

Aischines' Liability in the Crown Case

In late summer of 330 BCE the famous “Crown Case” finally proceeded to trial. Six years earlier Ktesiphon, as councilman, had proposed (a *probouleuma*) to crown Demosthenes for singular service in the aftermath of Chaironeia, and Aischines had blocked the proposal with a suit for unlawful action (*graphē paranomōn*). A year later the case had not come to trial and, automatically, the proposal became moot. And so the matter stood for five years until, somehow, the original proposal was revived in the same wording, and the case came before a jury who would decide if it should be enacted at long last. The developments that brought this about are obscure to us: evidently Aischines forced the issue (Cawkwell 1969, followed, e.g., by Worthington 2013: 294–5). But there must also have been some legislative intervention to make the original proposal viable again, for both speeches expect Demosthenes to be crowned if the bill passes (Schaeffer 1887: 225–7; cf. Wankel 1976: 18–25; Yunis 2001: 7–12). Later tradition agrees that the verdict drove Aischines into exile, as he failed to win even one-fifth of the ballots; he incurred the automatic penalty of ten minas along with disqualification (*atimia*) from bringing any such suit in future. And so, scholars have supposed, it was that reversal—a relatively modest penalty and being barred from a remedy he had only resorted to once—that drove him to abandon Athens. But there is another detail in the ancient sources that has been largely ignored, and it may lead to a more credible explanation: Aischines himself proposed the penalty that he would face, one that would entail complete *atimia*, the radical cancellation of his citizen rights. Prompted by that clue, this paper reconsiders (1) the later testimonia, along with passages in the two surviving speeches that refer to (2) irregular proceedings that led to the trial, and (3) a threat of *atimia* hanging over the prosecutor.

(1) The ancient testimonia report that Aischines failed to win one-fifth of the votes, but none says explicitly that he was driven into exile simply because of the automatic penalty (e.g., Plutarch *Dem.* 24.2). The various *vitae* represent two traditions ([Plut.] *Moralia* 840C–D): one, that Aischines could not or would not pay the ten minas; the other, that “he himself assessed the *additional* penalty” that he would face (ὀρίσας τὸ πρόστιμον αὐτὸς ἑαυτῷ, as transmitted in Photios 61.20a Bekker, and in the *Vita* attributed to Apollonios).

(2) Aischines protests at length against irregular proceedings in the assembly and legal maneuvers that put the prosecutor in the position of defendant (3.3–8, 191–4). This scenario is usually discounted as commonplace ranting against factional politics, but the emphasis suggests a particular relevance to the case at hand. (3) Demosthenes himself supposes that Aischines faced complete *atimia*, sufficient to silence him in assembly and the courts (18.13, 82–3). That perspective is usually explained away as hyperbole or post-eventum gloating, but it probably refers to the very circumstances that Aischines protested against.

The second tradition in the *vitae* would suggest, indeed, that Aischines was required to accept an extraordinary risk as prosecutor, a penalty that entailed complete *atimia*. In major *paranomōn* cases the defendant (author of the targeted decree) usually faces a huge fine of many talents and *atimia* if he does not pay. The arrangement in Ktesiphon’s case seems to be that the crushing cost would fall upon whichever litigant lost the case (by whatever margin). Scholars have ignored that implication largely because it does not fit with the longstanding model of *graphē paranomōn* as a constitutional remedy with a fixed procedural mechanism against overreach by the *demos*. But in fact the evidence suggests that this procedure was sometimes subject to *ad hoc* adjustments against obstruction. After all, in the first well-attested case, against the Arginousai generals, it was proposed that the litigant who challenged the decree be himself

subject to the same penalty that those defendants would face if they lost (Xen. *Hel.* 1.7.13). In that instance the prosecutor withdrew his challenge to the bill, but a similar wager was probably devised in Ktesiphon's case, which Aischines had little choice but to accept: the *probouleuma* was revived by vote of the assembly to submit the issue to the court, with a rider that he who challenged the measure must face the same penalty he proposed.

Bibliography

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