

Chapter 16

Abuse of the *eisangelia* in the Latter Half of the Fourth Century BC

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Introduction: The Procedure and Its History

*Eisangelia*¹ was a public procedure, which was directed mainly against offences committed by public officials (either generals who had betrayed the Athenian forces or *rhētores* who deceived the Athenian demos after bribery), but could also be used against any citizen who attempted to overthrow the democracy.² The *eisangelia* was a democratic institution most probably introduced by Kleisthenes in 507; it could be initiated at the first stage either before the Council or before the Assembly, and at the second stage it was brought to the court. The Council had the power to inflict a fine of up to 500 *drachmas*, so when the punishment would exceed this amount the case would be heard in court. The Assembly, after accepting the charge of the *eisangelia* and ordering the Council to draw up a *probouleuma* regulating the charge, the procedure and the sentence, and finally passing the proposal, could either hear the case at a third meeting of the Assembly or refer the case to the court. The Council dealt with *eisangeliai* against public officials and citizens performing a public service (*Ath. Pol.* 8.4, 25.3–4), whereas the Assembly dealt with *eisangeliai* against private citizens, politicians and public officials (*Hyp. Eux.* 7–10).

Eisangelia could be initiated at any time of year without any time limitation, a fact that facilitated prosecutions against officials, particularly if the prosecutors did not wish to wait until the end of their office, when they would officially account for their administration in their *euthynai*. Moreover, *eisangelia* was not subject, as were other public procedures, to the time limitation of five years, a fact shown in the case of Leokrates, which was brought to court by Lykourgos in 330 BC, eight years after the alleged act of treason by fleeing from Athens (338 BC).³ Moreover, in an *eisangelia* the

¹ The term is often translated as ‘impeachment’, but to avoid ambiguity the Greek word is retained throughout this chapter.

² For a basic and full account of the *eisangelia* procedure as well as the known *eisangelia* cases from the oratorical speeches, see Hansen 1975. Cf. also Harrison 1971: 51–9, MacDowell 1978: 28–9, 179–85, Todd 1993: 114.

³ Another public legal procedure, the *apagōgē phonou*, was also exempt from any time-limit, as can be seen

prosecutor did not face any risk, in contrast to other public cases (*graphai*), in which he was subject to a fine of 1,000 *drachmai* if he failed to secure one-fifth of the jurors' votes. Evidently, the main difference between other types of *graphai* and *eisangeliai* was that in the latter the charge had already been accepted by either the Council or the Athenian Assembly before it went to court, a control process that may explain the exemption from fine for the prosecutor of an *eisangelia*.

Nevertheless, the fact that *eisangeliai* were *azēmioi* (i.e. not subject to a penalty) until 333 BC indicates that it did offer an advantage for the prosecutor, since between 333 and 330 BC the law changed and assimilated the procedure of *eisangelia* to the conditions authorised for all other public procedures. The particular change, as well as further adjustments in matters of legislation, the form and use of *eisangelia* that occurred after the mid-fourth century in Athens, may be associated with the possible abuse of the procedure. In the present chapter, we will focus on the regulation of the *eisangelia* after the defeat of the Athenians in the battle of Chaironeia in 338 BC, in connection with the extraordinary measures voted by the Athenians at the time, in fear of Philip and Macedonian supremacy, reflecting thus the Athenians' anxiety about the threat of tyranny. Furthermore, this study explores the argumentation presented in court, in particular as derived from Lykourgos' speech *Against Leokrates* and Hypereides' speeches *For Lykophron* and *For Euxenippos*, concerning the improper use of *eisangelia* and the allegedly common abuse of the procedure. As will be shown, there seems to be a tendency to stretch the law concerning the *eisangelia*, the so-called *eisangeltikos nomos*, to cover extraordinary crimes against the state which should not have been subsumed to the specific procedure. Concerning the term of the law: 'any citizen who tried to overthrow the democracy', the charges presented in court after 338 BC were apparently extended to a remarkable degree.⁴

The specific clause in the law on *eisangelia* dealing with crimes against the constitution actually replaced all previous legislation against tyranny and overthrow of the democracy, which dates back to Drakon's time.⁵ Drakon's law was supplemented by Demophantos' law, which is preserved at Andok. 1.96–98, prescribing the crimes subject

in Lys. 13.83.

⁴ Todd 1993: 114.

⁵ Todd 1993: 103–28.

to *eisangelia*.⁶ According to Demophantos' law, anyone who suppressed democracy or held public office after its suppression or attempted to become a tyrant or helped to install tyranny was to be treated as a public enemy, and all Athenians were expected to take an oath that such a man 'shall be killed with impunity'.

The law is datable to the first prytany of 410/09.⁷ The text quoted in Andokides' speech reaffirms an ancient law, which most probably had not been invoked to prevent the tyranny of the Four Hundred in 411, and therefore required the Athenians to take an oath to observe it. The term τυραννεῖν in the text of the oath (§97, καὶ ἐάν τις τυραννεῖν ἐπαναστῆ ἢ τὸν τύραννον συγκαταστήσῃ) may indicate that Demophantos took over an outdated reference to tyranny from a previous law, but it could simply have derived from the common accusation of tyranny widely mentioned in the late fifth century.⁸ The wording of the oath is very similar to that of the law quoted in *Ath. Pol.* 16.10: ἐάν τις τυραννεῖν ἐπανιστῶνται [ἐπὶ τυραννίδι] ἢ συγκαθιστῆ τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος ('if any persons rise in insurrection in order to govern tyrannically, or if any person assists in establishing the tyranny, he himself and his family shall be disfranchised').⁹

The *stelē* upon which Demophantos' law was inscribed still existed in the fourth century BC and Demosthenes refers to this *stelē* in his speech *Against Leptines*, which was delivered in 355/4 BC (Dem. 20.159). Demosthenes mentions both the inscription and the oath concerning the gratitude owed to anyone who suffered in defence of the constitution. It appears that the Athenians were committed to the oath prescribed by Demophantos' law and wished to recognise defenders of the democracy as benefactors of the city.

Lykourgos, in his prosecution against Leokrates which will be fully analysed below, also mentions Demophantos' law as prescribing that a person who aspired to

⁶ There are some issues, concerning firstly the authenticity of the document cited in Andokides' speech as Demophantos' law, secondly the nature of the document (whether it is a decree proposed by Demophantos or a Solonian law), and finally the revision of the Solonian law that occurred after the restoration of the democracy in 403 BC. For a detailed discussion, cf. Canavaro and Harris 2012: 119–225.

⁷ As Edwards 1995: 181 argues with comparison to ML 84.

⁸ Cf. MacDowell 1962: 136 with Thuc. 6.53.3, 60.1; Ar. *Vesp.* 417, 464, 488; Av. 1074; *Thesm.* 338, 1143; *Lys.* 619, 630.

⁹ For a review of the evidence for measures against attempts to overthrow the democracy or set up a tyranny, cf. Ostwald 1955: 103–28 and Rhodes 1981: 220–2.

tyranny or attempted to overthrow the constitution or betray the city should be put to death (Lykourgos. 1.124–125). Subsequently, Lykourgos cites the decree, including the oath taken, and for his own purposes he stresses death as the inevitable punishment of a traitor, and impunity for the citizen who would dare to kill the traitor (§126). Lykourgos, however, states three times (1.125, 126, 127) that Demophantos' decree applied to those who killed both those who had attempted to set up a tyranny and those who had attempted to betray the city. However, the oath in the inserted document in Andok. 1 does not include traitors.¹⁰ Moreover, it is striking that Lykourgos makes use of Demophantos' law at this point of the speech, towards the end of his prosecution, in his attempt to persuade the jurors to condemn Leokrates to death. He takes it for granted that Leokrates is a traitor to the constitution, a charge that has supposedly been well established through a variety of examples of traitors in the past, who had been punished by the whole of the city, but not substantiated by any decree prescribing that Leokrates' flight could be considered an act of treason.

Demophantos' law had obviously preserved the spirit of the original law of Drakon and must have been popular among the Athenians throughout the fourth century BC. Lykourgos prefers to cite Demophantos' law rather than that of Eukrates, which had been introduced in 336 BC, a few years before Leokrates' trial, and which prohibited the Areopagites from holding office or sitting in council in the event of the democracy being overthrown. Eukrates' law reflected the anti-tyrannical mood of the Athenians due to their fear of Philip and Macedonian military superiority in general. Both in Demophantos' and in Eukrates' law it is made clear that the rebel who attempts to overthrow the democracy or impose tyranny loses all right to the protection of the law and may be killed with impunity.

The *eisangeltikos nomos* was most probably introduced after 336. It was almost certainly in place by 330 BC, since it is cited in the speech delivered by Hypereides at Euxenippos' trial (between 330 and 324):¹¹

¹⁰ Based on the content of the oath, its contradiction of the content of Demophantos' law, its wording and its structure, Canevaro and Harris 2012: 124 argue that neither the oath nor Demophantos' law as a whole should be taken as an authentic document.

¹¹ Various dates have been suggested by scholars, as for example 411/10 immediately after the fall of the Four Hundred, 403 after the restoration of the democracy and in connection with the republication of all Athenian laws, after 336 when Eukrates' law on treason and *eisangelia* was introduced; for a review of

ὕπερ τίνων οὖν οἴεσθε δεῖν τὰς εἰσαγγελίας γίνεσθαι; τοῦτ' ἤδη καθ' ἕκαστον ἐν τῷ νόμῳ ἐγράψατε, ἵνα μὴ ἀγνοῆ μηδεὶς: 'ἐάν τις,' φησί, 'τὸν δῆμον τὸν Ἀθηναίων καταλύη:' – εἰκότως, ὧ ἄνδρες δικασταί: ἡ γὰρ τοιαύτη αἰτία οὐ παραδέχεται σκῆψιν οὐδεμίαν οὐδενὸς οὐδ' ὑπωμοσίαν, ἀλλὰ τὴν ταχίστην αὐτὴν δεῖ εἶναι ἐν τῷ δικαστηρίῳ: – [ἢ 'συνίη ποι ἐπὶ καταλύσει τοῦ δήμου ἢ ἐταιρικὸν συναγάγη, ἢ ἐάν τις πόλιν τινὰ προδοῖ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατιάν, ἢ ῥήτωρ ὧν μὴ λέγη τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων': τὰ μὲν ἄνω τοῦ νόμου κατὰ πάντων τῶν πολιτῶν γράψαντες (ἐκ πάντων γὰρ καὶ τὰδικήματα ταῦτα γένοιτ' ἄν), τὸ δὲ τελευταῖον τοῦ νόμου κατ' αὐτῶν τῶν ῥητόρων, παρ' οἷς ἔστιν καὶ τὸ γράφειν τὰ ψηφίσματα.

So in what circumstances do you think *eisangeliai* should arise? You have already specified this in detail in the law, to leave nobody in doubt. 'If anyone', it says, 'seeks to overthrow the Athenian people.' Naturally, men of the jury: such a charge allows no procedural delay whatsoever, not even an affidavit for postponement, but must be heard in the jurycourt as soon as possible. 'Or if he gets together anywhere with a view to overthrow of the people, or assembles an association; or if anyone betrays a city or ships or an army or fleet; or says things, as a *rhētōr*, not in the best interests of the Athenian people and takes money for doing so'. (Hyp. *Eux.* 7–8.)¹²

The law refers explicitly to the *eisangelia* procedure, and the offences subject to it include firstly the attempt to overthrow the democracy or conspiracy against the constitution, but also additional charges such as treason, acceptance of bribes by *rhētores* to speak against the public interest, deceiving the demos by giving false promises, and finally offences relevant to treason, such as damage to naval facilities or trading, arson of public buildings or documents, and acts of sacrilege. The *eisangeltikos nomos* presents

these suggestions, cf. Ostwald 1955: 127. Given that the *eisangeltikos nomos* was based on and combined all preceding decrees and laws on *eisangelia* as used and extended to cases of treason in the second half of the fourth century BC, the latter date would seem more likely.

¹² The translation of all texts from Hypereides' speeches is by Whitehead 2000 with a few adjustments.

similarities with clauses in earlier legislation concerning attempts to overthrow or conspiracies against the constitution of the democracy, such as Demophantos' decree and Eukrates' law, but it seems likely that we are dealing with a distinct law which coexists with a number of earlier laws dealing with specific offences. The evidence from the attested *eisangeliai* in the Assembly during the period from 493 until 324 shows that there was a change after 360/50,¹³ and no *eisangelia* was heard by the Assembly after that date, but all *eisangeliai* in the Assembly were referred immediately to court.¹⁴ Further modifications to the original *eisangeltikos nomos* must have occurred after the middle of the fourth century BC, as reflected in the introduction of the provision that the prosecutor of an *eisangelia* was subject to a fine of 1,000 *drachmai*, after 333 BC. The amendment to the *eisangeltikos nomos* resulted in strengthening the powers of the court and reducing the powers of the Assembly, while the powers of the Areiopagos were considerably extended in the second half of the fourth century.¹⁵

The Impact Of The Defeat At Chaironeia

The Athenians took extraordinary measures after the defeat at Chaironeia in order to secure the protection of their city and of the women and the children in it. The authority of the Areiopagos was exceptionally increased to the same end. Lykourgos in his speech *Against Leokrates* refers to a decree, according to which the Council of the Areiopagos could seize and execute men who had fled from their country after the battle of Chaironeia and had abandoned it to the enemy:

... ἡ μὲν γὰρ ἐν Ἀρείῳ πάγῳ βουλή (καὶ μηδεὶς μοι θορυβήση: ταύτην γὰρ ὑπολαμβάνω μεγίστην τότε γενέσθαι τῇ πόλει σωτηρίαν τοὺς φυγόντας τὴν

¹³ Hansen 1975: 51–3.

¹⁴ Cf. Dem. 24.63. The reference in Timokrates' law to the γραμματεὺς κατὰ πρυτανείαν, who is not attested before 363, proves that the *nomos eisangeltikos* was revised at some time during the decade 363–354; cf. Hansen 1975: 54. Hansen suggests a date around 355 and associates the modification of the law with the relevant institutions to the division of powers between the Assembly and the court. The first institution was the limitation of the number of extraordinary assemblies and the second institution was the introduction of the procedure called *apophasis*, which also involved charges of treason and bribery of public speakers. Both institutions were introduced in 350 BC. Furthermore, Hansen suggests that the *eisangeltikos nomos* had a Solonian origin, since all the powers exercised by the court in the fourth century were believed to be Solonian in origin.

¹⁵ Cf. Lykourg. 1.55–56.

πατρίδα καὶ ἐγκαταλιπόντας τότε τοῖς πολεμίοις λαβοῦσα ἀπέκτεινε. ... ἀλλὰ μὴν Αὐτολύκου μὲν ὑμεῖς κατεψηφίσασθε, μείναντος μὲν αὐτοῦ ἐν τοῖς κινδύνοις, ἔχοντος δ' αἰτίαν τοὺς υἱεῖς καὶ τὴν γυναῖκα ὑπεκθέσθαι, καὶ ἐτιμωρήσασθε ...

The council of the Areiopagos; – No one, please, interrupt me; that council was, in my opinion, the greatest reason for the survival of the city at the time) arrested and executed men who at that time fled their country and abandoned it to the enemy. (...) Moreover you condemned and punished Autolykos for secretly sending his wife and sons away, even though he himself remained here to face danger. (Lykourg. 1.52–54)¹⁶

From this passage, it appears that the Areiopagos took the initiative not only in arresting deserters from the city but also in condemning them to death. Such a power was both suspect and contentious, as can be inferred from Lykourgos' request not to be interrupted (μηδεῖς μοι θορυβήση). The Areiopagos' executions were a punishment beyond its jurisdiction, which occasioned outrage both at the time and even at its mention in 330 BC at Leokrates' trial.¹⁷ The Athenian Assembly had also prescribed by decree that the women and children should be brought inside the walls, and that the generals should appoint guards to protect the Athenian citizens and other residents at Athens. Under these circumstances the scope of the offences subject to *eisangeliai* was extended or allowed space for legal argumentation in court.

Lykourgos, who was politically prominent in Athens in the period 338 until 326 BC, played a significant role either as a prosecutor or as a *synēgoros* in *eisangeliai*.¹⁸ Lykourgos had denounced Autolykos in 338 BC for the flight of his wife and sons from

¹⁶ The translation of passages from Lykourgos' *Against Leokrates* derives from Harris 2001 (in Worthington/ Cooper/ Harris 2001) with some adjustments.

¹⁷ Further on the Areiopagos' abuse of authority after the defeat in Chaironeia, cf. Sullivan 2003: 130–4.

¹⁸ As Plutarch mentions (*X orat.* 843d), Lykourgos accused and had several persons convicted as guilty, and even condemned them to death and his successful prosecution against Diphilos contributed to the amount of 160 talents for the treasury. Immediately after the battle of Chaironeia, in 338 BC, he prosecuted Autolykos, based on both decrees passed by the Athenians, for treason, on the grounds that he had secretly sent his wife and sons away and the trial resulted in his condemnation to death; Hansen 1975: no 113. Lykourgos also denounced Lysikles for his role as a general in the battle and succeeded in having him condemned to death Hansen 1975: no 112.

Attica after the defeat at Chaironeia and most probably after the vote of the relevant decree forbidding the citizens to flee from Athens. The procedure was an *eisangelia* and the trial resulted in the condemnation of Autolykos to death.¹⁹

Autolykos was condemned to death on the basis of a decree made after the battle of Chaironeia forbidding citizens and their families to flee from the city of Athens. There is no evidence about the date of this decree; but Autolykos was obviously subject to punishment because his action followed the enactment of the decree. In the same year (338 BC) Lykourgos denounced Lysikles for his role as a general at the battle of Chaironeia and brought him to court by an *eisangelia*; he was also convicted as responsible for the Athenians' defeat.²⁰ The cases of both Autolykos and Lysikles were closely related to the defeat at Chaironeia, after which the Athenians were devastated, and the charge of treason would have been an easy one to invoke for any kind of misconduct.

The Prosecution of Lykophron

A few years later, in 333 BC, Lykourgos acted as a *synēgoros* in the prosecution against Lykophron, which was an *eisangelia* with the accusation of treason, even though the actual offence was adultery; Hypereides had composed the speech in defence of Lykophron.

The prosecutor is Ariston, who maintains that Lykophron has had an affair with an Athenian woman who was married first to an unknown Athenian and, after his death, to Charripus. In particular, the indictment seems to involve Lykophron's attempt to persuade the woman to avoid physical contact with Charippos:

ἄξιον δ' ἐστίν, ὃ ἄνδρες δικασταί, κάκειῖθεν ἐξετάσαι τὸ πρᾶγμα, ἀφ' ὧν ἐν τῷ δήμῳ τὸ πρῶτον αὐτοὶ εὐθὺς ἠτιάσαντο. ἐμοὶ γὰρ οἱ οἰκεῖοι ἀπέστειλαν γράψαντες τὴν τε εἰσαγγελίαν καὶ τὰς αἰτίας ὡς ἐν τῇ ἐκκλησίᾳ ἠτιάσαντό με, ὅτε τὴν εἰσαγγελίαν ἐδίδοσαν, ἐν αἷς ἦν γεγραμμένον ὅτι Λυκοῦργος λέγει, φάσκων τῶν οἰκείων ἀκηκοέναι, ὡς ἐγὼ παρακολουθῶν, ὅτε

¹⁹ Hansen 1975: no 113.

²⁰ Hansen 1975: no 112.

Χάριππος ἐγάμει τὴν γυναῖκα, παρεκελευόμενῃ αὐτῇ ὅπως μὴ πλησιάσει
Χαρίππῳ ἀλλὰ διαφυλάξει αὐτήν.

In examining the affair, men of the jury, an appropriate starting-point is what these men originally accused me of, before the people. My family, you see, wrote to me with an account both of the *eisangelia* and of the charges they brought against me in the Assembly when they submitted the *eisangelia*. Amongst these was a record of a statement by Lykourgos. He claimed to have heard from the family that, during Charippos' wedding to the woman, I tagged along and tried to persuade her not to be intimate with Charippos, but to be on her guard against him. (Hyp. Lyc. 3)

Although Lykophron refers later to many accusations, all of them false, on the prosecution side, it is clear that the alleged crime attributed to him is *moicheia*. This is emphatically repeated in a form of a rhetorical question, where Lykophron suggests that it would have been senseless for Charippos to marry a woman who had sworn to be true to her lover:

τὸ δὲ κεφάλαιον ἀπάντων, ὡς καὶ μικρῶ πρότερον εἶπον, εἰς τοῦτο ἀναισθησίας ὁ Χάριππος, ὡς ἔοικεν, ἦλθεν, ὥστε πρότερον μὲν, ὡς φασιν, τῆς γυναικὸς προλεγούσης ὅτι συνομωμοκυῖα εἶη πρὸς ἐμέ, πάλιν δὲ ἀκούων ἐμοῦ παρακελευμένου αὐτῇ ὅπως ἐμμείνειεν τοῖς ὅρκοις οἷς ὤμοσεν, ἐλάμβανε τὴν γυναῖκα; καὶ ταῦτα δοκεῖ ἂν ὑμῖν ἢ Ὀρέστης ἐκεῖνος ὁ μαινόμενος ποιῆσαι ἢ Μαργίτης ὁ πάντων ἀβελτερώτατος;

And to cap it all, as I said a short while ago: had Charippos become so obtuse, apparently, as to have married the woman, when first she had said beforehand – *they claim* – *that she had pledged herself to me, and later he had heard me urging her to abide by the oaths which she had sworn?* Do you think that either Orestes the madman would have done that, or Margites, the biggest fool of all? (Hyp. Lyc. 7)

In order to strengthen his argument that the prosecutor is lying, Hypereides draws on the common *topos* that ‘prosecuting is better than defending’ (Hyp. *Lyc.* 8). The phrase, however, ‘prosecuting in the trial entails no risk’ (διὰ τὸ ἀκίνδυνον) seems to refer particularly to the *eisangelia*, and so implies an abuse of the procedure due to the risk-free privilege.²¹ In order to undermine further the *eisangelia* procedure used for the specific case, Lykophron ridicules the false accusations and argues that he is innocent on the grounds that adultery is a practice which no man can begin after fifty (Hyp. *Lyc.* 15).

Lykophron protests that it is not in an *eisangelia* that he should be defending himself. He maintains that the charges against him are charges ‘concerning matters where the laws prescribe public actions before the thesmothetai’ (Hyp. *Lyc.* 12). An obvious alternative would be a *graphē moicheias*. The second point of the defence concerning the propriety of the procedure is to present Lykophron as a private person, an *idiōtēs*, rather than a public figure, against whom an *eisangelia* should not be initiated, as presented in §§16–20. However, Lykophron’s personal record reveals that he had been honoured for his *andragathia* on eight occasions.²² Evidently, his socio-economic status was high, since he was a *hippeus*. Although Hypereides’ defence strategy was based on the argument that Lykophron was a private rather than a public person, he proudly mentions his tenure of two elective military posts: *phylarchos* of his tribe and *hipparchos* in Lemnos. In §20 the term ‘private individual’ (*idiōtēs*) is qualified as ‘unaccustomed to speaking’. He is an inexperienced speaker because he has avoided involvement in litigation or an active role in the Assembly. His office-holding, as phylarch and hipparch, does not weaken this claim, but still the question whether he can be considered an *idiōtēs* remains open. Any Athenian citizen was subject to an *eisangelia*, if he could be charged with an attempt to overthrow the democracy. According to Hansen ‘this crime committed against a free-born Athenian woman is interpreted as an infringement of the law as such and, accordingly, as an infringement of the democratic constitution, which is based on the law’.²³ Hypereides’ claim is designed to stress the unsuitability of the *eisangelia* firstly on the grounds of the offence, which is adultery and not treason, and secondly on the

²¹ For a parallel implication in the *topos*, ‘prosecution is risk-free in *eisangelias*’, cf. Isa. 3.47, where it is explained in procedural terms – fines, deposits, fees; cf. Whitehead 2000: 124.

²² (i) By the entire cavalry corps, (ii) and by his colleagues in office, (iii-iv) three times ‘by the citizen-body in Hephaistia, (v-viii) and as many times again by the one in Myrine; cf. Whitehead 2000: 138ff.

²³ Hansen 1975: no 119.

grounds of the offender who is not a public speaker but a simple Athenian citizen.

The allegation of *moicheia* had obviously and most probably exceptionally been accepted as the basis for a charge of treason by the Athenian Assembly. One possible explanation might have been that Lykourgos, who was influential at the time and heavily involved in the prosecution of *eisangeliai*, played a significant role in persuading the Assembly to accept adultery as treason. It may have been his prestige and his decisive defence for the protection of the city from traitors and threatening offenders that had secured the Athenians' approval. It is likely that 'the prosecution of Lykophron served as a test case for Lykourgos' efforts to transform the *eisangelia* procedure into a quasi-catch-all remedy for 'un-Athenian-activities'.²⁴

The fact that arguments on the suitability of the procedure are raised in court may reflect the novelty of the presentation of charges that would not normally have been considered to be subject to the *eisangeltikos nomos*. It appears to be rather a matter of interpretation of the scope of the law than an issue of legislation extending the range of the process. One might expect that the jury would be unwilling to agree with the prosecution that exile, execution and prohibition of burial in the city would be appropriate for a seducer, whose enemies had waited for three years to press charges against him.²⁵ Unfortunately, the result is not known and we can only make assumptions. If, however, Hypereides had won the case he would have mentioned it later in his defence for Euxenippos where he mentions various *eisangeliai* based on minor offences irrelevant to the *eisangeltikos nomos*. Finally, the use of *eisangelia* to prosecute a case of alleged treason indicates that at the time *eisangelia* was widely used as a potent weapon against 'enemies' of the city, reflecting a moralising agenda at the time due to the political instability and vulnerable security of the city of Athens.

The Prosecution of Leokrates

In 330 BC, eight years after the battle of Chaironeia, Lykourgos prosecuted Leokrates in an *eisangelia* based on the charge of treason:

²⁴ Phillips 2006: 393. For an analysis of Lykophron's case of *eisangelia*, *ibid* 375–94.

²⁵ Colin 1934: 120.

εὔχομαι γὰρ τῇ Ἀθηνᾶ καὶ τοῖς ἄλλοις θεοῖς καὶ τοῖς ἥρωσι τοῖς κατὰ τὴν πόλιν καὶ τὴν χώραν ἰδρυμένοις, εἰ μὲν εἰσήγγελκα Λεωκράτη δικαίως καὶ κρίνω τὸν προδόντ' αὐτῶν καὶ τοὺς νεῶς καὶ τὰ ἔδη καὶ τὰ τεμένη καὶ τὰς ἐν τοῖς νόμοις τιμὰς καὶ θυσίας τὰς ὑπὸ τῶν ὑμετέρων προγόνων παραδεδομένας ...

This is my prayer to Athena and those other gods and heroes whose statues stand throughout our city and countryside – if the *eisangelia* I have brought against Leokrates is just and if I have brought this man to court because he has betrayed the temples, shrines and precincts of the gods as well as the honours granted by the laws and the sacrificial rites handed down by your ancestors ... (Lykourg. 1.1.)

Lykourgos defines treason as desertion of the city and the temples, as well as breach of the ancestral traditions. In particular, Leokrates' assumed treason is, according to Lykourgos, the violation of the decree made by the Athenians immediately after the defeat at the battle of Chaironeia in order to protect their city:

γεγεννημένης γὰρ τῆς ἐν Χαιρωνείᾳ μάχης, καὶ συνδραμόντων ἀπάντων ὑμῶν εἰς τὴν ἐκκλησίαν, ἐψηφίσατο ὁ δῆμος παῖδας μὲν καὶ γυναῖκας ἐκ τῶν ἀγρῶν εἰς τὰ τεῖχη κατακομίζειν, τοὺς δὲ στρατηγοὺς τάττειν εἰς τὰς φυλακὰς τῶν Ἀθηναίων καὶ τῶν ἄλλων τῶν οἰκούντων Ἀθήνησι, καθ' ὅ τι ἂν αὐτοῖς δοκῇ. Λεωκράτης δὲ τούτων οὐδενὸς φροντίσας ...

After the battle at Chaironeia was over, all of you ran to meet in the Assembly, and the people decreed that the women and children should be brought from the countryside inside the walls and that the generals should appoint any Athenians or other residents at Athens for guard duty in whatever way they saw fit. Leokrates paid no attention at all to these decisions. (Lykourg. 1.16.)

The question is whether Leokrates can be accused of violating any of the decrees passed after the battle of Chaironeia. In the trial of Leokrates, Lykourgos may be effectively applying Autolykos' case as a precedent to persuade the jurors to convict Leokrates.²⁶ However, there seems to have been no law or decree in place at the time forbidding Leokrates' flight.²⁷ The most likely assumption is that these special terms were enacted and validated after Leokrates had left the city, because otherwise Lykourgos would have emphasised this fact, as he clearly mentions that Autolykos had smuggled his family out of Athens in violation of the decree. Due to the technical difficulty of charging Leokrates for the breach of this legislative measure, Lykourgos attempts to extend the definition of treason, an offence included in the *eisangeltikos nomos*. The definition of offences subject to an *eisangelia* seems to have expanded and included further different crimes in the second half of the fourth century BC. Lykourgos cites definitions and explanations of such crimes when he accuses Leokrates of many offences, reflecting a rhetorical exaggeration rather than a legislative reform:

... ἔνοχον ὄντα Λεωκράτην ἔστιν ἰδεῖν, **προδοσίας** μὲν ὅτι τὴν πόλιν ἐγκαταλιπὼν τοῖς πολεμίοις ὑποχείριον ἐποίησε, **δήμου δὲ καταλύσεως** ὅτι οὐχ ὑπέμεινε τὸν ὑπὲρ τῆς ἐλευθερίας κίνδυνον, **ἀσεβείας** δ' ὅτι τοῦ τὰ τεμένη τέμνεσθαι καὶ τοὺς νεῶς κατασκάπτεσθαι τὸ καθ' ἑαυτὸν γέγονεν αἴτιος, **τοκέων δὲ κακώσεως** τὰ μνημεῖα αὐτῶν ἀφανίζων καὶ τῶν νομίμων ἀποστερῶν, **λιποταξίου** δὲ καὶ **ἀστρατείας** οὐ παρασχὼν τὸ σῶμα τάξαι τοῖς στρατηγοῖς.

Leokrates is guilty of every one of these crimes: **treason**, since he left the city and surrendered it to the enemy; **overthrowing the democracy**, because he did not face danger in defence of freedom; **impiety**, because he is guilty of doing all he could to ravage the sacred precincts and destroy the temples; **mistreatment of parents** by destroying their tombs and robbing them of their ancestral rites; and **desertion** and **cowardice**, for refusing to

²⁶ Usher 1999: 327 indicates that Autolykos' case was different from that of Leokrates.

²⁷ Usher 1999: 324.

report to the generals for duty. (Lykourg. 1.147.)

It is remarkable how many charges are rhetorically emphasised and subsumed in the main accusation of treason; Lykourgos is accused of treason and consequently charged for the same cause with the overthrow of the democracy, impiety, mistreatment of his parents, desertion and refusal to serve. It is also striking, as we shall see below, that these alleged offences, as they are defined by Lykourgos here, were also invoked for the use of the *eisangelia* after the battle of Chaironeia (338 BC).

Lykourgos' interpretation of flight from the city of Athens as the basis for an *eisangelia* seems to have been used for the first time in the trial of Leokrates:

... ἀλλὰ διὰ τὸ μήτ' ἐν τοῖς πρότερον χρόνοις γεγενῆσθαι τοιοῦτον μηδὲν μήτ' ἐν τοῖς μέλλουσιν ἐπίδοξον εἶναι γενήσεσθαι. διὸ καὶ μάλιστ', ὧ ἄνδρες, δεῖ ὑμᾶς γενέσθαι μὴ μόνον τοῦ νῦν ἀδικήματος δικαστάς, ἀλλὰ καὶ νομοθέτας. (...) ἀναγκαῖον τὴν ὑμετέραν κρίσιν καταλείπεσθαι παράδειγμα τοῖς ἐπιγιγνομένοις.

... but because no such crime occurred in earlier times, as no one at the time expected it would happen in the future. As a result, gentlemen, you must above all act not only as judges for this crime but also as legislators. (...) your verdict must be left as a precedent for your successors. (Lykourg. 1.9.)

The rhetorical *hyperbolē* that the jurors set a legal precedent with their vote in a court case is a common *topos* in oratorical speeches, which aims to prejudice the jurors and influence their decision. In general, arguments from consequence with reference to the effects of the jurors' verdicts are very frequent in forensic oratory.²⁸ In reality, however, it was impossible for the jurors to make their verdicts consistent with previous verdicts by other jurors in different court cases. There was no legal requirement for the jurors to comply with previous decisions, even if there was a relevant connection between the

²⁸ E.g. Lys. 1.48–49, 12.99–100, 13.92–97, 30.32–34,

cases.²⁹

The additional force of Lykourgos' argument, here, is that he asks the jurors to become *nomothetai*, judging a case supposedly for the first time and thus setting a legal precedent to be followed by future juries, and, as it appears, the prosecutor creates the legal basis for his prosecution within the court case.³⁰ Moreover, the use of the argument reflects an awareness that the prosecutor is stretching the definition of treason to an unusual and perhaps unprecedented degree. The *eisangelia* does not seem to be legally the most appropriate procedure in Leokrates' case, since his flight was not forbidden by law at the time, but most probably it was silently accepted and brought to court.

The result of Leokrates' case is known to us from Aischines *Against Ktesiphon*:

ἕτερος δ' ἐκπλεύσας ιδιώτης εἰς Ῥόδον, ὅτι τὸν φόβον ἀνάνδρως ἤνεγκε,
πρώην ποτὲ εἰσηγγέλθη, καὶ ἴσαι αἱ ψῆφοι αὐτῷ ἐγένοντο: εἰ δὲ μία ψῆφος
μετέπεσεν, ὑπερώριστ' ἄν.

Another private citizen, who sailed away to Rhodes, was only recently prosecuted, as a coward in the face of danger. The vote of the jury was a tie, and if a single vote had been changed, he would have gone into exile. (Aischin. 3.252.)

According to Aischines, Leokrates was acquitted because the votes were equal; in particular ὅτι τὸν φόβον ἀνάνδρως ἤνεγκε. It is undoubtedly remarkable that Lykourgos actually managed to persuade such a large number of jurors to accept the *eisangelia* in order to prosecute Leokrates for treason, merely because he had left the city of Athens at a crucial time without being required by law to stay in the city. On the other hand, an equally large part of the jury was not convinced that such an interpretation of treason as flight from the city could be valid; therefore, they could only understand Leokrates' alleged offence as acting from fear and cowardice. The verdict in the specific case suggests that there was a real difference in Athenian public opinion on the appropriate

²⁹ For a different view, see Harris in this volume.

³⁰ Further on 'the rhetoric of consistency and prospective precedent in the extant speeches' and Lykourgos' consequentialist argument, cf. Lanni 1999: 41–4.

scope of the *eisangelia*.

The Prosecution of Euxenippos

At some point between 330 and 324 BC, most probably after the trial of Leokrates, who had been charged with treason on the grounds that he had fled from Athens immediately after the battle of Chaironeia and was eventually acquitted, Euxenippos was charged with deceit of the demos after bribery, even though he himself was not a *rhētōr*; Lykourgos participated in the *eisangelia* against Euxenippos and Hypereides had composed his speech *For Euxenippos* in his defence. As will be shown, Euxenippos' case constituted again an exceptional use of *eisangelia*.

Euxenippos and two unnamed fellow-citizens had been given the task of sleeping overnight in the sanctuary of the god Amphiaraos at Oropos, so as to discover, through what the god told them in their sleep, whether a particular tract of land in Oropos belonged to him or could be allocated to two of the ten Athenian tribes, Acamantis and Hippothoöntis (§§15–18). Euxenippos had a dream which he announced before the Assembly, but it was considered that the meaning of the dream was not fully clear. Polyeuktos proposed a decree that the land should be returned to the god and that the other eight tribes should compensate Hippothoöntis and Acamantis for their loss. The decree was defeated, and Polyeuktos was convicted in court for proposing an illegal decree but only fined 25 *drachmai*. However, he was not dissuaded, and with the support of Lykourgos, who would speak at the trial, he brought an *eisangelia* against Euxenippos with the allegation of accepting bribes from both tribes in order to report his dream (§§30, 39, *cf.* 15). Furthermore, Euxenippos was charged with being pro-Macedonian (§§19–26) and, finally, with various offences irrelevant to the case (§31).

The evident aim of the prosecution was to deepen the significance of Euxenippos' action so that it would seem a crime which threatened the security of the democracy.³¹ As the defendant in an *eisangelia*, Euxenippos obviously risked conviction if the jury took the view that his conduct had breached any provision of the *nomos eisangeltikos*. Thus one of Hypereides' lines of defence is that no such breach has occurred. But the central thrust of his argument is that Euxenippos is an *idiōtēs* (§§ 3, 9, 11, 13, 27–30), whereas

³¹ Curtis 1970: 31–2.

the section in the *nomos eisangeltikos* which deals with bribery concerns only *rhētōres* (§§ 1–2, 4–10, 27–30, 38–9).

It is striking that Hypereides begins his defence of Euxenippos by arguing that the *eisangeliai* made at the present time are different from the *eisangeliai* that used to be made in earlier times. He mentions five ‘previous’ *eisangeliai*, apparently from the late 360s,³² which all involved cases against generals and dealt with major crimes; the speaker shows amazement at the extraordinary use of the specific procedure in current cases and emphasises the fact that none of the charges described in more recent cases had anything to do with the *eisangeltikos nomos*:

ἀλλ’ ἔγωγε, ὧ ἄνδρες δικασταί, ὅπερ καὶ πρὸς τοὺς παρακαθημένους ἀρτίως ἔλεγον, θαυμάζω εἰ μὴ προσίστανται ἤδη ὑμῖν αἱ τοιαῦται εἰσαγγελίαι. τὸ μὲν γὰρ πρότερον εἰσηγγέλλοντο παρ’ ὑμῖν Τιμόμαχος καὶ Λεωσθένης καὶ Καλλίστρατος καὶ Φύλων ὁ ἐξ Ἀναίων καὶ Θεότιμος ὁ Σηστὸν ἀπολέσας καὶ ἕτεροι τοιοῦτοι: καὶ οἱ μὲν αὐτῶν ναῦς αἰτίαν ἔχοντες προδοῦναι, οἱ δὲ πόλεις Ἀθηναίων, ὁ δὲ ῥήτωρ ὧν λέγειν μὴ τὰ ἄριστα τῷ δήμῳ. καὶ οὔτε τούτων πέντε ὄντων οὐδεὶς ὑπέμεινε τὸν ἀγῶνα, ἀλλ’ αὐτοὶ ὄχοντο φεύγοντες ἐκ τῆς πόλεως, οὔτ’ ἄλλοι πολλοὶ τῶν εἰσαγγελλομένων, ἀλλ’ ἦν σπάνιον ἰδεῖν ἀπ’ εἰσαγγελίας τινὰ κρινόμενον ὑπακούσαντα εἰς τὸ δικαστήριον: οὕτως ὑπὲρ μεγάλων ἀδικημάτων καὶ περιφανῶν αἱ εἰσαγγελίαι τότε ἦσαν. νυνὶ δὲ τὸ γινόμενον ἐν τῇ πόλει πάνυ καταγέλαστόν ἐστιν. Διογνίδης μὲν καὶ Ἀντίδωρος ὁ μέτοικος εἰσαγγέλλονται ὡς **πλέονος** μισθοῦντες τὰς ἀλλητριδᾶς ἢ ὁ νόμος κελεύει, Ἀγασικλῆς δ’ ὁ ἐκ Πειραιέως ὅτι εἰς Ἀλιμουσίους ἐνεγράφη, Εὐξένιππος δ’ ὑπὲρ τῶν ἐνουπνίων ὧν φησιν ἐωρακέναί: ὧν οὐδεμία δήπου τῶν αἰτιῶν

³² The five *eisangelia* cases were the following: the case against Timomachos, a general in 361/0, who is charged with treason, embezzlement and with having ordered Kallippos to convey Kallistratos, his relative, from Methone to Thasos on board an Athenian trireme (cf. Dem. 19.180, Aischin. 1.56); the case against Leosthenes a general in 362/1, who is charged with treason (cf. Aischinin. 2.124); Kallistratos, charged with ‘having been bribed to make proposals in the Assembly contrary to the interests of the people’ and acquitted in the Oropos case (Plut. *Dem.* 5) but convicted and sentenced to death in a later case (Lykourg. 1.93); Philon, a *bouleutēs* in 335/4 and most probably a general, but nothing further is known about him (Hansen 1975: no 89); Theotimos who lost Sestos (Hansen 1975: no 94), a general in 361/0 or 360/59. Cf. Whitehead 2000: 172–4.

τούτων οὐδὲν κοινώνει τῷ εἰσαγγελτικῷ νόμῳ.

Well, personally, men of the jury, as I was just saying to those seated nearby, I am amazed that by now *eisangeliai* like this do not sicken you. Previously, those prosecuted in *eisangeliai* were Timomachos and Leosthenes and Kallistratos, and Philon from Anaia and Theotimos who lost Sestos, and others of that sort; some of them accused of betraying ships, others Athenian cities – and one of saying things, as a speaker, not in the best interests of the people. None of these five awaited their trial: they left, fleeing the polis of their own accord. Many others who were facing *eisangelia* did the same; it was a rarity to see a defendant in an *eisangelia* obediently appearing before the jurycourt. Such were *eisangeliai* then: they dealt with major crimes, *causes célèbres*. But what is happening now in the polis is totally ridiculous. It is Diognides and Antidoros the metic who are accused of hiring out pipers for more than the law prescribes; and Agasikles from Piraeus because he was registered as a demesman of Halimous, and Euxenippos on account of the dreams he says he had. Not one of these charges, of course, has anything to do with the *eisangeltikos nomos*. (Hyp. Eux. 1–3.)

Although the force of the comparison between previous and more recent *eisangeliai* is largely rhetorical, it does seem to reflect a real change in the use of the procedure and a certain attitude of the Athenians to it. The present practice in the city is described as absurd, *katagelaston*, which implies that prosecutors do not bring *eisangeliai* on serious charges any more. In particular, the cases mentioned are the *eisangeliai* against Diognides, presumably a citizen and doubtless a pimp but not otherwise known, and Antidoros the metic, not otherwise known, who were both accused of hiring out girl pipers for more than the law prescribed.³³ The *eisangelia* against Agasikles from Piraeus,

³³ According to *Ath. Pol.* 50.2 it fell to the ten *astynomoi* in office each year to see that female pipers (*aulētrides*), harpists (*psaltriaí*), and lyre-players (*kitharistriaí*) were not hired out for more than 2 *drachmas*. The concern was keeping the sex trade within bounds. Hansen 1975: nos 122–3 understands Hypereides as meaning that Diognides and Antidoros were the defendants in separate trials of a comparable

who was accused either of being a citizen falsely enrolled in the wrong deme or an alien usurping the rights of citizenship, had a successful outcome for the defendant and Agasikles was listed as a Halimousian. Even though the charge was a serious one, it would more appropriately have been addressed by a *graphē xenias*, an indication that *eisangelia* superseded the use of other public procedures covering a wide range of offences related to or interpreted under the label of ‘treason’. The lack of seriousness emphasised by Hypereides in this effective rhetorical contrast between past and present *eisangeliai* may also imply the trivialisation of the procedure dealing with charges irrelevant to the law.

Hypereides, when quoting the *eisangeltikos nomos* in §8, draws a contrast between the two sections of the law: its ‘opening provisions’ (τὰ μὲν ἄνω τοῦ νόμου) include everything from ‘if anyone seeks to overthrow the Athenian people’ to ‘if anyone betrays a city or ships or an army or fleet’. For the purposes of the defence strategy all this is ‘applicable to all citizens’. The ‘last part’ of the law (τὸ δὲ τελευταῖον τοῦ νόμου) was ‘or says things, as a *rhētōr* (ρήτωρ ὄν), not in the best interests of the Athenian people and takes money for doing so’; this part was not apparently intended to apply to a man like Euxenippos.³⁴

Another point connected with Hypereides’ argument that Euxenippos was not a *rhētōr*, otherwise this would be common knowledge for all the Athenians, is presented in §22:

εἰ γὰρ ταῦτα ἦν ἀληθῆ ἃ κατηγορεῖς, οὐκ ἂν σὺ μόνος ἦδεις, ἀλλὰ καὶ οἱ ἄλλοι πάντες οἱ ἐν τῇ πόλει: ὥσπερ καὶ περὶ τῶν ἄλλων ὅσοι τι ὑπὲρ ἐκείνων ἢ λέγουσιν ἢ πράττουσιν, οὐ μόνον αὐτοί, ἀλλὰ καὶ οἱ ἄλλοι Ἀθηναῖοι ἴσασι καὶ τὰ παιδία τὰ ἐκ τῶν διδασκαλείων καὶ τῶν ῥητόρων τοὺς παρ’ ἐκείνων μισθαρνοῦντας καὶ τῶν ἄλλων τοὺς ξενίζοντας τοὺς ἐκεῖθεν ἦκοντας καὶ ὑποδεχομένους καὶ εἰς τὰς ὁδοὺς ὑπαντῶντας ὅταν προσίωσι: καὶ οὐδαμοῦ ὄψει οὐδὲ παρ’ ἐνὶ τούτων Εὐξένιππον

kind, and suggests that the offence was perhaps ‘interpreted as an infringement of the law as such, and, accordingly, as an attempt to overthrow the democracy’. For an interpretation of the ridiculous current *eisangeliai*, cf. Whitehead 2000: 177–81.

³⁴ Whitehead 2000: 189.

καταριθμούμενον.

For if these accusations of yours were true, not only you but everyone else in the *polis* would know it. Just as with the others who either speak or act in the Macedonians' interests at all, not only do they themselves know but so does the rest of Athens, even the children coming out of the schools: they know which of the speakers are on their payroll and who else plays host to Macedonian visitors, both entertaining them and going out into the streets to meet them when they arrive. (Hyp. *Eux.* 22.)

Hypereides uses the 'common knowledge' topos referring to children to add plausibility by presenting his allegation as self-evident. To stress further the point that Euxenippos is an *idiōtēs* and not a *rhētōr*, Hypereides presents himself as an experienced prosecutor in *eisangelia* cases and suggests that an *eisangelia* for bribery of public speakers is 'just' only if it involves an orator who makes proposals against the best interests of the people, and this specific clause 'against the best interests of the people' should have been written in the *eisangelia* (Hyp. *Eux.* 28–30). Furthermore, the contrast Hypereides draws stems ultimately from the fact that Philokrates and the others had put their words on record as proposers of the decree. Euxenippos, on the other hand, had merely made, as requested, a verbal report on his experiences at the Amphiaraon.³⁵

The same line of argumentation, that the prosecution against Euxenippos contravenes the law on *eisangelia* since he is not a *rhētōr*, is emphasised towards the end of Hypereides' speech, when he encourages the jurors to save the defendant from an unjust prosecution:

τούτους μὲν οὖν ἴσως οὐ ῥάδιόν ἐστι κωλύσαι ταῦτα πράττειν: ὑμεῖς δέ, ὧ ἄνδρες δικασταί, ὥσπερ καὶ ἄλλους πολλοὺς σεσώκατε τῶν πολιτῶν ἀδίκως εἰς ἀγῶνας καταστάντας, οὕτω καὶ Εὐξενίπῳ βοηθήσατε, καὶ μὴ περιίδητε αὐτὸν ἐπὶ πράγματι οὐδενὸς ἀξίῳ καὶ εἰσαγγελία τοιαύτη, ἧ οὐ μόνον οὐκ ἔνοχός ἐστιν, ἀλλὰ καὶ αὐτὴ παρὰ τοὺς νόμους ἐστὶν εἰσηγγεμένη, καὶ

³⁵ Whitehead 2000: 236.

πρὸς τούτοις ὑπ' αὐτοῦ τοῦ κατηγοροῦ τρόπον τινὰ ἀπολελυμένη.

So: where they are concerned, perhaps it is not easy to stop this behaviour. You though, men of the jury, just as you have saved many other citizens unjustly brought to trial, should help Euxenippos too. Do not desert him over a trivial matter, and in such an *eisangelia*. Not merely is he innocent of it, but the *eisangelia* itself has been couched in defiance of the laws, and besides, it has in a way been destroyed by the prosecutor himself. (Hyp. *Eux.* 38.)

The *eisangelia* as described here is one of the intrinsically 'trivial' ones ridiculed in §3. According to the defence, the framing of the procedure has violated the laws, but obviously according to the prosecutor Euxenippos has spoken publicly and has received bribes (Hyp. *Eux.* 39). Hypereides rhetorically focuses on the fact that those who allegedly bribed Euxenippos are outside the city and it is they who should be punished instead of him; however, he implicitly admits that Euxenippos did take bribes. Thus, the emphasis is mainly placed upon the contrast between an *idiōtēs* and a *rhētōr*, undermining the facts that Euxenippos had received bribes and that he had made an announcement before the Athenian Assembly.

Hypereides emphatically stresses that he has never yet, in his life, prosecuted an *idiōtēs*. On the contrary, he appears to be on their side. In both defences for Lykophron and Euxenippos his line of argumentation was established upon the claim that the defendants were not public persons or speakers but simply private citizens, *idiōtai*. The fact that he repeatedly grounds his defence in these two *eisangeliai* upon such a claim may indicate that the Athenian people and the jurors would be expected to understand and accept the validity of using the procedure for charges such as these against politicians, generals and public officials, but not private citizens, presumably because the vast majority of *eisangeliai* attested and known to us, until the latter half of the fourth century, did involve cases of generals or public officials. Moreover, the emphasis on such a line of argumentation may reflect a transformation in relations between the private citizens and the public speakers and in effect between the demos and the authorities.

Since, however, Euxenippos took on a public duty and also addressed the Assembly, it could be argued that he was covered by the law. Hypereides is applying a rigid distinction between public and private which might not have been universally accepted.

A final case of *eisangelia* initiated by Lykourgos was his prosecution against Menesaichmus for impiety in 325/24 BC, where he successfully convicted the defendant.³⁶ As a whole, it appears that Lykourgos set the example by actively participating himself in prosecutions of various *eisangelia* cases after the defeat at Chaironeia, involving the offences prescribed by the *eisangeltikos nomos* but attributing a complementary definition and interpretation to them.

Conclusion

As has been shown, there is obviously a tendency to extend the scope of the *eisangelia* in the period after Chaironeia for political, constitutional and moral purposes. There was an anxiety to secure the democracy and protect the constitution and the city against any attempt at overthrow or destruction. Prominent political figures of the period, such as Lykourgos and Hypereides, played a significant role either as prosecutors or as *synēgoroi* in a number of *eisangeliai* against politicians or private citizens (*idiōtai*). In the context of the extraordinary legislative measures that were taken immediately after the defeat at Chaironeia, *eisangelia* was initially used against officials who were charged with being responsible for the military destruction and desertion of the city, such as Autolykus and Lysicles, but it was later extended to cover offences that were not explicitly proscribed by the *eisangeltikos nomos*, such as the accusations of *moicheia* against Lykophron and the flight from the city of Athens against Leokrates.

The latter two charges are of special interest concerning the use of *eisangelia* towards the end of the fourth century BC. Both allegations of adultery and flight were exceptionally brought to court by *eisangelia* to be accepted as the basis for a charge of treason by the Athenian Assembly. Lykourgos, who was heavily involved in the prosecution of *eisangeliai* at this point, attempted to persuade the Assembly to accept the specific charges of adultery and flight as treason. It was a matter of interpretation of the scope of the law rather than an issue of legislation extending the range of the process.

³⁶ Hansen 1975: no 126.

Lykourgos' public prestige and influence were used to secure the jurors' approval, appealing to the Athenians' ancestral morality and the political stability of the Athenian constitution.³⁷ It is unlikely that the jury would be willing to agree with the prosecution that exile, execution and prohibition of burial in the city would be appropriate for a seducer (*moichos*), but given that the result of the trial against Lykophron is not known, we can only make assumptions. We do know, however, the result of the prosecution against Leokrates which ended with the acquittal of the defendant, by only one vote.

Lykourgos employs a variety of rhetorical strategies and techniques in order to persuade the jurors that Leokrates' flight from the city of Athens should be seen as treason, though it had not broken a law. He even invites them to act as legislators and set their conviction of the defendant as a precedent for similar cases in the future. As it seems, Athenian public opinion was different from that of Lykourgos, since the jurors only accepted the allegation of cowardice.

Despite the rhetorical efforts of the orators to offer new interpretations of the scope of the *eisangeltikos nomos*, the Athenians probably expected that *eisangelia* should involve serious crimes against the constitution or the safety of the city rather than accusations of minor offences. Hypereides' rhetorical claims about the number of ridiculous accusations in cases of *eisangelia* brought in the same period, such as the hiring of girl pipers for more than the law prescribed and the registration of a metic as a demesman, seem to reflect a real change in the use of the procedure. Moreover, the element of ridicule used to undermine also the accusation against Euxenippos on account of the dreams he said he had reflects a certain attitude of the Athenians to this use of the procedure; they would obviously have agreed that cases of *eisangeliai* should involve only serious offences, even though non-serious allegations had presented a novel approach to the court on the scope of the law of *eisangelia*.

On balance, the attitude of the Athenians toward the *eisangeltikos nomos* was different from the interpretation offered by orators in court and was most probably consistent with the use of the procedure in the fifth and early fourth century BC; as has been shown, it was not always so easy to get through to the majority of the people that a

³⁷ For Lykourgos' vision of reconstructing the civic and political ideals of fifth century Athens, cf. Hanink 2014: 1–22.

wide interpretation of the offences prescribed by the *eisangeltikos nomos* could be enforced to cover any kind of a public figure's misconduct.

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