

## DEMOCRACY DENIED: WHY EPHIALTES ATTACKED THE AREIOPAGUS

### I. INTRODUCTION

EPHIALTES is a rather enigmatic figure in Athenian history. On the one hand, he is widely regarded as the third and final ‘author’ of Athenian democracy; the man who finished what Solon began and Kleisthenes pushed forward. On the other hand, our knowledge of what he actually did is remarkably fuzzy.

Considerable research on matters relevant to Ephialtes and his reforms has been published during the last decade, and it is my intention here to try to bring some of these results together to propose a new solution to the two principal problems concerning Ephialtes’ reforms: (i) what power(s) did he transfer from the Areiopagus to other bodies? and (ii) why did he propose these changes?

In particular, I shall suggest that the Areiopagus was rejecting significant numbers of magistrates-elect at their dokimasiai (their scrutiny before taking up office), and that Ephialtes’ reforms sought first and foremost to transfer this power from the Areopagites to the candidates’ peers.

I begin with consideration of the principal source problems.

The Ephialtes enigma noted above is apparent in our earliest and best source on the matter, [Aristotle], otherwise known and henceforward referred to as AP, author of the *Athenaion Politeia*, or *Constitution of the Athenians*.

His story is as follows:

Ephialtes, the son of Sophonides, had a reputation for being uncorruptable and faithful to the constitution (δικαίος πρὸς τὴν πολιτείαν). He became leader of the demos and launched an attack on the Areiopagus. First, he removed many of its members on charges of administrative misconduct. Then, in the archonship of Konon (462/1), he stripped it of all its additional powers, through which it had guardianship of the constitution (φυλακὴ τῆς πολιτείας); he distributed them among the boule (council of 500), the ekklesia (sovereign assembly), and the dikasteria (people’s courts).

There follows a lot of chronologically impossible nonsense about Themistokles, then

Ephialtes died shortly afterwards, murdered by Aristodikos of Tanagra<sup>1</sup>. The Areiopagus lost its supervisory powers in this way. (AP 25).

That, sadly, is the most complete account we have of Ephialtes’ reforms. It is far from satisfactory. However, AP is to be congratulated for not inventing more details to fill the all-too-obvious gaps in the story. Other authors are less restrained.

AP and his contemporaries themselves suffered source problems: Ephialtes’ reforms were repealed by the Thirty in 404—the stones on which they were inscribed were destroyed. Consequently no-one could consult a text of these laws after 404. So no-one, then or now, was or is *sure* what Ephialtes did.

<sup>1</sup> Our source here is peddling just one rumour about Ephialtes’ death. Others had it that Perikles killed Ephialtes (Idomeneus *FGH* 338 F8), and some assert that the killer was never found (Antiphon v 68, Diodorus xi 77.6). A.H. Sommerstein (‘Sleeping safe in our beds: stasis, assassination and the *Oresteia*’, in J.H. Molyneux ed. *Literary responses to civil discord* (Nottingham 1993) 1-17) has recently provided good justification for the strong tendency to see this as a political assassination, which reinforces the idea that Ephialtes’ reforms—whatever they were—were extremely important.

Another major problem for us is the sources on the Areiopagus—the body which Ephialtes ‘attacked’/reformed.

Most scholars believe that the Areiopagus was the earliest established body of Athenian government, its origins seeming to lie in a ‘tribal’ or pre-state council of elders. But Wallace, in his monograph on the Areiopagus of 1989,<sup>2</sup> argues that originally it was only a homicide court, and did not have powers other than judicial ones until Solon’s reforms of 594 or thereabouts. Our knowledge of the Areiopagus’ powers before Ephialtes’ reforms is sufficiently poor that such contrary views can co-exist.

These then are the main source problems. Despite their gravity, progress has been made on the two questions (i) and (ii) above, largely by considering possible actions and causes and then assigning probabilities to the various theoretical options. I begin with consideration of the first question: what powers could Ephialtes have removed from the Areiopagus?

## II. WHAT WAS ‘GUARDIANSHIP OF THE CONSTITUTION’?

AP says that the Areiopagus had ‘guardianship of the constitution’, and many scholars have asked: (a) What procedures could conceivably be involved in ‘guardianship of the constitution’? and (b) what are the known changes in the competence of the various bodies over these procedures?

For (a), most scholars suppose that ‘guardianship of the constitution’ should refer to defending the state against those who could seriously damage it: traitors, and its ‘rulers’, ie. magistrates who interpret and implement the constitution.

Treason and treasonable activities (such as proposing illegal or constitutionally-damaging laws, destroying public records, or setting fire to the dockyard) are the most obvious threat to the security of the state. The appropriate procedure for bringing traitors to book was called *eisangelia*, usually translated ‘impeachment’; ‘denunciation’ is better.

In answer to the question (b), after Ephialtes’ time, in the late 5th century, *eisangelia* was dealt with by the boule or the ekklesia and then passed over to a dikasterion.<sup>3</sup> Most scholars, including Wallace in his monograph on the Areiopagus<sup>4</sup> and Rhodes in his monograph on the Boule,<sup>5</sup> argue that before Ephialtes it was dealt with by the Areiopagus. So too Sealey, though he argues that competence to hear *eisangelia* was neither defined by statute nor transferred by statute (Ephialtes’ or anyone else’s); people making denunciations simply went to whichever body they thought ‘appropriate to receive the report’.<sup>6</sup>

So, with *eisangelia*, denunciation for treason or treasonable activities, there seems to have been a change of competence from the Areiopagus to the boule, ekklesia and dikasteria, though this change may have arisen through practice rather than reform.

A less obvious but very important and much more frequently required safeguard of the state is checks on magistrates to ensure that they rule according to the laws. The Athenians had two types of formal check. The first one, called *dokimasia*, scrutiny, was conducted before they took office, to check that incoming magistrates were qualified persons for the jobs to which they had been appointed.

<sup>2</sup> R.W. Wallace, *The Areiopagus council* (Baltimore & London 1989). Henceforth Wallace.

<sup>3</sup> For a detailed study see M.H. Hansen, *Eisangelia* (Odense 1975).

<sup>4</sup> Wallace 76.

<sup>5</sup> P.J. Rhodes, *The Athenian boule*<sup>2</sup> (Oxford 1989) 199-201. Henceforth Rhodes AB.

<sup>6</sup> R. Sealey, ‘Ephialtes, *eisangelia* and the Council’, (henceforth Sealey EEC) in G.S. Shrimpton and D.J. McCargar edd. *Classical contributions: studies in honour of M.F. McGregor* (Locust Valley 1981) 125-34, p. 131. His explanation for changing habits is the declining quality of Areopagites.

Regarding question (b), in the 4th century the incoming archons and the members of the boule were scrutinised by the outgoing members of the boule and then by the dikastai.<sup>7</sup> All other magistrates—approximately 700 of them—were scrutinised by the jurors in the dikasteria.

It is not known whether, before Ephialtes, the boule or the Areiopagus conducted the scrutiny of incoming bouleutai and archons.<sup>8</sup> With no evidence available and no arguments offered in support, most scholars assume that the Areiopagus conducted dokimasiai of archons and the boule conducted dokimasiai of bouleutai. For example, Rhodes, with great frankness, says ‘I *imagine* that the original check (on prospective bouleutai) will always have been made by the outgoing bouleutai’,<sup>9</sup> while the Areiopagus conducted ‘some dokimasiai—at any rate that of the archons.’<sup>10</sup> Wallace agrees, supporting his preference by pointing out that ‘if the Areiopagus heard dokimasiai, this would in effect give it veto power’.<sup>11</sup>

So for competence over dokimasia before Ephialtes’ reforms we can rule out the dikasteria and have to keep an open mind on the boule and the Areiopagus.

The second check on magistrates was conducted when they left office. This was called euthuna, ‘straightening’. All magistrates had to give an account of their actions in office at the end of their year of service. Any magistrate who handled money was, in addition, ‘straightened’, or audited, once a month.

As regards known changes of competence over euthuna, in the 4th century the annual euthuna consisted of two distinct stages. The first, an audit of finances, was administered by the logistai (inspectors) and their assistants (the synegoroi), who were chosen by lot from the people, and brought the accounts before a dikasterion for examination, acceptance or rejection. The second phase, an audit of general conduct, was administered by the euthunoi, who were chosen by lot, one from each of the ten phulai, and received complaints about outgoing magistrates; they decided whether such charges should be pressed, and if so, passed them on to the appropriate authorities.<sup>12</sup>

The monthly checks on magistrates who handled money were performed by another board of logistai, but these inspectors were chosen by lot from among the members of the boule.<sup>13</sup>

Aristotle—the genuine article rather than the one in square brackets—says explicitly, twice, that Solon gave the demos, i.e. the people, competence over euthuna.<sup>14</sup> Wallace argues strongly for Aristotle’s veracity.<sup>15</sup> Sealey and others think this unlikely and cite [Aristotle] (=AP) to give the Areiopagus competence over euthuna.<sup>16</sup> However, AP does not say that the Areiopagus had competence over euthuna; all he says is that the Areiopagus had ‘guardianship of the constitution’ and similar phrases, which may, or may not, involve euthuna, and which is precisely the problem being tackled here. Aristotle’s explicit and repeated testimony is that

<sup>7</sup> For an excellent exposition of the arguments in favour of double dokimasia for archons and referral to dikasteria for rejected bouleutai, see Rhodes AB 176-8.

<sup>8</sup> No-one supposes that jurors conducted dokimasiai before Ephialtes, if indeed dikasteria existed at that time.

<sup>9</sup> Rhodes AB 178, italics are mine. Rhodes denies the boule any other judicial competence before Ephialtes.

<sup>10</sup> Rhodes AB 205; see also P.J. Rhodes, *Commentary on the Athenian Politeia* (Oxford 1981) 150. Henceforth Rhodes CAP.

<sup>11</sup> Wallace 245 n. 78.

<sup>12</sup> The Forty for private suits, the thesmothetai for public.

<sup>13</sup> For discussion of euthuna see A.R.W. Harrison, *The law of Athens* ii (Oxford 1971) 14-5, 28-31, 208-11, and M.H. Hansen, *The Athenian democracy* (Oxford 1991) 220-4. Henceforth Hansen AD.

<sup>14</sup> *Pol.* 1274a15-18, 1281b32-5.

<sup>15</sup> Wallace 53-4.

<sup>16</sup> See especially R. Sealey, ‘Ephialtes’, *CP* lix (1964) 11-22 = *Essays in Greek politics* (New York 1967) 42-58.

euthuna was not in the competence of the Areiopagus. Hence I agree with Wallace, to whose arguments one may add that 4th century practice is in accord with Aristotle's version, in so far as the people (in the form of their appointed inspectors) and the people's courts (dikasteria) retain first and final competence over the annual and general examinations of every magistrate. I would expect the additional monthly checks on magistrates with financial responsibilities to be a later development, a tightening up of procedures after unhappy experiences, and to be considered a job suitable for delegation to the assembly's executive, the boule.

So, of the three possibilities for 'guardianship of the constitution', one, euthuna, seems *not* to have been a responsibility of the Areiopagus before Ephialtes' reforms, since the ekklesia, heliaia, or the people's appointees were performing it. That leaves eisangelia and dokimasia as possibilities.

We can now consider the second question: why did the ekklesia follow Ephialtes in voting to take these (or other) powers away from the Areiopagus?

### III. WHY REMOVE POWERS FROM THE AREIOPAGUS?

This too has been a subject of debate in the field, and some progress has been made. The main problem here is that the Areiopagus does not seem to have done anything noteworthy in the years preceding Ephialtes' attack.

Taking the silence of the sources as an honest reflection of the silence of the Areiopagus is the argument which underpins many treatments of Ephialtes' reforms, especially the older ones, and runs as follows: by Ephialtes' time the Areiopagus was an anachronism; it used to be an old and distinguished body, but since 487 (25 years before) archons had been selected by lot.<sup>17</sup> The switch from election to sortition deprived the archonships of distinction and honour; hence distinguished and honourable men would no longer have stood for the archonship; hence those who were selected as archons after 487 were undistinguished men; and hence, since ex-archons became Areopagites, the new men entering the Areiopagus from 487 were undistinguished,<sup>18</sup> hence over the 25 years since the change in method of selection the Areiopagus had gradually filled with undistinguished people, and no longer deserved its place of distinction in the Athenian political structure. Ephialtes changed the constitution to reflect changed realities.

There are many variations on this theme. For example, Kleisthenes<sup>19</sup> or Solon<sup>20</sup> originally introduced the lot to assign the nine elected archons to each particular archontal office; this did (eg. Badian) or did not (eg. Cawkwell) lead to a change in the age and prestige of candidates for the archonship.<sup>21</sup>

One thing is certain: until 457/6—five years *after* Ephialtes' reforms—when the third census

<sup>17</sup> There is only one source for this, AP 22.5, and although it seems to contradict other sources, and is clearly wrong on at least one detail (a pool of 500, instead of 100, elected candidates for the archonship) it is generally accepted as historically accurate. Why this change was introduced (if indeed it was) is a question on a par with that tackled here, and has been answered with many similar hypotheses to those proposed for Ephialtes' reforms.

<sup>18</sup> Any argument based on the particular names of known archons is spurious. There are simply too few of them to say anything meaningful, and one cannot assume identification of a named archon with a famous bearer of that name. Even where we have a *complete* list of eponymous archons for a period, eg. 480-460, this gives the names of only 11% of all archons during that period, since the ep. archon had eight colleagues—none of whom are known in the period given as an example. See R. Develin, *Athenian officials 684-321 BC* (Cambridge 1989) 63-73. Henceforth Develin.

<sup>19</sup> E. Badian, 'Archons and strategoi', *Antichthon* v (1971) 1-34. He argued that a decline in the age and quality of Areopagites started many years earlier, following the Peisistratid meddling with the archonships (Thuk. vi 54.6) and was formalised through an unknown reform of Kleisthenes.

<sup>20</sup> G.L. Cawkwell, 'Nomophylakia and the Areopagus', *JHS* cviii (1988) 1-12, esp. 4-7. Henceforth Cawkwell.

<sup>21</sup> See also W.G. Forrest and D. Stockton, 'The Athenian archons: a note', *Historia* xxxvi (1987) 235-40.

category, the hoplites, were first admitted, the only people eligible for the archonship were those classified in the top two census categories, the pentakosiomedimnoi and the hippeis.<sup>22</sup> Even after Solon, Kleisthenes, and the change of 487 (if such there was), selection for the archonship (and hence the Areiopagus) was still being made from the same relatively small number of relatively wealthy people. Moreover, it was still being made from an elected subset of them—a subset of 9 in earlier times and of 100 in later.

Taking the latter and larger figure as the ‘worst case’, most scholars think it inconceivable that there were sufficient pentakosiomedimnoi and hippeis to find 100 fresh candidates each year. Therefore the 91 who annually were elected as potential archons but whose names were not selected in the drawing of lots must have been eligible to stand again.

It is not obvious to me that selecting by lot nine men from one hundred, all of whom were distinguished by wealth and all of whom had already been honoured through their election to the pool from which lots were drawn, marks a downgrading of the post for which they were all candidates. Does a man who cherishes his standing in the community fear defeat by luck more than he fears defeat by popular acclaim (or rather, lack thereof)? For that seems to be the assumption behind the idea that distinguished and honourable men would not stand for the archonship once sortition was introduced. For what it is worth, I would think the opposite: election of 100 offered honour to many; selection by lot prevented dishonour to most. Assumptions aside, in Ephialtes’ Athens there were more than one hundred hippeis and pentakosiomedimnoi who wanted to be archons each year, and that suggests to me that Ephialtes did not attack the Areiopagus because its members were undistinguished.

Alternative explanations for Ephialtes’ attack have been proposed. One type supposes that the sources have nothing to say about the Areiopagus before Ephialtes’ attack not because it did nothing, but because it did nothing particularly noteworthy: it was simply doing its job (whatever that was). For example, Rhodes attributes Ephialtes’ attack less to anything the Areiopagus may have done, and more to Ephialtes’ principles as a true democrat: the Areiopagus was atypical of democratic institutions and Ephialtes sought to transfer more powers to the people<sup>23</sup>. Sealey offered a different explanation but one based on the same premiss of Areopagite ‘business as usual’: he argued that ‘[Ephialtes] was concerned about the way officials performed their tasks; the two procedures bearing on the performance of officials were dokimasiai, which tested their formal qualifications, and euthunai, where they were called to account for their shortcomings. To classify Ephialtes among “radical democratic leaders”<sup>24</sup> does not explain his work; he was a man seeking to remedy abuses of a perhaps extensive but certainly limited and specifiable kind’.<sup>25</sup> The argument is that the Areiopagus was failing in its duties, either by incompetence or misconduct, to scrutinize magistrates and call them to account. In consequence, Ephialtes transferred the powers of dokimasia and euthuna of magistrates from the Areiopagus to the boule, ekklesia and dikasteria. Eisangelia (denunciation)

<sup>22</sup> When the hippeis were first admitted is not known. However, assuming that archons were of old chosen from the highest group, it is likely that they were admitted from the first, because until Solon created the pentakosiomedimnoi, the hippeis were the highest social group. Had Solon restricted the archonship to his newly created highest group, the pentakosiomedimnoi, then he would at the same time have denied the hippeis their traditional right of access to the archonship, and we might expect the sources to remember and mention such a removal of privilege.

<sup>23</sup> Rhodes would add to the pre-Ephialtic powers of the Areiopagus further assorted procedures which he categorises under the title ‘official jurisdiction’; besides the ‘falling prestige of Areopagites since the introduction of the lot’ explanation, he also cites the trials of Kimon and Themistokles as possible contributory factors. See especially CAP 316 f. and AB 205 f., 210. Cf. Wallace 85 f.

<sup>24</sup> Wallace’s phrase.

<sup>25</sup> Sealey EEC, quote p. 134.

was not, according to Sealey, something defined by statute before Ephialtes' reforms, and hence was not included in the reforms.

Cawkwell, however, found it hard to believe that this could make the impact which it did on the tradition, ancient and modern. Quoting Sealey's concluding remarks (quoted above), he asked 'but was that all there was to "the guardianship of the laws"? And did the reforms of Ephialtes constitute no very great change in the nature of the Athenian constitution?'<sup>26</sup> To my mind this is to underestimate the power which *dokimasia*, *euthuna* or *eisangelia* individually (never mind in combination) confer on their administrators. But Cawkwell was driven to find something which would give his distinguished Areopagites something democratically offensive to do and thus give Ephialtes something to change. He found, largely in Isokrates,<sup>27</sup> a *cura morum*, arguing that the Areiopagus was full of paternalistic, moralistic busybodies who took it upon themselves to 'keep standards up'; they were not beyond denying a man admittance to their number for taking breakfast in a pub.<sup>28</sup>

Yet another explanation, almost the opposite of the first, is offered by Wallace, who thinks that by Ephialtes' time the Areiopagus, rather than being attacked because it was redundant, was attacked because it 'had become an important political force in the state', for which view he gives four arguments: (i) there must be a kernel of truth behind the admittedly imaginative accounts of Areopagite supremacy during or after the Persian Wars in AP 23-26 and Isokrates *Areopagitikos* vii 50-2, and the mention by Aristotle in *Politics* 1304a17-21; (ii) the early 5th century inscription published by Meritt *may* be restored 'resolved by the boule',<sup>29</sup> and *may* concern the restoration of thesmoi, ancient laws; (iii) although the sources are silent on the Areiopagus before Ephialtes and it 'disappears'<sup>30</sup> from politics almost without a trace' after 462/1, partial source survival may conceal political activity; and (iv) 'subsequent trouble caused by Kimon, Ephialtes' murder by unknown assassins, all this (*sic*) suggests that his reforms were not undertaken simply from a desire for abstract ideological purity'.<sup>31</sup>

From our perspective, as from that of the 4th century authors on whom we depend, Ephialtes' reforms seem to be a solution in search of a problem. I wish to add to the debate another candidate problem, one which has hitherto been ignored altogether,<sup>32</sup> or aired in the literature as 'a residual problem'<sup>33</sup> in the mechanics of the selection of bouleutai, the demes' representatives on the boule. It has not, to my knowledge, been connected with Ephialtes' reforms. It is the existence and number of deputy bouleutai.

<sup>26</sup> Cawkwell 9.

<sup>27</sup> Isokrates' *Areopagiticus*, written over a century after Ephialtes' reforms were introduced, 'contrasts the degenerate democracy of his own day with the earlier democracy of Solon and Kleisthenes, with particular reference to the function ... of the Areopagus as censor of public morals' to quote the splendid summary in the *OCD*.

<sup>28</sup> This story from a fragment of Hyperides, *apud* Athenaios 566F. Note that the occasion implied here is either *dokimasia* for entry to the Areiopagus (for which the only evidence is Plut. *Per.* 9.4) or *euthuna* on leaving an archonship. Remembering that a Greek breakfast, if taken, consisted of bread dipped in neat wine, the offence cited is not 'immoral' in the sense in which the average modern, contemplating his or her cornflakes or kedgeriee, might assume. The offence derives from public houses as places, rather than from alcoholic breakfasts.

<sup>29</sup> B. Meritt, 'Greek inscriptions', *Hesperia* xxxvi (1967) 72-84.

<sup>30</sup> A rather misleading word, since it does not 'appear in politics' before 462/1 either.

<sup>31</sup> Wallace 77-82. Argument (iv), which is extremely weak, is a reply to Rhodes.

<sup>32</sup> Eg. R.K. Sinclair, *Democracy and participation* (Cambridge 1988).

<sup>33</sup> D. Whitehead, *The demes of Attica* (Princeton 1987) 267. Henceforth Whitehead.

## IV. DOKIMASIA AND DEPUTIES: DENIAL OF DEMOCRATIC PROCESS

Literary sources from the late 5th and 4th centuries suggest that each bouleutes had an epilakhon, a deputy or understudy, to take his place on the council if he died or was rejected at his dokimasia<sup>34</sup>. Epigraphic evidence from the 4th century suggests that there was not one deputy for each bouleutes, but only one deputy per two bouleutai.<sup>35</sup>

Even on the lower ratio of half as many deputies as bouleutai, this means that in order to man the council of 500, the demes or phulai had each year to find 750 candidates; their chosen 500, plus 250 deputies. They had to send the extra 250 because experience taught that up to 250, or 50% of their chosen representatives for the executive council of the assembly, could die between selection for office and resignation from office, or be rejected at their dokimasiai, their scrutiny before taking up office.

It is I think impossible to say anything statistically meaningful about the number of bouleutai who might have died in any c. 16 month period during the mid 5th century, between selection for office in springtime and resignation from office in mid-summer, except to note that a 50% death rate is slightly higher than that given by historical demographers as an estimate for the toll taken by the pneumonic plague<sup>36</sup> which ravaged Constantinople in AD 542.<sup>37</sup> However, we can say something meaningful about dokimasia.

Dokimasia was a formal public scrutiny of a candidate for public office. Standard questions were asked to check qualification for office, and then the floor was thrown open for anyone present to make accusations against the candidate.<sup>38</sup> Witnesses were required to support the statements made on both sides. In democratic Athens the qualifications required were, for a member of the boule, that he (the order here is insignificant)

(i) was an Athenian. In Ephialtes' time only the father need be Athenian-born;<sup>39</sup>

(ii) was epitimos. Literally translated this means honourable, but it really means that he was not a certain kind of criminal (an atimos);<sup>40</sup>

<sup>34</sup> See Rhodes AB 7, and references cited in n. 9. As is clear from eg. Lysias xxvi, there were also deputy archons, and since all magistrates were subject to dokimasia, it follows that there must have been provision of deputies for each type, if not for each individual. By virtue of its size, the Boule clearly represented the biggest single problem in this respect.

<sup>35</sup> J.S. Traill, 'Athenian bouletic alternates', in G.S. Shrimpton and D.J. McCargar edd. *Classical contributions: studies in honour of M.F. McGregor* (Locust Valley 1981) 161-9, with references to earlier works in n. 1, and Whitehead 268, refs. n. 5.

<sup>36</sup> 'About the most fatal infectious disease that is known', with a mortality rate (i.e. the proportion that die once they have caught it) of 96%; see T.H. Hollingsworth, *Historical demography* (London 1969) 357.

<sup>37</sup> Described by Procopius *Persian Wars* ii 22-3. For the estimate see Hollingsworth (n. 36) 367.

<sup>38</sup> The standard questions, which concern technical qualification for office, were asked of each and every candidate, and this stage of the dokimasia was probably uncontentious in almost all cases. It was during the second part, when questions were invited from the floor, that individual and personal attacks might be made on the candidate. Such particular 'questions' are reproduced in the relevant speeches, but naturally not in abstract treatments such as AP 55.3.

<sup>39</sup> Perikles introduced the rule that *both* parents had to be Athenian-born in 451, about ten years after Ephialtes' reforms.

<sup>40</sup> Some modern scholars refer to atimoi in very charitable terms, saying for example that these people are 'disfranchised', which means little if anything in the modern world, or that they have 'lost' their citizen rights, as if they absentmindedly left them somewhere. This is very misleading. Atimia was a punishment for a crime. An atimos was a citizen who had had his rights *taken from him* (in toto—in which case he was denied rights that even metics and women enjoyed, e.g. entering the agora—or in part, for a fixed term or for life, and if the latter, for one or more generations) either upon conviction in court or by default (in the case of public debtors) for one of a number of specific military, familial, or civic crimes (Hansen identifies 27 such crimes; see M.H. Hansen, *Apagoge, endeixis and ephesis against kakourgoi, atimoi and pheugontes* (Odense 1976) 72-4). As such the atimos is, first and foremost, an Athenian criminal.

(iii) was from one of the appropriate census groups, in this case all but the fourth and poorest group, the thetes;

(iv) was 30 or older;

(v) had not already served twice;

and assorted other requirements known for other periods or related posts which are more or less plausible in this context, such as that he had legitimate children, owned land within the borders of Attike, and was not disabled.<sup>41</sup>

In Lysias xxvi [Euandros] 10 it is assumed that anyone registered on the ‘wrong’ tablets<sup>42</sup> is automatically rejected—even without an accuser. There will be no dispute about the rejection in such cases.<sup>43</sup>

After these formalities, the second part of the dokimasia seems to have involved a more or less formal interview, wherein candidates were asked to outline their activities to date and to justify their actions in the past,<sup>44</sup> and were assessed informally by the scrutineers for their suitability for office. Aristophanes’ exchange between Kleon and the Sausage-seller suggests that this was happening in the late 5th century: ‘I’ll say your grandfather was in the bodyguard of the tyrant’.<sup>45</sup> The main accusation in Lysias xxxi, an accusation against Philon, prospective bouleutes, in a dokimasia hearing before the boule, is that Philon has a bad character.<sup>46</sup> There is more than a touch of the ‘is he one of us?’ attitude in the sources, even *after* Ephialtes’ reforms.<sup>47</sup>

Now who conducted the dokimasiai of magistrates before Ephialtes’ reforms is simply not known. If they were heard by the Areiopagus, and candidates elected by the people or appointed by lot could be and sometimes were rejected at their scrutiny, by life-tenure, ‘upper class’ Areopagites, then here we may have a problem in need of a democratic reformer.

However, to pursue this I must deal with the statement by Hansen that ‘considering the total number of dokimasiai conducted by the dikasteria,<sup>48</sup> it is astonishing how few attestations we have of candidates rejected in the dokimasia. In almost all cases the dokimasia must have been a formality...the people’s court can only exceptionally have turned down a citizen elected<sup>49</sup> by the people in assembly’.<sup>50</sup> This statement is based on a statistic derived from the orators. There

<sup>41</sup> See Rhodes AB 1-3; AP 55 and Rhodes CAP *ad loc.*; R.J. Bonner, *Aspects of Athenian democracy* (New York 1933) 12-13, henceforth Bonner; D.M. MacDowell, *The law in classical Athens* (London 1978) 167-9. Henceforth MacDowell.

<sup>42</sup> Eg. lists of atimoi, metics, or in this case archived cavalry registers.

<sup>43</sup> The dispute in Lys. xvi [Mantitheos] concerns which of two tablets, on one of which the accused appears, but on the other of which he does not, is the more credible.

<sup>44</sup> ‘To undergo an examination of the record of their lives’, Lysias xvi 1.

<sup>45</sup> Ar. *Hippeis* 447. This source is not as early as Ephialtes, but does predate the oligarchic revolutions. There is nothing to suggest the existence of a formal question about association with the Peisistratids. See Bonner 13.

<sup>46</sup> E.g. (Loeb trans.) ‘Only those have the right to sit in Council on our concerns who, besides holding the citizenship, have their hearts set on it’ (5). Philon’s bad character is demonstrated by his leaving the country during the oligarchic regime of 403 (instead of staying to fight them) although he was neither poor nor disabled, and by his mother’s lack of trust in him to carry out her funeral arrangements. ‘If then he was as backward as he was able to help, how should he not be hated with good reason by you all?’ (13) It is clear that Philon is not technically debarred from office: ‘what inducement then could you have for approving this man? Because he has committed no offence? (24) ... He argues that if it was a crime to absent himself at that crisis, we should have had a law expressly dealing with it, as in the case of all other crimes’ (27).

<sup>47</sup> See Rhodes CAP 45.3 *ad loc.*; Lysias xxvi 14 suggests that someone was rejected ‘out of anger’.

<sup>48</sup> Viz. c. 700 per annum plus the 9+ first scrutinised by the boule.

<sup>49</sup> *Sic*; he is referring to those chosen by sortition as well.

<sup>50</sup> M.H. Hansen, *The Athenian assembly in the age of Demosthenes* (Oxford 1987) 101. Henceforth Hansen AA.



are eight certain cases of contested dokimasiai: one of an elected magistrate<sup>51</sup> and seven of allotted magistrates: 3 for archonships,<sup>52</sup> 3 bouleutai,<sup>53</sup> and one superintendent of the emporion.<sup>54</sup> There is in addition a speech prepared but perhaps not delivered,<sup>55</sup> and a fragmentary work, *P.Ryl.* 489, which has the beginning of another likely dokimasia speech, ‘in defence of Eryximachos, who remained in the city’, after which we have to understand ‘under the 30’.<sup>56</sup> So the total number of known cases, eight certain and two possible, is ten.

Hansen’s statement concerning the ‘formality’ of passing dokimasia is based on surviving contested cases, where the candidate or accuser had the confidence (see Lysias xvi 2) and cash (see Lysias xxxi 3) required to contest the candidacy, and on the subset of those cases which survive to us. Contested cases were those where the candidate (a) wanted to hold the post to which he had been assigned; (b) felt unfairly and demonstrably unfairly treated by those who scrutinised him; and, if he is one of the surviving cases (c) *expected* to be so treated, in so far as he went to the lengths of having a good logographer prepare a speech for him before the scrutiny took place—there was no opportunity for adjournment if one was challenged; one had to be prepared beforehand.<sup>57</sup> It is far from clear that the average Athenian fell into category (a), particularly for the boule,<sup>58</sup> and since rejection on any particular issue did not automatically lead to prosecution or further investigation,<sup>59</sup> some candidates may have been only too pleased to let their candidacy drop there and then—for example, if suspicion had been cast on their Athenian birth.

Eight certain surviving cases is a small sample from which to make any inference. One can make no more of the fact that only 8 certain cases of contested dokimasiai survive than that 25% of those cases concern *exactly* the same post, for two of these eight concern the same magistracy (the eponymous archonship) in the same year—Leodamas and his deputy Euandros.<sup>60</sup> Taken in isolation, this second statistic would appear to suggest that that particular

<sup>51</sup> Theramenes, would-be strategos, Lys. xiii 10.

<sup>52</sup>Leodamas, Lys. xxvi 13; Euandros, Lys. xxvi; and Polueuktos, Dein. fr. 1.

<sup>53</sup> Mantiheos, Lys. xvi; Philon, Lys. xxxi; and Demosthenes, Dem. xxi 111.

<sup>54</sup> Aristogeiton, Dem. xxv 67 and Dein. ii 10. This is the only known individual who held—or rather who hoped to hold—this post, though there were ten per annum (omitted by Develin, who does, however, include the only known secretary to this board).

<sup>55</sup> Lysias xxv, in defence against a charge of subverting the democracy, which K.J. Dover, *Lysias and the Corpus Lysiacum* (Berkeley & Los Angeles 1968) 189 suspects is a defence prepared in case accusations were made at the dokimasia but not in fact delivered. Accepting this, Hansen did not include this dokimasia speech in his statistic. It has also been suggested that this oration is a political pamphlet in the form of a speech (I owe this observation to Alan Sommerstein).

<sup>56</sup> See Dover (n. 55) 5.

<sup>57</sup> For hearings before the boule and non-appellate hearings before the dikasteria. Those who were rejected by the bouleutai could of course prepare for their appeal before the dikastai. A man might go to other, more sinister, lengths to try to ensure that he passed his dokimasia: see below.

<sup>58</sup> ‘The difficult task, it would appear, was evading bouleutic service, not undertaking it from choice’, Whitehead 267 n. 47.

<sup>59</sup> See eg. MacDowell 168.

<sup>60</sup> Lysias xxvi [Euandros]. This case cannot be used to generalise as S.C. Todd does (*Athenian internal politics* (Diss. Cambridge 1985) 119) that ‘pressure on time must have been considerable and hearings must *normally* have been perfunctory’ (emphasis added), because the ‘time crisis’ which certainly exists here arises from the threatened rejection of the deputy, and there is currently no second deputy to stand in should the deputy now be rejected. Also, Lysias implies that there has been a considerable lapse of time since the rejection of the original candidate, and that the deputy has engineered this ‘time crisis’ in order to pressure the scrutineers into passing him so that they can celebrate the festival over which he (or no-one) will preside tomorrow (xxvi 6-7). Clearly it was possible to reject both the candidate and the deputy, but one wonders how often this was a practical option, for reasons of time or of politics. If the bouleutic deputies could stand for any of their deme quota places (as Traill supposes) then the problem was less acute for the boule than for, eg. the strategoi or the archonships, for which we assume a 1:1 relationship

post was important, at least in that particular year. But in fact we know from other sources that the archonship at this time (382 BC) was not important, and from internal evidence it would appear that the accusation against the deputy Euandros was made by a friend of the original candidate Leodamas because a friend of Euandros brought the accusation which led to Leodamas's rejection.<sup>61</sup> And there is further evidence to suggest that passing dokimasia was not a mere 'formality'.

Lysias *surely* would have made something of Theramenes' rejection for the *strategia* if failing dokimasia was so rare—and this is the only known case of rejection of an elected magistrate<sup>62</sup>—whereas it is mentioned as a mere aside in the context of Theramenes' overlong stay in Sparta while treating for peace.<sup>63</sup>

[Demosthenes] lix [Neaira] 72 implies that a man who was well-born (εὐγενῆ) but poor and inexperienced could be expected to be challenged at his dokimasia for the basileus-archonship, and to need some sort of support to pass the scrutiny.

Lysias xxxi [Philon] 33 implies that several people are expected to fail at any one dokimasiai session in the boule,<sup>64</sup> and the concluding remarks to that speech have no force if passing dokimasia was a formality in the vast majority of cases: 'to judge of those who are worthy to sit on the boule you need no other test than yourselves, and the civic character which enabled you to pass your own dokimasiai' (34). If dokimasia was a formality, this is a sarcastic insult to the decision-makers, rather than the compliment with which one would expect the skilled rhetorician to end.

Further and strong evidence against passing dokimasia on the nod is the procedures used in AP's time (see AP 55) namely, secret voting in the dikasteria to be compulsory in *all* cases, that is, for those 700-odd magistracies handled solely in the courts and for the archons and rejected bouleutai who had undergone preliminary scrutiny before the boule, where votes were taken by show of hands. Voting by ballot on all candidates must have been an enormously time-consuming process; AP says that this procedure was introduced because 'if a *poneros* (reprobate) has managed to get rid of all his accusers, it is still in the power of the jurors to reject him' (AP 55.4).

If accusations did not lead to rejections, candidates who expected to be accused would not have 'disposed' of their potential accusers (as a more certain alternative to contesting their accusations through the services of logographers). And, I would submit, this time-consuming procedure of voting by secret ballot would not have been adopted across the board, and continued in practice, if the outcome was a foregone conclusion in 'almost all cases'.<sup>65</sup>

Compare our knowledge of *eisangelia*, judging which *may* have been one of the powers

between named candidate and named deputy. On the question of time, the Athenians do not seem to have felt pressurized into cutting corners on their standing commitments such as the dokimasiai and euthunai of magistrates; even the oligarchically-inclined author of [Xen.] *Athenaion Politeia* 3.1-9 saw no solution to the problem of the routine and regular duties of the boule and dikasteria filling their time to such an extent that it was extremely difficult to get a new matter considered.

<sup>61</sup> In short, the primary motivation here seems to have been personal enmities, getting even, and the good old virtue of harming one's enemies; see also Lysias xxxi [Philon] 2.

<sup>62</sup> Not to be confused with *eisangelia* proceedings against *stratego*i.

<sup>63</sup> Lysias xiii [Agoratos] sections 9-12 (fourteen lines of Loeb text) concern Theramenes ('who was plotting against your democracy') as ambassador; section 10 (two and a half lines of Loeb text) concerns Theramenes' rejection at his dokimasia, 'because you judged him disloyal to your democracy'.

<sup>64</sup> 'He alone, men of the boule, will have no just cause for complaint if he is not admitted, for it is not you who are debarring him from honour today' (but his own past behaviour); implication: others will be rejected today, but they might have just cause for complaint and appeal to the dikasteria. This is certainly *not* the sort of thing said in a meeting whose function is to 'rubber stamp' decisions taken elsewhere.

<sup>65</sup> Hansen AA 101.

taken from the Areiopagus by Ephialtes (see p. 88 above): We have only one *eisangelia* speech delivered before the *ekklesia*,<sup>66</sup> and only four before *dikasteria*.<sup>67</sup> We know in addition of the existence once of 7 more:<sup>68</sup> a grand total of 12. Another small sample. However, as with *dokimasia*, there is other, albeit less specific and detailed evidence: we know of a further 130 prosecutions by *eisangelia* between 492 and 322:<sup>69</sup> 48 of these cases (37%) concern one very well publicised affair in one year;<sup>70</sup> 34 of them (26%) were against *strategoï*, and as Hansen himself points out, correctly, the sources mention *eisangelia* of generals relatively often because they mention generals relatively often (p. 217). By contrast, contested cases of *dokimasia* mostly concern people who had not yet had the opportunity to do anything (wrong or otherwise) in an official capacity, and as such were highly unlikely to be sufficiently newsworthy to warrant mention in the surviving sources. Only 10 of the 130 cases of *eisangelia* (7.7%) refer to any magistrate other than *strategoï* throughout the whole period of 170 years.

Whatever else 4th century procedure for *dokimasia* suggests, AP 55.4 (quoted above) shows graphically the power which is in the hands of those who conduct *dokimasiai*: even without accusations being made, a candidate selected for office by democratic process could be rejected—silently, anonymously, and finally. *Dokimasia* endowed considerable power on its appointed administrators: the power of veto.

And the number of deputies suggests strongly to me that significant numbers failed the test.

If that is what happened in post-Ephialtes Athens, when *bouleutai* scrutinised *bouleutai*, and jurors scrutinised everybody,<sup>71</sup> it is not unreasonable to assume that something similar or worse happened when, as most scholars suppose,<sup>72</sup> Areopagites scrutinised the most important, if not all, would-be magistrates,<sup>73</sup> and there was no appeal from their decision.

Before Ephialtes, magistrates who had been selected *democratically*, by sortition or election or both, could have been denied entry to office by men who were socially superior, in post for life, and were essentially unaccountable: democracy denied by an undemocratic body. Here is something for a democrat to get his teeth into; here is something for everyone to remember (however vaguely) as the last great impediment to full democracy, and to remember the man who removed it as a great democratic reformer.

If this happened in anything like the numbers we suspect later, it is to me completely understandable why a democrat should wish to remove this power from the Areopagites' hands and place it in those of the candidates' peers. And it is at last clear why that man should have been considered a great democratic reformer. And, though I do not offer it as part of the argument, I can also now see why he might have been murdered.

<sup>66</sup> Lysias xxviii [Ergokles].

<sup>67</sup> Lysias xxx [Nikomakhos], Lykourgos [Leokritos], Hyperides ii [Lyk.], and iii [Euxen.].

<sup>68</sup> And a further three given in response: references in Harrison (n. 13) 50 n.2. Responses do not of course add to the number of actioned cases, being only the other side of the argument.

<sup>69</sup> Figures from Hansen AD 216 f.

<sup>70</sup> The profanation of the Mysteries and desecration of the Herms in 415. The simple fact that nearly 40% of the sample concerns one event warns against taking the numbers seriously.

<sup>71</sup> Directly or on appeal from the *boule*.

<sup>72</sup> Eg. Cawkwell, Rhodes, Stockton, Wallace.

<sup>73</sup> Although widely held, it is only a *guess* that outgoing *bouleutai* scrutinised incoming *bouleutai* from the foundation of the Kleisthenic *boule* until Ephialtes' reforms, and if true, this would represent an exception not only to the established practice of *dokimasia*, but also to the *boule*'s otherwise non-judicial functions during that period.

## V. EPILOGUE

In 403, after the deposition of the Thirty, the men who re-established democracy entrusted the ‘guardianship of the constitution’ to the Areiopagus. Hall<sup>74</sup> was rightly perplexed: why did the neo-democrats apparently reverse the action of the democratic reformer Ephialtes, and restore to the Areiopagus the powers which he had taken from it? And, more generally, what was the role of the Areiopagus under the Thirty?

Hall argues persuasively that when the Thirty ‘repealed’ Ephialtes’ reforms, they did not restore the pre-Ephialtes situation, including the powers of the Areiopagus; for when the stones bearing Ephialtes’ laws were destroyed, all those bodies mentioned in the laws with the powers that Ephialtes assigned them were side-stepped: their previous responsibilities were neither denied nor affirmed; their powers were effectively suspended.

That argument intuitively makes sense: the whole tenor of the oligarchy of 404—that which earned them the name of the Thirty ‘Tyrants’—is autocracy: ignoring the governmental structure and operating without recourse or reference to other (constitutional) bodies.

The fact that they did not affirm the Areiopagus in its pre-Ephialtes (or any other) powers and responsibilities leads Hall to infer that relations between the tyrants and the Areopagites were cold, and mutually so. Areopagites were still enjoying life tenure, and were still composed of ex-archons, and while the Thirty could and did interfere in the candidature and selection of members of almost all other governmental bodies, they had to wait for at least one year before ‘their men’ got into the Areiopagus. Their regime did not survive that long.

So, when the democracy was re-established, the Areiopagus was practically the only body of state untainted by the tyrants’ touch, and was duly empowered to ensure that the new members of council and other democratic bodies were scrutinised not by actual or suspect tyrant collaborators and sympathisers, but by Areopagites, untainted and ‘pure’.

This all seems eminently reasonable. And Hall’s thesis can be neatly dovetailed with that of this paper.

The crucially important job to be done at the restoration of the democracy in 403/2 was to man the various organs of government with ‘good (democratic) citizens’; to weed out those oligarchically-inclined members of the demos who might otherwise take up positions of power in the new government. That job was to conduct the dokimasiai of incoming magistrates. ‘Guardianship of the constitution’ meant then, first and foremost, the power to conduct dokimasiai. And that power was given to the Areiopagus.<sup>75</sup>

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<sup>74</sup> L. Hall, ‘Ephialtes, the Areopagus and the Thirty’, *CQ* xl (1990) 319-28.

<sup>75</sup> This paper was significantly improved by the comments and criticisms of J.V. Tucker, Stephen Todd, the other referee, and the editor, to all of whom I extend thanks.