

How the “Crown Case” Came to Trial and Why

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EARLY IN 336 B.C. the Athenian council passed Ctesiphon’s proposal to crown Demosthenes for his service after the defeat at Chaeronea, but Aeschines blocked the measure with a suit for unlawful action (*graphē paranomōn*) before it could be enacted in the assembly. If the case had gone to court at that juncture a verdict in favor of Ctesiphon would have ratified his decree, but at the end of that council’s year the case had not been decided and the proposal became moot. And so the matter stood for six years until 330, when the “Crown Case” came to trial, Ctesiphon was acquitted, and Demosthenes was crowned. Neither speech, nor later tradition, tells us plainly how this came about.

Most of the historians who have taken up this question have supposed that Aeschines revived the case when he saw an opportunity. He had begun the case before Philip’s death (3.219), and, after Philip died, both sides were content to abandon it. Years later, when the Spartan rebellion was crushed and defiance seemed futile, Aeschines could at last take revenge upon his enemy. This was the standard assumption even in the 1830s, when it was generally supposed that the delay was eight years (not six).¹ Westermann thought he could cut the delay in half by

¹ Plut. *Dem.* 24 dated the proposal and the indictment to the archonship of Chairondas (338/7), evidently relying on the document in *Dem.* 18.54. Working with that date: Anton Westermann, *De Aeschinis oratione adversus Ctesiphontem Commentatio* (Leipzig 1833), esp. 10–12 and 23–27; and Rudolf Rauchenstein, *De tempore quo Aeschinis et Demosthenis orationes Ctesiphontae habitae sint, Commentatio* (Aarau 1835). Both were preoccupied with the unequal treatment of Demosthenes’ career (as the orator himself ignores the period after

showing that Demosthenes’ narrative indicates a trial in 334, after Alexander demanded the surrender of the orator for his role in the Theban insurrection. Rauchenstein argued to the contrary, that (at that juncture) “the Athenians embraced and protected [Demosthenes] with the deepest affection, as a man most devoted to the *patria*.” As Rauchenstein saw it, the situation in 330 was more inviting for Aeschines’ reprisal, after an even more exhaustive display of Macedonian dominance. Fifty years ago Cawkwell took much the same approach and effectively disposed of some nagging reservations:² there was, after all, no statutory limit on the lawsuit (as scholars had supposed), and the author of the proposal was never immune from prosecution.³ So, surely, Aeschines would seize upon Macedon’s juggernaut to punish his adversaries; indeed, Demosthenes accuses Aeschines of capitalizing on recent adversity (18.308).

But there is another explanation with a respectable lineage, one that has the advantage of considering the rules before the motives: Schaeffer concluded (in the 1850s) that Demosthenes’ backers must have forced the issue;⁴ for both speeches expect

336, Aeschines’ “fourth *kairos*”), and why neither speaker blames the other for the long delay.

² G. L. Cawkwell, “The Crowning of Demosthenes,” *CQ* 19 (1969) 163–180, at 166–167, drawing upon Heinrich Reich, “Bemerkungen zum Prozess Ktesiphon,” in *Abhandlungen aus dem Gebiet der klassischen Altertums-Wissenschaft: [für] Wilhelm von Christ* (Munich 1891) 280–293; followed by Ian Worthington, *Demosthenes of Athens and the Fall of Classical Greece* (New York 2013) 294–295.

³ The old assumption, that the author of a decree was immune after a year, was due to confusion in later tradition; the limit properly applies to γραφαὶ νόμον μὴ ἐπιτίθειον θείναι. See H. J. Wolff, “Normenkontrolle” und Gesetzesbegriff in der attischen Demokratie (Heidelberg 1970) 10 n.8; Edwin Carawan, “The Trial of the Arginousai Generals and the Dawn of ‘Judicial Review,’” *Dike* 10 (2007) 19–56, at 32–38.

⁴ A. Schaeffer, *Demosthenes und seine Zeit*² III (Leipzig 1887 [1st ed. 1858]) 225–227. F. Winiewski, *Commentarii historici et chronologici in Demosthenis orationem De Corona* (Münster 1829) 290, had drawn the same conclusion but assumed that in 330 the crowning was a conciliatory gesture toward Macedon, as Demosthenes had been especially responsible for Athenian neutrality.

Demosthenes to be crowned if Aeschines is defeated,⁵ and that could not happen unless the measure was given new life by council or assembly.⁶ Of course, there is a way around the procedural hurdle: perhaps, as Goodwin suggested,⁷ the revival of the decree came *after* the court victory; presumably, the speechwriters anticipated the sequel or wrote it in *post eventum*. But that approach discounts the evidence in order to save the assumptions, and there is good reason to be wary of where it takes us: if Aeschines revived his case before the decree was resurrected, the lawsuit would seem both flimsy and pointless—the old charges had lost their edge and the old proposal was still dead. The other motives often adduced seem no less arbitrary: Aeschines may have been threatened with a penalty for failing to follow through on his lawsuit but, if that was his reason for proceeding, why now, when he had been largely inactive and no less at risk for some years?

In more recent work scholars acknowledge that the crowning was again viable but assume nonetheless that Aeschines forced the issue, without explaining how that would work.⁸ The present study is an attempt to do just that. The evidence we have suggests that Ctesiphon's proposal was renewed first and Aeschines then revived his case against it. So the question is not why Aeschines proceeded at that time but why Demosthenes' backers renewed the Crown proposal when they did. There are, after all, indications in the speeches and in later tradition that Ctesiphon's

⁵ Aeschin. 3.153–156, 211, 253–254, 259; Dem. 18.85, 266.

⁶ The rule is spelled out in Aristokrates' case, Dem. 23.92: ἄκυρόν ἐστι τὸ ψήφισμα: προβούλευμα γὰρ ἐστίν, ὁ νόμος δ' ἐπέτεια κελεύει τὰ τῆς βουλῆς εἶναι ψηφίσματα. Cf. Schaeffer, *Demosthenes* III 84–6 [= 1858: 77–79]; M. H. Hansen, *The Sovereignty of the People's Court* (Odense 1974) 51–52, and “*Graphē Paranomon* against *Psephismata* not yet passed by the *Ekklesia*,” *ClMed* 38 (1987) 63–73.

⁷ W. W. Goodwin, *Demosthenes On the Crown* (Cambridge 1901) 329–330.

⁸ Cf. Hermann Wankel, *Demosthenes Rede für Ktesiphon über den Kranz* (Heidelberg 1976) 18–25; Harvey Yunis, *Demosthenes On the Crown* (Cambridge 2001) 7–12.

proposal was revived in council and assembly, it was in response to that maneuver that Aeschines reasserted his challenge, and the issue was then framed in a decree for trial. That possibility, that the assembly should intervene, has been largely neglected in the scholarship, perhaps because it does not fit with modern thinking about judicial review:⁹ we like to assume that the constitutional remedy belongs in the court and the legislature should not interfere. But, even in the fourth century, the Athenian *dēmos* seems unconstrained by any separation of powers and all too willing to plot the course of justice.¹⁰ This essay proceeds from that perspective, beginning with the procedural clues and then considering the motives, as follows:

(1) The council of 330/29 resurrected the old *probouleuma* and thus the measure was at last introduced in the assembly, for the people to decide upon the old decree *de novo*. Then, when the decree was brought before the assembly, Aeschines reasserted his challenge to it. And so, in the face of his continued obstruction, the people decreed that the issue be decided at trial: whoever challenged the measure as unlawful would face an assessed penalty, if he failed to win one fifth of the votes.¹¹ Under that threat, Aeschines could have withdrawn his challenge but, to judge from what he says about the situation in 330, he thought he could still make a viable case on the legalities and discredit Demosthenes at last for the failings of his policy.

(2) We are not told explicitly why the decree was renewed in this way, but the parallel case of Hyperides' decree for Demosthenes, now represented in a large fragment of the speech *Against Diondas*, suggests a likely explanation. This earlier decree to

⁹ E.g., W. W. Goodwin, “The Athenian γραφή παρανόμων and the American Doctrine of Constitutional Law,” *TAPA* 26 (1895) lx–lxi.

¹⁰ Notably in sentencing officers without trial, as in the cases of Timagoras (368/7), and of Callisthenes and Ergophilus (363/2); see M. H. Hansen, *Eisangelia* (Odense 1975) 92–95, nos. 82, 85–86. In other instances the *dēmos* dictates arrangements for court trial, even *in absentia* (Hansen nos. 83–84, 88–90).

¹¹ As in *eisangelia* (at some point); cf. Theophrastus fr.636C Fortenbaugh, n.15 below.

honor Demosthenes was, indeed, proposed and challenged in 338/7 and then came to trial in 334 (much as Westermann supposed for Ctesiphon's decree). And when it came to court, it became a referendum on the fate of Demosthenes in the face of Alexander's demand for his surrender. Ctesiphon's decree, with much the same language, was probably revived amid similar concerns in 330.

Thus, in the following sections, we approach the problem first from one side, then the other:

§I deals with Aeschines' situation, the considerations that might have prompted him to take up the case in 330, and what jeopardy he faced. In §II we turn to the defense: there is no question but that Ctesiphon is liable for his proposal, but the real target of the lawsuit is Demosthenes himself. What, after all, was really at issue when the case came to trial? Of course, if Ctesiphon's proposal was in conflict with the standing laws in 336, it still counts against him in 330. But, for many among the jury, the first count in the indictment must have seemed little more than hypothetical: it *would have been* illegal to crown Demosthenes before his accounting in 336, but when the proposal was revived in 330, he had long since fulfilled that obligation. Conversely, Aeschines may have been liable all these years, at least in principle, for failing to proceed with his case,¹² but conventional remedies for reckless prosecution seem to have been rarely used and the penalty was no great burden.¹³ Yet, when the case came to court, his very liberty was at risk, "the prosecutor has become

¹² Owing a penalty of 1000 drachmas, if not denied the right to prosecute certain cases in future. Robert Wallace, "Withdrawing Graphai in Ancient Athens," *Symposion 2003* (Vienna 2006) 57–66, argued that in most cases (except *lipotaxiou*) the additional penalty (stripping him of the right to litigate) was limited to those instances where the prosecutor took payment to abandon the case; in his response, 67–72, Edward Harris insists that the disability applied broadly if the prosecutor failed to appear at *anakrisis* or later at trial.

¹³ Aeschines seems to have been largely inactive and unindicted in the period 336–330. Cf. Reich, *Abh. Christ* 291–293, discounting the notion (in [Plut.] 840C–D) that Aeschines could not pay the fine.

defendant” (Aeschin. 3.193), and he was, indeed, driven into exile by the vote against him.¹⁴

I. Aeschines’ Predicament

It may lend some clarity to this problem to begin with the outcome. The conventional view of Aeschines’ liability was simply that he faced a regular, statutory penalty, such as anyone would suffer for ‘frivolous’ or reckless prosecution: for failing to win one fifth of the ballots (as for failing to proceed), he would owe the fine of ten minas and be barred from public prosecution, to some degree.¹⁵ It is not quite clear how that bar to litigation applied. Paoli may yet be right in supposing that—at least for some time in some cases—*l’accusatore temerario* simply suffered the disability that came with his debt to the polis: the offender was *atimos* until he paid.¹⁶ There are some indications in the speeches and later tradition that an additional penalty (apart from the fine) barred the offender from using public suits.¹⁷ But the strongest testimony to the severest penalty comes from this case against Ctesiphon, and it seems to be describing a special provision of

¹⁴ Plut. *Dem.* 24.2–3 confirms that the judges so emphatically rejected Aeschines’ case, “that he did not receive one fifth of the ballots; and so he immediately departed from the city.”

¹⁵ Theophrastus fr.636C Fortenbaugh (*Lex.Cant.* s.v. πρόστιμον) reports a general rule, in public suits other than *eisangelia*, barring a litigator from litigation if he either failed to win one fifth of the votes or failed to proceed: ἔκειτο τῷ μὴ μεταλαμβάνοντι τὸ πέμπτον μέρος τῶν ψήφων, ὡς Θεόφραστος ἐν πέμπτῳ Περὶ νόμων· ἐν δὲ τοῖς δημοσίοις ἀγῶσιν ἐζημιοῦντο χιλίας καὶ πρόσεστί τις ἀτιμία, ὥστε μὴ ἐξεῖναι μήτε γράψασθαι παρανόμων μήτε φαίνειν μήτε ἐφηγεῖσθαι· ἐὰν δὲ τις γραψάμενος μὴ ἐπεξέλθῃ, ὁμοίως· περὶ δὲ τῆς εισαγγελίας, ἐὰν τις μὴ μεταλάβῃ τὸ πέμπτον μέρος τῶν ψήφων, οἱ δικασταὶ τιμῶσιν.

¹⁶ U. E. Paoli, *Studi sul processo attico* (Padua 1933) 320–325, emphasizing [Dem.] 58.6–15; followed by A. R. W. Harrison, *The Law of Athens II* (Oxford 1971) 169–176 (esp.175, on this point).

¹⁷ For the fragment of Theophrastos (n.15 above), E. M. Harris, in review of D. M. MacDowell, *Demosthenes Against Meidias*, CP 87 (1992) 79–80, points to the variant in schol. Dem. 22 (at §3), παράνομον for παρανόμων, as evidence that *graphai*, etc., against any illegality were barred.

the decree for these irregular proceedings, not the usual consequence for reckless prosecution.

To be sure, one strand of the tradition tells that Aeschines was simply fined and could not or would not pay the fine; under *atimia* on that account, he went into exile and ultimately set up shop in Rhodes. Ps.-Plutarch (*Lives of the Ten Orators* 840C–D) begins with that version of the story: after failing to win one fifth of the votes, Aeschines fled to Rhodes, “refusing to pay the thousand drachmas charged to his defeat.” But, the author adds, “other sources say, an additional penalty of *atimia* was assessed and he left the city unwillingly,” setting out for Ephesus to meet with Alexander. The details are consistent with other reports,¹⁸ and the implication, that he was driven into exile by a penalty specifically assessed, also finds support in later tradition. The *Life of Aeschines* attributed to Apollonius has this report: “Having specified an additional penalty if he failed to prove the measure *paranomon*, as he lost the case, because he was unable to pay the judgment that he himself had specified, he resorted to exile.”¹⁹ That tradition was followed by Photius: “[Aeschines] himself set the penalty he would face, if he failed to prove the act unlawful, and as he failed to prove (the charge) as he promised, he went into exile.”²⁰ These notices indicate a special provision burdening the prosecutor in this case, which would have to be spelled out in a decree for trial. And there are indications in both speeches of some such *ad hoc* arrangement.

¹⁸ *V.Aeschin.* 2 (anon.) Blass: μὴ μεταλαβεῖν τὸ πέμπτον μέρος τῶν ψήφων, ἀτιμωθέντα δ’ ἀπᾶραι εἰς τὴν Ἀσίαν καὶ ἐλθεῖν εἰς Ἔφεσον οἰηθέντα κατὰ ξειν αὐτὸν εἰς Ἀθήνας Ἀλέξανδρον; Aeschines turned to Rhodes at Alexander’s death.

¹⁹ *V.Aeschin.* 3 (Ἀπολλωνίου): καὶ ὀρίσαντος τὸ πρόστιμον ἐὰν μὴ δείξῃ αὐτὸ παράνομον καὶ ἡττηθέντος καὶ διὰ τὸ μὴ δύνασθαι καταβαλεῖν τὴν κατάδικην, ἣν αὐτὸς ὄρισε, φυγῆ χρησαμένου. The biographer cites a work “For the Crown” (ὡς καὶ τοῦτο ἔγνωμεν ἐν τῷ ὑπὲρ τοῦ στεφάνου).

²⁰ Photius *Bibl. cod.* 61, 20a.20–23 (I 59 Henry): καὶ ὀρίσας τὸ πρόστιμον αὐτὸς ἐαυτῷ, ἐὰν μὴ δείξῃ παράνομον, μὴ δείξας ὡς ὑπέσχετο ἐξέπεσε τῆς πατρίδος. Photius also reports that Aeschines set out to join Alexander but resorted to Rhodes after the conqueror’s death.

In his prologue Aeschines is irate about a maneuver by the *prytaneis* and presiders who managed the proceedings in council and assembly (3):

Now some men readily author unlawful proposals, and these measures are put to a vote by others who serve as presiders, who were not allotted that office rightfully but whose selection was rigged (ἐκ παρασκευῆς). And if one among the other councilmen, who was really allotted the presidency, tried to announce the tally of your votes, he is threatened with impeachment by those who regard the constitution no longer as common property but their own personal asset. They make slaves of private citizens and make much of their own *dynasteia*; they dissolve the trials that laws prescribe and set trial by decrees decided in anger.

This passage is usually read as a rant against systemic dysfunction with no particular relevance,²¹ but it describes just the sort of rule-bending required to bring Ctesiphon’s proposal back to life: it had the support of a faction in the council who somehow arranged to control the presidency, violating protocol and threatening to prosecute anyone who objected. So Aeschines goes on to complain that debate in the assembly is “no longer controlled by the laws or the *prytaneis* or the (rightful) *proedroi*, nor even by the tribe in prytany.” Amid such disorder, there is only one portion of the *politeia* still standing, the suits for unlawful action: “And if you undo even these—or give permission to those who are busily undoing them—then, I tell you, little by little you will abandon the constitution without even realizing it” (5).

Thus Aeschines insists that the *graphē paranomōn* itself is under attack and, it seems reasonable to suppose, the issue at hand is a case in point. It is that abuse of the system that gives particular relevance to the commonplace that follows (6–8): As everyone knows, there are three forms of government; the important difference is that democracies are governed by their standing laws, while tyrannies and oligarchies govern by the disposition of those in control. The suit against unlawful action is the chief

²¹ E.g. F. Blass, *Die attische Beredsamkeit*² III.2 (1898) 233–234 [=1880, 205–206]; followed for the most part by R. B. Richardson, *Aeschines Against Ctesiphon* (Boston 1889) 36–37.

safeguard against those who are eager to bend the constitution to their will: “Let no one among you fail to recognize that ... when he enters the courtroom to decide a *graphē paranomōn*, on this day he will cast his ballot on the very freedom of speech.” Yet, he claims, the proper functioning of the procedure itself is being undermined by recent maneuvers, and it was precisely to guard against such erosions that the lawgiver put first in the judges’ oath: “‘I shall cast my ballot in accord with the laws’. For [the lawgiver] knew well that, if the city keeps watch over the laws, it will also keep the democracy secure” (6). The jurors must keep that principle in mind and stand their ground, as guardians of the constitution.

Then again, after his argument is largely concluded, Aeschines returns to his protest against irregular proceedings in a section that seems specifically adapted to the situation in 330 (191–194). He has just argued that the culture of self-promotion is out of hand, comparing the modest and often nameless memorials of the past (178–185) and concluding with Archinus’ decree for the heroes who restored democracy in 403 (187). For comparison, he has the clerk read out Ctesiphon’s decree once again (188). It is the worst sort of fraud: this crowning for “saying and doing what is best for the city” honors the very man who should bear the blame for the greatest evils, and it virtually erases the honors for those who restored democracy in the time of our fathers. Rather, let their story be a lesson: the first step in establishing oligarchy is to suspend the suits against unlawful action.²² Aeschines’ history may be simplistic but the relevance should be clear enough: the recent legislative maneuver to revive Ctesiphon’s proposal, long after it should have died without a vote, is the same sort of prelude to autocracy that their (grand)fathers witnessed. After all, the challenge to Ctesiphon’s decree, which should have barred it from taking effect, has been somehow undone.

What follows (192) is meant to legitimize his case, however

²² Aeschin. 3.191: ὁ δῆμος κατελύθη ἐπειδὴ τινες τὰς γραφὰς τῶν παρανόμων ἀνείλον.

flimsy the legalities may seem. Aeschines says that his aged father recounted how he had witnessed regular recourse to *graphai paranomōn* in the early restoration era, in which juries were quick to convict for even a single defect; they did not reserve their wrath for measures that violate “all the laws,” as now. These days “the secretary reads the unlawful proposal and the judges, as though they are listening to an incantation ... have their minds on something else.”

And now, by the artfulness of Demosthenes, you are taking up a shameful practice in the courts. For the city’s judicial proceedings are turned around: the prosecutor becomes defendant and the defendant prosecutes; and sometimes the judges forget what they are judges of, compelled to cast their ballot on claims they were not called to decide.²³

Again the complaint is usually dismissed as a distraction,²⁴ but it is likely to have a particular bearing on the case at hand. Somehow, after blocking the proposal for six years, Aeschines saw the tables turned.

As though on cue, Demosthenes frames his defense as a plea for the jury to take proper retribution against Aeschines. In his prologue (18.13) he envisions some measure to stop the troublemaker once and for all, to repay him for all the calculated malice that he brought to the city’s deliberations. And as he proceeds to his peroration (266), he taunts Aeschines with losing the right to carry on with such tactics, if he fails to win one fifth of the votes. But he makes the point most emphatically in the midst of his arguments, after defending his own role in the Peace of Philocrates, in 82–83. He recalls that Aeschines regularly accused him of bribe-taking, and now he calls upon the jury to put a stop to it:

²³ Aeschin. 3.193: ἤδη δ’ ἐκ τῶν τεχνῶν τῶν Δημοσθένους αἰσχρὸν ἔθος ἐν τοῖς δικαστηρίοις παραδέχασθε. μετενήνεκται γὰρ ὑμῖν τὰ τῆς πόλεως δίκαια: ὁ μὲν γὰρ κατήγορος ἀπολογεῖται, ὁ δὲ φεύγων τὴν γραφὴν κατηγορεῖ, οἱ δὲ δικασταὶ ἐνίοτε ὧν μὲν εἰσι κριταὶ ἐπιλανθάνονται, ὧν δ’ οὐκ εἰσι δικασταί, περὶ τούτων ἀναγκάζονται τὴν ψήφον φέρειν.

²⁴ E.g. Richardson, *Aeschines Against Ctesiphon* 194–195, “the same commonplace is more cleverly applied in Dem. xix. 213.”

Aeschines claims that “I keep quiet when I’ve gotten something and shout (for more) when I’ve spent it. But not you [Aeschines], who shout when you’ve gotten (paid for it) and won’t ever stop, unless these (judges) stop you today with *atimia*” (παύσει δ’ οὐδέποτ’ ἔάν μή σ’ οὗτοι παύσωσιν ἀτιμώσαντες τήμερον). Again, it is often supposed that Aeschines would merely face the regular consequences of reckless prosecution: he loses a thousand drachmas and his right to bring certain public suits.²⁵ But here Demosthenes is insisting upon a more radical loss-of-rights; for, if Aeschines faced only the fine and the bar to *graphai* of one sort or another, it would hardly silence him in the assembly and at trial by other remedies.

These passages in the speeches, together with the notices in later tradition (nn.19–20 above), suggest that a rider was added when Ctesiphon’s decree was revived: if the measure was challenged (yet again), the case would go to the jury, and the sentencing would borrow a provision from *eisangelia*;²⁶ if the challenger proved guilty of reckless prosecution (failing to win one fifth of the votes), the court would decide upon his penalty.

There is a persistent theme in Demosthenes’ attack on Aeschines (carried over from the Embassy Case) that may have made this arrangement seem suitable when the issue was raised in the assembly: Demosthenes insists that Aeschines must be

²⁵ Theophrastus fr.636C (n.15 above) names *graphai paranomōn*, *phasis*, and *ephēgēsis* as the remedies barred. The first two were notorious instruments of *sykophantia*, as the prosecutor seizes the advantage merely by initiating his suit. In *graphai paranomōn*, the targeted legislation is blocked by the challenge under oath; in *phasis*, the ship or other asset is encumbered by public notice until there is some resolution to the case ([Dem.] 58.9–10). *Ephēgēsis* is not labeled a tool of extortion but might serve: the accuser leads the Eleven to make the arrest. In other *graphai*, if the prosecutor does not proceed, the case simply collapses. So it seems reasonable to sanction reckless prosecution in these particular instances, while other remedies (such as *eisangelia*, *apagōgē*, and *endeixis*) remain available. It need not imply a more general bar to all public remedies, as Harris has argued, *CP* 87 (1992) 79.

²⁶ As in Theophrastus fr.636C, concluding *περὶ δὲ τῆς εἰσαγγελίας, ἔάν τις μὴ μεταλάβῃ τὸ πέμπτον μέρος τῶν ψήφων, οἱ δικασταὶ τιμῶσιν*.

punished as a “traitor,” *prodotēs*.²⁷ Spengel’s treatment of Ctesiphon’s defense (from 1861) remains notable in this regard: much of his essay deals with the litany of accusations against Aeschines for betraying Athens; Spengel recognized the huge cloud of recrimination hanging over the prosecutor, but he reduced it to a *non liquet*. Even the most compelling of Demosthenes’ charges, that Aeschines was to blame for all the advantages Philip had gained—by the Peace of Philocrates (32–49) and later by Aeschines’ initiative at the Amphictyonic Council (142–153)—provide no proof that Aeschines actually conspired *to that end*.²⁸ And yet the allegations are likely to have consequences. After all, in the Athenian assembly, there was no need to prove specific intent in order to condemn a man for *prodosia*. The fate of the Arginusae generals is a case in point: the charge against them was not that they abandoned the casualties for some malicious end but simply that they failed to do as duty required. By the same standard, Aeschines had acted with reckless disregard of what he was giving up to the enemy. The blame did not amount to an indictment but certainly seems to have weighed against him.

Now the Arginusae case (from 406) may be instructive as well with regard to the decree for trial. Remember, as Xenophon tells it,²⁹ Callixeinus had brought forward a decree of council, for the assembly to decide upon the generals’ impeachment (*eisangelia*). When Euryptolemus demanded due process and challenged the decree as unlawful (*paranomon*), he was threatened with the same fate the generals would face. To be clear, he was *not* threatened with *the same charge* as the generals; there is no description of *prodosia* that would apply. Callixeinus’ proposal (which is spelled out at *Hell.* 1.7.9–10) charges the generals for “failing to recover” their comrades (οὐκ ἀνελάμβενοι); on that issue, the *dēmos* is to

²⁷ Leonhard Spengel, “Demosthenes Vertheidigung des Ktesiphon,” *Abh. Münch.* 10 (1861) 29–97, at 47–50, 69–70, 90–93.

²⁸ “Und Aeschines? ist er ein Verräther? Unmöglich wäre es nicht, dass er von Philippus bestochen gegen besseres Wissen und Gewissen gesprochen hätte, aber Demosthenes hat es keineswegs bewiesen” (Spengel 50).

²⁹ Xen. *Hell.* 1.7.12–16; cf. Carawan, *Dike* 10 (2007) 19–22.

cast ballots tribe by tribe. When Euryptolemus blocked that proposal with his sworn challenge, Callixeinus et al. could not simply dismiss the *hypomosia* by charging Euryptolemus with something else; Callixeinus' proposal was blocked until that case was decided—or until Euryptolemus withdrew his complaint (as he prudently would do). So Lyciscus added a rider calling for anyone who challenged the decree “to be judged by the same ballot as the generals, if they would not abandon their complaint”: τῆ αὐτῆ ψήφῳ κρίνεσθαι ἥπερ καὶ τοὺς στρατηγούς, ἐὰν μὴ ἀφῶσι τὴν κλήσιν. That is, if Euryptolemus would not withdraw his challenge, the verdict would decide at once the legality of the decree (to execute the generals or not) and the fate of those who opposed it. That probably means that the charge of *paranoma* would be decided by the same vote that Callixeinus had prescribed for the generals (with ballots and urns, tribe by tribe) and Euryptolemus would face the same penalty if the vote went against him.

After all, the assembly regularly dictated arrangements for impeachment by decree, and it was probably not unusual to meet objections as Lyciscus did, with a rider to fix the procedure.³⁰ Thus in Euryptolemus' case (had he not withdrawn his challenge), the same vote would have decided the *graphē paranomōn* and the fate of the defendants.³¹ The two cases would be combined: the same penalty that awaited the generals (for *prodosia*) would threaten the reckless prosecutor (in his *graphē paranomōn*) for obstructing the will of the people.

Similarly in the Crown Case, it looks as though Aeschines faced resentment for blocking the proposal in the assembly, and a rider was added to the decree for trial so that he must share the jeopardy. To that end, it would seem sensible to adopt the rule from impeachment (*eisangelia*), with a penalty to be decided by the jury, if he failed to win one fifth of the votes.

³⁰ Notably in Pericles' case (Hansen, *Eisangelia* no. 6): Dracontides' decree, for voting on the acropolis with ballots from the altar; Hagnon's rider moved the case to court and recast the charge.

³¹ When vindicated by the court, the proposal is enacted: Hansen, *ClMed* 38 (1987) 63–73.

Whatever procedural maneuver brought the case to court in 330, neither speech makes any reference to it, and that omission is surprising if we suppose that the case was prepared in the ordinary way (in *anakrisis* before the *thesmothetai*), without public hearing. But much of that gap can be closed with this reconstruction: the long delay and the move to revive the case were hashed out in the assembly, as the people debated the decree for trial. In effect, that debate in the assembly was the first phase of these proceedings. Some of the most puzzling disparities in the speeches—points that one side raises and the other ignores—are best resolved in this way. Notably, in 209–211 Aeschines portrays Demosthenes in tears, crying, “Where can I find refuge? ... There is no place I can fly away to!”; at which Aeschines protests, “Where can the Athenian *dēmos* find refuge, Demosthenes? What alliance stands ready? ... Why the tears, why the outcry? Isn’t Ctesiphon the one on trial?”³²

II. What was at stake for the defense in 330?

Holding Demosthenes to account

In 6–8, Aeschines insisted that the jury must be guardians of the constitution, and on that note he returned to the rule against crowning anyone who faces accounting. We might expect Aeschines to explain why that rule still matters in this case, six years after Demosthenes passed the accountings in question. He might have insisted that, although the point now seems academic, it *was* a violation of law in 336 and Ctesiphon is still liable for it. He never makes that argument. Rather, ingeniously, he will try to show that there is still one item for which Demosthenes has never yet faced accounting. But first, following close upon that image of the jury as guardians of the constitution, he proceeds to explain at some length why the rule against crowning-before-accounting was conceived and what its purpose must be (9–12): sometime in the past, honorific decrees were awarded in

³² In the old debate over the timing of this case (n.1 above) Westermann treated this passage as evidence that Aeschines revised his speech to answer what Demosthenes had said at trial, though nothing in Demosthenes’ speech corresponds.

mid term to prejudice those who would sit in judgment when the public servant was called to account; the jurors' sense of shame would keep them from condemning the man they had given such credit. A lawgiver saw through this and made a very sensible law against it; "but arguments have been devised stronger than the laws, and unless someone tells you so, you will be deceived and never know it." Without further explanation that rationale seems to have little relevance to the case at hand, since Demosthenes is no longer subject to accounting. It could be stock material carried over from an old draft, but since Aeschines saw fit to use it in his speech for trial (or for circulation), it ought to reflect upon some consideration that most of his audience would recognize. The likely implication, I suggest, is that Demosthenes might yet be held to account for his policy, and the defense has conjured up this crowning to shield him from that reckoning.

To be sure, Aeschines insists that, on one item, Demosthenes has never yet passed accountings for the service that Ctesiphon would honor. But that technicality may have been dictated by conventional constraints: rather than simply argue that the honorand was unworthy, the suit for unlawful action (*graphē paranomōn*) had to posit some express contradiction between the decree and the standing law. And in the revived proposal the strongest contradiction that Aeschines could find essentially amounts to this:³³

Ctesiphon's decree gave particular recognition to Demosthenes' service in the Wall Building project in 337/6, and there were two offices or levels of responsibility that Demosthenes held in regard to that project:

(α) As director of the Theoric Fund he was in charge of the fortification project for the city as a whole; in that capacity, he

³³ Aeschines' argument on the second count, that crowning at the Dionysia was in conflict with standing law (32–48), also seems a desperate recourse (to be treated in a further study). It may have been added in 330, as Friedrich Blass supposed in his first edition of *Die attische Beredsamkeit* III.2 (Leipzig 1880) 186.

was accountable for the sum of ten talents (or more) that was collected and expended in that year.

(β) But he was also the *teichopoios* for Pandionis, called upon by his tribe to collect their part of the funding and see that it was put to good use.

In the latter capacity (β) he seems to have contributed the whole sum of what was owed for his tribe, out of his own pocket.³⁴ But the rule, under Demosthenes’ own decree, seems to be that the tribal *teichopoioi* (β) were accountable to (α) the director of that project; that is, to Demosthenes himself (τὴν τῶν τεichoποιῶν ἀρχὴν ἤρχεν). Aeschines does not make the point as clear as we would like, because his jury in 330 had just heard the clerk read the decree and other evidence, and they would recall the objection Aeschines had made in the assembly.

Nonetheless, in itself the charge seems oddly trivial: since Demosthenes had passed his accountings for his major offices in 336, it was absurd to insist that he was still accountable when the case comes to trial in 330, for what he had donated six years earlier. If that old technicality carried any weight with the jury, it served to remind them of Demosthenes’ personal investment, from his role in the alliance with Thebes to the recent uprising of Sparta.

The other crown case: Diondas against Hyperides

In 330 Demosthenes insists that he is accountable for his whole career (18.8) but he is not very clear about how he will be held to account for it. A digression late in his speech gives us a clue and, luckily, new material has come to light that will help us interpret it. For Demosthenes tells (222–223) that Ctesiphon had honored him in virtually the same language as had been used in two (or three) earlier decrees: by Aristonicus in 340 (cf. 18.83)

³⁴ [Plut.] *X orat.* 846A concludes that 100 minas was the whole of his tribe’s contribution: καὶ τῶν τεichῶν ἐπιμελητῆς χειροτονηθεὶς ἀπὸ τῆς ἰδίας οὐσίας εἰσήνεγκε τὸ ἀναλωθὲν ἀργύριον, μνᾶς ἑκατόν. The original proposal seems based on this premise, honoring Demosthenes as a benefactor of his tribe, to allow for crowning in the theatre if the *dēmos* approved (Aeschin. 3.41–42, 44).

and thereafter by Demomeles and Hyperides. Why the fetish of coronation? Is it simply that Demosthenes could not satisfy his *philotimia*? Certainly there are such politicians, past and present. But if that were all there was to it, we would expect Aeschines to put it in that perspective; yet he never mentions the previous crownings.³⁵ Perhaps that silence is to avoid lending credibility to the decree at hand, but there may have been another, more important consequence that needed no amplification: the fact that Alexander was likely to demand the surrender of Demosthenes once again, as he did in 335/4. For that was the reckoning that seems to have revived Demomeles' decree, when it, too, had been left for dead.

Demosthenes' second crowning decree was passed before Chaeronea and indicted by Diondas in the aftermath; when the case came to its conclusion, Hyperides successfully defended the decree and it then took effect. Until a decade or so ago, the speech against Diondas was known only from a few references; it was generally supposed that the sequence of legislation and litigation unfolded without interruption³⁶ and thus concluded before Aeschines' case against Ctesiphon even began. Now a substantial fragment of the speech has been recovered from palimpsest and subjected to meticulous study.³⁷ Some questions

³⁵ Here he mentions Demomeles only as defendant in a case (of wounding) that Demosthenes brought at the Areopagus (3.51). Elsewhere (2.93) Aeschines had claimed that Demosthenes was fined for failing to proceed in that case; so he might have claimed that Demomeles' decree was some sort of pay-off.

³⁶ Dem. 18. 222–223; [Plut.] *X orat.* 848F and 846A (mistaking Diondas for “Diodotus”). From these references it was once concluded that there two decrees authored by Demomeles and Hyperides; and the natural presumption was that both cases were decided in due course, within the year. Thus Spengel, *Abh. Wien* 10 (1861) 82, acknowledging (n.1) that Diondas may have brought suit after Chaeronea. Goodwin, *Demosthenes On the Crown* 159, recognized that “the two names probably indicate a decree moved by Demomeles ... and amended or enlarged by Hyperides.”

³⁷ See Christopher Carey et al., “Fragments of Hyperides *Against Diondas* from the Archimedes Palimpsest,” *ZPE* 165 (2008) 1–19, with description of

remain but the key findings are fairly solid, and the parallel with Ctesiphon’s case seems to me compelling: in both cases, we have a suit against a crown decree that is postponed for some years and then revived when recent events reveal no clear advantage for the prosecutor and no new achievement for the honorand but all the more reason to show support for him in peril.

Hyperides’ speech defends a decree to honor Demosthenes that passed in the assembly but was blocked by a lawsuit, left in abeyance for more than two years, and then somehow brought to trial with the consequences undiminished: either the author of the decree would be punished or the crowning would be carried out. Demosthenes mentions the case as though it targeted his cousin Demomeles as well as Hyperides, for a decree honoring Demosthenes on the eve of Chaeronea (18.222–223): when it came to trial Diondas won fewer than one fifth of the ballots. That conclusion to the case can now be dated with some confidence to the winter or spring of 335/4.³⁸

Hyperides describes Diondas as an extortionist litigator of the worst sort, a *sykophantēs* who brought many lawsuits to force payment or other compliance, rarely risking a trial.³⁹ The case at hand was probably the last such gamble before Diondas vanished from the legal and political scene. Horváth suggests that Diondas revived the case when he expected to leave Athens and join the Macedonian crusade against Persia, so he had little to lose. That recourse probably factored into his decision, but he must have known that public opinion was largely hostile to Macedon, and that, if he revived the case and then lost it, the

the text and credit to earlier research; Lázló Horváth, “Hyperidea,” *BICS* 52 (2009) 187–222, and P. J. Rhodes, “Hyperides’ *Against Diondas*: Two Problems,” *BICS* 223–228. Horváth has provided text and apparatus at <http://hypereidoc.elte.hu>.

³⁸ Horváth concludes, *BICS* 52 (2009) 196, “the speech was delivered between January and March 334 BC.” Rhodes, 223–226, suggests that the trial came as late as May or June, when Diondas would take courage from Alexander’s dedication at Athens from the spoils of Granicus (*Arr. Anab.* 1.16.7).

³⁹ And yet, apparently, Diondas was never barred for reckless prosecution, until this case.

crowning of Demosthenes, which he had thwarted thus far, would at last succeed. He must have had little choice, and so it seems more likely that Hyperides and his group forced the issue: they revived the decree when it suited their agenda, and Diondas was compelled to contest it. But, again, how would that work?

Hyperides calls upon the Athenians to recognize what had become of their constitutional remedy in the wrong hands (p.3 Carey = 145^r lines 3–9):

I am on trial for what you have already decided. And yet, ... just as you think you must punish those who write decrees, if anyone authors anything against the interest of the *dēmos*, so, too, you should hold to account those that bring the indictments (in those cases). For it is no less a wrong to obstruct what is in the people's interest by trumping up charges than it is to draft unlawful acts.

There is no question but that Hyperides is the one in jeopardy, yet his liability goes back to the decree of 338, when Demomeles proposed to honor his cousin Demosthenes at the Dionysia the following spring. Then, sometime after the battle, Diondas challenged the decree, before the honors could be proclaimed in the theatre. Later Demosthenes (in 330) speaks as though Demomeles and Hyperides were authors of *psēphismata*, plural, but he is probably referring to the same measure, a decree initiated by Demomeles and revived by Hyperides. For Demosthenes speaks as though their combined efforts were vindicated when Diondas' lawsuit was so resoundingly defeated.

From that testimony scholars have long supposed that Hyperides simply added a rider to Demomeles' decree, but the new fragment complicates that explanation: for Hyperides, in 335/4, proceeds as though he is the one defendant who will be answerable for the decree that, presumably, Demomeles initiated. Now Hyperides has much to say about who is in jeopardy but he never mentions or alludes to Demomeles. To be sure, what we have is but a fragment of what was probably a lengthy speech, but if the elder cousin of Demosthenes were Hyperides' co-defendant, we might expect him to be indicated somewhere in these arguments, where Hyperides insists, "I am on trial for what *you* have ... decided." Instead, by this time Demomeles seems to

be out of the picture. He had been at least in his sixties, perhaps seventy or so, when he proposed the measure in 338.⁴⁰ So, let us suppose, Hyperides took up the case when his colleague was no longer active but other considerations became urgent.⁴¹

After the death of Philip, Aeschines claims (160), Demosthenes had carried on triumphant, as though Philip’s successor were a ridiculous pretender, a Margites. And then, when Thebes rose in revolt and Alexander came to deal with it, Demosthenes was elected ambassador to negotiate with him; but the vaunted champion of the *dēmos* turned back in trepidation—for good reason. For Alexander would demand his surrender as one of the instigators of that insurrection (Diod. 17.15). At that juncture (in 335/4), the Athenians rallied around Demosthenes and refused to surrender him to Alexander or to the synod of Greek states that followed his lead (161). Thereafter, as Aeschines tells it, Demosthenes managed to win some indulgence from Alexander through the seductive appeal of a mutual companion (162). And that rapprochement (allegedly) explains why Demosthenes had no proposal to offer when a more plausible match for Macedonia emerged, when the Persian king, with all his wealth and power, advanced to meet Alexander in Asia Minor (163–164): “Did you say anything at all, or author any decree” to take any action?

As for the rebellion that arose under Spartan leadership in 331, Aeschines demands (165–166), “What, after all, did you (actually) do?” Evidently Demosthenes put on quite an act (167): “you whirled around the *bēma* claiming that you were working against Alexander, ‘I confess to raising Laconia in revolt, I confess to stirring up Thessalians [and others] to rebellion’.” Of course Aeschines has only contempt for that claim, but there was probably something to it. In any event, however trivial Demosthenes’ role in rekindling the rebellion, he was bound to claim

⁴⁰ Davies, *APF* 3597 III.B (p.116).

⁴¹ The case *Against Leptines* (Dem. 20) is a partial parallel: the suit against unfitting legislation (νόμον μὴ ἐπιτήδειον θεῖναι) was initiated by Bathippus and, after his death, taken up by his son Apsephion more than a year later; in the meantime other litigators seem to have abandoned the case (20.145).

credit. Such claims would become known to Alexander and convince him that the time had come at last to hold to account this *dēmotikos* who kept stirring up insurrection.

It is at this point in the speech (168) that Aeschines turns intently upon the consummate “man of the people,” matching the true qualifications of such a figure against the failings of Demosthenes (as Aeschines sees them). That tag, *dēmotikos*, seems to have taken on a special importance at this juncture, when the next-to-last gasp of rebellion was throttled and Demosthenes was expected to be blamed for it. Emissaries from Pella were likely to demand his surrender, but his defenders would protest that Demosthenes was in fact, as his very name proclaims, the bulwark of the people, the one who had steadfastly risked life and liberty to say and do what was best in their cause. And so, to reaffirm their faith in him and preempt the demands of the overlord, his backers had revived Ctesiphon’s old decree.

Likewise in the earlier instance, three years after Demomeles proposed to crown his cousin, Hyperides revived the decree that Diondas had blocked and left for dead. It was the threat to Athenian autonomy in the winter of 335/4 that prompted that measure of support for Demosthenes in his peril. After all, as Aeschines explained (9–12), the purpose of honoring an officer before the end of his term was to prejudice those who would sit in judgment when he was called to account. And the fragment *Against Diondas* seems to acknowledge that motive.

Hyperides puts the backdrop to this case amid political maneuvers at Athens after the revolt of Thebes was crushed and Alexander demanded the surrender of Demosthenes, Lycurgus, and other spokesmen of the opposition. Diodorus reports that Phocion called for Demosthenes and the others to sacrifice themselves for the salvation of the city, just as the martyrs of early Attica had done; but the people shouted him down.⁴² Then Demosthenes delivered an inspiring speech, and Demades came forward with an “artfully composed decree” (ψηφισμα γεγραμμένον φιλοτεχνῶς), to answer Alexander’s demand with a more

⁴² Diod. 17.15; cf. Arr. *Anab.* 1.10.

tolerable concession: the men whom Alexander accused of insurrection would face Athenian justice, for the court of the people to “punish them according to the laws, if they deserved retribution” (κολάζειν κατὰ τοὺς νόμους, ἂν ὧσιν ἄξιοι τιμωρίας). And, evidently, Demades’ artful arguments persuaded Alexander that he had more to gain from litigious infighting at Athens than by making martyrs of his enemies. That seems the best setting for the revival of the decree from 338; for, in the pages we have, there are passages that respond to pressure from Macedon to deliver up Demosthenes et al.

In the case at hand Hyperides himself is the one in jeopardy, if the verdict goes against him; but there is another fate in the balance. The reference is indirect but the point is plain enough. For he asks the jury to *imagine* that their current predicament had unfolded in the past, when Philip was still alive and plotting against Athenian interests (p.2 Carey = 137^v–136^r lines 17–26):

Consider this, men of Athens: if we had been seized and brought to trial before Philip, what would he have accused us of? Not that we blocked him from taking Byzantium, led Euboea to revolt, demolished the alliance he had with the Thebans and made them our allies? What would we have suffered at his hands? Wouldn’t we have been put to death? I certainly think so. Then isn’t it awful, men of Athens, if on the same charges, we must be put in jeopardy (twice), at the hands of our adversaries (in Macedon) and before you (in court)?

Now it was Alexander who demanded the surrender of Athenian leaders, and the jury would recognize that Hyperides’ scenario reflects upon that situation at hand.⁴³ For the double jeopardy—at trial in Athens, facing doom in Pella—only makes sense in the context that Diodorus reports: Alexander has demanded the surrender of Demosthenes and others, to take retribution for their troublesome opposition. The speaker indicates that turn of

⁴³ Hyperides carries on connecting the past and the present (27–31): “Philip himself not only honored those who acted for him against you but also agitated for them to be honored among us—so they are inscribed as *proxenoi*—but we are barred from confirming the honors that we have given some among ourselves!”

events, where he alludes to the fate of Thebes: there are Theban refugees present in court, with nothing left to do but listen to the arguments—"I would it were not so," he says, to soften the bitter reminder. And on that note he cautions the jury (5.25–6.1 Carey):

If you reject this lawsuit, [the Thebans present] will conclude quite rightly that the accuser is ... raving mad, but that you are sticking to the same [commitments you made] ... But if you convict, they would have every right to charge you, as you condemn yourselves for wrongdoing in the very cause that you called upon them to join.

The cause that Athens called upon Thebes to join was, of course, the defense at Chaeronea in 338, for which Demosthenes claimed singular responsibility. Again, in 335 Demosthenes claims to have agitated in support of the Theban rebellion, but Athens had not joined in the insurrection and many of those refugees may have felt betrayed. For the jury, the recent disaster to their neighbor does not affect the issue in this case except insofar as they must either vindicate Demosthenes, who drew Thebes into their alliance years earlier, or at last renounce him.

So, to sort out these complications: one may reasonably suppose that Diondas was willing to revive his prosecution because Alexander had crushed the opposition—and perhaps because he expected to join him in Asia and thus evade any consequences at Athens (as Horváth suggests). But that scenario does not quite explain how the old decree in honor of Demosthenes came at last to trial with Hyperides as defendant and not Demomeles. From the pages preserved in the palimpsest we might rather conclude that, in response to Demades' artful proposal, in order to frustrate any bill of impeachment, Hyperides revived the old decree honoring Demosthenes. And so Diondas had to take up the cold case.

Years later Demosthenes treats the two cases as substantially the same: to prosecute Ctesiphon for praising Demosthenes' role in the alliance with Thebes is tantamount to retrying what the

court had already decided by their verdict against Diondas.⁴⁴ On a procedural level, the two cases differ, but the parallel may be closer than scholars have recognized. In Ctesiphon’s case, it was the council’s proposal, the *probouleuma*, that was challenged before it could be passed in the assembly, and, ordinarily, the viability of any such proposal ended with that council’s year. Yet Ctesiphon’s *probouleuma* was revived in 330 and, as I have argued here, it was probably brought to life by a decision of the assembly, with some irregular maneuvering in the council of 330/329. In Hyperides’ case against Diondas, the decree had passed but something similar may have happened: the moribund decree was not likely to be resurrected without some new initiative.⁴⁵

Two themes in the fragment point to this solution. First, considerable weight is put upon the pattern of obstruction by Diondas and others like him; they take advantage of the rules to bring charges and then let the accused languish without a decision. The implication seems to be that such would have been the fate of the decree at hand, if no one had taken the initiative to revive it. And there is also the insistence that the people should reaffirm their conviction and not abandon what they resolved years before. On this rationale Hyperides probably proposed that the old decree, what they “already decided,” at last be carried out, and he probably added a provision against further obstruction: if Diondas (or anyone else) should insist upon his sworn challenge, the case must at last proceed to trial. This measure to defend the leader who “carries on saying and doing what is best for the polis,” must not be thwarted by the same tactics that blocked so many initiatives in the people’s interest. Faced with a decree to this effect, Diondas may have had no choice but to take his chances in court—and pack his gear for a tour of duty with Alexander.

⁴⁴ Dem. 18.224, claiming “double jeopardy,” as though the previous decisions had established an indisputable legitimacy to the Theban alliance, as Spengel explained, *Abh. Wien* 10 (1861) 82. S. Usher, *Demosthenes: On the Crown* (Warminster 1993) 248, finds it “sophistical to the point of absurdity.”

⁴⁵ Such cases, with delay of more than a year after passage in the assembly, must have been rather rare: none listed in Hansen, *Sovereignty*.

Similar considerations explain the timing of the Crown Case: the trial was indeed triggered by the recent rebellion of Agis and came on the heels of his defeat (as Cawkwell argued), but the prosecution was not revived by the pro-Macedonians in triumph. Demosthenes had boasted of his role in fomenting insurrection and he was likely to face the wrath of Alexander yet again. So Ctesiphon and other backers, with some maneuvering among the members in council, managed to reintroduce the old proposal. The purpose was to achieve precisely what Aeschines warned of in crowning-before-accounting (9–12): to prejudice the jurors for the more fateful choice they had to make. For Aeschines reveals not only that crowning is back on the agenda but also that Demosthenes faces serious jeopardy, if the people turn against him:⁴⁶ the Athenians must “send him away, to be rid of this disaster afflicting all Hellas”; or “seize him like a thief ... for retribution.” If they crown him, they make common cause with those who violate the peace; only by doing “the opposite,” by conviction, can they absolve themselves.

October, 2018

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⁴⁶ 3.253–254: οὗτος στεφανοῦσθαι ἀξιοὶ καὶ κηρύττεσθαι οἶεται δεῖν. οὐκ ἀποπέμψετε τὸν ἄνθρωπον ὡς κοινὴν τῶν Ἑλλήνων συμφορὰν; ἢ συλλαβόντες ὡς ληστὴν τῶν πραγμάτων, ἐπ’ ὀνομάτων διὰ τῆς πολιτείας πλέοντα, τιμωρήσεσθε; ... δόξετε δ’ ἐὰν μὲν τοῦτον στεφανώσητε, ὁμογνώμονες εἶναι τοῖς παραβαίνουσι τὴν κοινὴν εἰρήνην, ἐὰν δὲ τοῦναντίον τούτου πράξετε, ἀπολύσετε τὸν δῆμον τῶν αἰτιῶν.