

***Ath. Pol.* 25.2 and *Lys. fr.* 178:
'additional' functions of the
Areopagite Council**

The author of the *Athenaion Politeia*, whether Aristotle or a pupil of his, said that in 462/1 Ephialtes took from the Areopagite Council 'the additional functions (*epitheta*), through which it had guardianship of the constitution', and gave some of these to the council of five hundred but others to the assembly and the courts (25.2). The author did not specify the functions given to the recipient bodies; the reason may well be that he did not know what they were. But many readers have supposed that in calling those functions 'additional' the author followed the view taken by the reformers of 462/1. This explanation suggests that the author drew, directly or indirectly, on sources contemporary with the reform.

An alternative explanation was proposed in 1964 (*CP* lix 12-13) and relied on novel activities in which the Council of the Areopagos engaged from about 340. A decree of Demosthenes authorized that Council to punish people for breaking the laws, and it contrived that several suspects were brought to justice (*Dein.* i 62-63; *Dem.* xviii 132-133; *Plut. Dem.* 14.5). When Aischines was chosen by the Athenians to represent their claim to Delos before the Delphic Amphiktyony, the Areopagos annulled the election and chose Hypereides instead (*Dem.* xviii 134; *Hyp. fr.* 67-75; [*Plut.*] *Ten orators* 850a). After the battle of Chaironeia some Athenians wished to entrust the defense of the city to Charidemos, but others with the help of the Areopagite Council persuaded the assembly to prefer Phokion (*Plut. Phok.* 16). A new mode of judicial procedure, called *apophasis*, was introduced. In this a preliminary investigation, comparable to the archon's *anakrasis*, was conducted by the Council of the Areopagos and was followed by a definitive trial before a *dikasterion*. This procedure is illustrated in the scandal arising from the money of Harpalos (*Hyp.* v 2-5; *Dein.* i 45) and since 1968 it has also been known from a papyrus fragment of Hypereides (*P Oxy* 2686). In the period beginning about 340 there may have been more activities of the Areopagite Council and more measures authorizing such activities than appear in the scanty record. The alternative explanation for the description in *Ath. Pol.* 25.2 of powers taken from the Areopagos as 'additional' says that the author had in mind the novel activities which began about 340.

This explanation has been challenged. In 1981 attention was drawn (by P. J. Rhodes: *A commentary on the Aristotelian Athenaion Politeia* 314) to *Lysias fr.* 178 Sauppe:

ἐλέγετο παρ' αὐτοῖς καὶ ἄλλα ἐπίθετά τινα, ὅποσα μὴ πάτρια ὄντα ἢ ἐξ Ἀρείου πάγου βουλή ἐδίκασεν, ὡς σαφὲς ποιεῖ Λυσίας ἐν τῷ πρὸς τὴν Μιξιδήμου γραφῆν.

In 1988 the challenge was elaborated (by G. L. Cawkwell, *JHS* cviii [1988] 2). The fragment is held to show that early in the fourth century, within the lifetime of Lysias, the description of some powers of the Areopagos as 'additional' was already current. It is suggested that this description came to be current in consequence of the restoration of 403, when the decree of Teisamenos told the Areopagite Council to take care of the laws (*Andok.* i 83-84).

Reader's of K. J. Dover's *Lysias and the Corpus Lysiacum* (Berkeley 1968) may hesitate when they find a speech attributed to Lysias. According to [*Plut.*] *Ten orators* 836a, 425 speeches were attributed to Lysias but Dionysios and Kaikilios recognized only 233 of these as genuine. Kallimachos, who is probably responsible for the attribution of 425 speeches to Lysias, may have given little thought to dating speeches, for later Dionysios could often bring chronological arguments to bear on works attributed to Attic orators. It is not often possible to ascertain dates for speeches known now only from fragments. But at least one such speech, attributed to Lysias in antiquity, belonged to an occasion more than twenty years later than any of the dates to which ancient readers ([*Plut.*] *Ten orators* 835c and 836a; D.H. *de Lysia* i 452-453 and xii 479) assigned the orator's death. That was the speech delivered by Iphikrates in his own defence at the trial consequent on the battle of Embata (D.H. *de Lysia* xii 479-480; *Lys. fr.* 128-133). The trial took place in 356/5 or more probably in 354/3 (G. L. Cawkwell, *C&M* xxiii [1962] 45-49). The speech *Against the indictment of Mixidemos*, which mentioned the 'additional functions' of the Areopagos, is known from six fragments (176-181). All six are transmitted by Harpokration; parts of two of them are also cited by other lexicographers. In naming the speech as the source of two of the quotations (*fr.* 176 s.v. *Mousaios*, *fr.* 180 s.v. *propempta*) Harpokration adds the words 'if authentic'.

The economical hypothesis is that the speech *Against the indictment of Mixidemos* was not composed by Lysias but sometime in the period beginning about 340, when the novel activities of the Areopagite Council prompted people to talk about its 'additional functions'. That was approximately the time when people began to discuss the work of Ephialtes (as pointed out by E. Ruschenbusch, *Historia* xv [1966] 369-376). So the term *epitheta* came to be applied to the powers which Ephialtes had supposedly taken from the Areopagos. The growth of a literary legend can be discerned, though not precisely.

RAPHAEL SEALEY

Department of History
University of California,
Berkeley