Graphē paranomōn (indictment for unlawful proposals[1])

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Graphē paranomōn is an institution of the Athenian public law, which together with the institution of ostracism constitutes a distinctive feature of the workings of democracy in Athens. *Graphē paranomōn* is a means of preserving legality. It has always been, if not exclusively, a preeminently Athenian institution. In fact it is occasionally found in some other Greek cities. It is easy, however, to discern the g*raphē*'s Athenian nature, for legality is inextricably bound to democracy and the rule of law.

According to the prevailing view, *graphē paranomōn* was introduced in 462 B.C.E. by motion of Ephialtes, son of Sophonides, leader of the democrats. According to Aristotle (*Ath. Pol.* 25.1), he was an incorruptible man and just in his devotion to the constitution. It belongs to an era when the Persian danger had just been averted decisively by Kimon's victory (467 B.C.E.) at the Eurymedon, a river in Pamphylia [6] in Asia Minor. The Athenians played a major role in the defeat of the Persians and the Athenian demos had recognized its power and sought to establish control over the governing of the city as a result. Ephialtes seized the opportunity —especially during the absence of Kimon, the leader of the oligarchs — to initiate democratic reforms with the help of the then young Pericles. Some of these reforms were aimed at stripping the Areiopagos of its powers.

The Areiopagos (officially the council of Areiopagos) was a body consisting of ex-archons and in this regard it may be compared to the Roman Senate. Due to the fact that former archons made up the Council, it set the tone in politics. Since by nature and tradition

[1] Translated by Evangelia Petridou (some notes by Ed Carawan [indicated EC]) The choice of "unlawful" to render *paranomos* is meant to convey the willful contradiction, "contempt" and violation of standing rules by a new law or decree (as explained p. 18 [1962]), and to avoid "unconstitutional" as a term fraught with connotations of modern judicial review which may not always fit the ancient model, without the hierarchy of rules implicit in modern systems (p. 14). Page numbers refer to the 2nd edition: Athens, 1962 (enlarged from *Νέον Δίκαιον* 16 [1960] 229-33).

the Areiopagos was a conservative body, the democrats wanted to curtail its powers, of which the most important was the so called *nomophylakia* (‘guardianship of the laws’). The Areiopagos was the guardian of laws and supervisor of the magistrates. *Nomophylakia* was of great significance and could be used to restrict the democrats and for this it was abrogated by Ephialtes’ reforms.

Nomophylakia however, whether exercised by an oligarchic or democratic body, is an important institution, especially to a democracy such as Athens. [7]. Thus following the abrogation of *nomophylakia* exercised by the Areiopagos, a substitute had to be found. This was *graphē paranomōn* (indictment for unlawful proposals). In Athenian public law, *graphē paranomōn* referred to the public criminal indictment which, in the absence of a prosecutorial office, ὁ βουλόμενος (any individual who is willing) could pursue. It was a kind of *actio popularis* and it was called *graphē* (‘writ’) because it was in writing.

Graphē paranomōn was thus an indictment which anyone at all, ‘anyone willing’ could carry out, seeking to abrogate an unlawful law or decree through sanctions imposed on the one proposing such an unlawful law or decree. Law and decree were two written sources of law in Athens. We are not able to discern a difference in content between a law and a decree, though the subject is hotly debated. In the following discussion I will use the two terms without distinction while bearing in mind that surviving decrees greatly outnumber surviving laws.

A law was unlawful when it had either formal or substantive defects. We will discuss substantive defects further in the course of this lecture (see p. 16f.). Formal defects —and these especially [8] supplied grounds for a *graphē paranomōn*—were any flaws in the legislative procedure. One such common formal defect often incurring *graphē paranomōn* occurred when a decree was put to a vote in the assembly of the people without a preliminary recommendation by the council of the five hundred.

The council of the five hundred was the second deliberating body in Athens. It was called the council of the five hundred because it consisted of five hundred councilors. The duties of the council of the five hundred were rather administrative by today’s

standards. However, it also took part in legislating since it prepared the bills that were put to vote in the assembly of the people in the form of declarations of the council of the five hundred, its own decrees. These were called *probouleumata* because they were properly introduced first (i.e. before debate in the assembly of the people). Decrees appeared as declarations by both the council of the five hundred and the assembly of the people: ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ ('it was the decision of the council and the assembly'). Omission of the preliminary decree was grounds for *graphē paranomōn*.

Liable to *graphē paranomōn* was any Athenian citizen who had proposed an unlawful law or decree or colluded in the passage of such law or decree. Thus it was mainly the *rogator legis* (in Roman terminology) ['proposer of a law'] who could be accused in a *graphē paranomōn.* We have to be aware, however, that [9] according to the democratic principle of *isegoria* (equal access to the right of speech), any Athenian member of the assembly of the people was able to put forth proposals. This was in contrast to Rome where only the presiding magistrate of the popular assembly had *ius agendi cum populo* and the people, in accordance with the aristocratic rule of *consensus,* simply agreed or disagreed without having any right to submit their own proposal. But the proposer, ὁ εἰπών as he was called, who had to be mentioned as the mover in the decrees, was not the only person liable to *graphē paranomōn*. Any other person supporting the bill was also liable, e.g. the presiding councilor in the assembly, who had allowed voting on that proposal, the orators who had argued for it, and so on.[2]

As mentioned above, any Athenian citizen —ὁ βουλόμενος ('anyone willing')— could be prosecutor. He could stand up when the proposal was made and publicly declare that he considered it unlawful and that he intended to prosecute the proposer via *graphē paranomōn.* At the same time he also had to declare the law which the proposal contravened. It was necessary for him to follow up and reinforce

[2] It is doubtful whether merely vocal support of a bill rendered the speaker liable, but it seems certain that liability extended to anyone whose name appeared on the record—for proposing 'riders', or, as T observes, the officials who preside and put the matter to a vote, as feared in debate on the Sicilian expedition. (EC)

this declaration with an oath called *hypomosia* (ὑπωμοσία). *Hypomosia* was a kind of oath which resulted in the suspension of proceedings. In the case of *graphē paranomōn* [10] resulted in the suspension of further legislative process until the court ruled on the question of unlawfulness. In the event that the proposal had already passed, the validity of the law or decree was suspended until the court ruled.

The right to submit *a graphē paranomōn* expired one year after the unlawful proposal was made or the law was passed. The time limit concerned discharging *graphē paranomōn* as a criminal prosecution only; for once *graphē paranomōn* was initiated, access to trial could never expire. There is the example of Aeschines, who brought charges in a *graphē paranomōn* against Ctesiphon in 336 B.C.E. but the *graphē paranomōn* was not tried until six years later, in 330 B.C.E. The reason for the delay is not known. The criminal responsibility of the proposer expired after one year but anyone at any time could bring to court any unlawful law even after the one-year statutory limitation. Then the court decided only on the validity of the law.

The court responsible for trying *graphē paranomōn* cases was the Heliaia. It was the chief and standard court in Athens, in which laymen dispensed justice. As no body of judges or jurists was created in Athens, any Athenian citizen could be a member of the Heliaia (*heliastes).* This was the reason for the orators' gross and gratuitous absurdities [11] before the *heliastai.* The composition of the Heliaia, setting the trial date and the presidency rested with the *thesmothetai* (θεσμοθέται), which were included among the Athenian archons. The Heliaia usually consisted of five hundred and one *heliastai*. In serious cases the number went up to a thousand and one and this was the standard composition of the *graphē paranomōn* cases.

But there was a suit brought before even more dicasts (citizen judges). The *graphē paranomōn* brought by Leogoras, father of orator Andokides, against Speusippos on the occasion of the Hermokopidai scandal in 415 B.C.E. is reported to have been tried before 6000 dicasts. The action against Speusippos is the first testimony we have regarding a specific instance of *graphē paranomōn.*

Graphē paranomōn carried a monetary penalty which depended on the gravity of the unlawfulness. We have testimony indicating proposed penalties as high as 15 talents but we have also ridiculous

penalties of 25 drachmas. The latter are tantamount to acquittal and occur mostly during the 4th century B.C.E., when *graphē paranomōn* had degenerated. Even the death penalty is mentioned once.

G*raphē paranomōn* belongs to the so called *agōnes timētoi* (ἀγῶνες τιμητοί, 'assessable contests'). *Agōnes timētoi* were trials (before juries of citizens) decided in two stages. The first stage was more or less preliminary [12], for during this stage it was decided whether the accused was guilty and thus at the same time a decision was given on the unlawfulness of the law or decree. With an affirmative outcome at this preliminary issue, the trial proceeded to the second stage, which constituted the sentencing phase. The penalty had to be calculated, assessed, hence the name ἀγῶνες τιμητοί. From this perspective, ἀγῶνες τιμητοὶ can be compared to the Roman *arbitria liti aestimandae.* As it was customary among the ancients, the accuser proposed the penalty. In response, the accused proposed a penalty of which he deemed himself worthy. One might recollect from Socrates' Apology that Socrates' accuser, Meletus, asked for the death penalty and that Socrates not only rejected this, but counter proposed to be publicly maintained at the Prytaneion. The court had a choice between the two proposals, that of the accuser and the one of the accused.

Concurrent with the infliction of the penalty was the removal of the unlawful law and all its provisions regardless of their legality. If the unlawful proposal was not on track to become law, there was no proceeding against the proposal. Convicted for a third time on charges of *paranomōn* one suffered partial 'dishonor', *atimia*, i.e. loss of civil rights. This meant that the one convicted three times in g*raphai paranomōn* [13] thereafter forfeited the right to make proposals in the assembly of the people. Conversely, if the accuser did not get at least a fifth of dicasts' votes in favor of his g*raphē,* he was fined a thousand drachmas and lost the right to bring g*raphē paranomōn* in the future. This concludes the discussion on the narrow legal context of g*raphē paranomōn.*

But g*raphē paranomōn* presents the greatest interest because it brings about issues which to the modern jurist seem exceptional, if not inconceivable. G*raphē paranomōn* was initiated whenever a new law contravened an old one. But how is it possible a new law to

contravene an older one? Is it possible for a legal system even to exist when it ignores the rule fundamental to us of *lex posterior derogat priori* —that is, a legal system in which the past binds the future—however unforeseeable? Or, to take the question further: how can there be a legal system which relies on the opposite rule, *lex prior derogat posteriori*?

These are reasonable questions and all the more important if we consider that the concept of a body specially charged with ranking the rules of law did not exist among the ancients. Nowadays [14] the hierarchy of written law can be graphically represented as a pyramid from the lowest rank to the highest, from the ministerial decision to the decree, the law, and on up to the constitution. Thus the lower rule of the hierarchy of justice must agree with the higher one. The highest authority is the constitution, with which it is necessary for all state activity to comply, subject to judicial review. Since no such ranking existed in antiquity, how is it possible for a newer law to be found unlawful in respect to an older law of equal validity? This question is all the more puzzling since, as we noticed earlier [p. 7], it is not possible to find a difference between the content of a law and the content of a decree. To explain this phenomenon it is necessary to refer to the theory and teaching of the ancients on law and legislation. Specifically the issue at hand is the teaching regarding abrogating a law.

Historically, there have been three main systems for abolishing a law. The first system regards law as a kind of convention. This means that those to whom the law is directed submit to it willingly. Therefore, what is sufficient to abolish this law-convention is what is sufficient to abolish any convention: first and foremost the *contrarius consensus*, which is indicated by disuse.[3] [15] Such systems based on convention were taught by some sophists. The second system is the one according to which every law is in force only so long as no newer law abolishes it explicitly or implicitly. This system is currently in force. The third system is the exact opposite of the second one. According to it, the law is unchangeable, immovable, eternal, and immortal. This system, stricter in some places, more lax in others, was standard in all the

[3] That is, when a law of this sort is no longer obeyed, it is abrogated, by popular agreement. (EC)

cities of ancient Greece. For that reason, it is called the Greek system.

The strict version of this system is found in Lacedaemon. The Lacedaemonians believed in the divine origins of their legislation: they attributed it to Lycurgus, who had received it as an oracle from Delphi. Thus any alternation of the legislation of Sparta would constitute a violation of the divine commandments of Apollo. “It is not the ancestral custom in Lacedaemon to change the laws,” says Plato in *Hippias Major* (284b). Perhaps it is partly due to this fixed adherence of the Spartans to laws legislated once and for all that Sparta remained at the margin of the ancient Greek world in its political culture.

Opposed to this strict Spartan system is the Athenian one, which indeed allowed the modification of laws but under a strictly prescribed [16] process, which was the regular process for legislation.

To the Athenians, law was especially a pedagogical medium —a model and admonition rather than a command. It was necessary for a person to accept this as a model for adjusting his behavior. Under these conditions it followed that the Athenians looked to the law as something divine and sacred, as opposed to the Romans who coolly obeyed the law — an attitude more important for justice.

The Athenians had then organized an appointed session (*synodos*) of the people’s assembly for the purpose of legislation. This was the first session of the year, coinciding with the eleventh day of the month Hecatombaion (corresponding to July). During this session the people were asked if the laws were sufficient that is, whether they stood by the laws or in the contrary proposed to amend them, which is to say to legislate. If the voting came out in favor of legislation then it was possible for any Athenian member of the assembly of the people to propose a law under the following positive or negative prerequisites. Violation of these prerequisites would make the proposer of the law liable to g*raphē paranomōn.* This violation comprises the very substantive defects to which I referred in the beginning of this lecture (p.7).

The first prerequisite is that it is necessary for the new law not to contravene the ancestral constitution, about which historians and orators speak profusely. [17] The ancestral constitution is none

other than the ancient, hereditary constitution. It is the Athenian form of government. However, what exactly is this ancestral constitution and what it consists of we are not able to say, as the criteria of the native polity are difficult to discern and fluid. Evidence of this is that both the oligarchs and the democrats equally evoked it. In any event, we can inductively isolate certain principles which comprise the core of the ancestral constitution. Such a principle and indeed a fundamental one was *isonomia*, of which the Athenians were rightfully proud. *Isonomia* is equality before the law, which is even today the cornerstone of every democracy. From *isonomia* follows a further principle: that personal laws – οἱ νόμοι ἐπ᾽ ἀνδρί, as they said – were prohibited. Thus even in Rome, prerogatives [any exceptions or status above the law] were prohibited according to the famous provision of the "Twelve Tables" (9,12) "*privilegia ne inroganto".* From the interdiction of personal law we further deduce that retroactive laws were prohibited, because a retroactive law necessarily regulates specific cases or otherwise adjusts already established relationships.

The second prerequisite is that the new law may not contradict an older law, otherwise the old law must be explicitly abrogated. [18] Thus the old law has priority over the new in the absence of an explicit provision to the contrary. One must bear in mind that according to the terminology of the ancients, *paranomos* did not only convey today's meaning, that it is "unjust" or "illegal" and indeed opposition to a legal rule, but specifically in the g*raphē paranomōn* it also conveyed contempt for the existing law. Under these conditions it reasonably follows that it was necessary for the old law to be explicitly abrogated.

You might well ask: could it possibly be that difficult for the one proposing a new law to simultaneously propose the abrogation of the old law, which the new law contradicted? But one must bear in mind that, as already mentioned (p. 10), a body of jurists did not exist in Athens. The Athenians were 'sacrilegious' toward the law.[4] What is more, Athens was plagued by the evil of *polynomia* [profusion of statutes], which rendered the knowledge of the Athenian law a difficult feat. One of the functions of g*raphē paranomōn* was

[4] That is, they had no taboo against tampering with the law (EC)

precisely to purify and disambiguate the law by removing the antinomies. What would be achieved today — and to be sure in a better way — by interpretation, was achieved in Athens by g*raphē paranomōn.*

A third prerequisite is that the new law could not be among the matters exempt from legislation. There were subjects which could not be taken up by the law. These were, for example, laws under a time limit. [19] Solon had prohibited any reform of his legislation for a hundred-year period. This third prerequisite also covered laws that by a special clause, a special sanction, made provision so that they could not be abrogated. Another prohibited subject was international treaties, much like today. Another instance was the perpetual exile that is, lifelong banishment that had afflicted citizens or families. Under perpetual exile it was not possible for the people to return. The family of Alcmaeonidae, to which Pericles belonged on his mother's side, were exiled from the time of the Cylonian curse around the end of the 7th century B.C.E., and they were forced to wait for about a century before returning to Athens.

There is a fourth prerequisite but that is not related to g*raphē paranomōn.* The law had to be 'suitable' [ἐπιτήδειος] that is, beneficial, expedient, which is something different from the criterion of the 'unlawful' which we encountered earlier (p. 7). If the law was inexpedient, it was liable to a similar g*raphē* but not g*raphē paranomōn.* The question was, of course, political and not legal.

Even if all these prerequisites were met, the prejudication process was not complete. This is because the proposal of the law was brought before a committee of Heliastai —called legislators on this occasion. [20] They judged whether the proposal was worthy of being rendered into law or whether instead it should be rejected. The defense of this proposal was assumed by the proposer himself while the defense of the old law, in the instances that it contradicted the new law, was undertaken by five Athenians called *syndikoi* or advocates. That means that in the final analysis it was not the people's assembly that legislated, but instead the body of legislators. Moreover, legislation took the form of a judicial contest. The intervention of the legislators ensured that unlawful

laws would be enacted only with difficulty. But this orderly legislative procedure by legislators was not always observed and the people's assembly, in its omnipotence, legislated as it pleased.

When Ephialtes introduced the new institution of g*raphē paranomōn,* his aim was adherence to the established order and the preservation and consolidation of recent democratic gains because he knew that the people of Athens were malleable and they could easily be carried away by their passions. G*raphē paranomōn* was a restriction upon the otherwise unrestricted demos.

Indeed while the governing of the city was in the strong and "lawful" hands of Pericles there was no need for g*raphē paranomōn* and, as mentioned previously (p.11), only around the end of the 5th century B.C.E. do we witness g*raphē paranomōn.* [21] However, when the Peloponnesian War flared and the political passions lost all restraint, g*raphē paranomōn* was transformed from a political institution to a party poltics instrument for the annihilation of adversaries. And while one would expect that g*raphē paranomōn* would be aimed chiefly against the oligarchs, the opposite happened. This is because the oligarchs in particular used the democratic g*raphē paranomōn* in an effort to abolish democracy.

There is the classic example of Archinos, who belonged to the oligarchic circles of Theramenes; in 403 B.C.E. he was successful in a g*raphē paranomōn* against Thrasyboulos the leader of the democrats, who had just restored democracy after overthrowing the Thirty. This decree was indicted as unlawful on the grounds that it lacked preliminary approval of the council (ἀπροβούλευτον).

Distinguished democrats and patriots such as Demosthenes and Hyperides were prosecuted with g*raphē paranomōn.* And it is no accident that we find the most fervent acclaimer and defender of g*raphē paranomōn* in no other than the antidemocrat Aeschines. The disparity of purposes was in play again, as it so often happens with the —so called—cunning of history. For while g*raphē paranomōn* had the power to do so, it neither prevented the abolition of democracy in 411 B.C.E. under the Four Hundred nor in 404 B.C.E. under the Thirty. It did not even prevent the crime of imposing the death sentence and the execution of the generals who were victorious in the sea battle at Arginusae in 406 B.C.E. Regarding these tragic

events as well as the exercise of g*raphē paranomōn* in an effort to save the generals, which was withdrawn for fear of the crowd, Xenophon in *Hellenika* (1,7,12) writes: “and the crowd was shouting, ‘it is a terrible thing, if anyone prevent the people from doing as they wish.’”

Ironically, when in 403 B.C.E. with the restoration of democracy g*raphē paranomōn* was definitively restored, it actually turned out to be almost superfluous. This is because in 403 B.C.E. under Eucleides, the Athenians undertook a general scrutiny of their laws so that their legislation was clarified with regard to conflicting laws. The g*raphai paranomōn* from the 4th century B.C.E. are of entirely partisan nature. Almost no political man remained immune to g*raphē paranomōn,* though remarkably, Cephalus was never indicted. This is the reason why during the 4th century B.C.E. ridiculous penalties of 25 drachmas are imposed (see p. 11) and Aristophon of Azenia was indicted and acquitted seventy-five times, a fact that proves how much significance g*raphē paranomōn* had lost. But the fact that both in 411 B.C.E. under the Four Hundred and in 404 B.C.E. under the Thirty those who abolished democracy also got rid of g*raphē paranomōn* proves that g*raphē paranomōn* had been correctly devised as a guarantee of democracy.

Since comparison of laws is a brilliant means for the understanding of any given legal system under scrutiny and in addition classical antiquity is an integral entity, I consider it useful to say a few words regarding lawfulness in Rome as well as in its extension, Byzantium.

The Romans, this especially law-gifted people of antiquity, did not acknowledge the Greek legislative system. According to the Romans a newer law abrogates a previous one either explicitly or tacitly, though the Romans in their conservatism avoided explicit abrogation of existing laws. Thus it is not possible to find a newer law unlawful in relation to an older one. It was only possible to have simply irregular laws, if some irregularity had crept into legislative procedure, for example if the taking of auguries had been omitted. The ranking of legislative rules of law was unknown to the Roman respublica, [24] at least judging from the *leges Valeria Horatia, Publilia Philonis,* and *Hortensia* which equated *leges* and *plebiscita.*

Still there were some rules that were customarily upheld. They are the so-called *mores maiorum,* the customs that are comparable to the ancestral constitution of Athenians. The contents of *mores maiorum* were vague, much like the content of the ancestral constitution, so they could be easily both violated and invoked. I bring to your attention the example of the famous tribune Tiberius Gracchus, the elder of Gracchi. When in 133 B.C.E. Tiberius Gracchus was opposed in introducing social reforms by his colleague Marcus Octavius who by veto was cancelling his legislative initiatives, he devised to petition the *concilia plebis* for the deposition of Marcus Octavius as was done. This act by Tiberius Gracchus was deemed unprecedented and violating the spirit of Roman *respublica* because reputedly no Roman officer had ever been deposed from office, while in office. That they (the *concilia plebis*) could not find a specific provision, which was violated, is proven by the fact that they were forced to accept the action of Tiberius Gracchus. [25].

If there is a Roman institution aiming at upholding lawfulness and hence somewhat corresponding to g*raphē paranomōn,* that is the veto by tribunes, those terrible and immune persons of the Roman democracy, *personae sacrosanctae. During* the principate and the dominium, of course there is no room for legality, as the latter is absent in totalitarian regimes. The same is true for Byzantium. However, two novellas of the later era are remarkable.

The first one dates to the year 1159 of the emperor Manouel Komnenos I, “it is declared with the present gold-sealed decree that, if during the entirety of our reign anything is decided (in writing or not) by my regime against the laws and the uprightness of laws, it shall remain invalid and shall wholly expire, void in all respects.” This novella was included in Stephan Dousan’s Serbian Code of Law of the 14th century. Indeed some Serbian historians claimed that the concept of justice in this novella is Serbian.

The other novella dates to the year 1329 of the emperor Andronikos Palaiologos III. Addressing the members of a newly assembled court, he said, “if they understand and perceive even me to commit injustice, they should question me with frankness and [26] compel by any means possible the full correction of this injustice.” These words of Andronikos Palaiologos III bring to my mind the speech that Eleutherios Venizelos made on May 17, 1929, during the

inauguration of the newly established Council of State. Addressing the Counselors of State during the first celebratory session, the prime minister said: “if it so happens that you wish to annul even the most serious act of government to date, I will not be annoyed but I will be the first to congratulate you. For I want every citizen, even the most defenseless farmer in the far corners of the state to be able to say to the administration that does him wrong, adapting the wording of the Miller of Potsdam:[5] ‘there are judges in Athens!’ “.

In conclusion, I would like to tell you about a famous *graphē paranomōn* which actually engendered a masterpiece of ancient rhetoric that is, the speech ‘On the Crown’ by Demosthenes. Indeed the speech ‘Against Ctesiphon’ by Aeschines, to which Demosthenes responded, is nothing else but a *graphē paranomōn.*

After the events in Chaeroneia in June of 337 B.C.E. in the archonship of Chaerondas, Demosthenes proposed and passed a decree that the walls around Athens should be repaired. The decree stipulated that one individual from each of the ten tribes shall be elected as ‘wallbuilder’ (*teichopoios*). [27] He would serve as superintendant and treasurer for the repair of the particular section of the walls that his tribe was allotted.

The Pandionis tribe, to which Demosthenes belonged, elected him wallbuilder. He did not confine himself to his duties alone but also contributed 100 minas from his own funds. Demosthenes’ friend, Ctesiphon, availed himself of the opportunity to propose a decree for Demosthenes to be crowned with a golden wreath in the theater during the celebration of the Great Dionysia when the new tragedies were performed. That would be approximately in March of 336 B.C.E. The reason behind the honorary decree was that Demosthenes “conducts

[5] For a historical account of the Millers Arnold case, see for example: David M. Luebke (1999), “Frederick the Great and the celebrated case of the Millers Arnold (1770-1779): A Reappraisal.” *Central European History*, (1999) 32.4: 379-408. For an account of the narrative as part of the German mythology, see, for example, S.A.Sackmann, “Cultural mythology and global leadership in Germany,” In E.H. Kessler and D. J Wong-MingJi, eds. (Northampton, MA, 2009), *Cultural mythology and global leadership.* pp. 127-144.

himself most excellently for the people of Athens both in speech and in action".

Immediately this decree of Ctesiphon was indicted as unlawful by Demosthenes' rival, Aeschines. This indictment was formally directed against Ctesiphon but it was essentially Demosthenes whom Aeschines attacked throughout his whole speech. Due to the fact that this indictment presented great interest to the Athenians and because two of the most eminent orators were confronting each other, a whole day (called *διαμεμετρημένη,* 'measured' by the clepsydra) was given to the prosecution and the defense.

The articles of the charge were three.

The first article was that Demosthenes was to be crowned even though this was [28] while he was yet accountable as an officer. There was a law prohibiting the crowning of an officer who was subject to accounting.

The second article was that a crowning at the theater was proposed even though there was a law prohibiting the crowning at the theater.

The third article, which was the most important, was that the reasoning behind the crowning was false because Demosthenes did not conduct himself excellently for the people of Athens either in speech or in action. There was a law prohibiting falsehoods in decrees.

The outcome was disastrous for Aeschines. Not only did the indictment not gather even a fifth of the juror's votes, which meant that he was fined 1000 drachmas, but also his reputation had been so bruised that he exiled himself to Rhodes, where it was said that he established a school for orators. When Aeschines was reading his speech against Ctesiphon to the people of Rhodes, they used to ask him, admiring and gaping, how with such a speech he was not able to crush his opponent, he used to answer: "indeed, if only you had heard this beast!", meaning Demosthenes.

Ctesiphon's acquittal was also the most beautiful prize that Athens could bestow upon its brilliant son—especially in an era when Demosthenes' policy had failed miserably and the Macedonian was at his zenith. At exactly the same time when in Athens the *graphē*

paranomōn against Ctesiphon was tried, Alexander was victorious at Gaugamela in Asia and Darius was being assassinated.

In honoring the defeated Demosthenes, the defeated Athenians crowned both themselves and him with a golden crown.