosth., *In Everg. et Mnes.* XLVII.27-28). Demochares respected the decision and returned the equipment, but Theophemus did not (ps. Demosth., *In Everg. et Mnes.* XLVII.28-32). This trierarch and several others who could not recover equipment reported to the Council, which passed a decree ordering them to recover the equipment in whatever way they could (ps. Demosth., *In Everg. et Mnes.* XLVII.33). The trierarch went to the house of Theophemus and when trying to seize property came to blows with him and left without obtaining anything (ps. Demosth., *In Everg. et Mnes.* XLVII.34-40).

The trierarch then went to the Council, showed them the blows he had suffered and described his treatment while trying to collect the state's equipment. The members of the Council then grew angry that because of the insult to the trierarch,

to the Council and to the Assembly, which had enacted the law about the recovery of equipment (ps. Demosth., *In Everg. et Mnes.* XLVII.41). The Council then invited him to make a formal report (εἰσαγγέλλειν) and ordered the *prytaneis* to give prior written notice to Theophemus for a hearing on the grounds that he was in the wrong and was preventing the departure of the fleet because he did not return the equipment, took away the property seized in compensation for the equipment (ἐνέχυρα) and wounded a person collecting the property and serving the state (διακωλύοντι τὸν ἀπόστολον, διότι τὰ σκευή οὐκ ἀπεδίδου καὶ τὰ ἐνέχυρα ἀφείλετο καὶ ἐμὲ συνέκοψεν τὸν εἰσπράττοντα καὶ ὑπηρετοῦντα τῇ πόλει). The Council made a decision in accordance with the report made by the trierarch (κατὰ τὴν εἰσαγγελίαν ἦν ἐγὼ εἰσήγγειλα) and voted by secret ballot. Theophemus was convicted and adjudged to be guilty (ps. Demosth., *In Everg. et Mnes.* XLVII.42). The Council then held a *diacheirotonia*, that is, a vote with a choice between two options, whether to hand over the case to a court or to impose a penalty of up to five hundred drachmas, the maximum allowed by law for the Council. Many people interceded on behalf of Theophemus, provided an inventory and invited him to submit the dispute about the blows to private arbitration (ἐπιτρέψειν). The trierarch went along with a decision to impose a fine of twenty five drachmas (ps. Demosth., *In Everg. et Mnes.* XLVII.43)¹⁵⁸. Later after the trierarch returned to Athens after the expedition, he invited Theophemus to submit their dispute to arbitration and when the latter refused, he brought an action against him for assault (ps. Demosth., *In Everg. et Mnes.* XLVII.45).

It is difficult to know whether this case qualifies as an example of *eisangelia* to the Council. The first point to make is that the case concerns the jurisdiction of the Council in matters pertaining to the fleet and not to its supervision of officials. The accusation is made against Theophemus who is no longer an official. Second, the charge against Theophemus is not that he is an official who is not following the law but that he prevented the departure of the fleet by not returning equipment belonging to the state and by assaulting an officer of the state going about his duty of collecting property. The charges in this case therefore may not fit the substantive criteria for the procedure of *eisangelia* to the Council against officials not following the law (ps. Aristot., *Ath. pol.* 45.2: τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις). In other words, the charge is against a private citizen preventing an official from carrying out his duties and the verb used in the passage would mean only ‘denounce’ or ‘inform’ in the same way it does in the cases examined *supra*, p. 64, Section 3. On the other hand, one might argue that the return of naval equipment was one of the official duties of Theophemus as a trierarch and that the case would therefore fall under the sub-

¹⁵⁸ HANSEN, 1975, p. 120 claims that the trierarch proposed this penalty, but his narrative only says that he agreed with what the Council decided (συνεχώρησα).

stantive requirements of the procedure. Third, the procedure followed here may not fit the procedure of *eisangelia* to the Council against officials in procedural terms. In *eisangelia* to the Council about officials, the Council receives the charge and takes a single vote about guilt. If the Council condemns, there is no second vote, but the case is referred to the court (οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικάστηριον). In this case involving Theophemus, the Council makes two votes, the first about guilt, the second a *diacheirotonia* about imposing a fine of less than five hundred drachmas or sending the case to a court. The language of the second vote also differs from the language used in the *Constitution of the Athenians* because it is a *diacheirotonia*, not a judgment (κρίνει, κρίσις). Here the Council has a choice, but in the *eisangelia* of officials not following the law, the Council does not have a choice after the first vote, and the case must be transferred to the court. On the other hand, one might argue that the account of the procedure in the *Constitution of the Athenians* is cursory and omits the alternative possibility of imposing a fine less than five hundred drachmas on an official without sending the case to court¹⁵⁹. In support of such a view, one could cite the law of Nicophon on coinage, which provides for penalties of less than five hundred drachmas on officials who do not follow the rules of the law (*SEG* XXV.72, lines 35-36). It is therefore difficult to decide how to classify this case.

Checklist of Cases of Eisangelia to the Assembly.

This list includes all the cases Hansen (1975, p. 69-111) classifies as ‘*eisangelia* to the Assembly’. The names of the accusers and defendants are given if known and the main source(s), followed by the new classification presented in this essay. An asterisk means that the sources for the trial are late and questionable.

1. Unknown accuser against Miltiades, date 493 (Herodot., 6.104), trial in the Assembly.
2. Xanthippus against Miltiades, date 490/489 (Herodot., 6.136.1), trial in the Assembly.

¹⁵⁹ This is the view of RHODES, 1972, p. 147. HANSEN, 1975, p. 24 attempts to reconcile the two sources by claiming that in ps. Demosth., *In Everg. et Mnes.* XLVII.43 that «the Council's decision is final in the sense that it is only brought before the jurors if the defendant refuses to accept the fine» and claims that the term *kyrios* has two meanings: ‘final’ or ‘final unless appealed against’». The only evidence he gives for the second meaning of the adjective is ps. Demosth., *In Everg. et Mnes.* XLVII.34 where the speaker mentions a decree passed in the Council that was *kyrios* because no one brought a *graphe paranomon* against the decree. This distorts the meaning of the passage, which indicates only that the decree remained in effect because no one brought an action against the decree. The adjective has its normal meaning here.

3. Unknown accuser against Hipparchus, date 480-460 (Lycurg., *Or. in Leocr.* 117-118), trial in the Assembly*.
4. Leobotes against Themistocles, date 460s (Thuc., 1.135.2; 138.6), trial in Assembly (?).
5. Pericles and others against Cimon, date before 462 (ps. Aristot., *Ath. pol.* 27.1), *euthynai*.
6. Unknown accuser against Pericles, date 430/429 (Thuc., 2.65.3), unknown procedure, probably *euthynai*.
- 7-9. Unknown accusers against Eurymedon, Pythodorus and Sophocles, date 425/424 (Thuc., 4.65.3), unknown procedure, probably *euthynai*.
10. Unknown accuser against Thucydides, date 424/4 (Thuc., 5.26.5), defendant may have fled before trial or *euthynai*.
11. Pythonicus against Alcibiades, date 415 (Andoc., *De myst.* I.11-14, 27; Thuc., 6.28-29), denunciation (*menysis*) followed by a trial for impiety.
12. Thessalos against Alcibiades, date 415 (Andoc., *De myst.* I.27; Diod., 13.5; Thuc., 6.53.1; 6.61.1; 6.67.1; Isocr., *De big.* XVI.6-9), denunciation (*menysis*) followed by trial for impiety.
- 13-42. Profanation of the Mysteries, date 415 (Andoc., *De myst.* I.11-33), denunciation (*menysis*) followed by trials for impiety.
- 43-60. Mutilation of the Herms, date 415 (Andoc., *De myst.* I.34-69), denunciations (*menysis*) followed by trials for impiety.
61. Unknown accuser against Diocleides, date 415 (Andoc., *De myst.* I.60, 65-66), case brought under law concerning false denunciation.
62. Unknown against Phrynichus, date 411/410 (Lycurg., *Or. in Leocr.* 112-115), trial in the Assembly*.
63. Unknown accuser against Aristarchus, date 411-405 (Xenoph., *Hell.* 1.7.28; Lycurg., *Or. in Leocr.* 115), trial in the Assembly under law of Cannonus.
64. Unknown accuser against Gylon, date 410-405 (Aeschin., *In Ctesiph.* III.171), procedure uncertain*.
65. Unknown accuser against Anytus, date 409 (Diod., 13.64.6; ps. Aristot., *Ath. pol.* 27.5; *Lex. Seg.*, *Gloss. rhet.*, p. 236, l. 3-7 sv. δεκάζειν, probably *euthynai*).
66. Trial of generals after Arginousai 406 (Xenoph., *Hell.* 1.7.1-35; Diod., 13.101-102), trial in the Assembly by decree.
67. Agoratus denounces generals and taxiarchs, date 404 (Lys., *In Agor.* XIII), Denunciation to the Assembly, which orders that those denounced be tried in court, but the Thirty have the case tried in the Council.
68. Conon against Adeimantus, after 393/392 (Demosth., *De falsa leg.*, XIX.191), procedure unknown, possibly a *graphe prodoxias**.
- 69-72. Callistratus against Epicrates, Andocides, Cratinus and Euboulides, date 386 or later (Demosth., *De falsa leg.* XIX.277-280; Philoch.,

- FGrHist* 328, *fr.* 149 a), trial in the Assembly.
73. Unknown accuser against Ergocles, date 389 (Lys., *In Ergocl.* XXVIII, *In Philocr.* XXIX; Demosth., *De falsa leg.* XIX.180), *euthynai*.
 74. Unknown accuser against Dionysius, date 388/387 (Demosth., *De falsa leg.* XIX.180), procedure unknown.
 75. Unknown accuser against Thrasylbulus, date 387 (Demosth., *In Timocr.* XXIV.134; Lys., *Περὶ τῆς Εὐανδρ. δοκ.* XXVI.21-24; Xenoph., *Hell.* 5.26-27), trial in the Assembly.
 76. Unknown accuser against Thrasylbulus, date 382 (Demosth., *In Timocr.* XXIV.134; Lys., *Περὶ τῆς Εὐανδρ. δοκ.* XXVI.21-23), trial in the Assembly.
 - 77-78 Unknown accusers against unknown generals, date 379/378 (Xenoph., *Hell.* 5.4.9-10 and 19; Plut., *Pel.* 14.1, procedure unknown, but probably not *eisangelia* because Plutarch says one penalty was a fine.
 79. Unknown accuser against Treasurers of Athens, date 377/376 (?) (Demosth., *In Timocr.* XXIV.136), procedure unknown.
 80. Callistratus and Iphicrates against Timotheus, date 373 (ps. Demosth., *C. Timoth.* XLIX.6-24; Xenoph., *Hell.* 6.2.13; Diod., 15.47.3), trial in the Assembly.
 81. Callistratus and Iphicrates against Antimachus, date 373 (ps. Demosth., *C. Timoth.* XLIX.9-10), trial in the Assembly.
 82. Leon against Timagoras, date 367 (Demosth., *De falsa leg.* XIX.31, 137, 191; Xenoph., *Hell.* 7.1.38), trial in Assembly.
 83. Leodamas against Callistratus, date 366 (Aristot., *Rhet.* 1364 a 19-23; Plut., *Demosth.* 5), procedure unknown.
 84. Leodamas against Chabrias, date 366 (Aristot., *Rhet.* 1364 a 19-23; 1411 b 6-7; Demosth., *In Mid.* XXI.64), procedure unknown.
 85. Unknown accuser against Callisthenes, date 362 (Aeschin., *De falsa leg.* II.30; Aristot., *Rhet.* 1380 b 10 ff.), possibly trial in the Assembly.
 86. Unknown accuser against Ergophilus, date 362 (Demosth., *De falsa leg.* XIX.180; *In Aristocr.* XXIII.104; Aristot., *Rhet.* 1380 b 10 ff.), possibly trial in the Assembly.
 87. Unknown accuser against Callistratus, date 361 (Hyper., *Pro Eux.* III.1-2), *eisangelia*.
 88. Aristophon against Leosthenes, date 361 (Hyper., *Pro Eux.* III.1-2; Diod., 15.95.1-3), *eisangelia*.
 89. Unknown accuser against Philon, date 361 or 360 (Hyper., *Pro Eux.* III.1-2), *eisangelia*.
 90. Apollodoros against Autocles, date 360 (Demosth., *In Aristocr.* XXIII.104; Demosth., *Pro Phorm.* XXXVI.53; ps. Demosth., *C. Polycl.* L.12), procedure unknown, possibly *eisangelia*.

91. Apollodorus against Timomachus, date 360 (Hyper., *Pro Eux.* III.1-2; Demosth., *Pro Phorm.* XXXVI.53), *eisangelia*.
92. Apollodorus against Calippus, date 360 (Demosth. *Pro Phorm.* XXXVI, 53), *eisangelia*.
93. Apollodorus against Timotheus, date 360 (Demosth., *Pro Phorm.* XXXVI.53), procedure unknown, possibly *eisangelia*.
94. Unknown accuser against Theotimus, date 361 or 360/359 (Hyper., *Pro Eux.* III.1-2), *eisangelia*.
95. Apollodorus against Timotheus, date 360 (Demosth., *Pro Phorm.* XXXVI.53), procedure unknown, possibly *eisangelia*.
96. Euthycles against Cephisodotus, date 359 (Demosth., *In Aristocr.* XXIII.5, 167-168; Demosth., *De falsa leg.* XIX.180; Aeschin., *In Ctesiph.* III.52), procedure unknown, but not *eisangelia* because a fine was imposed.
97. Hyperides against Aristophon, date 361-343 (Hyper., *Pro Eux.* III.28), procedure unknown.
98. Hyperides against Diopieithes, date 361-343 (Hyper., *Pro Eux.* III.29), procedure unknown.
99. A decree of the Assembly calling for punishment, not a legal case, date around 343 (*IG II³*.399).
100. Aristophon against Iphicrates, date 356/355 (Isocr., *Antid.* XV.129), *euthynai*.
101. Aristophon against Timotheus, date 356/355 (Isocr., *Antid.* XV.129), *euthynai*.
102. Aristophon against Menestheus, date 356/355 (Isocr., *Antid.* XV.129), *euthynai*.
- 103-108. *Apocheirotonia* followed by trial (?), no indication that it was *eisangelia*, date is 343/2 (Demosth., *In Theocr.* LVIII.27-28).
109. Hyperides against Philocrates, date 343/342 (Hyper., *Pro Eux.* III.29-30; Demosth., *De falsa leg.* XIX.116; Aeschin., *De falsa leg.* II.6; *In Ctesiph.* III.79, 81), *eisangelia*.
110. Aeschines against Demosthenes, date 342/341 (Aeschin., *In Ctesiph.* III.224), Aeschines announces his intent to bring *eisangelia* but does not do so.
111. Demosthenes against Anaxinus, date 342/341 (Aeschin., *In Ctesiph.* III.223-224, Demosth., *De cor.* XVIII.137), arrest, torture and execution of Anaxinus (no trial).
112. Lycurgus against Lysicles, date 338/337 (Diod., 16.88; ps. Plut., *Vit. dec. or.* 843 d), *euthynai* or *eisangelia*.
113. Lycurgus against Autolycus, date 338 (Lycurg., *Or. in Leocr.* 53), *eisangelia* terminology not used; very vague.
114. Chares against Pheidiades, date 336-324 (Dion. Hal., *De Dinarcho* 10), *eisangelia*, possibly to the Council.

115. Unknown accuser against Agasicles, date 336-324 (Hyper., *Pro Eux.* III.3), *eisangelia*.
116. Unknown accuser against Pytheas, date 336-324 (Dion. Hal., *De Dinarcho* 10), uncertain what type of *eisangelia*.
117. Unknown accuser against Pistias, date 336-324 (Dinarch., *In Demosth.* I.48-53; Dion. Hal., *De Dinarcho* 10), *eisangelia*.
118. Unknown accuser against Callisthenes, date 336-307, title of speech only, uncertain what type of *eisangelia* (Dion. Hal., *De Dinarcho* 10), but Harpocration (*sv. βουλαία*) calls the speech an *endeixis*, yet in other references to the speech calls it an *eisangelia*. The speech concerned the grain trade and Callisthenes may be person identified in Demosth., *Adv. Lept.* XX.33.
119. Ariston against Lycophron, date 333 (Hyper., *Pro Lykophr.* II), *eisangelia*.
120. Aristogeiton against Hegemon, date 331 (ps. Demosth., *In Aristogit.* I XXV.47), *eisangelia* withdrawn, but speech is a forgery.
121. Lycurgus against Leocrates, date 331 (Lycurg., *Or. in Leocr.*), *eisangelia*.
122. Unknown accuser against Diognides, date 331-324 (Hyper., *Pro Eux.* III.3), *eisangelia*.
123. Unknown accuser against Antidorus, date 331-324 (Hyper., *Pro Eux.* III.3), *eisangelia*.
124. Polyeuctus against Euxenippus, date 330-324 (Hyper., *Pro Eux.* III), *eisangelia*.
125. Unknown accuser against unknown defendant, date before 327 (Demosth., *C. Phorm.* XXXIV.50-51), denunciation concerning a loan (not treason).
126. Lycurgus against Menesaichmus, date before 353/4, Harpocr., *sv. ἀρκυ-ωρός*, quotes from *eisangelia* against Menesaichmus, but the charge is *asebeia* (see *Pap. Berolin.* n. inv. 11748: ἄσέβημα) and the other sources for the speech do not call it an *eisangelia* (fr. 3, 4, 5 a, 5 b, 7, 8, 9, 10, 11).
127. Agathon says in the Assembly that Agathon must be tortured, but Agathon is released, date around 324 (ps. Demosth., *In Aristogit.* I XXV.47), not an accusation; information from forged speech*.
128. Aristogeiton against Democles, date 324 (ps. Demosth., *In Aristogit.* I XXV.47), *eisangelia* withdrawn, but speech is a late forgery*.
129. Demosthenes against Callimachus, 324 (Dinarch., *In Demosth.* I.94), *eisangelia* withdrawn.
130. Unknown accuser against Himeraios, date 336-322 (Dinarch., *fr. 1 Or. XIV*=Dion. Hal., *De Dinarcho* 10), title of speech (*eisangelitikos*), but see Plut., *Demosth.* 28.4 (condemned by a vote in the Assembly, later arrested and put to death).

Additional Case.

Dinarch., *In Demosth.* I.58, date before 323, *eisangelia* to the court against Polyeuctus.

Checklist of Cases of Eisangelia to the Council.

This list includes all the cases Hansen (1975, p. 112-120) classifies as ‘*eisangelia* to the Council’. The names of the accusers and defendants are given if known and the main sources(s), followed by the new classification presented in this essay.

- 131-133. Unknown choregus against Ampelinus, Aristion, Philinus and the undersecretary of the *thesmothetai*, date 419 (Antiph., *De chor.* VI.12, 35), *eisangelia* to the Council.
134. Unknown member of the Council against the *poletai*, *poristai*, *praktores* and their secretaries, date 419/418 (Antiph., *De chor.* VI.49-50), *eisangelia* to the Council.
- 135-137. Board of generals against Antiphon, Archeptolemus, and Onomacles, date 411 (ps. Plut., *Vit. dec. or.* 833 e-834 b), information in a forged document.
138. Eudikos introduces a rider to a decree of the Assembly instructing the Council to investigate and punish unknown men guilty of bribery, date 410/409 (*IG I³*.102), trial by decree of the Assembly.
139. Satyrus accuses Cleophon, date 404 (Lys., *In Agor.* XIII.12; *In Nicom.* XXX.10-14), trial in court by illegal procedure.
140. Unknown accuser against Nicomachus, date around 399 (Lys., *In Nicom.* XXX.30), *euthynai*.
141. Unknown member of the Council against metic grain-dealers, date 386 (Lys., *Κατὰ τῶν σιτοπ.* XXII.22), hearing in the Council followed by trial in court (not *eisangelia* to the Council because the metics are not officials).
142. Aristophon against some trierarchs, date 361 (Demosth., *De cor. trier.* LI.51.8-9), *eisangelia* to the Council or trial in court by *eisangelia*.
143. Pamphilus against Timarchus as member of the Council, date 361/360 (Aeschin., *In Timarch.* I.109-112), vote of expulsion (*ekphyllophoria*) ordered by a decree of the Assembly.
144. Unknown trierarch against the ex-trierarch Theophemus, date 357/356 (ps. Demosth., *In Everg. et Mnes.* XLVII.42), *eisangelia* or denunciation (*menysis*) to the Council.

Abbreviations

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Agora XIX: G.V. LALONDE, M.K. LANGDON, M.B. WALBANK. *Inscriptions. Horoi, Poletai, Leases of Public Lands* («The Athenian Agora», 19), Princeton, 1991.

FGrHist: Die Fragmente der Griechischen Historiker, cur. F. Jacoby, Berlin-Leiden, 1923-1958.

ID: Inscriptions de Délos, II (IV), cur. F. Durrbach, Paris, 1926.

IG I³: Inscriptiones Graecae, I³. *Inscriptiones Atticae Euclidis anno anteriores*³, Fasc. I, cur. D.M. Lewis, Berlin, 1981.

IG II²: Inscriptiones Atticae Euclidis anno posteriores II et III², editio minor, I. *Decreta annorum 403/402-230/229*, cur. J. Kirchner, Berolini, 1913.

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IG XII, 2: Inscriptiones Graecae, XII. *Inscriptiones insularum maris Aegaei praeter Delum*, 2. *Inscriptiones Lesbi, Nesi, Tenedi*, cur. W.R. Paton, Berolini, 1899.

IG XII, 5: Inscriptiones Graecae, XII. *Inscriptiones Cycladum*, 5, I-II, cur. F. Hiller von Gaertringen, Berolini, 1903-1909.

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OGIS: Orientis Graeci Inscriptiones Selectae, I-II, cur. W. Dittenberger, Lipsiae, 1903-1905.

Pap. Berolin.: Papyri Berolinenses (cited by inventory No).

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SEG: Supplementum Epigraphicum Graecum, Lugduni Batavorum, 1923 ss.

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Policing Major Crimes
in Classical Athens:
Eisangelia and Other Public Procedures

*Il sanzionamento dei crimini più gravi
nell'Atene classica:
Eisangelia e altre procedure pubbliche*

Abstract

Riassunto

This essay examines the policing of major crimes in Classical Athens. In 1975 Mogens Herman Hansen published a study of *eisangelia*, in which he listed one-hundred and thirty cases of *eisangelia* to the Assembly and fourteen cases of *eisangelia* to the Council. This essay shows that the procedure called *eisangelia* used in the cases *For Euxenippus* and *Against Leocrates* was a public procedure against those who aimed at tyranny, who betrayed the armed forces, or speakers who did not give their best advice after taking gift and was initiated by bringing a plaint before magistrate. The penalty was death, and there was no penalty for the accuser who did not gain one-fifth of the votes. The information about the procedure in the lexica is contradictory and mostly unreliable. Sections 2-6 show that most of the trials labelled '*eisangelia* to the Assembly' were actually trials in the Assembly initiated by a decree, denunciations (*menyseis*) to the Assembly, trials from the *euthynai* of officials, or cases in which there is not sufficient evidence to determine the procedure. Section 7 collects the few securely attested examples of *eisangelia* to the court for serious crimes and shows that there are none before 370 BCE. Section 8 reviews all the evidence for *eisangelia* to the Council against the contemporary sources and shows that only four cases fall into this category. Section 9 shows that there

L'articolo esamina la sanzione dei crimini più gravi contro lo stato nell'Atene classica. Nel 1975 Mogens Herman Hansen pubblicò uno studio sull'eisangelia nel quale contava centotrenta casi di eisangelia all'Assemblea e quattordici casi di eisangelia al Consiglio. L'articolo dimostra che la procedura denominata eisangelia, utilizzata nei casi Per Eusenippo e Contro Leocrate, era una procedura pubblica che era attivata presentando un'istanza al magistrato competente e che perseguiva coloro che avessero tentato di stabilire una tirannide, coloro che avessero tradito le forze armate o gli oratori che non avessero pronunciato un discorso in Assemblea nell'interesse pubblico dopo aver accettato doni. La condanna prevedeva la pena capitale mentre non c'era nessuna pena per l'accusa, qualora non avesse ricevuto un quinto dei voti. Le informazioni sulla procedura contenute nei lessici sono contraddittorie e per lo più inattendibili. Le sezioni 2-6 dell'articolo dimostrano che la maggioranza dei processi etichettati come 'eisangelia all'Assemblea' erano in realtà processi in Assemblea iniziati per decreto, denunce (menyseis) all'Assemblea, processi risultanti da euthynai dei magistrati oppure casi per cui non ci sono sufficienti evidenze per determinare la natura della procedura. La sezione 7 raccoglie i pochi casi sicuramente attestati di eisangelia al tribunale per crimini contro lo Stato e

was no shift in sovereignty from the Assembly to the courts around 400 BCE, but that democracy and the rule of law went hand in hand in both the fifth and the fourth centuries BCE. The article includes a list of all the cases analyzed by Hansen with a new classification.

Keywords: Athenian Law, *eisangelia*, public procedure, rule of law, trials by decree.

dimostra che nessuno di essi è antecedente al 370 a.C. La sezione 8 esamina tutte le evidenze sull'eisangelia al Consiglio e dimostra, attraverso il confronto con le fonti contemporanee, che solo quattro casi ricadono in questa categoria procedurale. La sezione 9 dimostra che non ci fu uno spostamento della sovranità dall'Assemblea alle corti intorno al 400 a.C. ma che la democrazia e la rule of law coesistettero sia nel V sia nel IV secolo a.C. L'articolo include una lista di tutti i casi analizzati da Hansen con una nuova classificazione.

Parole chiave: diritto attico, eisangelia, procedura pubblica, processi per decreto, rule of law.

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