ΕΙΣΑΓΓΕΛΙΑ IN ATHENS[1]

Εἰσαγγελία, 'impeachment', has regularly had a few pages devoted to it in books on Athenian law or the Athenian constitution. Recently a book has been published on the subject, one of a series on Athenian legal topics by M. H. Hansen:[2] in it he assembles the evidence for 144 certain, probable or possible instances of *εἰσαγγελία* between 500 and 323 B.C., and his analysis leads him to disagree with much that has been said hitherto. However, I am not persuaded that all his own conclusions are correct.

One note of warning should be sounded at the beginning. *εἰσαγγέλλειν*, like *γράφεσθαι*, *φαίνειν*, *ἐνδεικνύναι* and other verbs used of initiating legal proceedings, is a word within whose normal range of meaning one or more technical senses developed. The existence of a technical sense did not, of course, put an end to the non-technical use of the word, and we must always be alert to the possibility that even in a legal context a word may have been used not in its technical legal sense, or that in part or all of the period with which we are concerned a set of technical terms, each with its own distinct meaning, may not have fully crystallised: for instance, unless the word is corrupt, Lys. x 1 uses *εἰσήγγελλε* of a prosecution which was not an *εἰσαγγελία* in any technical sense of the word (Gernet and Bizos therefore emend to *ἐπήγγελλε*); within a single speech, Isae. xi, a charge of maltreating an orphan is referred to both as an *εἰσαγγελία* (§§6, 15) and as a *γραφή* (§§28, 31, 32, 35). E. Ruschenbusch has argued that *εἰσαγγέλλειν* was the original term for any verbal denunciation to the authorities, and tended to survive for all charges older than the rule that denunciations must be submitted in writing:[3] if he is right, this will help to explain the odd assortment of cases for which *εἰσαγγελία* became the distinctive technical term.[4] We must be as precise as we can when we set out to analyse Athenian legal procedure; but we must beware of producing an analysis which is more precise and tidy than the procedure analysed.[5]

I. Solonian Justice

Hansen challenges two accepted doctrines about Solon's machinery of justice: that it provided for *εἰσαγγελίαι* to the Areopagus for major offences against the state (which must therefore at a later date have been transferred from the Areopagus to more democratic bodies); and that the *ἡλιαία*,[6] to which appeals were allowed against the decisions of an individual magistrate, was an assembly of the citizen body meeting for judicial purposes (so that in early Athens cases which are said to have been decided by the *δῆμος* may be cases which had been referred to the *heliaea* in that way).

εἰσαγγελίαι to the Areopagus rest on *Ath. Pol.* 8.4: the Areopagus *τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν, Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν*. Hansen, 17–19, *cf.* 56–7, believes that this statement is evidence only for fourth-century controversy about Solon: he grants that the Areopagus may in fact have tried political offenders in archaic Athens, but he

[1] I should like to thank Dr D. M. Lewis and Prof. D. M. MacDowell for reading and commenting on a draft of this paper.

[2] *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians* (Odense U. Class. Stud. vi: Odense 1975). I cite by author's name this book and also the following: R. J. Bonner & G. Smith, *The Administration of Justice from Homer to Aristotle*, i (Chicago 1930); A. R. W. Harrison, *The Law of Athens*, ii (Oxford 1971); C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford 1952); J. H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig 1905–15); P. J. Rhodes, *The Athenian Boule* (Oxford 1972).

[3] *Untersuchungen zur Geschichte des athenischen Strafrechts* (Graezistische Abhandlungen iv: Cologne & Graz 1968) 73–4.

[4] One technical use of *εἰσαγγέλλειν* was for accusations against the *διαιτηταί* (*Ath. Pol.* 53.6; Harp., Suid. [*EI* 222] *εἰσαγγελία*, quoted p. 106 below): the *διαιτηταί* were not instituted until 399 (D. M. MacDowell, *RIDA*[3] xviii [1971] 269–73); but it was not until later in the fourth century, perhaps about the 370s, that written denunciations were required (G. M. Calhoun, *TAPA* l [1919] 177–93, arguing for 378/7).

[5] Hansen shows more awareness of this danger in his *Apagoge, Endeixis and Ephegesis* . . . (Odense U. Class. Stud. viii: Odense 1976) 28, 47, than in his *Eisangelia*.

[6] For the smooth breathing see H. T. Wade-Gery, *BSA* xxxvii (1936/7) 265 n. 3 = *Essays in Greek History* (Oxford 1968) 173 n. 4, Dover on Ar. *Nub.* 863, MacDowell on Ar. *Vesp.* 195. But the aspirate is normal in modern works, and I retain it when I transliterate.

guesses that εἰσαγγελία was introduced by Cleisthenes and from the beginning was a denunciation not to the Areopagus but to the *ecclesia*. That later Athenians did or did not have access to the laws of Solon tends to be an article of faith among historians; here I can only reiterate my belief that they did have access to his laws, and that whereas the orators might ascribe to Solon any law of which they approved *Ath. Pol.*'s claim to report the laws of Solon should be taken seriously.[7] The sceptical Hignett was impressed by the amnesty law quoted by Plut. *Sol.* 19.4 (where ὅσοι ἐξ Ἀρείου πάγου . . . ἐπὶ τυραννίδι ἔφευγον are among those excluded from Solon's amnesty), and did not rule out the possibility that a law of Solon regulated the already-existing procedure of εἰσαγγελία.[8] *Ath. Pol.*'s formulation of the law may well be anachronistic—κατάλυσις τοῦ δήμου would be more at home in the late fifth and fourth centuries than in the early sixth, and Solon's law is more likely to have used the language of the law cited in *Ath. Pol.* 16.10 (ἐάν τινες ἐπανιστῶνται ἐπὶ τυραννίδι[9])—but the danger of tyranny in the time of Solon was real enough, and there is no reason why *Ath. Pol.*'s statement should not be substantially correct. Whether the terms εἰσαγγελία and εἰσαγγέλλειν were used in Solon's laws of this kind of prosecution, and whether (as Ruschenbach suggests) they were used also of other kinds of prosecution, are less important questions.

No ancient text states that the *heliaea* was a judicial session of the whole assembly. *Ath. Pol.* 9.1 and Plut. *Sol.* 18.2–3 do not use the word ἡλιαία at all, but refer to ἡ εἰς τὸ δικαστήριον ἔφεσις; the word ἡλιαία is found in laws quoted by Lys. x 16, Dem. xxiv 105. However, it is most unlikely that there was a plurality of jury courts as early as the time of Solon, and words cognate with ἡλιαία in other dialects denote the assembly,[10] so it is normally assumed that Solon's *heliaea* was the assembly.[11] Against this Hansen, 51–2, cites Arist. *Pol.* ii 1273 b 41–1274 a 5:

> . . . τὰ δὲ δικαστήρια δημοτικόν. ἔοικε δὲ Σόλων ἐκεῖνα μὲν ὑπάρχοντα πρότερον οὐ καταλῦσαι, τήν τε βουλὴν καὶ τὴν τῶν ἀρχῶν αἵρεσιν, τὸν δὲ δῆμον καταστῆσαι, τὰ δικαστήρια ποιήσας ἐκ πάντων. διὸ καὶ μέμφονταί τινες αὐτῷ· λῦσαι γὰρ θάτερα, κύριον ποιήσαντα τὸ δικαστήριον πάντων, κληρωτὸν ὄν.

Aristotle then proceeds to show how the full democracy was built on Solon's foundations, but insists that this development did not correspond to Solon's intentions (1274 a 5–21). Here we clearly have what Hansen assumes in the case of the Areopagus and εἰσαγγελία—evidence for fourth-century controversy about Solon and the extent to which he was responsible for the classical form of the Athenian democracy. The democracy as known to Aristotle and to the τινες whose view he rejects did include a plurality of δικαστήρια, manned by jurors taken from the whole citizen body (or rather, from those citizens aged over thirty and not disqualified who had been registered as jurors: cf. *Ath. Pol.* 63.3) and assigned by lot to a particular court on a particular occasion (*Ath. Pol.* 63–6): Aristotle rejects the general claim that Solon intended to make the law-courts all-powerful; he does not say whether he agrees that Solon's δικαστήριον was κληρωτόν, but his silence on this point does not necessarily imply that he agrees. In this passage he and the men whose view he discusses have one eye on the past and one eye on the present, and it would be very hazardous to see in it a proof that 'the Solonian court of appeal was manned by sworn jurors chosen by lot'. Hansen rejects *Ath. Pol.* 8.4 on εἰσαγγελία but accepts this passage on the *heliaea*; but *Ath. Pol.* 8.4 is far more explicit, and, I believe, far more likely to be correct as a statement about Solon's machinery of justice.

The Areopagus tried charges of major offences against the state before the time of Solon, and was confirmed in its right to do so by Solon's law on εἰσαγγελία. In the late fifth and fourth centuries εἰσαγγελίαι were not tried by the Areopagus, so its right to try them must have been taken away at some time subsequent to Solon's reforms: Ephialtes is known to have weakened the Areopagus by taking from it important judicial powers (*Ath. Pol.* 25.1–2, Plut. *Cim.* 15.2–3, *Per.* 9.5), and this is the most likely occasion for the change.[12] However, we hear of six trials between

[7] For the arguments see Ruschenbusch, *Σόλωνος νόμοι* (*Historia* Einzels. ix 1966) 1–14, A. Andrewes, *Φόρος: Tribute to B. D. Meritt* (Locust Valley 1974) 21–8.

[8] Hignett 90.

[9] Comparison with the law of 337/6 (*SEG* xii 87.7) suggests that we should delete τυραννεῖν rather than ἐπὶ τυραννίδι from the papyrus' text: *cf.* N. Ç. Conomis, Ἑλληνικά xvi (1958–9) 10 n. 3, Hansen, *Apagoge, Endeixis and Ephegesis* (n. 5) 77 n. 17.

[10] E.g. Hdt. i 125.2, v 29.2, 79.2, vii 134.2; *SIG*[3] 56 (=ML 42 B). 44, 594.2, 715.1.

[11] E.g. Wade-Gery, *op. cit.* (n. 6) 265=173–4; Hignett 97, 216.

[12] E.g. Rhodes 204–5.

500 and Ephialtes' attack on the Areopagus which our sources place in a δικαστήριον or before the δῆμος.[13] About 492 Phrynichus was fined 1,000 drachmae for his *Μιλήτου ἅλωσις* by *Ἀθηναῖοι* (Hdt. vi 21.2); and Militiades was brought ὑπὸ δικαστήριον and prosecuted (unsuccessfully) on a charge of tyranny in the Chersonese (Hdt. vi 104.2). After his failure to capture Paros Militiades was prosecuted ὑπὸ τὸν δῆμον by Xanthippus on a charge of ἀπάτη, and fined 50 talents (Hdt. vi 136). During or after the war against Xerxes, Hipparchus did not appear ἐν τῷ δήμῳ to answer a charge of προδοσία, and in his absence was condemned to death (Lyc. *Leocr.* 117). Themistocles after his ostracism was found guilty of medism by *Ἀθηναῖοι* (*cf.* Thuc. i 135.2–3): of two texts quoting from Craterus the name of the prosecutor, *Lex. Rhet. Cant.* εἰσαγγελία (= Crat. 342 F 11a) refers to the prosecution as an εἰσαγγελία, Plut. *Them.* 23.1 (=F 11b) uses the phrase γραψάμενος αὐτοῦ προδοσίας. In the story of Themistocles and Ephialtes in *Ath. Pol.* 25.3–4 Themistocles is about to be tried by the Areopagus for medism, and pretends that he will denounce to the Areopagus men conspiring to overthrow the constitution (the only other text to mention the story, the *hypothesis* to Is. vii, cites *Ath. Pol.* but supposes that both men were in debt to the state). Cimon on returning from the siege of Thasos was charged with taking bribes not to attack Macedon, and acquitted: *Ath. Pol.* 27.1 says that Pericles κατηγόρησε τὰς εὐθύνας *Κίμωνος* στρατηγοῦντος; while Plutarch makes Pericles one of the prosecutors ὑπὸ τοῦ δήμου προβεβλημένος, and writes of a δίκη and of δικασταί (*Per.* 10.6, *Cim.* 14.3, 15.1). As Hansen acknowledges (9), different procedures, sometimes leading to different penalties, were available against men accused of the same offence: the major offences against the state which were the subject of εἰσαγγελίαι might also be the subject of γραφαὶ δώρων (*Ath. Pol.* 59.3) or καταλύσεως τοῦ δήμου (*cf.* law *ap.* [Dem.] xlvi 26) or προδοσίας (Poll. viii 40); or if the accused was a public official the charge might arise in the course of his εὔθυναι (cf. *Ath. Pol.* 48. 4–5). Hansen regards the first trial of Militiades as a possible instance of εἰσαγγελία referred by the *ecclesia* to a court; the second trial of Militiades, the trial of Hipparchus and the trial of Themistocles as εἰσαγγελίαι to the *ecclesia*; and the trial of Cimon as 'presumably' an εἰσαγγελία arising out of εὔθυναι, referred by the *ecclesia* to a court.[14] Many have believed that at any rate the two trials of Militiades and that of Hipparchus were εἰσαγγελίαι heard by the *ecclesia*, and that before the 490s the law on εἰσαγγελία must have been modified in order to allow this;[15] but if under Solon's dispensation and still in the early fifth century the *heliaea* was a judicial session of the assembly, cases heard by τὸ δικαστήριον or ὁ δῆμος may have been cases which had gone on appeal from one of the archons to the *heliaea*. This could have happened in the cases of Phrynichus and Militiades; if Hipparchus' offence was that he failed to return from ostracism when summoned,[16] he may have been condemned by some *ad hoc* procedure; and I have suggested that Themistocles was condemned (on an εἰσαγγελία) and Cimon was acquitted (in his εὔθυναι) by the Areopagus, and that these two verdicts helped to provoke Ephialtes' attack on the Areopagus. Any account of these trials must be speculative: our information on judicial procedure before the late fifth century is scanty; three of the trials are mentioned briefly by Herodotus, who was more interested in the prosecutions and the results than in the procedure; the other three are reported by writers more remote from the events; the trial of Themistocles is the only one in connection with which the term εἰσαγγελία is found—and for that another text uses γράφεσθαι, and our only unambiguous indication of the body which tried the case is the almost certainly false story told by *Ath. Pol.*

That Solon instituted or confirmed the procedure of εἰσαγγελία to the Areopagus, and that εἰσαγγελία to the Areopagus remained possible until Ephialtes' reform, need not be doubted. In the early fifth century charges to which the procedure of εἰσαγγελία was appropriate could be heard by the δῆμος (whether as *ecclesia* or as *heliaea*): either the *ecclesia* had by then been made an alternative recipient of εἰσαγγελίαι or (as I believe) the Areopagus remained the sole recipient of εἰσαγγελίαι but charges of major public offences could be laid before one of the archons and referred to the *heliaea*; if at this time the *boule* was not yet divided into prytanies,[17] and the archons

[13] *Cf.* Rhodes 199–201; Hansen does not discuss the trial of Phrynichus; he discusses the others on p. 19 and as cases 1–5 in his catalogue (69–71).

[14] On εὔθυναι leading to an eisangeltic form of trial *cf.* below p. 110.

[15] E.g. Hignett 154–5.

[16] E.g. Wilamowitz, *Aristoteles und Athen* (Berlin 1893) i 114–15.

[17] *Cf.* Rhodes 17–19.

presided in the *boule* and *ecclesia*,[18] the practical differences between these two explanations will not have been great.

II. Categories of *ΕΙΣΑΓΓΕΛΙΑ*

Hansen bases his analysis on Harp. (=Suid. *EI* 222) *εἰσαγγελία:*

δημοσίας τινὸς δίκης ὄνομά ἐστι, τρία δ' ἐστὶν εἴδη εἰσαγγελιῶν.

(a) ἡ μὲν γὰρ ἐπὶ δημοσίοις ἀδικήμασι μεγίστοις καὶ ἀναβολὴν μὴ ἐπιδεχομένοις, καὶ ἐφ' οἷς μήτε ἀρχὴ καθέστηκε μήτε νόμοι κεῖνται τοῖς ἄρχουσι καθ' οὓς εἰσάξουσιν, ἀλλὰ πρὸς τὴν βουλὴν ἢ τὸν δῆμον ἡ πρώτη κατάστασις γίνεται, καὶ ἐφ' οἷς τῷ μὲν φεύγοντι, ἐὰν ἁλῷ, μέγισται ζημίαι ἐπίκεινται, ὁ δὲ διώκων, ἐὰν μὴ ἕλῃ, οὐδὲν ζημιοῦται, πλὴν ἐὰν τὸ ε′ μέρος τῶν ψήφων μὴ μεταλάβῃ· τότε γὰρ χιλίας ἐκτίνει· τὸ δὲ παλαιὸν καὶ οὗτοι μειζόνως ἐκολάζοντο.

(b) ἑτέρα δὲ εἰσαγγελία λέγεται ἐπὶ ταῖς κακώσεσιν· αὗται δ' εἰσὶ πρὸς τὸν ἄρχοντα, καὶ τῷ διώκοντι ἀζήμιοι, κἂν μὴ μεταλάβῃ τὸ ε′ μέρος τῶν ψήφων.

(c) ἄλλη δὲ εἰσαγγελία ἐστὶ κατὰ τῶν διαιτητῶν· εἰ γάρ τις ὑπὸ διαιτητοῦ ἀδικηθείη, ἐξῆν τοῦτον εἰσαγγέλλειν πρὸς τοὺς δικαστάς, καὶ ἁλοὺς ἠτιμοῦτο. Ἰσαῖος μέντοι περὶ τοῦ Ἀγνίου κλήρου τὸ αὐτὸ πρᾶγμα εἰσαγγελίαν καὶ γραφὴν ὠνόμασεν.[19]

Hansen, 21–8, claims that Harpocration divides his first category into *εἰσαγγελία* to the *boule* and *εἰσαγγελία* to the *ecclesia*, and proceeds to distinguish between these subdivisions, as (i) *εἰσαγγελία* to the *boule* against magistrates or against private citizens with public duties to perform,[20] either on charges of major public offences covered by the *νόμος εἰσαγγελτικός*[21] or on charges connected with their public duties, and (ii) *εἰσαγγελία* to the *ecclesia*, against any citizens, on charges of major public offences covered by the *νόμος εἰσαγγελτικός*. However, it is not clear to me that Harpocration does make the distinction on which Hansen relies: in his first category he refers only to major public offences, and *πρὸς τὴν βουλὴν ἢ πρὸς τὸν δῆμον ἡ πρώτη κατάστασις γίνεται* need not have the disjunctive force which Hansen sees in it but may mean simply that an *εἰσαγγελία* of this first category might receive its first airing either in the *boule* or in the *ecclesia* —and if this interpretation is right Harpocration has said nothing of Hansen's *εἰσαγγελία* to the *boule*.

In *Ath. Pol.* 45.2 we read:

κρίνει δὲ τὰς ἀρχὰς ἡ βουλὴ τὰς πλείστας, καὶ μάλισθ' ὅσαι χρήματα διαχειρίζουσιν· οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἣν ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις· ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον ἐὰν αὐτῶν ἡ βουλὴ καταγνῷ.

This paragraph is concerned not with major public offences but with offences with regard to their duties committed by magistrates. Hansen starts by distinguishing two procedures, remarking that 'the Athenians took much more interest in procedural than in substantive law' (21), and concludes that for major public offences committed by magistrates either procedure was available. But although the laws of Athens were organised according to the authorities responsible for implementing them,[22] the standard form for a law dealing with an offence and the procedure available against offenders seems to have been:

ἐάν τις (ἀδίκημά τι ἀδικῇ), τούτων εἶναι γραφὰς πρὸς τοὺς θεσμοθέτας, or *εἰσαγγελίαν εἰς τὴν βουλήν* or other form of procedure.[23]

It will be more profitable if we, like the laws, begin with the offence: major public offences are

[18] E.g. Hignett 74, 92, 98–9, 150–1.

[19] For Isae. xi *cf.* above p. 103.

[20] I agree with Hansen on this extension of the concept of magistrate (*cf.* M. Piérart, *Ant. Class.* xl [1971] 550–1, Rhodes 147); so as not to clutter the argument, I shall write simply of magistrates.

[21] *Cf.* below pp. 107–8.

[22] *Cf.* below, n. 27.

[23] I cite as a few of the most straightforward examples [Dem.] xliii 71, xlvi 26; ML 46.31–41 *cf.* 41–3, *IG* ii^2 1631.385–401. The *νόμος εἰσαγγελτικός* as quoted by Hyp. iv 7–8 begins *ἐάν τις . . .* (Hansen, following the enumeration of the Teubner text, cites this speech as iii).

Harpocration's first category, and we may examine the procedures appropriate to that; misconduct by magistrates is better regarded as a separate category, to be added to Harpocration's three, than as a subdivision of his first category,[24] and we should study separately the procedures appropriate to this. Confusion could of course arise, because some offences committed by magistrates might be represented either as major acts of disloyalty to the state or as misconduct in office, but if prosecutors were required to state on which law or section of the law they based their prosecution[25] it should in principle be possible to maintain this distinction.

Hansen, 14–15, cites Timocrates' *habeas corpus* law, which provides that men who have been imprisoned *κατ' εἰσαγγελίαν ἐκ τῆς βουλῆς* and whose *κατάγνωσις* has not been reported to the *thesmothetae κατὰ τὸν εἰσαγγελτικὸν νόμον* are nevertheless to be brought before a *δικαστήριον* by the Eleven within thirty days (Dem. xxiv 63): he argues from the use of the word *κατάγνωσις* that this must refer to his subdivision of *εἰσαγγελία* to the *boule*,[26] and from the reference to the *εἰσαγγελτικὸς νόμος* that that law must have dealt with this subdivision as well as with *εἰσαγγελίαι* to the *ecclesia* for major public offences. I readily grant that, since the *boule* was involved in the trying of *εἰσαγγελίαι* both for major public offences and for offences committed by magistrates, a single *νόμος εἰσαγγελτικός* among the *νόμοι βουλευτικοί*[27] may have dealt with both; but at this stage in the discussion I should prefer to say simply that Timocrates' law concerned *εἰσαγγελίαι* which the *boule* had resolved to refer to a court.

In the fourth century there was a consolidated *νόμος εἰσαγγελτικός* which (among other things) specified the major public offences to which the procedure of *εἰσαγγελία* was appropriate.[28] Extracts from this law are quoted by Hyp. iv 7–8, 29, 39, listing offences which may be summarised under the three heads of attempting to overthrow the democracy, treason, and being a *ῥήτωρ* and taking bribes to speak otherwise than in the best interests of Athens; *Lex. Rhet. Cant. εἰσαγγελία*[29] and Poll. viii 51–2, from Theophrastus, enable us to amplify the definition of treason;[30] from [Dem.] xlix 67 we may add (either to the definition of the third kind of offence or as a fourth kind) deceiving the people by false promises. Some scholars have tried to make further additions on the basis of known *εἰσαγγελίαι*:[31] they may be right, as we cannot be sure that the list of offences which we can reconstruct from quotations of the law is complete. Certainly if there is any substance in Hyperides' complaint that *εἰσαγγελία* had come to be used as a means of dealing with petty crime it is hard to believe that this procedure was available only against the offences listed in our quotations of the law. The lexicographers claim that *εἰσαγγελία* was available *ἐπὶ τῶν ἀγράφων δημοσίων ἀδικημάτων* (Poll. viii 51), *ἐφ' οἷς μήτε ἀρχὴ καθέστηκε μήτε νόμοι κεῖνται τοῖς ἄρχουσιν καθ' οὓς εἰσάξουσιν* (Harp. *εἰσαγγελία*):[32] according to *Lex. Rhet. Cant.* this was the view of Caecilius, whereas Theophrastus enumerated the offences which we have considered above. I have argued for the acceptance of this;[33] but more commonly it has been accepted only for the period before the compilation of the *νόμος εἰσαγγελτικός*[34] or rejected altogether,[35] and Hansen, 19–20, joins those who wholly reject it. Certainly Hansen's arguments are insufficient: the fact that Hyperides does not quote this clause in iv, and that surviving speeches by prosecutors in *εἰσαγγελίαι* do not quote this as the clause on which they rely, does not guarantee that no such clause existed, since Hyperides is arguing that *εἰσαγγελία* is appropriate only to major offences against the state and not to the prosecution of his client, and we should expect a prosecutor to subsume his case under one of the specific clauses whenever he could do so (it would be easier to argue for the defendant's guilt by citing a law which he was alleged to have broken than by

[24] *Cf.* Rhodes 169–71, where I was unnecessarily reluctant to recognise the use of *εἰσαγγελία* for charges of this kind as a technical use of the word.

[25] *Cf.* Hansen 20.

[26] *Cf.* below p. 111 with n. 73, p. 112.

[27] For the organisation of Athens' laws see the law *ap.* Dem. xxiv 20, where the four categories are *βουλευτικοί, κοινοί, τοῖς ἐννέα ἄρχουσιν, τῶν ἄλλων ἀρχῶν*. If, as I suspect, the organisation of the second part of *Ath. Pol.* is based on the organisation of the laws, that will confirm that laws concerning the *ecclesia* were among the *βουλευτικοί*.

[28] *Cf.* Rhodes 162–4, Hansen 12–20.

[29] Most accessible as Philochorus, 328 F 199.

[30] In Rhodes 163, clause iv should be grouped with clause ii.

[31] Notably H. Hager, *JPh* iv (1872) 74–112, T. Thalheim, *Hermes* xxxvii (1902) 339–52.

[32] Cf. *Lex. Rhet. Cant. εἰσαγγελία*, schol. Plat. *Rep.* viii 565 c, *Lex. Seg.* 244.14 Bekker, Zon. *εἰσαγγελία*, Suid. *εἰσαγγελία EI* 221): texts assembled by Hansen 16 n.15.

[33] Rhodes 162–4, *cf.* Bonner and Smith 294–5.

[34] E.g. Lipsius 194 n. 53.

[35] E.g. Harrison 54–5.

admitting that what the defendant had done was not contrary to the existing law).[36] It is wrong to say that Caecilius conflicts with Hyperides: it appears from *Lex. Rhet. Cant.* that Caecilius conflicts with Theophrastus, but the views of both on εἰσαγγελία are known only from the lexica, and we cannot be sure that they did directly conflict. Caecilius may have been mistaken, but he should have had some foundation for his view: either his clause was a part of the law (and I am not yet persuaded that it was not), or else the forms of disloyalty to the state which were specified in the law came to be interpreted so generously that he was led to infer from the εἰσαγγελίαι known to him that there must also have been a more general clause.[37]

In the section that follows I shall be concerned largely with εἰσαγγελίαι for major public offences, and to some extent with εἰσαγγελίαι for offences committed by magistrates, but not at all with Harpocration's second and third categories, εἰσαγγελίαι for maltreatment and against arbitrators.

III. Procedure in *ΕΙΣΑΓΓΕΛΙΑΙ*

Our evidence for εἰσαγγελίαι in cases of major public offences is most informative about the body before which the final hearing took place.[38] In some cases (according to Hansen, only εἰσαγγελίαι against magistrates[39]) the *boule* could impose fines of up to 500 drachmae;[40] otherwise the final trial might be held either in the *ecclesia* or in a δικαστήριον: to give three clear examples, in 404 the men denounced by Agoratus would have been tried by a δικαστήριον had not the Thirty come to power and redirected the case to the *boule*;[41] in 373/2 Timotheus and Antimachus were tried by the *ecclesia*;[42] in 343 Philocrates was condemned by a δικαστήριον.[43] From 403 until the trials of Callisthenes and Ergophilus in 362[44] we know of more εἰσαγγελίαι tried by the *ecclesia* than tried by a δικαστήριον, but thereafter we know of none tried by the *ecclesia*: Hansen, 51–7, accepts the suggestion that shortly after 362 the νόμος εἰσαγγελτικός was amended to deprive the *ecclesia* of the right to hold the final trial (partly, perhaps, because a court session cost less than a meeting of the *ecclesia*),[45] and I have no wish to quarrel with that.

We have comparatively little information on the procedure by which an εἰσαγγελία came to its final hearing. On the beginning of a case, I have argued that the first accusation might be presented either to the *boule* or to the *ecclesia*;[46] Hansen, 21–8, distinguishing between εἰσαγγελίαι to the *ecclesia* for major public offences and εἰσαγγελίαι to the *boule* against magistrates, claims that εἰσαγγελίαι for major public offences were normally first presented to the *ecclesia* and only exceptionally to the *boule*.

There was a rule that the *ecclesia* could not decree anything without a προβούλευμα (*Ath. Pol.* 45.4); but how far it was possible to give a matter its first airing in the *ecclesia* (after which it would have to be referred to the *boule* before the *ecclesia* could reach a decision on it) is disputed:[47] as with

[36] Prosecutors might indeed go to great lengths to bring their charge within the scope of the specific clauses of the law. Lycophron in 333 was accused of attempting to overthrow the democracy by breaking the law of the democracy which forbade adultery with an Athenian woman: Hyp. i 12–15 (Hansen's case 119; Hansen, following the Teubner text, cites this speech as ii). But this stretching of the law does not show that there cannot have been an open clause: here as in iv Hyperides argues not that there is no law relevant to the misdeed of which the defendant is accused but that there is a law which prescribes a procedure other than εἰσαγγελία.

[37] *Cf.* Harrison *loc. cit.*

[38] Hansen assembles and discusses the evidence in his catalogue of εἰσαγγελίαι, pp. 69–120. I shall give the number of each case in his catalogue, and cite only the evidence most relevant to this discussion.

[39] *Cf.* below p. 111.

[40] E.g. case 144: [Dem.] xlvii 42–3. Obviously a fine of 500 drachmae would not be a sufficient penalty for a man fully guilty of a major public offence, and I do not believe it was intended that the *boule* should impose penalties within its competence on such men: *cf.* below p. 113.

[41] Case 67: Lys. xiii 35.

[42] Cases 80–1: [Dem.] xlix 9–10.

[43] Case 109: Hyp. iv. 29, *Hesp.* v (1936) 393–413, no. 10, ll. 47–50, 111–15.

[44] Cases 85–6: Aesch. ii 30 with Arist. *Rhet.* ii 1380 b 10–13. The inference from δῆμος in Aeschines is less than certain.

[45] *Cf.* Lipsius 188–92.

[46] *Cf.* above p. 106, and Rhodes 164–71.

[47] See in general Rhodes 52–81; R. A. de Laix, *Probouleusis at Athens* (U. of California Publications in History lxxxiii: 1973) 3–142; Rhodes, *JHS* xciv (1974) 232–3 (reviewing de Laix). There were similar provisions for the presentation of προβολαί and ἱκετηρίαι (*Ath. Pol.* 43.5–6), and in the case of προβολαί the limitation of numbers may be thought to favour prior notice.

εἰσαγγελίαι, we are not often told how a matter which came to be debated in the *ecclesia* was first raised as a subject for debate. The agenda of the κυρία ἐκκλησία in each prytany included τὰς εἰσαγγελίας ἐν ταύτῃ τῇ ἡμέρᾳ τοὺς βουλομένους ποιεῖσθαι (*Ath. Pol.* 43.4), and it may be that the προβούλευμα did not need to be more specific than an invitation to those who wished to present εἰσαγγελίαι, and that εἰσαγγελίαι could thus be presented at a κυρία ἐκκλησία without prior notice to the *boule*.[48] Even if this is correct, however, it does not prove that εἰσαγγελίαι were always or usually presented to the *ecclesia* without prior notice to the *boule*.

Hansen, 25, claims that there are four indisputable examples of εἰσαγγελίαι initiated in the *ecclesia*; but unfortunately none of the four is straightforward. The first accusation against Alcibiades in 415, by Pythonicus, was made at an ἐκκλησία τοῖς στρατηγοῖς τοῖς εἰς Σικελίαν,[49] presumably in the course of a debate on the Sicilian expedition rather than on an occasion when εἰσαγγελίαι were invited. On the events leading to the trial of the generals after the battle of Arginusae Xenophon and Diodorus notoriously disagree,[50] but neither Xenophon's abrupt οἱ δ' ἐν οἴκῳ τούτους μὲν τοὺς στρατηγοὺς ἔπαυσαν nor Diodorus' account of the letter sent by the generals to the δῆμος (which should first have been taken to the prytany and considered by the *boule*: cf. *Ath. Pol.* 43.6) establishes that the machinery was set in motion through the regular business of a κυρία ἐκκλησία, whether by a hostile vote in the ἐπιχειροτονία τῶν ἀρχῶν[51] or by a formal εἰσαγγελία: I should guess that the news of the battle and its aftermath, together with the letter from the generals, led the *boule* to convene a special meeting of the *ecclesia* to consider what action should be taken; then, as we read in Xenophon, the *ecclesia* deposed the generals; and after the return of the generals and the prosecution on another charge of one of them they reported to the *boule* and the *boule* decided to place them under arrest.[52] Again, in the case of the men who took part in an attack on Eretria, perhaps in 357, it is clear that the *ecclesia* called on the *boule* to produce a προβούλευμα but it is not clear how the question came to be raised in the *ecclesia*, and a debate on Eretria is perhaps as likely as a formal εἰσαγγελία.[53] Finally there is the prosecution of Lycophron, in 333:[54] Hyperides' speech was delivered at the final hearing, in a δικαστήριον; in this context ἐν τῷ δήμῳ τὸ πρῶτον αὐτοὶ εὐθὺς ἠτιάσαντο confirms that the hearing in court was preceded by a debate in the *ecclesia* but is not sufficient to prove that the matter was raised in the *ecclesia* without having previously been raised in the *boule*. These four cases do not prove that it was normal to initiate an εἰσαγγελία at a κυρία ἐκκλησία without previously submitting it to the *boule*.

There are two instances of εἰσαγγελίαι first raised in the *boule*, which Hansen, 26, is able to explain as exceptional: Thessalus' prosecution of Alcibiades in 415[55] (and the other accusations lodged in 415[56]); and the prosecutions involving Agoratus in 404.[57] Some of the prosecutions of 415, and those of 404, he points out, depended on information from slaves and metics, who could not address the *ecclesia* without permission from the *boule*; and in 415 the *boule* was made αὐτοκράτωρ to handle the investigations (And. i 15). I am not sure that the first argument is cogent, since in response to Pythonicus at the ἐκκλησία τοῖς στρατηγοῖς the *prytanes* decided on the spot to exclude the uninitiated and introduce Andromachus (§§11–14); the second is hard to assess, since we are not told, and it may not have been stated, from what restrictions the *boule* was freed when it was made αὐτοκράτωρ.[58] If it is right to make the distinction between charges primary, four further cases may be relevant here which concern major public offences but are classified by Hansen as εἰσαγγελίαι to the *boule* against magistrates: the prosecution of Antiphon and others for προδοσία in 411/0 (under the intermediate régime, not the democracy);[59] the

[48] E.g. Rhodes 55–6, Hansen 25; de Laix, *op. cit.* 178, does not discuss this question.

[49] Case 11: And. i 11–13.

[50] See P. Cloché, *Rev. Hist.* cxxx (1919) 5–68, A. Andrewes, *Phoenix* xxviii (1974) 112–22.

[51] *Cf.* below p. 110.

[52] Case 66: Xen. *Hell.* i 7.1–3, D.S. xiii 101.1–5. It is not clear at what point the attack on the generals came to be regarded as an εἰσαγγελία: on deposition and εἰσαγγελία see below p. 110; on the sequel to these events see below p. 111.

[53] Case 99: Tod 154. If this were a formal εἰσαγγελία from the beginning we might expect the accused to be named in the decree.

[54] Case 119: Hyp. i 3.

[55] Case 12: Is. xvi 7.

[56] Cases 13–61: And. i 15–17, 34–45. 61–8. I am not sure that the involvement of the *ecclesia* is proved by the use of δῆμος and οἱ Ἀθηναῖοι in Thuc. vi 60. 1, iv 61.7, and of ὑμεῖς in And. i 37, 66 (*cf.* below p. 111).

[57] Case 67, *cf.* Rhodes 164–6: Lys. xiii 19–33.

[58] *Cf.* Rhodes 186–8.

[59] Cases 135–7: decree *ap.* [Plut.] *X.Or.* 833 e–f.

prosecution of Cleophon in 404,[60] probably for treason and not simply for desertion;[61] Aristophon's prosecution of trierarchs in 361, for treason and desertion;[62] and perhaps the prosecution of Theophemus in 357/6.[63] The first three cases were, and the fourth could have been, referred directly to a δικαστήριον by the *boule*; but none of them is a certain instance of regular eisangeltic procedure for a major public offence. Finally there are two cases which Hansen regards (neither with certainty) as εἰσαγγελίαι to the *boule* against magistrates, initiated in the *ecclesia* and referred by it to the *boule*. One is a charge of bribery in connection with a decree honouring one of the men who killed Phrynichus in 411:[64] this clearly arose in the course of a debate on the rewards for the killers; since Phrynichus was judged posthumously to be guilty of treason, cases which arose in connection with his murder may themselves have been treated as if they concerned major public offences. The other is the prosecution of Timarchus in 361/0, for embezzlement and prostitution:[65] this again may have arisen in the course of a debate rather than when εἰσαγγελίαι were invited; here the charge was presumably not a major public offence but μὴ χρῆσθαι τοῖς νόμοις.

It should be noted that there are some cases where eisangeltic procedure was followed but the man who first gave information did not consciously εἰσαγγέλλειν in the technical sense of the word: Pythonicus, who first accused Alcibiades of profaning the Mysteries, did so in the course of a debate on the Sicilian expedition;[66] Agoratus and Menestratus, who at first in 404 were themselves accused of conspiring, were finally judged τἀληθῆ εἰσαγγεῖλαι;[67] the trierarch who had failed to obtain ship's equipment from Theophemus went to the *boule* to complain and show his bruises, and was told to εἰσαγγέλλειν.[68] A number of cases treated by Hansen as εἰσαγγελίαι[69] began with an ἀποχειροτονία, a deposition by the *ecclesia* of a general or other official, which might happen either in the ἐπιχειροτονία τῶν ἀρχῶν at the κυρία ἐκκλησία of each prytany (*Ath. Pol.* 43.4, 61.2) or (I assume; but Hansen does not consider the possibility) in a debate which the *boule* invited the *ecclesia* to hold after some catastrophe.[70] Similarly what began as the εὔθυναι of a retired magistrate could culminate in a trial in which eisangeltic procedure was followed, and Hansen writes that 'an *eisangelia* may replace the second stage of the *euthynai* proper'.[71]

The evidence is not entirely clear, but it suggests to me that an εἰσαγγελία for a major public offence could be begun in a variety of ways: by having a magistrate deposed while in office; by raising an objection at a magistrate's εὔθυναι after his retirement from office; by raising the matter in the course of a debate to which the offence was relevant; or directly, by formally presenting an εἰσαγγελία. In the last case, I believe that the εἰσαγγελία could be submitted either without notice when εἰσαγγελίαι were invited at a κυρία ἐκκλησία or to the *boule*. εἰσαγγελίαι against magistrates, on a charge of μὴ χρῆσθαι τοῖς νόμοις, could likewise be begun in a variety of ways: through a magistrate's deposition or at his εὔθυναι; in the course of a debate on a topic to which the offence was relevant; through the presentation of an εἰσαγγελία by an individual citizen; or when the *boule* itself detected an offence in the course of its supervisory work.[72]

[60] Case 139: Lys. xxx 10.

[61] *Cf.* Rhodes 183 with n. 4.

[62] Case 142: Dem. li 8–9 with 1: the end of §9 suggests that here ὑμεῖς may be taken seriously.

[63] Case 144, *cf.* Rhodes 154–6: [Dem.] xlvii 41–2. The charge was ὡς ἀδικοῦντι καὶ διακωλύοντι τὸν ἀπόστολον: it is not clear whether in this instance that was represented as treason or as μὴ χρῆσθαι τοῖς νόμοις; in Cephisophon's decree for a colony to the Adriatic in 325/4 failure to do one's duty in accordance with that decree is regarded as a dereliction of official duty punishable by the εὔθυνοι, while ἀτακτοῦντας trierarchs are to be punished by the *boule* (Tod 200. 233–46).

[64] Case 138: ML 85.38–47.

[65] Case 143: Aesch. i 109–12.

[66] Case 11: And i 11. *Cf.* above p. 109.

[67] Case 67, *cf.* Rhodes 164–5: Lys. xiii 50, 56 (this stage of the case was conducted under the régime of the Thirty). Hansen, case 67 n. 6 (*cf.* Lipsius 208), regards this use of εἰσαγγέλλειν as non-technical; but I suspect that Agoratus and Menestratus were in retrospect treated as οἱ εἰσαγγείλαντες.

[68] Case 144, *cf.* Rhodes 164: [Dem.] xlvii 41–2.

[69] The cases of Pericles (6), the generals after Arginusae (66), Ergocles (73), the generals who supported Thebes in 379/8 (77–8), Timotheus (80), Autocles (90), Cephisodotus (96), Iphicrates and colleagues in 355 (100–2), and the *thesmothetae* of 344/3 (103–8). These are discussed by Hansen, 41–4, who concludes that 'an *apocheirotonia* of a magistrate was normally the first step towards an *eisangelia*.' *Cf.* Harrison 59: 'This procedure (*sc.* ἀποχειροτονία) was in effect an εἰσαγγελία.'

[70] *Cf.* above p. 109, on the trial of the generals after Arginusae.

[71] *Cf.* the cases of Cimon (5), Eurymedon and colleagues (7–9), Thucydides (10), Ergocles (73), Philocrates (109) and Lysicles (112), discussed by Hansen, 45–7. I too think that the trial of Cimon arose from his εὔθυναι, but I suspect that before Ephialtes' reform both εἰσαγγελίαι and εὔθυναι were the concern of the Areopagus: *cf.* above p. 105.

[72] *Cf.* Hansen 31–3.

Hansen, 21–8, argues that with *εἰσαγγελίαι* to the *ecclesia* for major public offences the accusation was referred by the *ecclesia* to the *boule* (or, exceptionally, raised in the *boule*); the *boule* submitted to a subsequent meeting of the *ecclesia* a *προβούλευμα* on how the trial was to be conducted, and, in particular, on whether the final hearing was to be before the *ecclesia* or a *δικαστήριον*; the *ecclesia* then debated the question and recorded its decision in a *ψήφισμα*; and the final hearing took place in accordance with that *ψήφισμα*. With *εἰσαγγελίαι* to the *boule* against magistrates, he believes, the accusation was made in the *boule* (or, exceptionally, referred to it by the *ecclesia*); the debate in the *boule* amounted to a trial (*κρίσις*), and if the defendant was found guilty the *boule*'s resolution was a verdict of condemnation (*κατάγνωσις*);[73] if the *boule* imposed a penalty within its own competence (up to a fine of 500 drachmae) the defendant might appeal to a *δικαστήριον*, if the *boule* wanted a heavier penalty the case had to be referred to a *δικαστήριον*.[74] On Hansen's classification, either procedure was available against a magistrate charged with a major public offence.

There is no doubt that variations in procedure existed. In the trials concerning the religious scandals of 415 (which, as we have seen, may be exceptional, since the *boule* was made *αὐτοκράτωρ*) all final hearings were in *δικαστήρια*. The mutilation of the Hermae was presumably reported to the *boule* and thence to an extraordinary meeting of the *ecclesia*;[75] Pythonicus made his accusation against Alcibiades at a meeting of the *ecclesia* debating the Sicilian expedition;[76] the recall of Alcibiades from Sicily was initiated by the *boule* but resolved by the *ecclesia*.[77] Otherwise it is not clear whether the *ecclesia* continued to be involved: Hansen argues, from texts which I find less than compelling, that accusations made before the *boule* were repeated before the *ecclesia*;[78] I prefer to rely on another text that is perhaps less than compelling (And. i 17), and think it likelier that accusations were referred directly by the *boule* to the *δικαστήρια*. Proceedings against the generals after Arginusae began with their deposition by the *ecclesia*;[79] then (if Xenophon may be trusted on these details) accusations were made against one of the generals in a *δικαστήριον* where he was on trial for another offence, and the court decided to imprison him (*Hell.* i 7.2);[80] the generals reported to the *boule*, one member decided that they should be imprisoned and brought before the *ecclesia*, and this was done (§§3–6); the *ecclesia* called on the *boule* to submit to a later meeting a *προβούλευμα* on how the generals were to be tried (§7); and that *προβούλευμα* invited the *ecclesia* to take a single vote to decide whether the eight generals were to be held guilty and sentenced to a stated penalty (§9), but this was illegal, *inter alia* in calling for a single vote on eight defendants (§§23, 26, 34). The case involving Agoratus began with Theocritus' giving information to the *boule* (Lys. xiii 19–22); the *boule* arrested and questioned Agoratus (§§23–30); Agoratus was then questioned in the *ecclesia*, but it appears that this stage in the proceedings was not essential, at any rate for the less prominent of the accused—*οὕτω σφόδρα τινὲς ἐπεμέλοντο ὅπως καὶ ἐν τ�ῳ δήμῳ περὶ τῶν στρατηγῶν καὶ τῶν ταξιάρχων μήνυσις γένοιτο (περὶ δὲ τῶν ἄλλων ἀπέχρη ἐν τῇ βουλῇ [μήνυσις] μόνῃ γεγενημένη)* (§§31–3)[81]—and the *ecclesia* voted to have the men named by Agoratus tried in a *δικαστήριον*; but the Thirty came to power and transferred the

[73] I am not sure that Hansen is right to restrict *κατάγνωσις* to unfavourable decisions of this kind: the decisions of the *ecclesia* in response to a *προβολή*, though they had purely advisory force, could be described as *καταχειροτονίαι* if unfavourable to the accused or as *ἀποχειροτονίαι* if favourable (Dem. xxi 1–2, 214), and it may be that an unfavourable decision of the *boule* which was embodied in a *προβούλευμα* to the *ecclesia* could also be termed *κατάγνωσις*.

[74] Hansen, 24–5, obtains this result from [Dem.] xlvii 42–3 and *Ath. Pol.* 45.2: I am less confident that *Ath. Pol.*'s summaries of Athenian law can be pressed this far, and suspect that the *boule* had an inappellable right to impose fines up to 500 dr. (*cf.* Rhodes 147 with n. 6); it is beyond dispute that there was some distinction between penalties within the *boule*'s competence and penalties beyond the *boule*'s competence, to which *Ath. Pol.* makes no allusion.

[75] *Cf.* the procedure followed in 339 when news arrived that Philip II had occupied Elatea: Dem. xviii 169–70. This preceded the *ἐκκλησία τοῖς στρατηγοῖς*: *cf.* MacDowell's edition of And. i, p. 182.

[76] *Cf.* above p. 109.

[77] Is. xvi 7; Plut. *Alc.* 21.7 *cf.* 22.5, D.S. xiii 5.2, 4, *cf.* 69.2 (the use of *δῆμος* by these writers is not enough to prove the point, but I readily grant that a vote of the *ecclesia* was needed to recall Alcibiades from Sicily.

[78] *Cf.* above n. 56.

[79] *Cf.* above p. 109.

[80] As Xenophon tells the story, complaints about Arginusae were introduced into a trial on a financial charge; he implies but does not openly state that it was because of Arginusae that Erasinides was placed under arrest.

[81] I quote §32, from Hude's O.C.T.: *μόνῃ* is Frohberger's correction of *μὲν ἡ*; the meaning is not in doubt.

final hearing to the *boule* (§§34–8). In the trials of Philocrates in 343,[82] Leocrates in 330[83] and Agathon in 324[84] the final hearing in a δικαστήριον was in each case preceded by a debate in the *ecclesia*.

In 419 Ampelinus and colleagues were presumably prosecuted on a charge of μὴ χρῆσθαι τοῖς νόμοις: the prosecution began as an εἰσαγγελία to the *boule*, and the final hearing was in a δικαστήριον.[85] In 411/0 (under the intermediate régime) Antiphon and those who had served with him on an embassy to Sparta under the Four Hundred were denounced to the *boule* on a charge of προδοσία, and the *boule* resolved that they should be prosecuted in a δικαστήριον.[86] In 409 on a charge of bribery (which might have been treated as a major public offence[87] or as an instance of μὴ χρῆσθαι τοῖς νόμοις) the *ecclesia* ordered the *boule* to debate, καὶ κολάζειν, τὸν [δ]ορο[δοκεσάντον καταφσ]εφιζομένεν καὶ ἐς δικασ[τέριον παραδιδόσα]ν, καθότι ἂν δοκεῖ αὐτε[ι].[88] In 404 Cleophon, probably on a charge of treason, was denounced to the *boule*, which referred the case to an (irregularly constituted) court.[89] In 399 the final hearing of the case against Nicomachus, again on a charge which might have been treated either as a major public offence or as an instance of μὴ χρῆσθαι τοῖς νόμοις, was in a δικαστήριον; but the *boule* had been involved, and it is said of Nicomachus that ἔδει ὑπὸ τοῦ δήμου κρίνεσθαι.[90] The trierarchs prosecuted by Aristophon in 361, on a charge of treason and desertion, were first accused in the *boule*, which found them guilty and referred them to a court.[91] Similarly in 357/6 the *boule* found Theophemus guilty ὡς ἀδικοῦντι καὶ διακωλύοντι τὸν ἀπόστολον, another charge which might be regarded either as a major public offence or as μὴ χρῆσθαι τοῖς νόμοις: it then had to debate whether to fine him 500 drachmae (the maximum penalty within its competence) or to refer the case to a δικαστήριον.[92] Towards the middle of the fourth century Timocrates was author of a law which prescribed that when men were imprisoned κατ' εἰσαγγελίαν ἐκ τῆς βουλῆς, if their κατάγνωσις was not given to the *thesmothetae* in accordance with the νόμος εἰσαγγελτικός, they were nevertheless to be brought before a δικαστήριον by the Eleven within thirty days.[93]

It was clearly not normal for charges of μὴ χρῆσθαι τοῖς νόμοις to be considered by the *ecclesia*: these were brought to the *boule* by the εἰσαγγελία of an individual or by one of the other methods which we have noticed,[94] and the *boule* could impose a penalty within its own competence or refer the case to a δικαστήριον; by the mid fourth century, when a case is referred to a δικαστήριον the *boule*'s decision is thought of as a κρίσις which has resulted in a κατάγνωσις, but it is not clear whether this was the case earlier. εἰσαγγελίαι for major public offences, I have argued, might first be presented either to the *boule* or to the *ecclesia*: the *boule* was not competent to impose a fitting penalty for such offences, so the final hearing took place either in the *ecclesia* (until the reform of the 350s) or in a δικαστήριον; the evidence suggests to me that the *boule* more commonly referred cases to the *ecclesia* but sometimes referred them to the δικαστήρια; when a case was referred to the *ecclesia* it (guided but not bound by the *boule*'s προβούλευμα) might either conduct the final hearing itself or refer the case to a δικαστήριον.

This degree of imprecision I do not find objectionable. When a non-citizen was given the right of access to the authorities in Athens this was regularly expressed as πρόσοδος πρὸς τὴν βουλὴν καὶ τὸν δῆμον,[95] and it could well have been stipulated when εἰσαγγελίαι for major public

[82] Case 109: Dem. xix 116–17, Hyp. iv 29. In *Hesp.* v (1936) 393–413, no. 10, lines 48–9 are restored [—— τῆς γραφῆς εἰς ἣν εἰσήγ]γειλεν αὐτὸν Ὑπ[ερείδης τῶι δήμωι ἀλλ' ὀφλό]ντος ἐρήμην, but the corresponding passage in lines 113–15 reads κατὰ τὴν εἰσαγγελίαν ἣν εἰσήγγει[λεν αὐτὸ]ν Ὑπερείδης: [Γ]λαυκίππο: Κολ: ἀλλ' ὀφλό[ντος ἐρ]ήμην, and in line 49 Κολλυτεύ: is more probable than τῶι δήμωι (my attention was drawn to this by Dr D. M. Lewis; I am unhappy also about the restoration τῆς γραφῆς εἰς ἣν εἰσήγ]γειλεν in line 48).

[83] Case 121: Lyc. *Leocr.* 19 (probably to be connected with the εἰσαγγελία against Leocrates), 127.

[84] Case 127: [Dem.] xxv 47–8.

[85] Cases 131–3: Ant. vi 35–8.

[86] Cases 135–7: decree *ap.* [Plut.] *X.Or.* 833 e–f.

[87] *Cf.* above p. 110.

[88] Case 138: ML 85.38–47. *Cf.* ML 46.31–41, on the procedure to be followed against any one who interfered with the payment of tribute to Athens: accusations were to be made through the *prytanes* to the *boule*, which if it found the accused guilty would refer the case to a δικαστήριον; but the verb used of the accuser is not εἰσαγγέλλειν but γράφεσθαι.

[89] Case 139: Lys. xxx 10–11.

[90] Case 140: Lys. xxx 1; 7; 30 (ὑπὸ Markland: ὑπὲρ MSS).

[91] Case 142: Dem. li 8–9 (where I accept Hansen's defence of δικαστήριον against δεσμωτήριον) with 1.

[92] Case 144: [Dem.] xlvii 42–3.

[93] Dem. xxiv 63. Hansen supposes this to refer only to his sub-class of εἰσαγγελία to the *boule*: *cf.* above pp. 107, 111 with n. 73.

[94] *Cf.* above p. 110.

[95] E.g. ML 89.37–8, Tod 131.15–16.

offences were taken away from the Areopagus that they were to be presented *εἰς τὴν βουλὴν καὶ τὸν δῆμον*; it was also stipulated that there was to be an opportunity for this at the *κυρία ἐκκλησία* of each prytany, and I should guess that it was not directly stipulated whether the principle of *προβούλευσις* required all such *εἰσαγγελίαι* to be presented first to the *boule*. *εἰσαγγελίαι* on charges of *μὴ χρῆσθαι τοῖς νόμοις* were presumably required to be presented *εἰς τὴν βουλήν*. As for what followed the presentation of the *εἰσαγγελία*, it may originally have been stated or assumed for charges of major public offences that the *boule* should make a *προβούλευμα* on how the defendants should be tried, and for charges of *μὴ χρῆσθαι τοῖς νόμοις* that the *boule* should either acquit or impose a penalty within its own competence or refer to a *δικαστήριον*. However, the *ecclesia* was a more cumbersome body (and, in the fourth century, a more expensive one) than a *δικαστήριον*, and I suspect that the existence of *εἰσαγγελίαι* to the *boule* (and a *δικαστήριον*) for charges of *μὴ χρῆσθαι τοῖς νόμοις* encouraged the use of the *δικαστήρια* on some occasions for the final hearing of charges of major public offences. We should perhaps see an allusion to this habit of referring to the *δικαστήρια* cases which did not have to be thus treated in Ar. *Vesp.* 590–1:

> *ἔτι δ' βουλὴ χὠ δῆμος ὅταν κρῖναι μέγα πρᾶγμ' ἀπορήσῃ*
> *ἐψήφισται τοὺς ἀδικοῦντας τοῖσι δικασταῖς παραδοῦναι.*[96]

Meanwhile, perhaps in order to confer greater importance on the prosecutor and his prosecution, perhaps in order to secure a quicker trial, the procedure *εἰς τὴν βουλὴν καὶ τὸν δῆμον*, intended for major public offences, came to be used comparatively frequently and for comparatively trivial misdeeds: this may help to explain the change of the 350s, by which the *ecclesia* lost the right to conduct the final hearing,[97] and the change of the late 330s, by which *εἰσαγγελίαι* ceased to constitute an exception to the rule that prosecutors in public suits who failed to obtain a fifth of the votes were to be fined;[98] but in the 320s Hyperides was still able to complain that this procedure had formerly been used only for serious offences but was now used for trivial ones (iv 1–3).

Hansen makes a rigid distinction between two kinds of *εἰσαγγελία*, to the *ecclesia* against any citizen charged with a major public offence, and to the *boule* against magistrates charged either with a major public offence or with *μὴ χρῆσθαι τοῖς νόμοις*. I believe that Athens' laws took as their starting-point the charge, and distinguish between the charges of major public offences and *μὴ χρῆσθαι τοῖς νόμοις*, with points of contact in that the procedure appropriate to each charge involved the *boule* and was known as *εἰσαγγελία*, and that some misdeeds could be represented as instances of either kind of offence. The classical Athenian democracy was still a young state (Pericles died less than two hundred years, and Demosthenes slightly less than three hundred years, after Draco had given Athens her first written laws), and it was a state that had no professional draftsmen or professional jurists.[99] The Athenians were experimenting in devising constitutional machinery that would allow the *δῆμος* to play an active part in the running of its affairs, and we should not be surprised if the evidence suggests to us uncertainties of the kind that I have indicated in the previous paragraph—if (for instance) it was laid down that *εἰσαγγελίαι* were to be presented *εἰς τὴν βουλὴν καὶ τὸν δῆμον* and could be presented at the *κυρία ἐκκλησία* of each prytany, but it was not laid down how the rule of *προβούλευσις* was to be applied to the presentation of *εἰσαγγελίαι* or whether the final hearing of the case must take place in the *ecclesia*. Different laws, presumably enacted on different occasions, made it possible to pursue men

[96] *Cf.* Rhodes 168–70. I concede to Hansen, 52, that the reservation of the death penalty for the *δῆμος πληθύων* (people in assembly, i.e. *ecclesia*) is to be read in its context of laws dealing with the powers of the *boule*; but it remains true that the *δικαστήρια* were thought of as bodies representative of the Athenian people and able to express the will of the people on the litigants before them (*cf.* B. McM. Caven, *JHS* xcvi [1976] 227, reviewing *Eisangelia* and another book by Hansen).

[97] *Cf.* above p. 108.

[98] *Cf.* Hansen 29–31: he believes that *εἰσαγγέλλοντες* had always been liable to a fine for withdrawing their prosecution.

[99] The one pointer to a specialist that I have found is [Plut.] *X.Or.* 842 c: Lycurgus *εἰσήνεγκε δὲ καὶ ψηφίσματα, Εὐκλείδῃ τινὶ 'Ολυνθίῳ χρώμενος ἱκανωτάτῳ περὶ τὰ ψηφίσματα*. Aesch. iii 125 claims that Demosthenes prevented Athens from supporting the Amphictyony in the Fourth Sacred War by taking advantage of the inexperience of the man whom he persuaded to propose an apparently innocent motion; D.S. xvii 15.3 attributes to Demades a *ψήφισμα γεγραμμένον φιλοτέχνως*.

charged with the same offence by different procedures, leading to different penalties; one procedure could turn into another, so that what began as an objection raised at the ἔυθυναι of a retired magistrate could lead to an eisangeltic form of trial. In studying the judicial procedures of Athens we must make full allowance for this fluidity.

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