

How to Impeach in Classical Athens: A Response to Edward M. Harris and Alberto Esu

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Abstract: *This paper challenges the hypothesis of Edward Harris and Alberto Esu that Athenian eisangelia for major political trials (traditionally known as eisangelia to the Assembly) was initiated like ordinary public prosecutions, by filing a written indictment with the relevant magistrate rather than in the Assembly itself. It argues that this reconstruction rests on inference and arguments from silence, and that it conflicts with the available literary evidence. A close analysis of passages in Demosthenes and Hyperides, especially In Defence of Lycophron, shows that accusations and the formal submission of the eisangelia occurred in the Assembly and constituted the first procedural step, sometimes even in the defendant's absence. Further evidence from Against Phormio also fits the traditional model better than Harris' reinterpretation. The paper concludes that the established view of Assembly-initiated eisangelia remains more consistent with the sources than its recent revision offered by Harris and Esu*

In a recent paper on 'impeachment' (*eisangelia*) in Classical Athens, Edward M. Harris and Alberto Esu have suggested several improvements to the seminal study on this subject published over half a century ago by Mogens Hansen.¹ Among these, their

¹ E.M. Harris with A. Esu, "Policing Major Crimes: Eisangelia and Other Public Procedures" *Rivista di Diritto Ellenico [RDE]* 11 (2021) 39-119; M.H. Hansen, *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century and the Impeachment of Generals and Politicians* (Odense 1975); since the part dealing with the initiation of *eisangelia* was penned by Harris (Harris with Esu,

article advances an alternative hypothesis concerning the initiation of this procedure or, to be more precise, of one its specific yet well-attested types: the ‘*eisangelia* to the Assembly’. According to Harris, this procedure was in fact initiated neither in the Assembly nor in the Council of Five Hundred (which prepared the Assembly’s agenda), as the traditional model maintains,² but by filing a written plaint with the relevant magistrates. Harris rightly assumes that these magistrates were the *thesmothetai*, yet he is forced to dismiss the only unambiguous piece of evidence linking them to this procedure because there it is explicitly called ‘*eisangelia* to the Assembly’.³ His argument is that this type of *eisangelia*, intended to cover major crimes against the state (henceforth it will be simply called *eisangelia*), followed ‘the same basic procedure’ as other public prosecutions. It began, as he contends, with the volunteer prosecutor issuing a summons to the accused; the next step was the submission of the indictment to the *thesmothetai*, to which the accused would respond with a counter-indictment (*antigraphē*); this in turn was followed by a preliminary hearing and, finally, the trial itself.⁴

It would be difficult to overstate the impact of this hypothesis.⁵

RDE 41), I will refer only to him throughout the remainder of this paper.

² On the various possibilities of initiating an *eisangelia* to the Assembly according to the traditional model (such as through the Council, from the floor) see Hansen *Eisangelia*, 22-26, P.J. Rhodes, “ΕΙΣΑΓΓΕΛΙΑ in Athens,” *JHS* 99 (1979) 103-114, at 108-111.

³ οἱ δὲ θεσμοθέται (...) τὰς εἰσαγγελίας <ᾶς> εἰσαγγέλλουσιν εἰς τὸν δῆμον (...) εἰσάγουσιν (*Ath. Pol.* 59.2; text after M. Chambers; Teubner). Harris argues that the term εἰσαγγελία here denotes the procedure of ‘denunciation’ (*mēnysis*), and tacitly dismisses Blass’ conjecture <ᾶς> when he says: ‘*eisangeliai* mentioned in the chapter about the *thesmothetai*, who introduce them to the Assembly’ (my emphasis); Harris with Esu *RDE* 68.

⁴ Harris with Esu *RDE* 44-45, 47; Harris dismisses the statement in Harpocration’s definition (ε 7): πρὸς τὴν βουλὴν ἢ τὸν δῆμον ἢ πρώτη κατάστασις γίνεται, as one of the many blunders made by this lexicographer (53-54). On the course of a standard public (and private) prosecution see J.H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig 1914) 804-844; A.R.W. Harrison, *The Law of Athens*. V. 2. Procedure (Oxford 1971) 85-105; D.M. MacDowell, *The Law in Classical Athens* (London 1978) 237-242; S.C. Todd, *The Shape of Athenian Law* (Oxford 1993) 125-129.

⁵ All the more that it has already been given considerable exposure as evident from the two recently updated OCD entries (both penned by Harris),

That *eisangelia* was always given its first (and sometimes only) public hearing in the Assembly—even when initially submitted to the Council—was an assumption taken for granted by generations of scholars,⁶ and often served as a yardstick for identifying many trials as instances of this procedure in the absence of other evidence.⁷ By Harris’ account, the number of reliably attested cases of *eisangelia*—which emerged from Hansen’s study as the best documented legal procedure—would be drastically limited from around one hundred and thirty to only seventeen. This would force us to seriously rethink the role of the Assembly in the Athenian administration of justice. It would also have, as Harris observes, far-reaching implications for traditionally accepted model of evolution from the ‘sovereignty of the people’ to the ‘sovereignty of law’ in classical Athens, in which the transfer of *eisangelia* cases from the Assembly to the lawcourts is an important element (according to Harris and Esu, no such shift ever occurred because there was no single ‘locus of sovereignty’ in democratic Athens).⁸ What is more, we would

one on ‘policing’ and the other on ‘*eisangelia*’ itself; it is also beginning to gain traction in more recent scholarship even if some of it is directly influenced by Harris (and Esu): e.g., C. Joyce’s review of W. Schmitz, *Leges Draconis et Solonis* (Stuttgart 2023) in *BMCRCR* 2024 with n. 5; A. Esu, *Divided Power in Ancient Greece: Decision-Making and Institutions in the Classical and Hellenistic Polis* (Oxford 2024) 41 n3; several essays in E. Harris, A. Esu (eds.), *Keeping to the Point in Athenian Forensic Oratory* (Edinburgh 2025); cf. G. Falco, *Ps.-Demostene, Contro Timoteo. Introduzione, traduzione e commento* (Berlin 2024) 186.

⁶ E.g., Lipsius, *Das attische Recht* 180-191 esp. 182; R.J. Bonner, G. Smith, *The Administration of Justice from Homer to Aristotle*. V. 1 (Chicago 1930), 296; Harrison, *Law II* 52; MacDowell, *Law* 183; Todd, *Shape of Athenian Law* 113-14; E. Volonaki, “Abuse of the *Eisangelia* in the Latter Half of the Fourth Century,” in C. Carey, I. Giannadaki, B. Griffith-Williams (eds.), *The Use and Abuse of Law in the Athenian Courts* (Leiden 2018) 293-314, at 293; A. Scafuro, “Law and Politics in the Fourth Century: The Evolution of Public (aka ‘Criminal’) Justice,” in W. Riess (ed.) *Colloquia attica III* (Stuttgart 2021) 133-169, at 137.

⁷ In his catalogue of *eisangelia* procedures Hansen frequently states: “The trial must be classified as *eisangelia* because the case is heard/ratified by the Assembly,” e.g., *Eisangelia* 83, 87, 91-4.

⁸ The traditional model is advocated by Hansen, most explicitly in work on *graphē paranomōn* (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

have to rewrite many history textbooks, as it presents several notorious cases such as the Mysteries and Herms affair (415 BC) or the trial of the Arginusae generals (406 BC), in an entirely new light. In this paper, however, I argue that the evidence for the traditional model of initiating *eisangelia* is much stronger than Harris (with Esu) would have us believe.

In the first place, it should be emphasised that Harris' hypothesis is based entirely on inference. There are no sources which would directly attest that *eisangelia* was initiated in the same manner as other public lawsuits. Nowhere are we told explicitly that the prosecutor launched it by filing a plaint with a magistrate, as he would in any standard public procedure. Nevertheless, Harris points to several clues which, taken together, would provide his model with a firm grounding. The first is that in his extended discussion on the scope of *eisangelia*, Hyperides compares it to other standard public prosecutions (*Eux.* 6). The second is that the defendant in such cases had to produce a written 'counter-indictment' (*antigraphē*), for which Harris finds no room in the traditional model: 'if an *eisangelia* was initiated by a decree, how could there be a written reply by the defendant? What form would it take?' he asks. His third and most important clue is that in the cases which can be reliably identified as *eisangeliai*, there is no mention of initiation in the Assembly;⁹ those on the other hand, which are explicitly said to have involved this body, Harris regards as different procedures.

Now, the first two clues are something of a mixed bag. In the *Defence of Euxenippus* Hyperides does indeed discuss *eisangelia* alongside other public procedures (*graphē asebeias, paranomōn*), but to his list of

1974, 17-18, 59-61), and expanded into a full-length study by M. Ostwald (*From Popular Sovereignty to the Sovereignty of Law*, Berkeley 1986); for Harris' and Esu's counter-arguments see *RDE* 94-95, 100-101.

⁹ These are, according to Harris (*RDE* 77): the prosecution of Euxenippus (*Hyp. Eux.*), of Lycophon (*Hyp. Lyc.*), of Leocrates (*Lyc.* 1), from which speeches have been preserved, and of Timomachus, Leosthenes, Callistratus, Philon, Theotimus (*Hyp. Eux.* 1), of Agasicles, Diognides, and Antidorus (*Hyp. Eux.* 3), of Philocrates (*Hyp. Eux.* 29), of Cephisodotus (*Aesch.* 3.51-2), of Pistias (*Din.* 1.52-3; *F xv Conomis*); of Pytheas (*Din.* *F vi Conomis*); I see no reason to classify the trial of Polyectus (*Din.* 1.58-9) as a case of *eisangelia*, all the more because the prosecutors were elected and did not volunteer.

comparisons he also adds ‘summary arrest’ (*apagōgē*) which was initiated, as the name suggests, by arresting a criminal and not by filing a written indictment against him. Furthermore, in the subsequent chapter of the same speech Hyperides explicitly distinguishes *eisangelia* from other lawsuits, and that precisely on procedural—and not substantive—grounds (Hyp. *Eux.* 7): unlike ordinary *graphai*, *eisangelia* offers no room for postponement, which in any case would have occurred precisely during the preliminary stages preceding the trial itself. It is therefore difficult to infer anything about the initiation and the course of *eisangelia* from its juxtaposition with other procedures here, apart from the obvious fact that in the latter part of the 4th century BCE it found its conclusion in the lawcourt. The second clue, that is the ‘counter-indictment’ (*antigraphē*), is a more problematic issue. In standard public prosecutions it was indeed submitted to the relevant magistrate, though it is not entirely clear whether this happened during the first meeting or at the *anakrisis*.¹⁰ Unfortunately, we are entirely in the dark as to how these proceedings might have looked in *eisangelia* cases, what would have occurred during them, and even—as some have suggested—whether they took place at all.¹¹ Were Harris’ model sufficiently grounded, it

¹⁰ τίς ἢ παρὰ τοῖς ἄρχουσιν ἀντιγραφῆ; ([Dem.] 45.87; cf. 42.17; 45.46). Harrison (*Law II* 92) assumed the *antigraphē* was submitted during the first meeting, so does C. Kremmydas, “Anakrisis and the Framing of Strategies of Argumentation in Athenian Public Trials,” in Carey et al. (eds.), *Use and Abuse*, 110-131, at 111; MacDowell (*Law* 240) thought it happened during the *anakrisis*, which is also implied by Lipsius (*Das attische Recht* 823).

¹¹ Uncertain: L. Rubinstein, “Clauses out of Context: Partial Citation of Statutes in Attic Forensic Oratory,” in Carey et al. *Use and Abuse*, 165-180, at 173 n16; J. Filonik, “How Does Lysurgus Keep to the Point”, in Harris and Esu, *Keeping to the Point* 101-119, at 106, 115; no *anakrisis*: MacDowell, *Law* 242; R. Sealey, “Ephialtes, Eisangelia and the Council,” in P.J. Rhodes (ed.), *Athenian Democracy* (Edinburgh 2004) 310-324 at 317-318; *contra*: Kremmydas, “Anakrisis” 117; cf. Hyp. *Lyc.* 11 (σὲ... προειδόμενα... ἃ ἔχω... λέγειν): the prosecutor could have learned beforehand of Lysiphron’s line of defense either by hearsay or, which seems more likely given the speaker’s certainty, during the *anakrisis*, when both parties became familiar with the key arguments of the other side, as argued by G. Thür, “The Principle of Fairness in Athenian Legal Procedure: Thoughts on the Echinus and Enklema,” *Dike* 11, 51-73; see also Kremmydas, “Anakrisis” esp. 121-122.

would offer an elegant way out of this conundrum. As it stands, however, it does not.

The third clue—that in the reliably attested cases of *eisangelia* there is no reference to its initiation in the Assembly—is an argument from silence, but this silence would still be enough to cast doubt on the validity of the traditional model. The key question, it would seem, is what counts as reliable and what does not, and Harris’ methodology, it should be acknowledged, is generally sound. He rightly notes that the terms εἰσαγγέλλειν and εἰσαγγελία are not always used by the orators in reference to ‘impeachment’, but also to other procedures, such as ‘denunciations’ (*mēnyseis*) and ‘audits’ (*euthynai*) of generals.¹² He is also right to observe that not every trial involving the Assembly must be qualified as *eisangelia*—a point that may be particularly true for those from the early 5th century BCE, and, again, for cases resulting from ‘denunciations’ and ‘depositions’ (*apocheirotomia*) of generals.¹³ Although these otherwise legitimate reservations are not always decisive, with only one exception I will refrain from discussing such doubtful cases, and focus instead on those which Harris himself considers reliable. This is because even among the latter, the silence is not sufficiently telling to provide his hypothesis with a firm foothold.

Two passages stand out as notable troublemakers, both rather cursorily dismissed by Harris in footnotes—which, to my mind, does not do justice to their significance. In his prosecution of Aeschines for misconduct during the embassy to Philip II, Demosthenes recounts the accusations he himself made in the Assembly against his fellow ambassadors (Aeschines included), referring to Hyperides’ *eisangelia* of Philocrates—a case which, it should be emphasized, Harris himself regards as a reliable one:

ἴστε δῆπου πρώην, ὅτ’ εἰσήγγελλεν Ὑπερείδης Φιλοκράτην, ὅτι παρελθὼν ἐγὼ δυσχεραίνειν ἔφην ἐν τι τῆς εἰσαγγελίας, εἰ μόνος

¹² Cf. Rhodes, *Eisangelia* 103; D. Hamel, *The Athenian Generals* (Leiden 1998) 122-130; A. Scafuro, “Epicheirotomia and the So-Called ‘Euthynai of Generals,’” in B. Biscotti, *Kállistos Nómos*. FS A. Maffi (Torino 2018) 199-219, at 217-18; see also Lipsius, *Das attische Recht* 178 n. 4.

¹³ Cf. Scafuro “Euthynai” 204, 217-18, who prefers the non-committal designation of ‘trials by decree’ for such prosecutions of generals.

Φιλοκράτης τοσούτων καὶ τοιούτων ἀδικημάτων αἴτιος γέγονεν,
οἱ δ' ἔννεα τῶν πρέσβειων μηδενός. (Dem. 19.116)¹⁴

You are well aware that recently, when Hyperides was subjecting Philocrates to *eisangelia* (εἰσήγγελλεν), I came forward and said that I am troubled by one thing in that *eisangelia*: that only Philocrates was to be blamed for so many grave offenses and no one else from the other nine ambassadors.

The clumsy English in ‘was subjecting Philocrates to *eisangelia*’ is deliberate since a more palatable translation would have risked tilting the interpretation toward one particular view. According to Harris, ‘all this passage states is that Demosthenes made a comment about the case [i.e., the *eisangelia*] in the Assembly’, to which he adds that it ‘implies nothing about how the case was initiated’.¹⁵ In other words, as Harris would have it, the *eisangelia* was launched as any standard public prosecution would be, and Demosthenes merely referenced that fact in the charges he made against the other ambassadors during the meeting of the Assembly. The difficulty lies, however, in the tense of the key verb: εἰσήγγελλεν. In narratives of past events, the imperfect typically ‘creates a framework, and makes us expect that, within that framework, other states of affairs will be presented’, which is especially true of subordinate temporal clauses (ὅτ' εἰσήγγελλεν).¹⁶ In Demosthenes’ case, the temporal framework thus established for his accusations in the Assembly is that of Hyperides subjecting Philocrates to *eisangelia*. The most natural reading, then, is to identify this timeframe with the same meeting of the *ekklēsia* during which both politicians would have performed their respective actions. This would yield the sense: ‘recently [in the Assembly], during which Hyperides was subjecting Philocrates to *eisangelia*, I came forward and said...’.

In all fairness, two arguments that could support Harris’ interpretation of this passage, should be mentioned. First, the verb εἰσαγγέλλειν can also denote the entire process of conducting the

¹⁴ The text of Demosthenes is that established by M. Dilts (OCT); all translations are my own.

¹⁵ Harris with Esu, *RDE* 77 n. 97.

¹⁶ A. Rijksbaron, *The Syntax and Semantics of the Verb in Classical Greek*. An Introduction (Chicago 2007³), 13 (quotation), 76.

prosecution, from its initiation to the trial itself.¹⁷ Even in the imperfect, therefore, it could still be reconciled with Harris' hypothesis: Hyperides initiated the proceedings against Philocrates, which involved several stages (summons, filing of the plaint, preliminary hearing, and hearing-in-chief), and within this broader timeframe the eventful meeting of the *ekklēsia* happened to take place. Second, the reading εἰσήγγελλεν appears only in one manuscript, the Parisinus Graecus 2934 (S), which is both the oldest and generally considered the best. Other manuscripts have εἰσήγγειλεν instead. Modern editors almost unanimously prefer the reading of S, the sole dissidents being C. A. and J. H. Vince (Loeb series), who print the aorist. Placing this latter tense in the temporal clause would yield the sense: 'recently, after Hyperides subjected Philocrates to *eisangelia*, I came forward...'. In this shape, the passage does align with Harris' model: Hyperides first prosecuted Philocrates in court, and only afterwards did Demosthenes make further accusations against the other ambassadors in the Assembly.

No such argument, however, can be produced to dismiss the other troublemaker, which is the most formidable obstacle to Harris' hypothesis. In the defense speech written for Lycophrōn—prosecuted by way of an *eisangelia* (another reliable example)—Hyperides has him recount the moment he was first made aware of the case mounted against him:

ἄξιον δ' ἐστὶν ὧ ἀνδρες δικασταὶ κάκειθεν ἐξετάσαι τὸ πρᾶγμα, ἄφ' ὧν ἐν τῷ δήμῳ τὸ πρῶτον αὐτοὶ εὐθύς ἠτιάσαντο· ἐμοὶ γὰρ <οἱ> οἴκε[ι]οὶ ἀπέστειλαν γράψαντες τὴν τε εἰσαγγ[ε]λίαν καὶ τὰς αἰτίας, ἃς ἐν τῇ ἐκκλησίᾳ ἠτιάσαντό με, ὅτε τὴν εἰσαγγε[λ]ίαν ἐδίδοσ[α]ν, ἐν α[ί]ς ἢ]ν γεγρα[μ]μένον, ὅτι Λυκο[ύ]ργος λέγ[ει], φάσκω[ν τ]ῶν [ο]ικ[ε]ίων ἀκ[η]κοέναι, [ὡ]ς ἐγὼ παρακολουθῶν, ὅτε Χάριππος ἐγάμει τὴν γυναῖκα... (Hyr. *Lyc.* 3)¹⁸

¹⁷ Initiation: Dem. 19.13 (εἰσαγγέλλοντα καὶ τοῦτον τὸν τρόπον εἰς κρίσιν καθιστάντα); *Lyc.* 1.1 (εἰσήγγελλα: of the present trial); Hyr. *Eux.* 1 (εἰσηγγέλλοντο: of defendants who did not stand trial), 29 (εἰσαγγείλας: of Philocrates), 39 (εἰσηγγέλκε: of the present trial). The entire procedure: Dem. 20.79 (περὶ προδοσίας ἂν αὐτὸν εἰσηγγέλλον οἶτοι, καὶ εἰ ἐάλω...); Aesch. 3.252 (εἰσηγγέλθη καὶ ἴσα αἰ ψήφοι αὐτῷ ἐγένοντο); Hyr. *Eux.* 3? (εἰσαγγέλλονται: of the present trial among others), 27 (εἰσαγγέλλειν: juxtaposed with κρίνειν).

¹⁸ The text of Hyperides is that established by Ch. Jensen (Teubner).

It is worthwhile, judges, to examine the matter also from the point, at which during the Assembly they first (τὸ πρῶτον) made their accusations (ἠτιάσαντο) directly. For my relatives have written down and sent me both the *eisangelia* and the charges (αἰτίας) they made (ἠτιάσαντο) in the Assembly, when they were submitting the *eisangelia* (εἰσαγγελίαν ἐδίδοσαν). There it was written (ἦν γεγραμμένον) that Lycurgus said, claiming he heard it from the relatives, that when Charippus was marrying the woman, I followed...

According to Harris, ‘there is no reason to believe that the discussion of the charges in the Assembly (...) formed part of the legal procedure’, to which he adds, ‘it is clear that the formal procedure was initiated by a written indictment and not by a decree’.¹⁹ Indeed, Hyperides does speak of a written indictment here.²⁰ The crucial issue, however, is when and to whom it was submitted. This brings us to the key phrase εἰσαγγελίαν δίδοναι. Unlike the verb εἰσαγγέλλειν, its meaning appears to be more restricted. This is evident not only from its semantics (to give/submit an *eisangelia*, i.e., the indictment itself), but also from the two other instances of its use, where it refers either to submitting (*Eux.* 30) or, more generally, to launching (*Lyc.* 12) the procedure, and not to the entire course of the prosecution.²¹ Moreover, in the present passage Lycophron plainly states that the accusations made in the Assembly were the first move against him (τὸ πρῶτον) by the prosecution team. Even more significantly the key verb is—again—in the imperfect (ἐδίδοσαν). The act of submitting the *eisangelia* thus emerges as the timeframe within which the accusations against Lycophron were made (ἠτιάσαντο).²² This directly contradicts Harris, according to whom *eisangelia* was initiat-

¹⁹ Harris with Esu, *RDE* 45 n. 16.

²⁰ Unless the ἐν αἰ[ίς ἦ]ν γεγραμμένον is taken to mean the letter sent to Lycophron; the text itself is uncertain, but the reconstructed relative pronoun (αἰίς) most likely refers to the ‘charges’ (αἰτίας) made by the prosecutors: cf. D. Whitehead, *Hyperides. The Forensic Speeches* (Oxford 2000) 113.

²¹ Submitting: καὶ οὐδ’ οὕτως ἀπέχρησέ μοι τὴν εἰσαγγελίαν {αν} δοῦναι, ἀλλ’ ὑποκάτω παρέγραψα... (*Hyp. Eux.* 30); launching: εἰσαγγέλια[ν δέδ]ωκα... ἵνα... [εἰσ]ίης εἰς τὸ[ν ἀγῶνα] (*Hyp. Lyc.* 12); cf. Whitehead, *Hyperides* 112-113.

²² Cf. Hansen, *Eisangelia* 106; Whitehead, *Hyperides* 113; D.D. Phillips, “Why Was Lycophron Prosecuted by Eisangelia.” *GRBS* 46 (2006) 375-3 at 390.

ed with the relevant magistrate. Lycophron's prosecutors could not have been filing the case with the *thesmothetai* and at the same time presenting the charges against him in the Assembly. Since both actions were simultaneous, both must have taken place at the meeting of the *ekklēsia*.²³

There is yet another obstacle to reconciling the present passage with Harris' model, even if the grammatical issues posed by the imperfect are set aside. On the assumption that *eisangelia* followed the same course as any standard public prosecution, the submission of the indictment to the relevant magistrate would have required the presence of the accused, and, accordingly, would have been preceded by a duly delivered summons. Yet Lycophron never mentions this. On the contrary, he explicitly states that the prosecutors were submitting the indictment (εἰσαγγελίαν ἐδίδοσαν) in his absence and makes it clear that he had no prior knowledge of the case. In any standard public prosecution, this would have amounted to a grave procedural irregularity.²⁴ Lycophron's failure to raise any such objection clearly indicates that no such irregularity occurred in this case.²⁵

On a final note, I would like to highlight a passage in Demosthenes' *Against Phormio* (Dem. 34) referring to *eisangelia* but dismissed by Harris as such. The speech concerns a maritime loan that the eponymous Phormio allegedly failed to repay.²⁶ The relevant argu-

²³ One might also assume that the imperfect εἰσαγγελίαν ἐδίδοσαν has a conative force (denoting an action attempted or intended) which would yield the sense: 'were about to submit the *eisangelia*'. The conative imperfect, however, always presupposes that 'the state of affairs did not get beyond the stage of an attempt' (Rijksbaron, *Syntax* 16), which is of course not the case here.

²⁴ If the defendant did not show up during the first meeting with the magistrate or during the *anakrisis*, a verdict against him could have been given by default; the public prosecution for false witnessing to summonses (*graphē pseudoklēteias*) was one of the measures intended to forestall such abuses on the part of unscrupulous prosecutors: Harrison, *Law II* 89 (skeptical about the first meeting), 102; Todd, *Shape of Athenian Law* 125-127.

²⁵ Granted, the speech is only fragmentary, but Lycophron's account of how the *eisangelia* was submitted would have been the most obvious place to mention such a procedural violation.

²⁶ In fact, the case is a *paragraphē*: the speaker initiated a maritime suit against Phormio, who in turn, before the case went to court, lodged the *para-*

ment is meant to serve as an example bolstering the speaker's case:

ὕμεις γάρ ἐστε οἱ αὐτοὶ οἱ τὸν ἐπίδεδανεισμένον ἐκ τοῦ ἐμπορίου
πολλὰ χρήματα καὶ τοῖς δανεισταῖς οὐ παρασχόντα τὰς ὑποθήκας
θανάτῳ ζημιώσαντες εἰσαγγελθέντα ἐν τῷ δήμῳ, καὶ ταῦτα
πολίτην ὑμέτερον ὄντα καὶ πατρὸς ἐστρατηγηκότος (Dem. 34.50)

It was you and no one else that punished with death the man, who borrowed a large amount of money from the emporion, and did not provide the lenders with the sureties for the loan, after he has been subjected to *eisangelia* (εἰσαγγελθέντα) in the Assembly. You did that despite the fact that he was a citizen of your polis and the son of a general.

Harris understands the participle εἰσαγγελθέντα not as a reference to *eisangelia* but to ‘denunciation’ (*mēnysis*), which, he insists, was a procedure separate from the trial itself.²⁷ According to his interpretation, after being ‘denounced’ in the Assembly, the unfortunate citizen was subsequently prosecuted in a standard private lawsuit on the charge of ‘making additional loans on security and not handing over to creditors securities (after presumably defaulting on loans)’. This, however, creates a serious problem since—as Harris himself observes—‘the charge is a private one, and the penalty is death’. In the end, therefore, he concedes that this passage is ‘very odd’ and ‘very suspect’.

The traditional model of *eisangelia* offers a far less problematic interpretation. The participle εἰσαγγελθέντα would refer to the first stage of a single procedure initiated in the Assembly and concluded in court. The death penalty was a regular feature of *eisangelia* trials,²⁸

graphē claiming that the action is inadmissible; for a detailed introduction to this speech see S. Isager, M.H. Hansen, *Aspects of Athenian Society in the Fourth Century B.C.* (Odense 1975) 156-169.

²⁷ Harris with Esu, *RDE* 64.

²⁸ Harris suggests on the basis of Aesch. 3.252 that *eisangelia* was an *agōn atimētos* with a statutory death penalty (the other passages he mentions, especially from Hyp. *Lyc.*, *Eux.* and *Lyc.* 1, are inconclusive, since an anticipation of punishment is frequently found in speeches delivered in *agōnes timētoi*); while this solution may seem attractive, the evidence of Dem. 23.117 with Aesch. 3.52 poses a problem nonetheless (that for Menesaechmus is late and therefore less reliable: [Plu.] 843d); both these passages refer to the prosecution of the general Cephisodotus where conviction was followed by *timēsis*, and, according to Harris, this was either a *graphē prodosias* (very poorly attest-

which would explain why the unfortunate merchant was executed. Indeed, as Harris observes, the accusation itself seems more suitable for a private lawsuit where only compensation and damages would be at issue. But Demosthenes is quick to add that the merchant's misdemeanor not only harmed individual private parties but was a matter of public concern (34.51).²⁹ And if the charge still strikes us as too insignificant for such a high-profile prosecution, we should recall that, according to Hyperides, two Athenian residents (a metic and a citizen) were brought to court precisely by way of *eisangelia* because they had allegedly hired out flute girls at prices higher than those permitted by law. It is not unreasonable to suppose that this latter accusation was, in reality, more serious than Hyperides would have us believe. Perhaps the same can be said about the merchant's case: that the charges against him involved matters more serious than mere mercantile irregularities. After all, both orators had good reasons to trivialize their *eisangelia* examples to suit their rhetorical purposes: Hyperides to underscore the absurdity of Euxenippus' prosecution, and Demosthenes to emphasize the importance of repaying one's loans.

Even in the field of classics and ancient history, fifty years is a long time, enough for long-established models and ideas to be revised and reevaluated. Hansen's foundational study of *eisangelia* is no exception here. It has already been improved on with respect to a number of details throughout the last couple of decades, and its thorough and systematic reassessment is more than welcome.

ed) or a *euthyna* (quite frequent in prosecutions of generals); the problem is that Aeschines explicitly speaks of Cephisodotus as ἀπ' εἰσαγγελίας αὐτοῦ κρινομένου; see Harris with Esu, *RDE* 46, 73-74; *contra*: Hansen, *Eisangelia* 33-36; for discussion on Aesch. 3.252 see also J. Sullivan, "Second Thoughts on Aeschines 3.252". *G & R* 49 (2002), 1-7 (who claims that it refers to the *timēsis* stage); E. Bianchi, "Ancora su Eschine, III 252," *Dike* 5 (2002), 83-94 (who refutes Sullivan), and most recently J. Filonik, "Acquitted/Convicted by a Single Vote? Aeschines 3.252 and the Vote Counts in Athenian Oratory" *Mnemosyne* 78 (2025) 781-94 (who supports Bianchi).

²⁹ Cf. the prosecution of Lycophron (*Hyp. Lyc.*); while adultery was a serious, potentially capital offense, its representation as an existential threat to the entire community (*Lyc.* 12; cf. F 3) was an obvious hyperbolisation: see Phillips, "Lycophron."

Yet, as I have argued in this paper, Harris' radical departure from the traditional model of initiating *eisangelia* not only renders some cases unduly convoluted and problematic (*Against Phormio*), but also flies in the face of those which Harris himself considers reliable. Hyperides' *In Defence of Lycophron* in particular poses an insurmountable obstacle to this hypothesis and given that there are no sources directly supporting it, one cannot help but consider it too far-fetched if not simply wrong.

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