

Why Was Lycophron Prosecuted by *Eisangelia*?

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IN HYPEREIDES 1,¹ a defense against an *eisangelia* (impeachment) for seduction brought by one Ariston (*PA* 2140) with the cooperation of the prominent politician Lycurgus, the speaker Lycophron (*PA* 9255) contends that he has been brought to trial by an improper procedure which his prosecutors have chosen in order to minimize the risks to themselves and exaggerate the nature of the alleged offense (*Hyp.* 1.12):

And you accuse me in your impeachment (εἰσαγγελία) of subverting the democracy by violating the laws (καταλύειν τὸν δῆμον παραβαίνοντα τοὺς νόμους); but you yourself have taken a flying leap over all the laws and handed in an impeachment concerning matters for which there are *graphai* before the *thesmothetai* provided by the laws. You did this, first, so that you might go to trial without risk (ἀκίνδυνος εἰσῆς εἰς τὸν ἀγῶνα); and second, so that you might write into the impeachment tragedies of the sort you have presently written: you accuse me of making numerous women grow old, unmarried, in their houses, and of making many others cohabit with unsuitable men in contravention of the laws.²

Scholars have traditionally privileged and accepted at face

¹ The numbering of speeches adopted here is that of F. G. Kenyon, *Hyperidis orationes et fragmenta* (Oxford 1906); the fragments of *Hyp.* 1 from the Harris papyrus are numbered as by C. Jensen, *Hyperidis orationes* (Leipzig 1917), who transcribes them more fully than either Kenyon or G. Colin, *Hyperide: discours* (Paris 1946). The fragments of and testimonia to Lycurgus' two prosecution speeches against Lycophron are cited as by N. C. Conomis, *Lycurgi oratio in Leocratem* (Leipzig 1970).

² For the description of *eisangelia* as "risk-free" cf. §8; for the objection to the prosecution's choice of procedure (common in Athenian defense speeches: e.g. *Ant.* 5.9) cf. fr.3 *ad fin.*

value the first motive attributed to the prosecution by Lycophron; namely, that proceeding by *eisangelia* was “risk-free.” Yet a closer examination of the speech reveals that additional factors not identified by Lycophron contributed to the choice of *eisangelia*; and that, in fact, the degree of risk may have been less important to the prosecution than the second motive which Lycophron ascribes to them; namely, the opportunity to hyperbolize the offense with which he was charged.

I. The “risk-free” topos and the date of *Hyperides* 1

The present communis opinio places *Hyperides* 1 in 333,³ a date calculated by adding the three years Lycophron spent on Lemnos before his trial (*Hyp.* 1.17) to (August) 336, when Dioxiippus (*PA* 4529) won the Olympic pancration (*P.Oxy.* XIII 1607 fr.13).⁴ A date of 333 for Lycophron’s trial accords with the independent terminus ante quem of July/August 330, when Demosthenes (18.250) indicates that *eisangelia* prosecutors who garnered less than one-fifth of the jury’s votes were fined 1000 dr.,⁵ which would appear to rule out a characterization of *eisangelia* as “risk-free.” Yet it is important to realize that, accord-

³ A. Körte, “Die Zeitbestimmung von *Hyperides*’ Rede für Lykophron,” *Hermes* 58 (1923) 230–237; Colin, *Hyperide* 122–125; J. O. Burt, *Minor Attic Orators* II (Cambridge [Mass.] 1954) 370–371; L. Moretti, *Olympionikai* (Rome 1957) no. 458; M. H. Hansen, *Eisangelia: The Sovereignty of the People’s Court* (Odense 1975) 107 with n.16; S. C. Humphreys, “Lycurgus of Butadae: An Athenian Aristocrat,” in J. W. Eadie and J. Ober (eds.), *The Craft of the Ancient Historian: Essays in Honor of Chester G. Starr* (Lanham 1985) 199–252, at 219; J. Ober, *Mass and Elite in Democratic Athens* (Princeton 1989) 345; M. Edwards, *The Attic Orators* (London 1994) 79; C. Cooper, in I. Worthington, C. Cooper, and E. M. Harris, *Dinarchus, Hyperides, and Lycurgus* (Austin 2001) 70–71. See especially D. Whitehead, *Hyperides: The Forensic Speeches* (Oxford 2000) 78–82, who summarizes the evidence for 333 and also discusses the dating controversy before Körte.

⁴ *P.Oxy.* 1607 contains fragments of a second defense speech for Lycophron, which may also be plausibly attributed to *Hyperides* (see Cooper, in Worthington et al., *Dinarchus* 69, for a summary of arguments pro and con). For Dioxiippus’ Olympic victory see G. H. Förster, *Olympische Sieger* (Zwickau 1891) no. 381; Moretti, *Olympionikai* no. 458; S. G. Miller, *Ancient Greek Athletics* (New Haven 2004) 164.

⁵ For the date of Dem. 18 see H. Yunis, *Demosthenes: On the Crown* (Cambridge 2001) 11 with n.44.

ing to this scheme, 333 is not a definite date but a terminus ante quem non:⁶ nowhere in his defense does Lycophron state that he departed for Lemnos immediately after the wedding, and we have no reason to presume that he did so.⁷

While accepting 333 as “probably correct,” David Whitehead has recently called into question both the identification of Dioxiippus’ victory mentioned in the Oxyrhynchus papyrus and the validity of 330 as a terminus ante quem.⁸ Grenfell and Hunt’s restoration εἰς [᾽Ο]λυ[μπίαν] is admittedly conjectural, as Whitehead observes, but it has been accepted by all subsequent editors and accords with the independent testimony for Dioxiippus’ Olympic victory. However, the implications of the fragment’s opening lacuna have been overlooked. The fragment places the wedding of Lycophron’s alleged lover in proximity to Dioxiippus’ victory: ... τῷ Χα[ρίπ]πῳ τὴν [ἀ]δελφ[ὴν] εἰς [᾽Ο]λυ[μπίαν] ἀποδημήσα[ι] τὸν Δ[ι]ώξιαπ[ο]ν στεφανώσ[ο]ντα τὴν πόλιν, “... his sister to Charippus, Dioxiippus left town for Olympia to win a crown for the city.” Colin, followed by Arapopoulos and tentatively by Burt, supplements the beginning of the sentence with the phrase ὅτ’ ἔμελλεν ἐγδοῦναι, “when he was about to marry,” which would place Dioxiippus’ victory soon before his sister’s wedding; but the correct supplement could just as well be ἐγδόντα vel sim., which would reverse the order of events. If the Olympic festival followed the wedding, we can safely presume that the wedding fell in 336; but if, as Colin presumes, the games preceded the wedding, the wedding may have occurred in early 335, and accordingly the terminus ante quem non for Hypereides 1 should be stated as 333–332.

More significant is the question whether Hypereides might

⁶ Cf. N. C. Conomis, “Notes on the Fragments of Lycurgus,” *Klio* 39 (1961) 72–152, at 130: “since the case took place at least three years after the marriage as can be deduced from [Hyp.1.]17, it must be dated to 333 the earliest.”

⁷ Lycophron might have had a compelling reason to quit Attica soon after the wedding if, as his prosecutors maintain, he disrupted the proceedings in an insulting manner; but he forcefully denies the allegation (Hyp. 1.3–7).

⁸ Whitehead, *Hypereides* 81–82, 124.

describe *eisangelia* as “risk-free” (1.8, 12) even after the adoption of the thousand-drachma fine for malicious prosecution; if the answer is positive, 330 no longer stands as a lower limit for Hypereides 1. In §8, Hypereides characterizes *eisangelia* as risk-free for the prosecution in comparison with the risks faced by the defendant Lycophron;⁹ this observation is self-evident, an example of the standard “prosecuting is better than defending” topos,¹⁰ and useless for our purposes. In §12, however, the comparison is between *eisangelia* and other methods of prosecution. Here Lycophron asserts not simply that prosecuting is better than defending, but that prosecuting by *eisangelia* is better than prosecuting by *graphê*. Even after 330, this argument might be defensible, but just barely. Traditionally, prosecutors by *graphê* who received less than 20% of the jurors’ votes were fined 1000 dr. (e.g. Dem. 21.47) and incurred a form of partial *atimia* which barred them, to some extent, from initiating future prosecutions.¹¹ But when the thousand-drachma fine was adopted for impeachments, the bar on prosecution was not.¹² It is unlikely that an Athenian jury would regard the difference between the fine alone and the fine plus partial *atimia* as

⁹ “I think, men of the jury, that prosecutors in lawsuits have many advantages over defendants: since the lawsuit is risk-free for them (διὰ τὸ ἀκίνδυνον αὐτοῖς εἶναι τὸν ἀγῶνα), they say whatever they want and tell lies, while the men on trial, because of their fear, forget to say many things, even about what they themselves have done.”

¹⁰ Whitehead, *Hypereides* 124, with comparanda.

¹¹ A. R. W. Harrison, *The Law of Athens* (Oxford 1968–1971) II 175–176 (who however rejects the characterization “partial *atimia*”); D. M. MacDowell, *The Law in Classical Athens* (Ithaca 1978) 64; S. C. Todd, *The Shape of Athenian Law* (Oxford 1993) 133.

¹² Poll. 8.52, citing Theophrastus *Laws* fr.4b Szegedy-Maszak. Notably, Pollux glosses Hypereides’ “risk-free” (ἀκίνδυνος) as “non-fineable” (ἀζήμιος), and thus supports the *Crown* case (Dem. 18) as the terminus ante quem for Hyp. 1: “Hypereides says in the *For Lycophron* that the person who brought an *eisangelia* and did not secure a conviction was not subject to a fine (ἀζήμιος ἦν). Yet Theophrastus says that those who brought other *graphai* were fined 1000 (drachmas) if they did not receive one-fifth of the votes, and incurred *atimia* besides; while those prosecuting by *eisangelia* did not incur *atimia* but were fined the thousand; it is likely that this was added later because of people who brought *eisangeliai* lightly.”

sufficiently great to regard the former as “risk-free” compared with the latter, and the plausibility of this interpretation decreases further when we compare the arguments used in Hypereides 1 with those used in Hypereides 4.

Hypereides 4, like Hypereides 1, was delivered for the defense in an *eisangelia*. Hypereides himself gave this speech as *synēgoros* (advocate) for Euxenippus (*PA* = *APF* 5886 [=5888]), who had been impeached by Polyeuctus (*PA* 11947) for submitting to the Assembly a false report of a dream he had while incubating in the temple of Amphiaraus at Oropus on assignment from the *dēmos* (Hyp. 4.14–15). Scholarly consensus places Euxenippus’ trial between 330 and 324,¹³ and thus it almost certainly postdates, and cannot significantly predate, Demosthenes 18. Owing to the similar circumstances of the respective defendants, and especially to the fact that they were both tried by *eisangelia*, Hypereides reprises in his defense of Euxenippus many of the arguments employed in the speech for Lycophron. These include the appeal to the jury to hear both sides of the case in order to judge fairly and in accordance with the law (4.4, 40 ≈ 1 fr.1, 2); the inapplicability of *eisangelia* to the charged offense, which should be prosecuted by means of the available dedicated procedures established by law (4.5–6, 30 ≈ 1.12; cf. 1 fr.3 *ad fin.*); attempts by the prosecution to distract and subvert the defense and to obstruct the defendant’s right to call *synēgoroi* (4.10–11, 19–20, 31–32 ≈ 1 fr.3 *ad init.*, §§10–11); exaggeration of alleged offenses to the level of tragedy (4.26 ≈ 1.12); and allegations of prosecutorial sycophancy (4.27, 33–36 ≈ 1.1–2).

Amidst all these points of connection between the speeches for Euxenippus and for Lycophron, conspicuously and significantly absent from Hypereides 4 is any discussion of the risks incurred by Polyeuctus in prosecuting Euxenippus. *In vacuo*, commentary on this point would suit Euxenippus’ defense as well as it did Lycophron’s; and indeed, Hypereides repeatedly mentions considerations of risk in *For Euxenippus*. The Athenians did well to compose the *eisangelia* statute as they did, since it would have been senseless to allow politicians to reap the

¹³ Whitehead, *Hypereides* 156 with references.

rewards of successful policies while transferring to private citizens the risks attendant upon those that failed (τοὺς δὲ κινδύνους ὑπὲρ αὐτῶν τοῖς ιδιώταις ἀνεθήκατε, 4.9). Sycophantic prosecutions of those who endeavor to increase public revenues along with private wealth must be deterred, since, “when it is a frightful prospect to acquire and save, who will be willing to take the risk?” (ὅταν γὰρ ἢ φοβερὸν τὸ κτᾶσθαι καὶ φείδεσθαι, τίς βουλήσεται κινδυνεύειν; 37). Most directly apropos is Hypereides’ explicit reference to the risks confronting the defendant Euxenippus in the present trial: “What finer or more democratic custom is there in the city ... than, when a private citizen, finding himself in a lawsuit and in danger (εἰς ἀγῶνα καὶ κίνδυνον καταστάς), cannot speak in his own defense, any willing citizen is permitted to mount the platform and assist him and instruct the jurors about the case in accordance with justice?” (11). Later in the speech the orator specifies the penalty Euxenippus will incur upon conviction as death (14) and denial of burial in Attica (18); the latter sanction is pointedly contrasted with the paltry fine of 25 dr. levied upon the prosecutor Polyuctus when he lost the *graphê paranomôn* which Hypereides asserts as Polyuctus’ motive for bringing the present *eisangelia*.¹⁴ Yet nowhere does Hypereides advance the corollary, so prominent in the oration for Lycophron, that the prosecution of Euxenippus is risk-free. The most likely explanation for this omission, which occurs despite abundant and seemingly conducive opportunities, and in sharp contrast to the numerous correspondences between the two speeches, is that the thousand-drachma fine for *eisangelia* prosecutors who persuaded less than one-fifth of the jurors had not been adopted as of the trial of Lycophron but was in place by the trial of Euxenippus. Thus the argument from silence provided by Hypereides 4 indicates that Hypereides 1 was delivered before the institution of the thousand-drachma fine for frivolous im-

¹⁴ 4.18, καὶ σοὶ μὲν τῷ τοιοῦτο ψήφισμα γράψαντι πέντε καὶ εἴκοσι δραχμῶν ἐτιμήθη, τὸν δὲ κατακλιθέντα εἰς τὸ ἱερόν τοῦ δήμου κελεύσαντος μηδ’ ἐν τῇ Ἀττικῇ δεῖ τεθᾶφθαι; “And you, who composed a decree of this sort, were fined 25 drachmas, but the man who incubated in the temple on the people’s order should not even be buried in Attica?”

peachments, and the terminus ante quem of July/August 330 stands.

Our *termini* for Hypereides 1 are, therefore, 333–332 and July/August 330. Since we do not know how much time elapsed between the wedding of Dioxiippus’ sister and Lycophron’s departure for Lemnos, there are no substantial grounds for favoring 333 over 332, 331, or the first half of 330 (before the *Crown* case). This observation bears significantly upon the potential motives of Lycophron’s prosecutors.

II. *Procedural options for Lycophron’s accusers*

The charge which Lycophron’s prosecutors brought in their *eisangelia* was Lycophron’s alleged seduction of the sister of Dioxiippus (Hyp. 1.11–12, 15; Lyc. fr.X–XI.3, 11, cf. test. 3),¹⁵ which he apparently achieved, on at least one occasion, by digging through the wall of her house (*P.Oxy.* 1607 fr.1–3; ?cf. Lyc. fr.X–XI.14) and publicly manifested by his conduct at her wedding to Charippus (Hyp. 1.3). In characterizing *eisangelia* as risk-free in §12, Lycophron criticizes his prosecutors for using impeachment to prosecute accusations “for which there are *graphai* before the *thesmothetai* provided by the laws” (ὑπὲρ ὧν γραφαὶ πρὸς τοὺς θεσμοθέτας ἐκ τῶν νόμων εἰσίν). He thus presents the choice of action facing his prosecutors as one between proper and dedicated *graphai*, which he does not specify, and impeachment, which the prosecution elected to pursue since it presented them with no risk. In fact, at the time

¹⁵ See also Lyc. fr.X–XI.9 = Harp. s.v. πεφασμένης· Λυκούργος ἐν τῷ κατὰ Λυκόφρονος ἀντὶ τοῦ γεγενημένης. Λυσίας δ’ ἐν τῷ κατὰ Θεομνήστου, εἰ γνήσιος, φησὶ “τὸ μὲν πεφασμένως ἐστὶ φανερώς” (“*pephasmenês* [‘clear, manifest’]: Lysurgus, in the *Against Lycophron*, in place of *gegenêmenês* [‘having become/being’, or perhaps ‘engaged in’ (LSJ s.v. γίγνομαι II.3.c)]. Lysias in the *Against Theomnestus*, if genuine, says, “*pephasmenôs* [‘clearly, manifestly’] means *phanerôs* [‘openly’].” The latter citation is Lys. 10.19, where Lysias quotes from a law the phrase “any women who are clearly for sale” (ὅσαι δὲ πεφασμένως πωλοῦνται). This clause is cited at [Dem.] 59.67 as providing an affirmative defense against a charge of seduction: the law “prohibits the seizure of a [man as a] seducer in the company of any of those women who are located in a brothel or are clearly for sale” (οὐκ ἐὰ ἐπὶ ταύτησι μοιχὸν λαβεῖν ὅποσαι ἂν ἐπ’ ἐργαστηρίου καθῶνται ἢ πωλῶνται ἀποπεφασμένως); cf. Plut. *Sol.* 23.1.

of Lycophon's trial, Athenian law offered four potential remedies¹⁶ against an accused seducer.¹⁷

1. *Eisangelia*. Under the terms of the impeachment statute preserved by direct quotation at Hyp. 4.7–8, the persons justiciable by *eisangelia* were those who subverted or attempted to subvert the democratic government of Athens; those who committed specific treasonable acts, including betrayal of a city, army, or navy; and politicians who proposed measures against Athenian interests under the influence of bribery. Thus the original purpose of *eisangelia* was to redress “high crimes and misdemeanors”¹⁸ bearing directly upon the governmental stability and military security of the Athenian state. Impeachment was an especially valuable weapon against office-holders (including elected military officers: Hyp. 4.27), as would-be prosecutors who did not wish to wait for their targets' end-of-term review (*euthynai*) could bring an *eisangelia* against a sitting magistrate. During the 330's, however, thanks in large part to the influence and example of Lycurgus, prosecutors exploited the vague language of the subversion-of-democracy clause in the *eisangelia* law in order to launch impeachments for a number of offenses which the legislator had presumably not envisioned,¹⁹ including violation of the maximum legal fee for prostitutes and fraudulent deme registration (Hyp. 4.3) as well as Euxenippus' allegedly false report of his dream and the seduction charged to Lycophon.²⁰ In the preserved part of Hypereides 1,

¹⁶ Three additional remedies would have been available if Lycophon had been caught in the act: summary execution by a qualified relative of his paramour (Dem. 23.53; cf. Lys. 1.30–31); other self-help punishments, including the forcible insertion of a radish into the anus and removal of pubic hair by hot ash (Ar. *Nub.* 1083–1084, *Plut.* 168, *Thesm.* 536–538; cf. Xen. *Mem.* 2.1.5); and extortion of ransom ([Dem.] 59.41, 65–70).

¹⁷ At Lys. 1.25 ff., Euphiletus is similarly selective in presenting the courses of action available to the wronged party in the case of *moicheia*. According to his narrative, upon catching his wife in bed with her lover Eratosthenes, he had only two options: he could either kill Eratosthenes or hold him for ransom (see n.16 above).

¹⁸ Cf. U.S. Constitution, Article 2, section 4: “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

¹⁹ Hyp. 4.1–3; Humphreys, in Eadie/Ober, *Craft* 219.

²⁰ Lyc. fr.X–XI.2 argues that Lycophon's acts constituted subversion of the democracy: “for it is not right to let go unpunished a man who transgresses the written laws by which the democracy is kept safe ((τὸν) τοὺς

Lycophron never explicitly protests that his case represents the first application of *eisangelia* to seduction (as, for example, Euxitheus on the use of *apagōgē* to prosecute a suspected killer, Ant. 5.9); but the beginning of his speech, where such an objection would naturally occur, is lost, and his vehement complaints about the prosecution's choice of procedure²¹ indicate that this application was at least a relative novelty, if not an absolutely unprecedented maneuver.

2. *Graphē moicheias*. Lycophron's reference to suitable "*graphai* before the *thesmothetai*" (§12) certainly includes an allusion to the *graphē moicheias*, a dedicated public action for seduction which fell under the jurisdiction of the *thesmothetai* ([Arist.] *Ath. Pol.* 59.3–4; [Dem.] 59.87; ?cf. Lys. fr.18–21 Thalheim = fr.IX Gernet-Bizos *Against Autocrates for seduction* [κατ' Αὐτοκράτους μοιχείας]).²² Athenian law empowered any willing citizen (barring specific ineligibility: above, 378) to mount a *graphē*, and so both Ariston and Lycurgus were presumably competent to prosecute Lycophron by this procedure irrespective of their relationship to the wronged party, whether defined as Dioxiippus' sister or her *kyrios*.

The penalty upon conviction in a *graphē moicheias* is not attested. The mandatory death sentence posited by Harrison²³ is highly improbable, but prosecutors may have been able to propose capital punishment if, as Harris suggests, the *graphē moicheias*, like many other

γεγραμμένους νόμους, δι' ὧν ἡ δημοκρατία σφύζεται, παραβαίνοντα) and has become the introducer and legislator of other, depraved customs." Cf. Hyp. 1.12: "you accuse me in your impeachment of subverting the democracy by violating the laws" (καταλύειν τὸν δῆμον παραβαίνοντα τοὺς νόμους).

²¹ See especially fr.3 *ad fin.*: "or betrayal of dockyards or arson of government buildings or seizure of the Acropolis" (ἢ νεωρίων προδοσίαν ἢ ἀρχείων [ἀρχαίων Jensen] ἐμπυρισμὸν ἢ κατάληψιν ἄκρας). Presumably Lycophron offered this paraphrase of the *eisangelia* statute in order to demonstrate that its terms did not include allegations of seduction (M. Marzi, in M. Marzi, P. Leone, E. Malcovati, *Oratori attici minori* I [Turin 1977] 148).

²² See Harrison, *Law* I 35; E. M. Harris, "Did the Athenians Regard Seduction as a Worse Crime than Rape?" *CQ* 40 (1990) 370–377, at 374; Marzi, in *Oratori* 154 n.30; C. Carey, "Rape and Adultery in Athenian Law," *CQ* 45 (1995) 407–417, at 410; R. Omitowaju, *Rape and the Politics of Consent in Classical Athens* (Cambridge 2002) 108.

²³ Harrison, *Law* I 35; he notes (rightly, in my opinion) that Lys. 13.66 ("he was caught as a seducer, and the penalty for that is death," ἐλήφθη μοιχός· καὶ τούτου θάνατος ἡ ζημία ἐστίν) refers not to the penalty in a *graphē moicheias* but to the Draconian law (Dem. 23.53) which permitted the killing of a seducer caught in the act by specified relatives of his paramour.

graphai (including the *graphê hybreôs*: see below), was an *agôn timêtos* featuring unlimited penal assessment, up to and including a sentence of death.²⁴ Omitowaju, however, argues that the defendant convicted in a *graphê moicheias* faced the same penalty as the unsuccessful prosecutor of a *graphê adikôs heirchthênai hôs moichon* (action for wrongful detention as a seducer).²⁵ In this case, the death penalty will have been unavailable, as in this procedure the defendant who proved that he had detained a seducer rightfully was entitled to punish the seducer in the presence of the court according to his own discretion, with the restriction that he not use a dagger.²⁶

3. *Graphê hybreôs*. If the plural *graphai* (§12) indicates that Lycophron has in mind more than one specific *graphê* before the *thesmothetai*, then he is presumably referring to the *graphê hybreôs* in addition to the *graphê moicheias*.²⁷ This too came under the supervision of the *thesmothetai* (Isoc. 20.2; Dem. 21.47, 37.33) and could be prosecuted by any willing Athenian citizen (Isoc. 20.2; Dem. 21.45, 47). The action was an *agôn timêtos* without penal limit, and therefore prosecutors could seek the death penalty (Dem. 21.47; Lys. fr.44 Thalheim = fr.XVI Gernet-Bizos; cf. Dem. 54.1); if a monetary fine was levied, it was paid not to the prosecutor or the victim but to the Athenian state (Dem. 21.45).

4. *Apagôgê*. Summary citizen arrest (*apagôgê*) was available against certain classes of offender apprehended in circumstances of manifest guilt. Upon arrest, the accused was haled before the Eleven; if he

²⁴ Harris, *CQ* 40 (1990) 374. By contrast, some *agônes timêtoi* involved a limited penal assessment: in the *dikê aikeias*, for example, convicted defendants were liable only to an assessable monetary fine (Lys. fr.44 Thalheim = fr.XVI Gernet-Bizos; cf. Harp. s.v. αἰκία).

²⁵ Omitowaju, *Rape* 107–109.

²⁶ [Dem.] 59.66. The proviso “without a dagger” must imply a bar on capital punishment (cf. S. G. Cole, “Greek Sanctions against Sexual Assault,” *CP* 79 [1984] 97–113, at 103–104; contra, Harris, *CQ* 40 [1990] 374): surely the detainer was not forbidden to kill the seducer with a knife but permitted to do so with a rock, a club, or his bare hands. Note also the provision that a woman apprehended in *moicheia* who attends publicly funded religious rites “shall suffer with impunity whatever she suffers, except death” (πλὴν θανάτου, [Dem.] 59.87).

²⁷ Colin, *Hypéride* 112; K. Th. Arapopoulos, *Ὑπερείδου λόγοι* (Athens 1975) 14. On the applicability of the *graphê hybreôs* to *moicheia* see Harrison, *Law* I 35; D. Cohen, *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens* (Cambridge 1991) 178; N. R. E. Fisher, *Hybris* (Warminster 1992) 41; cf. Lys. 1.2, 4, 16, 25.

confessed his guilt, he was summarily executed, while if he maintained his innocence, he received trial in a *dikastérion* and faced a statutory death sentence if convicted ([Arist.] *Ath. Pol.* 52.1). Aeschines 1.90–91 shows that seducers were included among the *kakourgoi* (“malefactors”) who were subject to *apagôgê* provided that they were apprehended ἐπ’ αὐτοφώρῳ.²⁸ The allegations raised by Lycophron’s prosecutors indicate that Lycophron could also have been summarily arrested on other grounds. Digging through walls (*toichôrychia*), as a means of breaking and entering, qualified the doer as a *kakourgos* and served as grounds for *apagôgê*.²⁹ According to his prosecutors, Lycophron did this on at least one occasion in order to conduct an assignation with Dioxippus’ sister;³⁰ the accusation is rebutted three times by Lycophron’s *synêgoros* (*P.Oxy.* 1607 fr.1 cols. 1–3). Yet evidently no *apagôgê* was ever initiated against Lycophron, either for seduction or for *toichôrychia*.

The critical distinction between the first three options, which Lycophron acknowledges, and *apagôgê*, which he suppresses, is that *apagôgê* contained a flagrancy requirement, embodied in the phrase ἐπ’ αὐτοφώρῳ. However, the nature of this requirement was arguably flexible,³¹ and the accusations leveled against Lycophron suggest that his prosecutors could have employed *apagôgê*. The prosecution portrays Lycophron as a habitual seducer, a repeat offender who has caused “numerous

²⁸ M. H. Hansen, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 44–45, and “The Prosecution of Homicide in Athens: A Reply,” *GRBS* 22 (1981) 11–30, at 22–24; D. Cohen, “The Social Context of Adultery at Athens,” in P. Cartledge, P. Millett, S. C. Todd (eds.), *Nomos: Essays in Athenian Law, Politics, and Society* (Cambridge 1990) 147–166, at 147, and Cohen, *Law* 111–112; Omitowaju, *Rape* 105; contra, Harris, *CQ* 40 (1990) 376–377; cf. M. Gagarin, “The Prosecution of Homicide in Athens,” *GRBS* 20 (1979) 301–323, at 320 n.60; N. R. E. Fisher, *Aeschines: Against Timarchos* (Oxford 2001) 224–225. Hyp. 1.6 may corroborate Aeschines on this point: see below, 386 with n.33.

²⁹ [Dem.] 35.47; Xen. *Mem.* 1.2.62, *Apol.* 25; Pl. *Resp.* 344B; Ar. *Ran.* 771–774; cf. Xen. *Symp.* 4.36; Pl. *Resp.* 575B, *Gorg.* 508D–E; Hansen, *Apagoge* 38–48.

³⁰ Arist. *Eth. Nic.* 1138a24–26 also associates *toichôrychia* with *moicheia* (as well as theft).

³¹ See E. M. Harris, “‘In the Act’ or ‘Red-Handed’? *Apagoge* to the Eleven and *Furtum Manifestum*,” in G. Thür (ed.), *Symposion 1993: Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Cologne 1994) 169–184.

women to grow old, unmarried, in their houses, and many others to cohabit with unsuitable men” (Hyp. 1.12; cf. Lyc. fr.X–XI.2 [above, n.20], which accuses Lycophron of introducing novel and foul customs, thus suggesting multiple instances of seduction). On these grounds, Lycophron could be represented as a “manifest” seducer, and hence liable to *apagôgê*, just as Agoratus, the defendant in Lysias 13, met the requirements of the Eleven as a “manifest” (ἐπ’ αὐτοφώρῳ) killer despite his not having been apprehended in the act (Lys. 13.85–87).³² Agoratus denounced his victims in the presence of the Council of 500 and the Assembly; Lycophron, according to his prosecutors, similarly manifested his affair with Dioxippus’ sister before numerous witnesses at her wedding to Charippus. As Lycurgus favored a demonstrably broad interpretation of the *eisangelia* statute (as evidenced in the prosecutions of Lycophron and Euxenippus), he may well have taken a similarly broad view of the ἐπ’ αὐτοφώρῳ requirement for *apagôgê*. Indeed, the surviving fragments of Lycurgus’ speeches for the prosecution explicitly compare Lycophron to offenders of the categories liable to *apagôgê*, including *andrapodistai* (Lyc. fr.X–XI.1) and *lôpodytai* (X–XI.11); this suggests that the prosecution may have considered employing *apagôgê* against Lycophron.³³

³² We should note that, although the Eleven accepted the *apagôgê* of Agoratus with the proviso that the arrest warrant be amended to include the phrase ἐπ’ αὐτοφώρῳ, the trial verdict is unknown, and hence we do not know how the jury reacted to the prosecution’s interpretation of the flagrancy requirement.

³³ It is possible that Lycophron himself refers to the possibility of *apagôgê* at Hyp. 1.6. In rebutting the prosecution’s account of his interruption of the wedding ceremony (above, n.7), he asks the jury to consider whether he had so lost his mind that “I did not hesitate to say such things about a free woman with everyone listening, nor was I afraid that I would be throttled to death straightaway” (οὐδ’ ἔδεδίειν μὴ παραχρῆμα ἀπόλωμαι [πνι]γόμενος). Some editors, however, posit [ἀπα]γόμενος (C. Babington, *The Orations of Hyperides for Lycophron and for Euxenippus* [Cambridge 1853] 2; Colin, *Hyperide* 132; Arapopoulos, *Ἵπερείδου λόγοι* 18), which Colin (131) and Arapopoulos (18 n.1) interpret as a reference to *apagôgê*. Whitehead, *Hyperides* 121, favors [πνι]γόμενος over [ἀπα]γόμενος on the grounds that *apagôgê* was not available as a remedy for slander; but if Hyperides wrote [ἀπα]γόμενος, the

One consideration which may have weighed in favor of *apagôgê* and *eisangelia*, and against the *graphai moicheias* and *hybreôs*, was the Athenian statute of limitations (νόμος προθησμίας), which mandated that litigation be initiated within five years of the *casus litis*.³⁴ As the sources present the five-year *prothesmia* as a general principle of Athenian law, we must presume that it governed all legal procedures, absent express evidence to the contrary.³⁵ No such exception is attested for the *graphê moicheias* or the *graphê hybreôs*. *Eisangelia*, however, was evidently exempt from the five-year limit, since Lycurgus impeached Leocrates seven years after his alleged treason in the aftermath of the battle of Chaeroneia (Lyc. 1.45); and we have a strong hint that *apagôgê* was exempt as well (Lys. 13.83).³⁶ Lycophron stands accused of seducing the sister of Dioxiippus during her first marriage (*P.Oxy.* 1607 fr.1 col. 3; Hyp. 1 fr.4) and, presumably, between the death of her first husband—at which time she was pregnant, allegedly by Lycophron (Hyp. 1 fr.4)—and her wedding to Charippus, at which Lycophron urged her to remain faithful to him (Hyp. 1.3). Nowhere does the prosecution allege that Lycophron and Dioxiippus' sister continued their affair after this second wedding, which occurred in 336 or early 335; and Lycophron was brought to trial between 333 and the summer of 330. If Lycophron's alleged seduction of Dioxiippus' sister occurred more than five years before Ariston and Lycurgus decided to prosecute him, their choice of actions under the statute of limitations will not have

point would be, I think, that an outburst of the sort described by the prosecution would qualify Lycophron as a “manifest” seducer (see above).

³⁴ Dem. 36.25–27; 38.17, 27; cf. [Dem.] 43.16; Isae. 3.58 (as pertaining to the law of inheritance).

³⁵ E.g., Lys. 7.17 (no *prothesmia* for violation of sacred olive trees).

³⁶ The speaker anticipates Agoratus' complaint that he has been prosecuted long after his alleged offense by commenting, “I don't think there is any *prothesmia* for offenses like this; I believe that, whether someone seeks punishment immediately or some time later, the defendant must demonstrate that he has not done what he is charged with.” This dismissal of the *prothesmia* implies that the *apagôgê* of Agoratus was brought more than five years after the death of Dionysodorus (cf. S. C. Todd, *Lysias* [Austin 2000] 138–139).

been between *eisangelia* and the *graphê moicheias* or *hybreôs*, as Lycophron presents it, but rather between *eisangelia* and *apagôgê*.³⁷ In this case, Lycophron's comment about *graphai* may have been a red herring, although his remark about the relative prosecutorial risks remains sound, as the thousand-drachma fine for receiving less than 20% of the votes applied to *apagôgê* (Dem. 22.26) as well as *graphai*.

Another feature of *eisangelia* and *apagôgê* which coincided with the interests of Lycophron's accusers was the mandatory death penalty imposed upon a convicted defendant. Lycophron maintains that the true impetus for the lawsuit against him is a dispute over succession to the estate of his alleged lover's first husband. Upon his death, this man left a pregnant wife and a will; at the time his relatives evinced no suspicions regarding the parentage of the unborn child, but now that the child seems likely to survive, they allege that it is Lycophron's in order to disqualify it from the inheritance, which will then presumably devolve upon one or more of themselves (Hyp. 1 fr.4). The fact that at least three years intervened before Lycophron was prosecuted lends significant credence to his account. In order to obtain the first husband's estate for themselves, his relatives needed to establish the illegitimacy of his supposed child; in order to keep it, they needed to deter any foreseeable future challenges on the issue. If they prosecuted Lycophron by *graphê* (either *moicheias* or *hybreôs*) and managed to secure a conviction, a capital sentence was far from guaranteed. In a *graphê moicheias*,

³⁷ The extent to which the Athenians complied with the statute of limitations is admittedly a matter of debate. The speakers of Dem. 36 (§26) and 38 (§18), both delivered in counter-prosecutions (*paragraphai*), complain that the courts have admitted their adversaries' prosecutions nineteen and more than twenty years, respectively, after the *casus litis*. It may be, though, that enforcement of the *prothesmia* was commonly left to trial juries (cf. Lys. 13.83, where the speaker anticipates that the *prothesmia* will be among his jury's considerations), and it should be noted that Phormio, on whose behalf Dem. 36 was delivered, triumphed over his would-be prosecutor Apollodorus so decisively that Apollodorus was convicted by over 80% of the jury and fined the *epôbelia* accordingly ([Dem.] 45.6). At the very least, therefore, if time were a factor, Lycophron's prosecutors could reasonably have decided against prosecuting by *graphê* on the grounds that it would provide Lycophron with an automatic, and possibly conclusive, line of defense.

as we have seen, the death penalty may not even have been possible; and while the prosecutor in a *graphê hybreôs* could propose a death sentence, the jury might elect to impose the alternative penalty proposed by the defendant. Lycophron would therefore have had good odds of surviving a conviction by *graphê*, and might retaliate—for example, by bringing a lawsuit for false testimony (*dikê pseudomartyriôn*) against the prosecution's witnesses—in such a way as to reopen the question of the child's parentage. Therefore, the best way for the first husband's relatives to settle this question decisively in their favor was to employ against Lycophron a procedure in which a conviction would not only establish Lycophron as the presumptive father of the child but also insure against legal reprisals.³⁸ Thus *eisangelia* and *apagôgê* for seduction, which removed all penal discretion from the jury, were preferable to the *graphai moicheias* and *hybreôs*.

Lycophron's prosecutors may, therefore, have had more compelling reasons to proceed by impeachment than the desire to avoid the prospect of incurring a thousand-drachma fine if their case failed miserably. Depending upon the date when they filed suit, the statute of limitations may have disallowed a *graphê moicheias* or *hybreôs*; and, even if these *graphai* were available, *eisangelia* presented the advantage of a guaranteed death penalty upon conviction. As *apagôgê* was equivalent to *eisangelia* with respect to both of these considerations, we should ask not only why impeachment was preferable to *graphai*—the question raised (and incompletely answered) by Lycophron—but also why it was preferable to *apagôgê*. The most likely answer to the latter question lies in the *ep' autophôrôî* requirement for *apagôgê*, which had no counterpart in *eisangelia*. Prosecution by *apagôgê* would have invited Lycophron to mount the defense that he had not been caught in the act; and the jury's verdict, as in Lysias 13, could be expected to depend heavily upon which

³⁸ If Lycophron had living relatives, they might attempt to clear his name, but this would be much more difficult for them than for Lycophron himself: for example, they could not file a *dikê pseudomartyriôn*, which had to be brought by the individual(s) against whom the alleged false testimony had been offered.

interpretation of *ep' autophôroi* the jurors accepted. Lycophron's accusers, therefore, had good reason to avoid *apagôgê* and the attendant problem of flagrancy—however loosely the phrase *ep' autophôroi* might be interpreted—in favor of the impeachment procedure, under which flagrancy was not an issue.

III. *The impeachment of Lycophron and the "Lycurgan program"*

But the best explanation for the choice of *eisangelia* lies in Lycurgus' prominent involvement in the prosecution. Under normal circumstances, an intrafamilial estate squabble is not the type of dispute in which Lycurgus would condescend to involve himself: of his fifteen attested fragmentary speeches, not one is a *logos klêrikos* (and, of course, his sole complete speech, *Against Leocrates*, is from an *eisangelia*); and while the pseudo-Plutarchan *vita* of Lycurgus (*Mor.* 841A–844D) mentions his participation in religious and political trials, it makes no mention of inheritance lawsuits.

Yet Lycurgus was prominently involved in the prosecution of Lycophron from the outset. The first stage of the *eisangelia* against Lycophron took place in the Assembly, where Lycurgus testified that relatives of Dioxiippus' sister had informed him of Lycophron's conduct at her wedding to Charippus (*Hyp.* 1.3). For the resulting jury trial Lycurgus composed two speeches for the prosecution; most likely one was delivered by Ariston, the nominal prosecutor who submitted the bill of impeachment (*Hyp.* 1 fr.4 ὡςπερ Ἀρίστων ἐν τῇ εἰσαγγελίᾳ γράφει; 1.12, addressing Ariston, ἐμὲ μὲν αἰτιᾶ ἐν τῇ εἰσαγγελίᾳ ... εἰσαγγελίαν δέδωκας), and the other by Lycurgus himself as *synêgoros* (cf. 1.19).³⁹ Owing to his position as de facto head of state by virtue

³⁹ Hansen, *Eisangelia* 107 n.12; Whitehead, *Hyperides* 103. The more common view is that Lycurgus delivered both speeches, the first at the preliminary hearing before the Assembly and the second at trial (F. Blass, *Die attische Beredsamkeit* III.2 [Leipzig 1898] 67; Colin, *Hyperide* 111 n.1; Burt, *Minor Attic Orators* II 373; S. Salomone, "Osservazioni sull' orazione iperidea 'Per Licofrone,'" *Maia* 25 [1973] 55–63, at 59; Arapopoulos, *Υπερείδου λόγοι* 14 n.1; Malcovati, in Marzi et al., *Oratori* 814). Whitehead, *Hyperides* 104, raises the possibility that both were trial speeches delivered by *synêgoroi*, on the grounds that Ariston, described by Lycophron as a sycophant (*Hyp.* 1.2), may not have required a speechwriter. However, Athenian speakers so commonly use "sycophant" as a term of abuse against their adversaries that

of his long-term superintendence of the public treasury ([Plut.] *V.Lycurgi* 2–3), and to his reputation as a dedicated and skillful, if perhaps overzealous, prosecutor (*V.Lycurgi* 10), Lycurgus was much in demand as a *synēgoros*: “for his whole life he remained in good repute with the Athenians and was considered to be just, with the result that, even in the lawcourts, a speech by Lycurgus was deemed an advantage to the person he supported” (*V.Lycurgi* 13). Even Hypereides, when he later crossed swords again with Lycurgus at the trial of Euxenippus, admitted Lycurgus’ reputation for moderation and reason (Hyp. 4.12)⁴⁰ while criticizing his use of *eisangelia* (4.1–3).

Ariston and the cooperating relatives of the first husband of Dioxiippus’ sister and of the woman herself, therefore, endeavored to recruit Lycurgus onto the prosecution team because Lycurgus’ presence lent his *auctoritas* to their allegations and significantly improved their odds of securing a conviction.⁴¹

we should not presume that a person who is called a sycophant is necessarily a skilled writer. On the basis of the phrase “when *they* submitted the impeachment” (ὅτε τὴν εἰσαγγελίαν ἐδίδοσαν, 1.3), L. Rubinstein, *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens* (Stuttgart 2000) 240 with n.10, suggests that Lycurgus may have participated in the composition of the bill of impeachment (although elsewhere [51 n.73] she describes Lycurgus as Ariston’s *synēgoros*). However, as Lycophron credits Ariston with sole authorship of the bill in fr.4 and §12, we should not read too much into this plural (cf. Whitehead, *Hypereides* 103 n.131), which merely indicates that Ariston had support for his *eisangelia*; note that the plural subject in the temporal clause ὅτε ... ἐδίδοσαν parallels, and was probably influenced by, the plural subject immediately preceding: “the accusations which *they* (*scil.* Ariston and Lycurgus) brought against me in the Assembly” (τὰς αἰτίας ἃς ἐν τῇ ἐκκλησίᾳ ἠτιάσαντό με).

⁴⁰ That Hypereides was sincere in this expression of respect for Lycurgus is indicated by his defense of Lycurgus’ sons before the Eleven after their father’s death (Hyp. fr.118; [Plut.] *V.Lycurgi* 28).

⁴¹ Salomone, *Maia* 25 (1973) 59. Lycurgus may have been content to retain Ariston as the prosecutor of record since he was not personally affected by Lycophron’s alleged actions. Although *moicheia* was legally a public offense in that it could be prosecuted by uninvolved parties, it was fundamentally a personal affair: note that Euphiletus, while rationalizing his killing of Eratosthenes as a mandate from the law of the city, characterizes Eratosthenes’ seduction of his wife as an offense against “my house” and “my wife and my children” (Lys. 1.25–26). By contrast, no such complica-

Lycurgus accepted because the Lycophron case aided in the pursuit of his own political and social agenda, which featured the use of high-publicity litigation—and particularly *eisangelia*—as a corrective measure which not only punished the convicted defendant but furthered the moral education of the Athenian citizenry.⁴² In so doing, he advanced a reading of the *eisangelia* statute which ranged from moderate, if controversial, extension (as in the prosecution of Leocrates)⁴³ to the radical shift in application evidenced in the impeachments of Lycophron and Euxenippus. Lycurgus argued that Lycophron qualified for impeachment because his act of seduction amounted to a subversion of the democracy (above, 382 with n.20); moreover, the correlation of Lycophron’s tenure of an elective *archê* as hipparch on Lemnos (Hyp. 1.17; [Arist.] *Ath. Pol.* 61.6) with Lycurgus’ characterization of him as the “legislator” of immoral habits (Lyc. fr.X–XI.2) suggests that Lycurgus also cited the clause of the impeachment law which targeted anyone who, “as a politician, does not propose what is best for the Athenian people.” Thus, in sponsoring the impeachment of Lycophron, Lycurgus attempted to assimilate seduction, an act *contra bonos mores* which he considered “un-Athenian,” to the anti-Athenian

tions attended Lycurgus’ *suo nomine* prosecution of Leocrates (Lyc. 1), since treason affected all Athenians equally.

⁴² For Lycurgus’ view of the didactic function of prosecution see, e.g., Lyc. 1.10, 67; Lycurgus’ general concern with the education of his fellow citizens was most famously demonstrated in his sweeping reform of the *ephebeia* (Humphreys, in Eadie/Ober, *Craft* 206–209). On the use of *eisangelia* in pursuit of the moral aspects of the “Lycurgan program” see A. Petrie, *Lycurgus: The Speech Against Leocrates* (Cambridge 1922) xxiii–xxiv; Humphreys 217–219; M. Faraguna, *Atene nell’ età di Alessandro* (Rome 1992) 280–285; Harris, in Worthington et al., *Dinarchus* 158.

⁴³ Lycurgus charged Leocrates under the general treason clause of the *eisangelia* law (Lyc. 1.1 and passim), but the alleged treason consisted in Leocrates’ flight from Attica in the aftermath of Chaeroneia (16–27). While this action arguably violated an ad hoc decree passed after the battle (16), abandoning Attica does not appear among the examples of (actively) treasonous acts listed in the *eisangelia* law (Hyp. 4.7–8: above, 382). The acquittal of Leocrates (although by only one vote: Aeschin. 3.252) indicates significant resistance to Lycurgus’ use of *eisangelia* on this occasion (cf. Burtt, *Minor Attic Orators* II 10).

offenses specified in, and traditionally prosecuted under, the *nomos eisangeltikos*:⁴⁴ hence Lycophron's observation (Hyp. 1.12)—repeated by Hypereides in his defense of Euxenippus (Hyp. 4.26)—that his prosecutors magnified the charged offense to the level of tragedy (above, 375, 379).

The prosecution of Lycophron, therefore, served as a test case for Lycurgus' efforts to transform the impeachment procedure into a quasi-catch-all remedy for "un-Athenian" activities.⁴⁵ For Lycurgus, this prosecution involved risks of a different sort and of greater consequence than the thousand-

⁴⁴ A. B. Bosworth, *Alexander and the East* (Oxford 1996) 115, suggests that the fame of Dioxippus as an Olympic victor made the seduction of his sister a *cause célèbre* worthy of *eisangelia*. However, if Dioxippus' prestige had been a factor, we would expect justice to have been sought swiftly, rather than at least three years after the alleged offense, at a time when Dioxippus may no longer have been in Attica: as Bosworth observes, he joined Alexander's campaign "some time before 327"; cf. Diod. 17.101.2–6. Note, too, the unlikelyhood that the *eisangeliai* of Diognides and Antidorus and of Agasicles (Hyp. 4.3) involved any wrongs done to (or by) prominent Athenians—in contrast to the previous impeachments described at Hyp. 4.1, 28–30.

⁴⁵ In addition to his participation in the *eisangelia* prosecutions of Lycophron, Leocrates, and Euxenippus, Lycurgus is explicitly attested as having impeached Autolytus (338, for dispatching his wife and children from Attica after Chaeroneia, convicted: Hansen, *Eisangelia* no. 113); Lysicles (338, for his role as general in the loss at Chaeroneia, convicted: Hansen no. 112); and Menesaechmus (before 325/4, for impiety, convicted: Hansen no. 126). The strong tradition regarding Lycurgus as a habitual prosecutor (e.g., [Plut.] *V.Lycurgi* 42–46), his participation in the tenuous *eisangeliai* against Lycophron and Euxenippus, and the recent series of impeachments described at Hyp. 4.3 make it highly probable that Lycurgus involved himself in a number of other *eisangeliai*, either as prosecutor of record or as *synēgoros* for the prosecution. In my opinion, the contemporary testimony of Hypereides and Lycurgus decisively refutes the position (based on statements by later lexicographers) that any legislation valid in the fourth century provided for impeachments for novel offenses not covered by written law (καὶνὰ καὶ ἄγραφα ἀδικήματα): so Hansen, *Eisangelia* 16–17, 19–20, and "Eisangelia in Athens: A Reply," *JHS* 100 (1980) 89–95, at 91–93; contra, R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle I* (Chicago 1930) 295–296; P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 163–164, and "ΕΙΣΑΓΓΕΛΙΑ in Athens," *JHS* 99 (1979) 103–114, at 107–108. At any rate, Lycophron's objection to the use of *eisangelia* against him is that it bypasses existing legal remedies for seduction, an offense neither *kainon* nor *agraphon*.

drachma fine in *graphai* to which Lycophron alludes. At stake, to some degree, in the trial of Lycophron were the policy, credibility, and reputation of Lycurgus: just as his fellow prosecutors counted on these factors to sway the jury toward a conviction, an acquittal could be construed as a rejection, at least in this instance, of Lycurgus' broad interpretation of *eisangelia*. As the trial verdict is not known, we have no way to gauge the jury's reaction to the particular application of *eisangelia* against Lycophron. However, within three years, the Athenian people indicated its general displeasure with the recent abuses of the impeachment procedure symptomized in Lycophron's case, and demonstrated its sympathy with Lycophron's objection to "risk-free" *eisangeliai*, by penalizing frivolous impeachment with a thousand-drachma fine. Although the deterrent effect of this measure upon Lycurgus appears to have been minimal, judging from his participation in the impeachment of Euxenippus (Hyp. 4), at least *eisangelia* prosecutors now had to assume the same financial risk as those who employed other public procedures, such as *graphai* and *apagôgê*.⁴⁶

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