

# Hyperides and Aristophon: An Uneasy History

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**A**RISTOPHON OF AZENIA is a figure familiar to most classicists for three reasons: the re-enactment of Pericles' citizenship law (403 B.C.), his biblical longevity (ca. 430–330),<sup>1</sup> and the anecdote about his seventy-five acquittals in trials for an unlawful decree (*graphe paranomon*).<sup>2</sup> In this last accomplishment his only nemesis appears to have been the orator Hyperides, the single litigant ever mentioned in the sources to have secured Aristophon's conviction by way of such prosecution. The evidence comes from a scholion to Aeschines' *Against Timarchus* (schol. 1.64 Dिल्ts, with adjustments):

κεκωμώδηται ὁ Ἀριστοφῶν ὡς ὑπὲρ Χάρητος μισθοῦ λέγων καὶ ὡς παρανόμων γραφὴν πεφευγὼς καὶ ὡς στρατηγῆσας ἐν Κέῳ καὶ διὰ φιλοχρηματίαν πολλὰ κακὰ ἐργασάμενος τοὺς ἐνοικοῦντας, ἐφ' ᾧ γραφεὶς ὑπὸ Ὑπερείδου παρανόμων ἐάλω.

παρανόμων ἐάλω] παρανόμων del. Meier : παρ' ὀλίγον Hunziker

Aristophon has been ridiculed in comedies (κεκωμώδηται) for being paid to speak on behalf of Chares, for having been acquitted in a prosecution for an unlawful decree (παρανόμων), and for his generalship in Keos, when he caused great harm to

<sup>1</sup> For these two points see S. I. Oost, "Two Notes on Aristophon of Azenia," *CP* 72 (1977) 238–242, at 240, and D. Whitehead, "The Political Career of Aristophon," *CP* 81 (1986) 313–319, at 314, with discussion and sources.

<sup>2</sup> Aeschin. 3.194; schol. Dem. 18.70 (πολλάκις μὲν κριθείς, οὐδέποτε δὲ καταγνωσθείς). On this anecdote see Oost, *CP* 72 (1977) 238–240; cf. Whitehead, *CP* 81 (1986) 318.

its inhabitants because of his greed. For this he was prosecuted by Hyperides for an unlawful decree (*παρانونόμων*), and convicted (*ἐάλω*).

The trial itself is referred to explicitly or by implication in a handful of other sources (frs.41–43 Jensen), yet by far the most important testimony are Hyperides' own words in his *On Behalf of Euxenippus*, a defense speech in an “impeachment” (*eisangelia*), delivered most likely between 330 and 324.<sup>3</sup> There he reproaches the main prosecutor, Polyeuctus of Kydantidai, for dragging innocent “private persons” (*idiotai*)—like the eponymous Euxenippus—to court, and in a not too subtle self-gratulatory remark he contrasts such undesirable behavior with his own forensic accomplishments (*Eux.* 27–29 Jensen):

[27] ... καίτοι σε ἐχρῆν, ἐπείπερ προήρησαι πολιτεύεσθαι, καὶ νῆ Δία δύνασαι, μὴ τοὺς ἰδιώτας κρίνειν μηδ' εἰς τούτους νεανιεύεσθαι, ἀλλὰ τῶν ῥητόρων ἐάν τις ἀδικῆι, τοῦτον κρίνειν, στρατηγὸς ἐάν τις μὴ τὰ δίκαια πράττη, τοῦτον εἰσαγγέλλειν· παρὰ γὰρ τούτοις ἐστὶ καὶ τὸ δύνασθαι βλάπτειν τὴν πόλιν, ὅσοι ἂν αὐτῶν προαιρῶνται, οὐ παρ' Εὐξενίπῳ οὐδὲ τῶν δικαστῶν οὐδενί. [28] καὶ οὐ σὲ μὲν οὕτως οἴομαι δεῖν πράττειν, αὐτὸς δὲ ἄλλον τινὰ τρόπον τῇ πολιτείᾳ κέχρημαι, ἀλλ' οὐδ' αὐτὸς ἰδιώτην οὐδένα πάποτε ἐν τῷ βίῳ ἔκρινα, ἤδη δὲ τισὶ καθ' ὅσον ἐδυνάμην ἐβοήθησα. τίνας οὖν κέκρικα καὶ εἰς ἀγῶνα καθέστακα; Ἀριστοφῶντα τὸν Ἀζηνιέα, ὃς ἰσχυρότατος ἐν τῇ πολιτείᾳ γεγένηται (καὶ οὗτος ἐν τούτῳ τῷ δικαστηρίῳ παρὰ δύο ψήφους ἀπέφυγε). [29] Διοπίθη τὸν Σφήττιον, ὃς δεινότατος (ἐ)δόκει εἶναι τῶν ἐν τῇ πόλει· Φιλοκράτη τὸν Ἀγνούσιον, ὃς θρασύτατα καὶ ἀσελγέστατα τῇ πολιτείᾳ κέχρηται· τοῦτον εἰσαγγείλας ἐγὼ ὑπὲρ ὧν Φιλίππῳ ὑπηρετεῖ [καὶ] κατὰ τῆς πόλεως εἶλον ἐν τῷ δικαστηρίῳ...

[27] Since you have chosen to take part in politics—and by Zeus, you're quite capable in this—you should not prosecute

<sup>3</sup> D. Whitehead, *Hyperides. The Forensic Speeches* (Oxford 2000) 155–157, following D. Comparetti, *Il discorso d' Iperide in favore d' Euxenippo* (Pisa 1861) 43–45.

(κρίνειν) private persons (ιδιώτας), nor indulge in your youthful arrogance against them. Instead you should prosecute (κρίνειν) politicians, if they commit a crime, and impeach (εισαγγέλλειν) generals, if they do what is not right. For they are capable of harming the city—all those among them who choose to do so—and not Euxenippus, nor any of these judges. [28] Not that I believe only you should behave this way, while I myself engage in politics in a different manner. Never in my life have I myself (αὐτός) prosecuted (ἔκρινα) a private person (ιδιώτην); in fact, some of them I have even helped to the best of my ability. And whom did I prosecute (κέκρικα) and put on trial (εἰς ἀγῶνα καθέστακα)? Aristophon of Azenia, who has become the most powerful politician (and in this very court he was acquitted by two votes only). [29] Diopethes of Sphettus, who seemed to be the most fearsome man in the city. Philocrates of Hagnous, who engaged in politics in the most insolent and abusive manner. Having impeached (εἰσαγγείλας) him for his services to Philip against our city, I won the case in court...

1. *One trial or two?*

Yet as they are, these two sources clearly speak of two different prosecutions: one successful and the other not. Ever since the publication of *On Behalf of Euxenippus* (1853) various attempts were made to reconcile them (one of which, based on Hunziker's emendation of the scholion, will be argued for in this paper). It was not until Mogens Hansen, however, that the seemingly most obvious way of achieving this was attempted: Hyperides simply prosecuted Aristophon twice. In the trial mentioned by the scholiast (ca. 362) he was victorious,<sup>4</sup> while in the one he brags of himself (362–343?) he suffered a close defeat.<sup>5</sup> Though Hansen himself never stated explicitly his

<sup>4</sup> M. H. Hansen, *The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals* (Odense 1974) 31; on the authority of the scholion this trial must be related to the Kean rebellions (364–362 B.C.); cf. *IG II<sup>2</sup>* 111 = Rhodes/Osborne 39.

<sup>5</sup> M. H. Hansen, *Eisangelia. The Sovereignty of the People's Court in Athens in the*

reasons for keeping the two cases apart, the rationale behind this has been most succinctly articulated by David Whitehead in his masterful commentary: “I fully share Hansen’s reluctance to conflate prosecutions of Aristophon by H[yperides] which failed and, *on an otherwise unproblematical paradosis*, succeeded.” (*Hyperides* 233, my emphasis).

Thus, the undeniable strength of Hansen’s approach is that—apparently—it does not require tampering with the available evidence. But it also raises a non-negligible objection: if indeed Hyperides prosecuted Aristophon twice, why would he choose to impress the jurors with a defeat, albeit a close one, and not with the case in which he was victorious?<sup>6</sup> Hansen’s implicit answer to this question (as he never raises it explicitly) is that in the speech for Euxenippus Hyperides’ objective is to discuss “the right use of the *eisangelia*” (*Eisangelia* 99), which in turn mandates that all the examples he produces—Aristophon, Diopieithes, and Philocrates—belong to this type of trial, even though only the last of them is explicitly identified as such. The orator, in other words, deliberately limits himself to cases of impeachment and therefore is rhetorically constrained to mention the *eisangelia* of Aristophon instead of the more successful case of *graphe paranomon*.

Now schooling the prosecutor about the right use of *eisangelia* is indeed the overarching strategy of the entire Hyperidean speech. However, the exact wording of the quoted passage does

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*Fourth Century B.C. and the Impeachment of Generals and Politicians* (Odense 1975) 99; the date of this trial is a conjecture based on the assumption (1) that it followed the previous one and (2) that the prosecutions in *Eux.* 28 are mentioned in chronological order (the last of them belonging to 343).

<sup>6</sup> Cf. J. Engels, *Studien zur politischen Biographie des Hyperides*<sup>2</sup> (Munich 1993) 36: Hyperides “in der Euxenipposrede von einem knappen Freispruch des Aristophon ... in einem Zusammenhang berichtet, in dem Hyperides eine Verurteilung gewiss betont hätte.” See also F. Blass, *Die attische Beredsamkeit*<sup>2</sup> III.2 (Leipzig 1898) 7 (on the trial of Diopieithes): “die klage blieb erfolglos; andernfalls würde Hyp.[ereides] seinen Sieg nicht verschweigen.”

not entirely conform with this objective. As briefly noted by Whitehead (*Hyperides* 233), it is couched in “vague” terms which are “suggestive ... of trials of all kinds.” Hyperides berates Polyeuctus for “prosecuting” (κρίνειν) private persons, instead of “prosecuting” (κρίνειν) politicians, whereas he himself “prosecuted and put on trial” (κέκρικα καὶ εἰς ἀγῶνα καθέστακα) only the big fish, and never stooped to “prosecute” (κρίνειν) private persons. Only once, when it comes to bringing generals to justice, does he use the verb εἰσαγγέλλειν. Compare this to another passage where Hyperides explicitly complains about the abuse of impeachment (*Eux.* 1–3). Here the language is much more precise when it comes to specifying the procedural details, to the point of being borderline monotonous: “impeachments (εἰσαγγελία) such as these,” “before, subject to impeachment (εἰσηγέλλοντο) were,” “many of those who were impeached (εἰσαγγελλομένων),” “rarely could one see anyone tried in an impeachment (εἰσαγγελίας),” “so great and obvious were crimes subject to impeachments (εἰσαγγελία),” “now impeached are (εἰσαγγέλλονται) Diognides and Antidorus.” The term and its cognates are used six times throughout the three chapters. By contrast, in the two chapters leading up to the enumeration of Hyperides’ forensic trophies (*Eux.* 27–28), it occurs only once, as opposed to five instances of far more general terms such as κρίνειν.

That Hyperides is nonetheless limiting himself to impeachments alone is evident, according to Hansen, from yet another statement in the quoted passage. The orator explicitly claims never to have prosecuted (ἔκρινα) a private person (ιδιώτην), which seems to be effectively contradicted by the record of his lost speeches, for many of them are indeed targeted against individuals without any known ties to Athenian politics.<sup>7</sup> Thus,

<sup>7</sup> Whitehead (*Hyperides* 231) lists *Against Dorotheus* (fr.97–100 Jensen; if genuine), *Against Conon* (fr.113–114), *Against Mantiheus* (fr.120–124), and hesitantly *Against Aristagora I–II* (fr.13–26); but see also below.

unless we are prepared to understand Hyperides' statement as a flat-out lie, we must assume that the otherwise vague term κρίνειν is employed here in a more restricted meaning, such as that of impeachment. Indeed we have no record of any such lawsuit launched by Hyperides against a private person. But this is not the only way to reconcile the orator's statement with the evidence from his lost work. By "never have I myself (αὐτός) prosecuted" he can just as well refer to public procedures in general (as opposed to private),<sup>8</sup> or even more specifically to those he launched himself (αὐτός),<sup>9</sup> with the exclusion of cases where his role was that of a *synegoros* or logographer. And none of Hyperides' attested public prosecutions against (presumably) private persons can be securely considered as delivered by himself, let alone as the main prosecutor.

Thus, Hyperides' criterion in selecting his examples is highly unlikely to have been procedural. In this particular passage, his goal was indeed to school his young (cf. νεανιεύεσθαι) adversary, standing at the beginning of his political career (ἐπέιπερ προήρησαι πολιτεύεσθαι), although in the right use not of *eis-angelia* but of public prosecutions in general. To this end the best suited cases in point were the spectacular trials of any kind, launched by Hyperides in a period when, just like Polyeuctus now, he was still making a name for himself in Athenian politics (the turning point in his career being the prosecution of Philocrates).<sup>10</sup>

<sup>8</sup> G. Colin, *Hyperide. Discours* (Paris 1968) 174–175 n.1; cf. M. Marzi (with P. Leone and E. Malcovati), *Oratori attici minori* (Torino 1977) 186 n.67; Whitehead, *Hyperides* 231. In addition to *Against Aristagora* (*graphe aprostasiou*) and possibly *Against Conon* (unknown procedure), this is also contradicted by the speeches *Against Timandrus: phasis? eisangelia kakoseos orphanon?*; *Against Patrocles: graphe proagogeias* (fr.138–145 Jensen; if genuine); and possibly *Against Arcestratides* (fr.46–54; unknown procedure).

<sup>9</sup> Thus T. B. Curtis, "The Judicial Oratory of Hyperides" (diss. U. North Carolina 1970) 9 (*non vidi*, cited after Whitehead, *Hyperides* 231).

<sup>10</sup> Which may explain why Hyperides chose not to mention his prosecu-

This is not to say, however, that the prosecution of Aristophon *must not have been* a case of impeachment (which, as argued later, it most likely was). The discussion so far was only intended to show that it *need not have been* one—that, in other words, Hyperides was not constrained by his rhetoric to mention only cases of *eisangelia*, that of the two trials against Aristophon (an *eisangelia* and a *graphe paranomon*) he was free to choose as an example the more spectacular one without any regard for its procedural details. And a clear victory in a high-profile *graphe paranomon* by a young upstart (as Hyperides was in the 360s) over a veteran of Athenian politics at the height of his power and influence (as Aristophon was in the 360s),<sup>11</sup> could hardly be topped in this respect. Certainly not by a later defeat—however close—at the hands of the same man who at that point may very well have had his best days behind him.<sup>12</sup> In the end, therefore, the initial question still remains unanswered: why would Hyperides choose to impress the jurors with a less spectacular close defeat instead of a sensational clear victory? And the only other reasonable answer to this is that there was

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tion of Demades (338–336 B.C.) who certainly was a powerful politician at that time (we do not know the result of the trial): fr.76–86 Jensen. Cf. P. Brun, *L'orateur Démade* (Bordeaux 2000) 66–68; Engels, *Studien* 136–141. On the trial of Philocrates as a turning point in Hyperides' career see Engels 73–77.

<sup>11</sup> Cf. Whitehead, *CP* 81 (1986) 314–315; M. H. Hansen, *The Athenian Ecclesia* II (Copenhagen 1989) 37–38; P. Liddel, *Decrees of Fourth-Century Athens* I–II (Cambridge 2020) II 249. Hyperides uses the perfect when he speaks of Aristophon (ἰσχυρότατος ... γεγένηται), but also of Philocrates (τῇ πολιτείᾳ κέρηται) whose pre-eminence certainly belonged to the past in the 320s. Cf. also Demosthenes (in 343) on Callistratus and Aristophon: πολλοὶ παρ' ὑμῖν ἐπὶ καιρῶν γεγόνασιν ἰσχυροί, Καλλίστρατος, αὐθις Ἀριστοφῶν (19.297).

<sup>12</sup> In the 340s Aristophon was still politically active, but not nearly as he was in the 350s, especially before the social war; see Oost, *CP* 72 (1977) 241; in 343 Demosthenes (quoted above) speaks of his influence—like that of Callistratus—as a phenomenon long gone; cf. Hansen, *Athenian Ecclesia* II 38.

no other trial, and no clear victory. But this commonsense explanation comes at the price of major tinkering with the available evidence.

## 2. *Tinkering with the scholion*

That there was only one trial is to some extent corroborated by the fact that none of the few testimonies mentioning Hyperides' prosecution of Aristophon ever speaks of two trials or of two speeches against him (although this may very well be an accident of preservation).<sup>13</sup> It was also a premise almost universally accepted by scholars before Hansen, and ever since the publication of *On Behalf of Euxenippus* (1853).<sup>14</sup> Their differences concerned not the number of cases, but its legal nature. The editorial standard was *graphē paranomon*<sup>15</sup> (although some of the editors distanced themselves from such commitment in their comments or in other works).<sup>16</sup> Indeed, this is the one and only label explicitly attached to it in the sources: the scholion to Aeschines. But it is precisely this testimony that flatly contradicts the more reliable information about the trial's outcome from Hyperides himself. The most obvious way to cut through this contradiction was to assume that the statement "was con-

<sup>13</sup> For instance many testimonies mention only one speech *Against Aristagora* (fr.20–26 Jensen), although it is established from other sources that Hyperides penned two such orations (fr.13–19).

<sup>14</sup> The exception was the editor princeps who still considered the possibility of two trials: Ch. Babington, *ΥΠΕΡΙΑΔΟΥ ΛΟΓΟΙ Β* (Cambridge 1853) 13.

<sup>15</sup> κατ' Ἀριστοφώντος παρανόμων is the standard label under which the fragments of the speech are listed in: C. Muller and J. Hunziker, *Oratores Attici* II (Paris 1858); Ch. Jensen, *Hyperidis Orationes* (Leipzig 1917); J. O. Burt, *Minor Attic Orators* II (Cambridge [Mass.] 1962); Marzi, *Oratori attici*; also the 1881<sup>2</sup> and 1894<sup>3</sup> Teubner editions by Blass and the 1906 OCT by Kenyon.

<sup>16</sup> Muller and Hunziker, *Oratores Attici* II 388–389; Blass, *Die attische Beredsamkeit*<sup>2</sup> III.2 7 with n.1.

victed” (ἔάλω) in the scholion is simply mistaken.<sup>17</sup> But in the absence of other, independent grounds for such intervention, it dangerously slides towards a circular argument—not to mention that it completely overlooks a significant problem vitiating this particular testimony. In the scholion we are told that Aristophon was prosecuted in a *graphe paranomon* for his service as a general on Keos, and for the wrongs he committed there. But bringing a general to justice for whatever evils he may have perpetrated when on campaign could be done either by way of a prosecution at his “audit” (*euthyna*) or through impeachment, but not a *graphe paranomon*.<sup>18</sup> A *graphe paranomon* must concern a decree, and not military duty or even the worst crimes committed when in service.

Attempts to make sense of this conundrum had been made even before the publication of *On Behalf of Euxenippus*. Moritz Meier, briefly arguing along the lines presented above,<sup>19</sup> suggested a simple scribal error, a mistaken duplication of the word παρανόμων from the directly preceding sentence in the scholion (ὡς παρανόμων γραφήν πεφευγώς). His solution was to delete it, and thus obtain the sense “for this [i.e. his generalship and the evils he inflicted when in service] he was prosecuted by Hyperides, and convicted.” But conviction seemed no longer an attractive option after the speech for Euxenippus with the orator’s own testimony was published (1853). Jakob Hunziker therefore decided to take one step further: in his commentary

<sup>17</sup> As Marzi does, *Oratori attici* 13 n.23 (cf. 186–187); see also Burt, *Minor Attic Orators* II 574–575 (by implication), and K. G. Boehneke, *Demosthenes, Lykurgos, Hyperides und ihr Zeitalter* (Berlin 1864) I 49 with n.2.

<sup>18</sup> See D. Hamel, *Athenian Generals* (Leiden 1998) 122–157; on the participle γραφεῖς used by the scholiast see below.

<sup>19</sup> “alterum παρανόμων ut male ex superioribus repetitum tollendum videtur, cum probabilis ratio excogitari nequeat, qua Aristophon propter mala quae Ceis inflixerat, in παρανόμων iudicium vocari potuerit”: *Commentatio de vita Lycurgi* (Halle 1848) cvi–cvii n.4.

on the scholion, instead of simply deleting *παρὰ νόμων*, he suggested emending it to *παρ' ὀλίγον ἔάλω*, i.e. “almost convicted” (which is habitually, and wrongly, attributed to Meier).<sup>20</sup>

Hunziker’s primary objective was to make the testimony of the scholion fit that from Hyperides’ *On Behalf of Euxenippus*, which in itself, as noted above, is hardly a compelling criterion. Although the basis of his conjecture was also Meier’s misgivings about the scholion itself, he did not substantiate it any further than with brief references to the stories of Aristophon’s courtroom invincibility, and—for the phrase *παρ' ὀλίγον* itself—to the Demosthenic expression *παρ' ὀλίγας ψήφους ἐτιμήσατε* (24.138). But anecdotes are never a reliable guide,<sup>21</sup> whereas Demosthenes’ choice of words provides no parallel at all, as he uses the quoted phrase in an entirely different, indeed opposite, meaning:<sup>22</sup> “you have narrowly [or: by a small margin of votes] chosen a monetary penalty [instead of the death sentence].” In fact, the expression *παρ' ὀλίγον* as such never occurs in the orators, while its few instances in other classical writers again convey the meaning of “narrowly” instead of “almost.”<sup>23</sup> In

<sup>20</sup> “Mihi Meierus a vero propius abesse videtur. Nam mendam traxisse verba scholiastae ex eo fit verisimillimum quod secundum Hyperidem in or. pro Euxenippo §29 Aristophon non caussa [*sic*] cecidit, sed *παρὰ δύο ψήφους ἀπέφυγεν*. Mitto quod schol. in Dem. de cor. p. 287 ed. Dindf. [schol. Dem. 18.70] prodit: Ἀριστοφῶν, ἀνήρ πολλάκις μὲν κριθείς, οὐδέποτε δὲ καταγνωσθείς. Cf. Aeschin. in or. c. Ctes. §194. Probabile est igitur pro *παρὰ νόμων ἔάλω* legendum esse *παρὰ ὀλίγον [*sic*] ἔάλω* (cf. Dem. P. 688, 26: *παρ' ὀλίγας ψήφους ἠτιμώσατε*): Muller and Hunziker, *Oratores Attici* II 389 (reprinted without changes in 1888).

<sup>21</sup> Hansen, *Sovereignty* (1974) 31; Oost *CP* 72 (1977) 239–240; Whitehead, *CP* 81 (1986) 313–314.

<sup>22</sup> Contrast the hypothetical meaning “you have almost chosen a monetary penalty.”

<sup>23</sup> Thuc. 7.71.3; Pl. *Ap.* 36A; see also Xen. *An.* 6.6.11; cf. LSJ<sup>9</sup> s.v. *παρὰ C.III.7*.

later sources, however, including the scholia,<sup>24</sup> it is found in this latter sense rather frequently,<sup>25</sup> and that also as a gloss explaining its less familiar synonyms.<sup>26</sup> Most importantly, it was also used to describe cases of narrowly escaped conviction (that is of persons *almost* convicted), the latter, furthermore, denoted with the verb ἀλίσκομαι, as evident from an entry in Photios (ι 198) and later in the *Suda* (ι 623):<sup>27</sup>

“ἴσαι ψῆφοι”: ἐπὶ τῶν παρ’ ὀλίγον ἐν τοῖς δικαστηρίοις ἀλίσκομένων.

“Equal votes”: regarding those who were almost convicted in court.

The assumption therefore that the scholiast to Aeschines (or one of his late antique sources) would use the phrase παρ’ ὀλίγον ἐάλω is by no means far-fetched. Furthermore, its corruption into παρανόμων can also be plausibly accounted for, as a case of partial assimilation to the same word in a preceding sentence: παρανόμων γραφήν πεφευγώς ... παρανόμων ἐάλω.<sup>28</sup> The same type of error is found in another scholion to the same speech, where the phrase εὐμαθῆς λόγος λέγεται ὁ εὐγνωστος is followed by a quotation from Sophocles’ *Ajax*: ὡς εὐμαθῆς μοι, κὰν ἄγνωστος ἦς ὅμως (schol. Aeschin. 1.8).<sup>29</sup> Here the word ἄγνωστος, which is metrically intolerable (and makes little sense), has been inserted in lieu of ἄποπτος, attested in all

<sup>24</sup> Schol. Aesch. *Eum.* 33; schol. Ar. *Plut.* 1097. Cf. nn.26 and 42 below.

<sup>25</sup> Already in Polyb. 1.21.9, 1.25.3, 2.55.3, 5.40.2.

<sup>26</sup> Schol. Aesch. *Pers.* 564, τυτθά] ὁ ἡμεῖς λέγομεν παρ’ ὀλίγον; cf. schol. Ar. *Nub.* 722.

<sup>27</sup> For a non-judicial use of the same collocation cf. Dio Chrys. 11.88 καὶ τοῦτον ἀλῶναι παρ’ ὀλίγον; see in general LSJ<sup>9</sup> s.v. παρά C.III.5.

<sup>28</sup> For which see M. West, *Textual Criticism and Editorial Technique* (Stuttgart 1973) 23–24.

<sup>29</sup> The only two MSS. containing this scholion (*Paris.gr.* 3003 and 2930) are late; the example is not meant to imply that the same copyist is responsible for both blunders, but to illustrate a pattern.

Sophoclean MSS. (Soph. *Aj.* 15).<sup>30</sup> And the obvious reason for the corruption is its similarity to the previously used εὔγνωστος. Thus, much as this scholiast was fixated on -γνωστος when quoting Sophocles, so did his colleague seem to be attached to the notion παρανόμων from the first sentence of his comment.<sup>31</sup>

The suggested corruption παρανόμων : παρ' ολίγον is present in all MSS. containing the scholion. They all, however, belong to the same family,<sup>32</sup> sharing a (lost) hyparchetype—labelled by Dilts as β—and therefore a number of other common errors. Apart from trivial mistakes (e.g. omission of articles, changing grammatical gender, case, or number, omission or switching of prepositions) these include more significant blunders, such as mislabelling the Lamian war as “Delian.”<sup>33</sup> This last error, a very obvious one, is actually seen corrected in one of the MS.<sup>34</sup> The phrase παρανόμων ἐάλω on the other hand is *per se* perfectly acceptable,<sup>35</sup> which could account for its survival: it is its context in the scholion that renders it nonsensical, and that only to someone familiar with the workings of Athenian law.

The information itself, which is explicitly said to have been drawn from comedy (κεκωμώδηται), most likely goes back to

<sup>30</sup> In addition the scholiast also confuses the personal pronoun; all Sophoclean MSS. have ὡς εὔμαθές σου.

<sup>31</sup> A modern example is a student's mistake cited by West (*Textual Criticism* 24): “bread, not oxen was the only food known to Dicaeopolis which was put into an oxen,” the latter instead of “oven.”

<sup>32</sup> M. Dilts, *Scholia in Aeschinē* (Leipzig 1992) vii–viii; the MSS. in question are (with Dilts' sigla): *Angelic.gr.* 44 (a), *Paris.gr.* 3003 (m), *Paris.gr.* 2930 (g), *Vat.gr.* 64 (V), *Paris.gr.suppl.* 660 (x), *Laur.* 57 (L), *Ambros.* I 22 sup. (S).

<sup>33</sup> Schol. Aesch. 1.21 ἐστρατήγησεν ἐν τῷ Δηλιακῷ πολέμῳ—of Leosthenes, who is also confused with his father in this scholion (in all the above-listed MSS.). On scholiastic blunders in general see N. Wilson, “Scholiasts and Commentators,” *GRBS* 47 (2007) 39–70.

<sup>34</sup> With a gloss to a gloss: οἶμαι Λαμιακῶ: *Paris.gr.* 3003 (m), fol. 44<sup>v</sup>.

<sup>35</sup> Cf. Dem. 21.58 ἀστρατείας ἐάλω, [59].28 γραφεῖς ὑπὸ Στεφάνου ... ἀστρατείας ... ἐάλω; Isa. 5.12 ἐάλω ψευδομαρτυριῶν.

one of the lost treatises on *komodoumenoi*, some of which were compiled already in the early Alexandrian age.<sup>36</sup> They were subsequently incorporated into separate commentaries (*hypomnemata*) on a given author, which made it through the transition to codex, and may have been even transliterated to minuscule (10<sup>th</sup> cent.).<sup>37</sup> It is also at this stage that the texts of the ancient authors were fitted with marginal scholia drawing their information from the said *hypomnemata*.<sup>38</sup> The exact wording of schol. Aeschin. 1.64—along with the posited error—may very well have been that of the first scholiast (the scribe of β?),<sup>39</sup> in which case the corruption would have been introduced in the process of production—that is, to quote Martin West, “mis-written without having been misread” (*Textual Criticism* 23).

<sup>36</sup> For which see J. Steinhausen, *KΩΜΩΛΙΔΟΥΜΕΝΟΙ* (Bonn 1910).

<sup>37</sup> Cf. Steinhausen, *KΩΜΩΛΙΔΟΥΜΕΝΟΙ* 33–34; G. Zuntz, *An Inquiry into the Transmission of the Plays of Euripides* (Cambridge 1965) 273–274; H. Maehler, “L’Évolution matérielle de l’hypomnème jusqu’à la basse époque,” in M.-O. Goulet-Cazé (ed.), *Le commentaire entre tradition et innovation* (Paris 2000) 29–36, at 33–34.

<sup>38</sup> The question when the proper marginal scholia were first composed is a contentious one; linking them with the transition to minuscule in the 9–10<sup>th</sup> century is the orthodox opinion since G. Zuntz, “Der Aristophanes-Scholien der Papyri: Teil III. Schlussfolgerungen,” *Byzantion* 14 (1939) 547–594; cf. H. Maehler, “Die Scholien der Papyri in ihrem Verhältnis zu den Scholiencorpora der Handschriften,” in F. Montanari (ed.), *La philologie grecque à l’époque hellénistique et romaine* (Vandœuvres 1994) 95–141, at 127; F. Montana, “The Making of the Greek Scholiastic Corpora,” in F. Montanari et al. (eds.), *From Scholars to Scholia* (Berlin 2011) 105–161; for attempts to link them with the uncial script, and date them to or before the sixth century, see N. G. Wilson, “A Chapter in the History of Scholia,” *CQ* 17 (1967) 244–256; K. McNamee, “Missing Links in the Development of Scholia,” *GRBS* 36 (1995) 399–414.

<sup>39</sup> Cf. Wilson, *GRBS* 47 (2007) 57; see also Maehler, in *La philologie* 101 (and for a more systematic comparison of the MSS. scholia with the fragments of ancient *hypomnemata* in general). As an example compare *P.Oxy.* XXX 2536 with schol. Pind. *Pyth.* 12.14–25; for a discussion see Maehler 115–118.

Alternatively, one might suppose that the phrase παρ' ὀλίγον ἐόλω was already present in the scholiast's sources (a *hypomnema*),<sup>40</sup> in which case the visual element would also be a contributing factor. Other possibilities, such the presence of the corruption already in the said sources, or, conversely, the existence of the correct phrase in an earlier MS. with scholia,<sup>41</sup> subsequently corrupted by the scribe of β,<sup>42</sup> cannot be entirely ruled out, although they seem much less likely.

The evils (πολλὰ κακά) inflicted by Aristophon on the inhabitants of Keos during his campaign as general can hardly mean anything else than extortions and depredations, given that the scholiast explicitly links them with his greed (φιλοχρηματία). The historical background of such a scenario (generalship, depredations, prosecution) was a common phenomenon in fourth-century Athens: the city lacked the necessary resources to fund its ambitious military undertakings, and as a result the generals were usually forced to provide for themselves and their soldiers when on campaign.<sup>43</sup> And the easiest way to do so was through extortions to which were subjected not only enemies of Athens but also neutral and sometimes even allied states. The orators frequently deplored such activities,<sup>44</sup> and the generals

<sup>40</sup> See Maehler, in *La philologie* 108, 113, 121, for some cases of verbatim repetitions in the scholia from the *hypomnemata* or marginal glosses in the papyri. As an example compare P.Berol. 13419<sup>v</sup> with schol. Pind. *Pyth.* 2.17–19; cf. Maehler 118–119.

<sup>41</sup> This would presuppose that such a hypothetical MS. was lost early enough not to influence the descendants of β.

<sup>42</sup> The corruption itself would not be difficult to imagine given the various disfigurements to which the phrase παρ' ὀλίγον is subject in other scholia: abbreviation (παρ' ὀλίγ): schol. *Il.* 11.446–449, 11.710, 18.378, 23.454 in BL *Burney* 086 fol. 115<sup>r</sup>, 120<sup>r</sup>, 207<sup>v</sup>, and 258<sup>v</sup> respectively; abbreviation with superscript (π<sup>α</sup>ρ' ὀλίγ): schol. *Il.* 11.446–449 in *Escorial.gr.* 509 (Ω 1.12) fol. 98<sup>v</sup>; ligature (παρ'ὀλίγον): *Venet.gr.* 821 (*Marc.gr.* 456) fol. 150<sup>v</sup>.

<sup>43</sup> Cf. Dem. 8.26; 2.28 μισθὸς δ' οὐκ ἔστιν.

<sup>44</sup> Dem. 21.173, cf. 51.13 (of trierarchs); Isocr. 15.108. See W. Kendrick

responsible are known to have faced trials on precisely such charges.<sup>45</sup> In the case of Aristophon, who in all probability succeeded Chabrias as a general sent to deal with the second rebellion on Keos, this time limited to only one of its four cities, Ioulis, the victims of his extortions were most likely the inhabitants of the other poleis of this island, already pacified by Chabrias during the previous campaign (perhaps excluding Karthaia which honored Aristophon with proxeny).<sup>46</sup>

Thus Hunziker's emendation can be based on solid grounds in terms of language, textual studies, palaeography, and history. Most importantly however, it renders an otherwise nonsensical statement ("on account of his generalship and depredations ... he was accused by Hyperides of drafting an unlawful decree and convicted") into a perfectly intelligible one ("on account of his generalship and depredations ... he was accused by Hyperides and almost convicted")—which is the *raison d'être* of any textual intervention in the first place. In addition to all this, it also ties in nicely with the orator's own statement about his marginal loss in the case against Aristophon. It should be emphasized, however, that the primary reasons for accepting Hunziker's emendation concern the scholion in and of itself, and not its adjustment to the other testimony (a problem which not even Hunziker himself managed to avoid)—quite unlike the attempts to simply disregard "was convicted" (ἐάλω), which do nothing to render the garbled

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Pritchett, *The Greek State at War II* (Berkeley 1974) 82–83.

<sup>45</sup> Lys. 28: Ergocles impeached for extortions inflicted on the inhabitants of an ally (Halicarnassus); Aeschin. 2.71 with Dem. 19.232: Chares' depredations and trials on account of them. Cf. Dem. 8.29 (καὶ λέγουσιν οἱ νόμοι, ταῦτα τοὺς ἀδικοῦντας εἰσαγγέλλειν) and 2.29.

<sup>46</sup> *IG XII.5* 542.43; on Keos see P. Brun, "L'île de Kéos et ses cités au IV<sup>e</sup> siècle av.J.C.," *ZPE* 76 (1989) 121–138; G. Reger, "The Aegean," in M. H. Hansen et al. (eds.), *An Inventory of Classical and Archaic Poleis* (Oxford 2004) 732–793, at 747–751.

statement of the scholiast intelligible, and are aimed solely at aligning it with Hyperides' own words.

The emendation was endorsed in the majority of pre-Hansen scholarship,<sup>47</sup> although with one exception<sup>48</sup> no one else attempted to substantiate it any further beyond the brief remarks of Meier and Hunziker (the latter, concerning *παρ' ὀλίγας ψήφους ἐτιμήσατε* in Dem. 23.138, quite mistaken).<sup>49</sup> With the two testimonies reconciled to refer to the same case, dated to ca. 362, the one and only prosecution of Aristophon by the young Hyperides, in which the latter suffered a close defeat, all that was left was to decide on the nature of the trial.<sup>50</sup> As *graphe paranomon*, by virtue of Hunziker's emendation, was out of the picture, and the scholion itself clearly suggested a trial related to military offenses, the choice was rather limited: either a public prosecution at an audit (*euthyna*)<sup>51</sup> or an impeachment.<sup>52</sup>

<sup>47</sup> A. Schaefer, *Demosthenes und seine Zeit* (Leipzig 1856<sup>1</sup>) I 159 n.2 (in 1885<sup>2</sup> I 150 n.2 he merely acknowledges that the scholion is mistaken); Comparetti, *Il discorso d' Iperide* 91; H. Hager, *Quaestionum Hyperidearum capita duo* (Leipzig 1870) 15; Blass, *Die attische Beredsamkeit*<sup>2</sup> III.2 7 with n.1; V. de Falco, *Iperide. Le orazioni In difesa di Eussenippo e Contro Atenogene* (Naples 1947) 112.

<sup>48</sup> The one exception is Colin (*Hypéride* 16 n.2): "le scoliaste a pu écrire ici *παρانونών* parce qu'il vient de rappeler qu'Aristophon, au cours de sa longue vie, a échappé à soixante-quinze procès de ce genre." This remark is based on Baiter and Sauppe's suggestion to read *παρانونών γραφάς* οὐ πεφευγώς instead of *παρانونών γραφήν πεφευγώς* in the first sentence of the scholion.

<sup>49</sup> Quoted nn.19 and 20 above, with discussion.

<sup>50</sup> Undecided: P. Girard, *Aristophon d'Azénia* (Paris 1883) 199 n.3; J. Miller, *RE* 2 (1896) 1005; Kirchner, *PA* 2108.

<sup>51</sup> Blass, *Die attische Beredsamkeit*<sup>2</sup> III.2 7 n.1; Colin, *Hypéride* 16 n.2; cf. G. Bartolini, *Iperide. Rassegna di problem e di studi (1912–1972)* (Padua 1977) 112.

<sup>52</sup> Schaefer, *Demosthenes*<sup>1</sup> I 159 n.2 (no opinion in *Demosthenes*<sup>2</sup> I 150); Comparetti, *Il discorso d' Iperide* 91; Hager, *Quaestionum Hyperidearum* 15–16; P. Treves, "Iperide," *Enciclopedia Italiana* (Rome 1933); de Falco, *Iperide* 112; cf. Engels, *Studien* 30 n.43.

The latter option has garnered more support, although not so much on the assumption developed later by Hansen that Hyperides' entire list is restricted exclusively to cases of *eisangelia*, but on a different piece of evidence.<sup>53</sup>

When boasting of his honorable loss to Aristophon, the orator remarks that it took place “in this very court” (ἐν τούτῳ τῷ δικαστηρίῳ). This qualification—which applies only to Aristophon's case, and not the other examples—was taken to mean the same procedure as the trial of Euxenippus.<sup>54</sup> But the problem here is that the orators, whenever they identify two procedures or distinguish one from another, never use the term δικαστήριον to convey this.<sup>55</sup> On the other hand, whenever they differentiate one δικαστήριον from another, their criterion is that of place,<sup>56</sup> of the officials in charge,<sup>57</sup> or of substantive matters in the broadest outline (public/private),<sup>58</sup> but not of procedure. In fact, in the very speech for Euxenippus, Hyperides distinguishes the “correct courts” (προσήκοντα δικαστήρια)

<sup>53</sup> See however Schaefer, *Demosthenes*<sup>1</sup> II 306, 422 (= *Demosthenes*<sup>2</sup> II 326, 452) who considered Diopieithes' prosecution also as a case of *eisangelia* and thus implicitly accepted this assumption; cf. Muller and Hunziker, *Oratores attici* II 408.

<sup>54</sup> Schaefer, *Demosthenes*<sup>1</sup> I 159 n.2; Comparetti, *Il discorso d' Iperide* 91; de Falco, *Iperide* 112; cf. Hansen, *Eisangelia* 99 (who takes this as an ancillary argument); Engels, *Studien* 30 n.43.

<sup>55</sup> E.g. Dem. 18.13, 21.25–28, 22.26–29 (the umbrella term frequently being *timoria*).

<sup>56</sup> Thus Dem. 23.65–80 (the homicide courts); the only homicide trial distinguished not with the term *dikasterion* but with *timoria* is the one without any anchoring in a particular place, the *apagoge* to the *thesmothetae*. Cf. A. Boegehold, in *Athenian Agora XXVIII The Lawcourts at Athens* (Princeton 1995) 4.

<sup>57</sup> ἐν τῷ τῶν θεσμοθετῶν δικαστηρίῳ (Andoc. 1.28).

<sup>58</sup> τὰ δικαστήρια τὰ τ' ἴδια καὶ τὰ δημόσια (Dem. 24.99); cf. *Ath. Pol.* 59.5, 67.5. For a more specific distinction among *dikasteria* based on substantive matters see Arist. *Pol.* 4.13 (1300b).

precisely on the basis of the presiding magistracy, and only then assigns them to various substantively defined cases (*Eux.* 6).<sup>59</sup>

What then does Hyperides' remark about "this very court" tell us? It could mean that Aristophon's trial took place in a court administered by the same officials as that of Euxenippus, i.e. the *thesmothetae*; but apart from presiding over cases of *eisangelia*, they also managed the *euthynai* of generals, and for that matter *graphai paranomon* as well.<sup>60</sup> It could mean that it was heard in the same court building, the most likely candidate being "Building A" in the north-east corner of the agora (possibly the same as the one referred to as "Heliaia"), which was in use in the time of both Aristophon's (ca. 362) and Euxenippus' (the 320s) trials: spacious enough to accommodate several dikastic panels, it would have been a likely place to hold impeachments—but also audits, *graphai paranomon*, and other high-profile public lawsuits.<sup>61</sup> Finally, "in this very court" could simply mean nothing in particular, as there are instances of such deictic references to "these" or "the same" *dikasteria* used for emphasis only, without conveying any additional information about the actual court itself or the case tried in it.<sup>62</sup>

### 3. After Hansen

In more recent scholarship, after the publication of Hansen's work on *graphe paranomon* and *eisangelia*, the majority have followed his firm distinction of the two trials.<sup>63</sup> In some cases,

<sup>59</sup> The one exception here is *apagoge* (not substance but procedure), assigned to the court of the Eleven.

<sup>60</sup> *Ath. Pol.* 49.2, emended; cf. P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia*<sup>2</sup> (Oxford 1993) 658.

<sup>61</sup> Boegehold, *Athenian Agora* XXVIII 14–15, 32.

<sup>62</sup> Aeschin. 3.232 ἐν τοῖς αὐτοῖς δικαστηρίοις; [Dem.] 25.77, 83 ἐν τούτοις τοῖς δικαστηρίοις; cf. Dem. 20.90 παρ' ὑμῖν ἐν τῷ δικαστηρίῳ.

<sup>63</sup> I. Worthington, *Dinarchus and Hyperides* (Warminster 1999) 28; Whitehead, *Hyperides* 233 (who moved away from the "plausible identification" of

however (Whitehead), his crucial proviso—that Hyperides deliberately limits his argument to trials by *eisangelia* only—was rejected (and rightly so). But this renders the question of the orator’s motivation all the more urgent: why would he choose to mention a close defeat in an *eisangelia* instead of a clear victory in a *graphe paranomon*? The two dissident voices, insisting on one prosecution only, are Johannes Engels and Craig Cooper.<sup>64</sup> The former, without explicitly engaging Hansen in a debate, briefly notes that Hunziker’s emendation is “very plausible,” and consequently follows the earlier scholars in assuming that there was only one trial, which he identifies as an impeachment. Like the earlier scholars, however, he bases this identification on Hyperides’ remark about “this very court” (which we have seen to be rather implausible), and at the same time on the assumption shared with Hansen (*Eisangelia*) that in the relevant passage the orator deliberately limits himself to cases of impeachment only. But this in turn leaves open the possibility of yet another Hyperides vs. Aristophon trial, based on a different procedure, and thus renders Engels’ one-trial scenario vulnerable on this end.

Cooper by contrast offers a detailed and original argument which ingeniously brings together the scholion, Hyperides’ own words, and a relevant piece of epigraphic evidence. Like Whitehead (*Hyperides*), he refuses to consider the enumeration of the trials in *Eux.* 28 as an *eisangelia*-only list. Like Hansen

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the two trials in *CP* 81 [1986] 313 n.2); *PAA* 176170 (s.v. Aristophon), 902110 (s.v. Hyperides); Liddel, *Decrees* I 184–186; J. Herrman, “Hyperides,” *OCD* online (2019: 10.1093/acrefore/9780199381135.013.3199).

<sup>64</sup> Engels, *Hyperides* 36 and n.4; C. Cooper, “Hyperides, Aristophon, and the Settlement of Keos,” in C. Cooper (ed.), *Epigraphy and the Greek Historian* (Toronto 2008) 43–48; the latter followed by J. Roisman, I. Worthington, and R. Waterfield, *Lives of the Attic Orators* (Oxford 2015) 248; see also R. K. Sinclair, *Democracy and Participation in Athens* (Cambridge 1991) 156, and J. Trevett, *Apollodoros the Son of Pasion* (Oxford 1992) 133, who briefly remark (without engaging in the debate) that the prosecution was a *graphe paranomon*.

(*Sovereignty* 1974), he insists on accepting the scholiast's statement that Hyperides' prosecution was a *graphe paranomon*, and like Hansen, he links this testimony with Aristophon's political (and not military) activity. Unlike Hansen, however, he accepts Hunziker's emendation which makes the case to be Aristophon's marginal victory. Not only does this reconcile the evidence of the scholion with Hyperides' own testimony, now both referring to the same trial, a *graphe paranomon* narrowly lost by Hyperides. It also allows him to pin the case on a preserved decree (*IG II<sup>2</sup>* 111), detailing the Athenian provisions for Ioulios on Keos, passed on the motion of none other than Aristophon himself, and—on Cooper's hypothesis—successfully defended in court. Hansen's own proposition, by contrast, based on the unemended scholion, necessitates the introduction of yet another decree of his, also concerning Keos, but this time overruled through Hyperides' successful prosecution. Although far from implausible, especially given Aristophon's political activity in the 360s, such multiplication of his initiatives related to the same place, time, and perhaps event (the second Kean rebellion) may raise some suspicions—a problem which Cooper elegantly sidesteps.

There are, however, two difficulties with this otherwise attractive solution. The first, which Cooper shares with Hansen, is that reconciling the evidence from the scholion with policy-making, and not military campaign, must necessarily rely on a vague paraphrase of the scholiast's words: thus, Hyperides prosecuted Aristophon “in connection with the subjugation of Keos,” or “on the occasion of the Keos affair.”<sup>65</sup> But what the scholiast actually says is that the trial of Aristophon was launched “on account of” (ἐφ' ᾧ) the “wrongs he committed”

<sup>65</sup> Hansen, *Sovereignty* (1974) 31, and Cooper, in *Greek Epigraphy* 44, respectively; cf. “Aristophon was defeated in a *graphe paranomon* case against a decree ... the content of the decree is not preserved” and “proposal relating to Keos”: Liddell, *Decrees* I 284 and II 249 respectively.

(κακὰ εἰργασάμενος) on the inhabitants of Keos, “when he was a general” (στρατηγήσας) there. None of this gives any support for the assumption that the case concerned a decree regarding the island, and not Aristophon’s behavior while in service. In fact, both Hansen and Cooper, in resorting to such paraphrases, tacitly concede that the exact words of the scholion are an embarrassment: that the scholiast must have omitted or garbled an important piece of information concerning the never-mentioned decree attacked by Hyperides. In other words, like Meier and Hunziker, they too assume an error in his testimony, only this time one lurking not in the term *παρὰ νόμων* but in the description of the charges on which Aristophon was prosecuted. But such an error is much more difficult to account for. Why would the scholiast suppress the information about the decree? Why would he link a *graphe paranomon* to a military campaign? Are there any textual or linguistic grounds to explain such a corruption? Or should we pin it exclusively on the vague argument from the scholiast’s ignorance?

The second problem, related to the previous, emerges from Cooper’s endorsement of Hunziker’s emendation. Though in itself highly plausible, this conjecture is fatal for any attempt at identifying Hyperides’ prosecution as a *graphe paranomon*. While the scholion itself, owing to its internal inconsistency, already provides a rather inhospitable ground for that identification, Hunziker’s emendation, which replaces the crucial term *παρὰ νόμων* with *παρ’ ὀλίγων*, removes the ground altogether. There is no other evidence to suggest that Hyperides prosecuted Aristophon for an unlawful decree: the passing remark about “drafting decrees” (*γράφειν*) in a brief fragment attributed to this speech can hardly have any bearing on the nature of the procedure.<sup>66</sup> By contrast, the emended scholion makes it quite

<sup>66</sup> οἶδε γὰρ αὐτῷ δεδομένην ἄδειαν καὶ πράττειν καὶ γράφειν ὅ τι ἂν ἔμβραχου βούληται (fr.41 Jensen); in the apology for Euxenippus, for instance, both drafting decrees and *graphe paranomon* are mentioned several times (*Eux.* 6, 8,

clear that the case is highly unlikely to have been a *graphe paranomon*.

My proposition therefore goes back to the pre-Hansen consensus. It has been argued in this paper that Hyperides prosecuted Aristophon only once, and the result was a close defeat, mentioned in his defense of Euxenippus. Contrary to what Hansen and Engels suggested, the orator's argument does not predetermine the legal nature of the cases he mentions: his selection is based not on the criterion of procedure, but on that of salience.<sup>67</sup> The basis of the accusation must therefore be ascertained from the (emended) scholion, which clearly speaks of offences committed during a military campaign. This limits the choice of procedure to the above-mentioned alternatives: *euthyna* or *eisangelia*. Although the latter is more frequently attested in the fourth-century trials of Athenian generals (since it was more prosecutor-friendly),<sup>68</sup> distinguishing one from another in the absence of any further clues, as rightly noted by Hansen (*Eisangelia* 45), is hardly possible.

One argument in favor of *euthyna* could be drawn from the language of the scholia to Aeschines. While the one concerning Aristophon describes him with the generic term *γραφεὶς* (which can mean any kind of prosecution),<sup>69</sup> in two other instances concerning actual impeachments the defendant is spoken of as *εἰσαγγεληθεὶς*.<sup>70</sup> However, one of these latter scholia is a mar-

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15, 17 bis); had any of these clauses survived instead of the whole speech, on their basis one might draw similar unwarranted conclusions as to the nature of the procedure employed here.

<sup>67</sup> On salience as a criterion of historical examples in the Greek orators see recently G. Maltagliati, "Persuasion through Proximity (and Distance) in the Attic Orators' Historical Examples," *GRBS* 60 (2020) 68–97, esp. 70–72.

<sup>68</sup> Hansen, *Eisangelia* 62–63; Hamel, *Generals* 148–157.

<sup>69</sup> See e.g. *Lex.Rhet.* s.v. *γραφεὶς*, Poll. 8.67, Phot. π 1588 (= *Suda* π 2159)—*dike apostasiou*; Cass. Dio 36.38.3, 59.24.3—Roman trials.

<sup>70</sup> Schol. Aeschin. 3.51 (Schulz = TLG), 3.79 (Schulz, Dilts).

ginal annotation (traditionally attributed to Joseph Scaliger) in a printed copy of the Aldine edition, and therefore not even considered in Dilts' more recent edition,<sup>71</sup> while the other in all MSS., save for the latest, comes in the form of a nonsensical future tense εἰσαγγελεῖς. In any event, both concern passages in Aeschines where the relevant cases are explicitly described as *eisangelia*. In other words, the fact that the scholiast used a highly specific legal term here does not necessarily stem from his profound knowledge of Greek law, rigorously applied in the comments, but from adapting the annotation to the annotated text. The prosecution of Aristophon by Hyperides on the other hand is never mentioned by Aeschines, and therefore the scholiast had to rely solely on his other sources, and his own judgment.

A more compelling argument in favor of impeachment can be made on the basis of both the scholion and the speech. The former text makes it clear that Aristophon was brought to justice on account of his conduct as a general. In the latter, just before Hyperides introduces his list of forensic trophies, we find the following admonition addressed to his adversary: “instead you should prosecute (κρίνειν) politicians, if they commit a crime, and impeach (εἰσαγγέλλειν) generals, if they do what is not right.” This is the one and only instance of an *eisangelia* term in this entire passage. And the first example on Hyperides' list is a general prosecuted for misconduct when in service: Aristophon of Azenia.

### 5. Conclusion

Aristophon's long and eventful political career is largely unknown to us save for the few literary and epigraphic scraps of information. As such, therefore, it could certainly accommodate two prosecutions of him by Hyperides, on two separate

<sup>71</sup> Schol. Aeschin. 3.51; cf. Schulz, *Aeschinis Orationes* 249–250; MacDowell, *CR* 43 (1993) 245 (review of Dilts).

occasions, by way of two different procedures, and with two opposite outcomes. And indeed, if these two trials were attested in two otherwise unproblematic sources, any attempt at fitting them into only one event could easily be dismissed as a case of procrustean manhandling. As argued in this paper, however, the two testimonies are anything but unproblematic. The scholion is on *paradosis* self-contradictory and clearly contains an error one way (*παρὰ νόμων*) or another (no decree mentioned). Within this alternative Hunziker's emendation provides the more plausible solution. Choosing the other option is precluded by the statement of Hyperides himself: not so much because the trial he mentions had a different outcome, but on account of his motivations in bringing it up as an example, and the rhetorical context of this testimony. In the speech for Euxenippus Hyperides mentions the narrowly lost prosecution of Aristophon among the high points of his political career. And there is absolutely no reason for him to bring up this close defeat instead of a clear victory attested by the unemended scholion (or even the one after Meier's deletion of *παρὰ νόμων*). In the end therefore the apparently straightforward and common-sense approach to keep the two testimonies apart raises more serious objections than it answers. Conflating them, by contrast, resolves their inherent difficulties, and incidentally allows the quasi-anecdotal accounts of Aristophon's numerous acquittals in *graphai paranomon* to remain unchallenged.<sup>72</sup>

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