

Anakrisis and the framing of argumentative strategies in Athenian Public trials

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1. A.Dorjahn, "On the Athenian Anakrisis", *Classical Philology* 36.2 (1941) 182: "...some scholars seem to find it difficult to reconcile themselves to the thought that the anakrisis was a relatively insignificant and circumscribed thing in the fifth and fourth century."
2. Isae. 6.12-13: ὅτε γὰρ αἱ ἀνακρίσεις ἦσαν πρὸς τῷ ἄρχοντι καὶ οὗτοι παρακατέβαλον ὡς ὑπὲρ γνησίων τῶνδ' Εὐκτήμονος ὄντων, ἐρωτώμενοι ὑφ' ἡμῶν τίς εἴη αὐτῶν μήτηρ καὶ ὅτου θυγάτηρ οὐκ εἶχον ἀποδείξαι, διαμαρτυρομένων ἡμῶν καὶ τοῦ ἄρχοντος κελεύοντος ἀποκρίνασθαι κατὰ τὸν νόμον. ...[13]... τὸ δ' ὕστερον ἦκοντες εἰς τὴν ἀνάκρισιν, πρὶν καὶ τινα ἐρέσθαι, εὐθὺς ἔλεγον ὅτι Καλλίππη μήτηρ, αὕτη δ' εἴη Πιστοξένου θυγάτηρ, ὡς ἐξαρκέσον εἰ ὄνομα μόνον πορίσαιντο τὸν Πιστοξένον. ἐρομένων δ' ἡμῶν ὅστις εἴη καὶ εἰ ζῇ ἢ μὴ, ἐν Σικελίᾳ ἔφασαν ἀποθανεῖν στρατευόμενον, καταλιπόντα ταύτην θυγατέρα παρὰ τῷ Εὐκτήμονι, ἐξ ἐπιτροπευομένης δὲ τούτῳ γενέσθαι, πρᾶγμα πλάττοντες ἀναιδεῖα ὑπερβάλλον καὶ οὐδὲ γενόμενον, ὡς ἐγὼ ὑμῖν ἀποφανῶ ἐκ τούτων πρῶτον ὧν αὐτοὶ ἀπεκρίναντο.
"When the preliminary hearings were being held before the Archon and my opponents had paid the deposit on their claim that these were legitimate sons of Euctemon, when we asked them the names of their mother and of her father, they couldn't say, although we protested, and the Archon ordered them to reply in accordance with the law... [13] ... later when they returned to the preliminary hearing even before anybody could ask a question , they immediately said that Callippe was the mother and that she was the daughter of Pistoxenus, as if it were enough for them merely to produce the name Pistoxenus. When we asked who he was and if he was alive or not, they said that he had died on military service in Sicily, leaving behind this daughter at Euctemon's house, who had the children by her when she was his ward, an invented tale going beyond shamelessness and quite untrue, as I'll prove to you first from the answers they themselves gave." (Trans. Edwards)
3. Isae. 10.2: ... ἡνάγκασμαι μὲν οὖν, ὧς ἄνδρες, διὰ τὸ μὴ δύνασθαι δίκην παρ' αὐτῶν λαβεῖν, τὴν μητέρα τὴν ἐμὴν ἐν τῇ ἀνακρίσει Ἀριστάρχου εἶναι ἀδελφὴν προσγράψασθαι· οὐ μὴν διὰ τοῦτο ὑμῖν ἢ διάγνωσις ἦτον περὶ αὐτῶν εὐκρινὴς γενήσεται, [ἀλλ'] ἐκ τῶν νόμων σκοποῦσιν εἰ τὰ ἑαυτοῦ δέδωκε τούτῳ Ἀρίσταρχος ἢ τὰ μηδὲν προσήκοντα.

“Because I could not obtain justice from them, gentlemen, I was forced to add to my petition at the preliminary hearing that my mother was a sister of Aristarchus. This will not, however, make your decision any easier when you consider whether, according to the laws, Aristarchus bequeathed this estate when it belonged to him or when he had no entitlement to it. (Trans. Edwards)

4. Questions that could come up at the *anakrisis* (adapted from A.R.W. Harrison, *The Law of Athens*, vol. II: Procedure, Oxford 1971, 96):

Was the plaintiff eligible to appear in court? Was the defendant qualified to answer the charge or the claim? ... Were the documents – plaint or indictment- properly drawn? Was the matter at issue actionable? Was the proper form of action chosen? (Note that the question of admissibility ((μὴ) εἰσαγωγίμων εἶναι τὴν δίκην) could give rise to a *paragraphe*) Did the magistrate have jurisdiction in the case? Was the action brought at the proper time according to the law?

5. A.R.W. Harrison, *The Law of Athens*, vol. II: Procedure, Oxford 1971, 96-7: “The object of the exercise [i.e. the *anakrisis*] was to determine first whether there was an issue to be put to a dikastery (whether the case was εἰσαγωγίμος), and second how exactly the question was to be framed. Some, if not all, of these questions must have arisen at the preliminary stage when the plaintiff made his first approach to the magistrate.”
6. D.M.MacDowell, *The Law in Classical Athens*, London 1978, 241: “This would give each of them a clearer idea of what the other was alleging and what were the exact points in dispute, and it would help them to decide how it would be best to present their arguments in the trial and what supporting evidence would be needed.”

7. Hyp. *Lycophron*. 9-10:

ἔπειτα οἱ μὲν ἐπειδὴν πρότερον¹ λόγον λάβωσιν, οὐ μόνον ἃ ἔχουσιν αὐτοὶ δίκαια περὶ τοῦ πράγματος λέγουσιν, ἀλλὰ συσκευάσαντες λοιδορίας ψευδεῖς κατὰ τῶν κρινομένων ἐξιστᾶσιν τῆς ἀπολογίας: ὥστε συμβαίνειν αὐτοῖς δυοῖν τὸ ἕτερον, ἢ περὶ τῶν ἔξωθεν διαβολῶν ἀπολογουμένοις τῆς περὶ τοῦ πράγματος ἀπολογίας ἀπολελεῖσθαι, ἢ μὴ μεμνημένοις τῶν προκατηγορηθέντων, οἷσιν καταλείπειν παρὰ τοῖς δικασταῖς ὅτι ἀληθὴ ἔστιν τὰ εἰρημένα. [10]

πρὸς δὲ τούτοις τοὺς τε μέλλοντας βοηθεῖν τοῖς φεύγουσι προδιαβάλλουσι καὶ αὐτοῦ τοῦ κρινομένου τὴν ἀπολογίαν διαστρέφουσιν.

“Moreover, since the prosecution speak first, they not only mention their legitimate claims in the case, but they invent baseless slanders against the accused and force them to change their defense. Defendants have two options: either they defend themselves against the irrelevant slanders and fail to make an adequate defense on the main issue, or they don’t mention the accusations just made and leave the jury with the impression that what was said is true. [10] What’s more, the prosecution create prejudice against those who intend to help the defendants and distort the accused’s own defense.” (Trans. Cooper)

8. Dem. 20.18: τάχα τοίνυν ἴσως ἐκεῖνο λέγειν ἂν ἐπιχειρήσειε Λεπτίνης, ἀπάγων ὑμᾶς ἀπὸ τούτων, ὥς αἱ λητουργίαι νῦν μὲν εἰς πένητας ἀνθρώπους ἔρχονται, ἐκ δὲ τοῦ νόμου τούτου λητουργήσουσιν οἱ πλουσιώτατοι.

“Again, Leptines may perhaps try to carry you away from these considerations by using this argument, namely that the liturgies now fall on poor people, whereas through this law they will be taken up by the richest.”

9. ἃ δὲ πρὸς τοῖς θεσμοθέταις ἔλεγεν, ταῦτ’ ἴσως λέγων παράγειν ὑμᾶς ζητήσῃ. ἔφη γὰρ ἐξαπάτης εἵνεκα παραγεγράφθαι τοῦτον τὸν νόμον, ἐὰν δ’ ὃν αὐτὸς ἔθηκεν λυθῇ, τοῦτον οὐ τεθήσεσθαι. [99] ἐγὼ δ’, ὅτι μὲν τῇ ὑμετέρᾳ ψήφῳ τοῦ τούτου νόμου λυθέντος τὸν παρῆς ἐνεχθέντα κύριον εἶναι σαφῶς ὁ παλαιὸς κελεύει νόμος, καθ’ ὃν οἱ θεσμοθέται τοῦτον ὑμῖν παρέγραψαν, ἔασω, ἵνα μὴ περὶ τούτου τις ἀντιλέγῃ μοι, ἀλλ’ ἐπ’ ἐκεῖν’ εἶμι. ὅταν ταῦτα λέγῃ δήπου, ὁμολογεῖ μὲν εἶναι βελτίω καὶ δικαιότερον τόνδε τὸν νόμον οὗ τέθεικεν αὐτός, ὑπὲρ δὲ τοῦ πῶς τεθήσεται ποιεῖται τὸν λόγον.

“As for what he told the *thesmothetai*, he may try to mislead you by repeating the same things. For he said that our law had been deceptively introduced as a replacement and will not be enacted if the law he passed were to be repealed. [99] As for me, in order to avoid any objections, I will omit the fact that the old law, according to which the *thesmothetai* allowed us to introduce this replacement law, clearly orders that as soon as his law is repealed, the one that has been introduced as a replacement should be enacted, and will proceed to my next point. Doubtless, when he is saying these things he admits that our law is better and fairer than his own but turns the discussion to how the law should be enacted.

10. Dem. 22.23: ὅταν δ’ ὅτι πρὸς τοὺς θεσμοθέτας προσῆκεν ἐπαγγέλλειν ἡμῖν, ἐκεῖνο ὑπολαμβάνετε, ὅτι καὶ τοῦτο ποιήσομεν καὶ νῦν προσηκόντως περὶ τοῦ νόμου λέγομεν.

And when he says we should have brought a charge before the Thesmothetae, consider this point that we will also do this, but now we are discussing the law in the appropriate manner. (Trans. Harris)

11. Dem. 22.5-8: a) ἔστι γὰρ εἷς μὲν ὃν οἶεται τεχνικῶς ἔχειν αὐτῷ λόγος περὶ τοῦ ἀπροβουλεύτου b) περὶ τοῦ νόμου τοῦ διαρρήδην οὐκ ἔωντος ἐξεῖναι μὴ ποιησαμένη βουλῇ τὰς τριήρεις αἰτῆσαι τὴν δωρεῖαν
12. Aeschin.1.160:ἐὰν δ' ἐπιχειρῶσι λέγειν, ὥς οὐχ ἡταίρηκεν ὅστις μὴ κατὰ συγγραφὰς ἐμίσθωθη, καὶ γραμματεῖον καὶ μάρτυρας ἀξιῶσί με τούτων παρασχέσθαι, πρῶτον μὲν τοὺς περὶ τῆς ἐταιρήσεως νόμους μέμνησθε, ἐν οἷς οὐδαμοῦ μνείαν ὁ νομοθέτης περὶ συνθηκῶν πεποιήται. οὐ γάρ, εἰ κατὰ γραμματεῖόν τις ἑαυτὸν κατήσχυνε, τοῦτ' ἐξήτασεν, ἀλλὰ παντελῶς, ὅπως ἂν ἡ πρᾶξις γένηται, τὸν πράξαντα κελεύει μὴ μετέχειν τῶν τῆς πόλεως κοινῶν.

“If they try to argue that a man has not prostituted himself if he did not make a contract to hire himself out, and demand that I provide documentation and witnesses to this effect, firstly remember the laws concerning prostitution; nowhere does the legislator mention contracts. He did not ask whether anyone had disgraced himself under a written contract, but, however the activity takes place, he absolutely bars the man who has engaged in it from the public affairs of the city.” (Trans. Carey)

Brief Bibliography

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