

EPHIALTES, THE AREOPAGUS AND THE THIRTY¹*In memoriam A. Andrewes*

Since the Persian Wars, the Areopagus had allegedly usurped certain 'additional functions'.² By removing them, and assigning them instead to the Council, the assembled People, and the jury-courts, Ephialtes undid the last institutional bastion of aristocratic political authority, and set the copstones on Athens' democratic order.

Such is the received wisdom,³ and it is here assumed that whatever the functions were that Ephialtes took from the Areopagus, his reforms marked a decisive step in Athens' democratic development.⁴ Two snags now crop up.

First, the *Oresteia*. At the climax of the *Eumenides*, the impartial jurisdiction of the Areopagus, chaired by Athens' patron goddess, is triumphantly established in place of the endless cycle of retributive self-help and blood-guilt represented by the story of the house of Atreus. Composed and produced within three years of Ephialtes' reforms,⁵ the drama is generally and rightly held to have some bearing on the political issue.⁶ But Aischylos' confident celebration⁷ of the Areopagus as embodying civilised justice seems diametrically contrary in sense to the democratic reformer's attack on it three years before.

Various explanations are on offer. Some scholars in the past imagined that

¹ Earlier incarnations of this paper have been improved thanks to comments by Mr G. L. Cawkwell, Prof. W. G. Forrest, Ms M. K. Debrunner Hall, and an anonymous referee. Faults are my own.

The following works are referred to by author's name, with or without short title: J. Bleicken, *Die athenische Demokratie* (Paderborn/München/Wien/Zürich, 1985); G. L. Cawkwell, 'Νομοφυλακία and the Areopagus', *JHS* 108 (1988), 1–12; E. R. Dodds, 'Morals and Politics in the *Oresteia*', in *The Ancient Concept of Progress* (Oxford, 1973), pp. 45–63; P. Krentz, *The Thirty at Athens* (Ithaca, N.Y., 1982); C. W. Macleod, 'Politics and the *Oresteia*', *JHS* 102 (1982), 124ff. = *Collected Essays* (Oxford, 1983), 20ff.; P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981); E. Ruschenbusch, 'Ephialtes', *Historia* 15 (1966), 369–76; R. W. Wallace, *The Areopagus Council to 307 BC* (Baltimore, 1989).

² τὰ ἐπιθετα. For discussions of this term, Rhodes, *Comm.* pp. 287, 314; Cawkwell, p. 2; Wallace, *Areop.* pp. 85–7.

³ Drawn mainly from the Aristotelian *Athenaion Politeia* 25.1f., with which the other sources, for what they are worth, tend to conform: Ar. *Pol.* 1274a7ff.; Diod. 11.77.6; Paus. 1.29.5; Plut. *Mor.* 812d. Philoch. F 64 b presents difficulties which cannot be tackled here.

⁴ Ruschenbusch argued that Ephialtes was more a figure of fourth-century political fiction than of fifth-century political history, but did little to dent main-stream faith. For recent statements see e.g. Bleicken, *Ath. Demokr.* pp. 36ff., 325f. (but note Hansen's reservations in his review, *CPh* 84 (1989), 137ff., esp. 141ff.: Bleicken makes too little allowance for institutional developments later than Ephialtes); Cawkwell; Wallace, *Areop.* pp. 77ff.

⁵ The first performance of the *Oresteia* is dated 459/8 (Philokles' archonship = Olymp. 80/2) by the hypothesis to the *Agamemnon*. Ar. *Pol.* 25.2 certifies Ephialtes' reforms for 462/1 (archonship of Konon).

⁶ Of modern discussions, only Macleod's resists the assumption – which is gently but firmly restated by A. H. Sommerstein in the preface to his new edition (Cambridge, 1989) of the *Eumenides*, pp. 25ff.

⁷ One nineteenth-century scholar waxed lyrical: 'Pries nun ein Dichter... gerade den Blutbann des Areopag als den ursprünglichen Inhalt seiner göttlichen Sendung, that er's im Ton freudigster Begeisterung und ungetrübtester Zuversicht' (Wilh. Oncken, *Die Staatslehre des Aristoteles*, vol. 2 (Leipzig, 1875), p. 504).

Aischylos was fighting a conservative rearguard action against the onward march of democracy – not a belief nowadays seriously entertained.⁸ But special pleading bedevils much subsequent discussion, and illustrates how intractable the apparent contradiction still is. Aischylos is made a democrat after all, by assuming that the Areopagus in the drama has nothing to do with the real-life counterpart attacked by Ephialtes, but stands instead for the democratic *Heliaia*;⁹ or by identifying the ἐπιποαί of *Eum.* 694 with the *epitheta* which Ephialtes took from the Areopagus.¹⁰ The poet becomes a man of the political centre, happy enough with Ephialtes' work, though against further democratic reform:¹¹ but only if we believe that Aischylos would make the Erinyes, of all people, speak for his own convictions,¹² and that he could refer to the *zeugitai*, of whose eligibility for the archonship from 458/7 onwards Aischylos on this view disapproved, as 'mud'.¹³ Alternatively, Aischylos is aloof from politics:¹⁴ then, however, the general reference of the passage (*Eum.* 700ff.) in which Athena declares the Areopagus 'a bulwark to safeguard the country and the city... a watchful guard in the land' has to be confined to the single and specific domain of homicide jurisdiction,¹⁵ which can hardly be claimed as 'the basis of all law and order'¹⁶ in the fifth century anyway;¹⁷ while the assumption is hard to swallow that, so soon after the controversy and upheaval of 462/1, a trilogy with its climactic *dénouement* set in the court of the Areopagus could avoid political implications clear to its audience if not to us. One writer skirts the issue, but at the same time contradicts himself, by maintaining on the one hand that the *Oresteia* constitutes the dramatist's considered response to the political events of 462/1,¹⁸ but declaring Aischylos' political opinions 'irrelevant' to interpretation of the drama on the other.¹⁹ And for the latest author, the play, while indeed carrying a marked political burden, has no bearing on the events of 462/1.²⁰ Where a work such as the *Oresteia* is concerned, however, what matters is not the date of its *première* but the period and political environment of its gestation; and the issues of 462/1 cannot be so clinically severed from those of the next few years.²¹

⁸ Cf. Dodds, p. 46.

⁹ Wilamowitz, *Aristoteles und Athen* (Berlin, 1893), ii.334.

¹⁰ K. J. Dover, *JHS* 77 (1957), 236.

¹¹ Dodds' own view, pp. 48f., supported by A. J. Podlecki, *The Political Background of Aeschylean Tragedy* (Ann Arbor, 1966), p. 95; L. A. Jones, *CA* 6 (1987), 74f.

¹² Dodds, p. 50.

¹³ Dodds, *CQ* 3 (1953), 19f. Jacoby raised the objection (*FGrHist* III B Suppl., Notes p. 528), and as Macleod remarks (p. 128 = *Essays*, p. 24, n. 16), Dodds' answer (*ACP*, p. 49 n. 1) does not convince.

¹⁴ In Macleod's view (pp. 127–9 = *Essays*, pp. 23–5), Aischylos has no political concern even with the Argive alliance; but see Sommerstein, *op. cit.* (n. 6), p. 30.

¹⁵ Dover, *op. cit.*, pp. 232ff., followed by Macleod, p. 129 = *Essays*, p. 25. Pronouncing this view 'sensible', Wallace, *Areop.* pp. 90f., begs the question by saying that Aischylos' language is 'insufficiently specific' to refer to wider legal competence: if this was itself as unspecific as 'guardianship of the laws' or 'supervision of the polity' (*Ath. Pol.* 8.4, cf. *Plut. Sol.* 19), how was Aischylos to be precise about it?

¹⁶ Macleod's formulation, p. 129 = *Essays*, p. 25.

¹⁷ Jones, *art. cit.* (n. 11), pp. 71f., for one cogent objection.

¹⁸ Chr. Meier, *Die politische Kunst der griech. Tragödie* (München, 1988), p. 117.

¹⁹ *Op. cit.*, p. 132. Cf. Meier's other recent discussion, 'Der Umbruch zur Demokratie in Athen (462/1 v. Chr.)', in R. Herzog, R. Koselleck (edd.), *Epochenschwelle und Epochenbewußtsein: Poetik und Hermeneutik XII* (München, 1987), pp. 353–80.

²⁰ Wallace, *Areop.* pp. 91–3.

²¹ Wallace himself refers (*Areop.* p. 93) to Kimon's ostracism, and cites *Thuc.* 1.107.4 (Athenian conservatives in 458/7 canvassing Spartan help to overturn democracy). One might add the issue of zeugite archons.

So far, literature. For historians an old chestnut concerns the constitutional role of the Areopagus during and after the régime of the Thirty in 404/3. Aristotle declares that among other measures on taking control, the Thirty revoked 'the laws of Ephialtes touching the Areopagus' (*Ath. Pol.* 35.2). Hence a modern orthodoxy, succinctly put by Cawkwell: 'the purpose of the revolutionaries of 404... was to return to the Areopagus Council the full powers it had before Ephialtes attacked it.'²² Yet when democracy was restored in 403/2, Teisamenos' decree gave the Areopagites wide powers of supervision over the new magistrates (*Andoc.* 1.83f.). This looks doubly paradoxical: in 403, when the most pressing thing on the political agenda is to put democracy back to work, the People entrust constitutionally delicate responsibilities to a body which a major democratic reformer has stripped of its powers; and the *demos'* faith in the Areopagites here is quite astounding if indeed it be true that they had played any significant role in the schemes or propaganda of the Thirty. Yet that is what scholars will have us believe.

To take the latter problem first. A voice in the wilderness came up with a drastic expedient. Discarding altogether Aristotle's report that the Thirty overthrew Ephialtes' laws, Ruschenbusch enlisted a passage of oratory from about 400 to support a theory that the Thirty actually deprived the Areopagus of powers.²³ A litigant prefaces his citation of a 'law from the stele of the Areopagus' by saying that to that body, *καὶ πατρίων ἐστὶ, καὶ ἐφ' ἡμῶν ἀποδεδόται, τοῦ φόνου τὰς δίκας δικάζειν* (*Lys.* 1.30). If *ἐφ' ἡμῶν ἀποδεδόται* means 'has in our own time been restored', the text implies a suspension of the Areopagites' homicide jurisdiction within the jurors' recent memory; and the period of the Thirty seems the fittest context for such an interruption.

This is not cogent. To the counter-arguments offered by Wallace²⁴ may be added a simple point. The verb *ἀποδίδωμι* need not in any strong sense connote 'restore' or 'give back', for it can just mean 'assign' or 'commission':²⁵ Lysias' Greek is equally consistent with uninterrupted Areopagite powers in force since their 'ancestral' inception as with their conferral anew after a break.²⁶

²² P. 3. This or similar opinions are espoused by: P. Cloché, *La restauration démocratique à Athènes en 403 av. J.-C.* (Paris, 1915), pp. 416f.; R. J. Bonner, *CPh* 21 (1926), 213f.; R. J. Bonner, G. Smith, *The Administration of Justice from Homer to Aristotle* (Chicago, 1930), i.277; A. D. Makkink, *Andokides' Eerste Rede, met inleiding en commentaar* (Amsterdam, 1932), p. 243; E. Lévy, *Athènes devant la défaite de 404: histoire d'une crise idéologique* (Paris, 1976), p. 195 and nn. 4-5; Krentz, *Thirty*, p. 61; Bleicken, *Ath. Demokr.* pp. 264f.; so too by implication E. M. Walker, *CAH* v (1935), pp. 99, 367; N. G. L. Hammond, *History of Greece*³ (Oxford, 1986), p. 443; M. Ostwald, *From Popular Sovereignty to the Rule of Law: Law, Society & Politics in Fifth-century Athens* (Berkeley/Los Angeles/London, 1986), pp. 479f., 517.

An obvious objection, that the Thirty in fact made no practical use of the Areopagus, leads to the variant offered by C. Hignett, *A History of the Athenian Constitution* (Oxford, 1952), p. 288, followed in essentials by J. Day, M. Chambers, *Aristotle's History of Athenian Democracy* (Univ. of Calif. Publications in History 73, Berkeley/Los Angeles/London, 1976), p. 129 n. 108, and stated at length and with refinements by Wallace (*Areop.* pp. 140ff.): the removal of Ephialtes' laws was by way of a *captatio*, a promise of restoration which the Thirty had no real intention of fulfilling.

Andrewes (*HCT* v (1980), pp. 215f.) writes more cautiously that the repeal of Ephialtes' laws was 'in effect a return to the constitution created by Kleisthenes'.

²³ P. 372. The theory was avowedly (*ibid.* n. 28) not new, but had found no twentieth-century fanciers.

²⁴ *Areop.* pp. 142f.

²⁵ *LSJ*⁹ s.v. D. M. MacDowell, *Athenian Homicide Law in the Age of the Orators* (Manchester, 1963), p. 43, cited with approval by Wallace (*Areop.* p. 142), therefore concedes too much.

²⁶ Better for Ruschenbusch's case might have been *Ath. Pol.* 39.5, where among the terms of settlement in 403 is a stipulation that cases of homicide and wounding were to be conducted

Ruschenbusch was nevertheless onto something. First, attention should go to the context of Aristotle's notice about the repeal of Ephialtes' laws by the Thirty.

This was not the only legal change which the Thirty made. Aristotle goes on to tell us that they rescinded those of Solon's regulations in which ambiguities gave rise to litigious disputation (τῶν Σόλωνος θεσμῶν ὅσοι διαμφισβητήσεις εἶχον); and they did away with the 'sovereignty' of the popular courts (τὸ κύρος ὃ ἦν ἐν τοῖς δικασταῖς κατέλυσαν, 35.2).

These prescriptions are just the kind of measure that Aristotle would expect a government such as the Thirty to take. This becomes clear from two things which he has already told us about Solon's laws; that according to one view (with which Aristotle does not disagree),²⁷ the principle established by Solon of appeal to the popular court(s) was the central pillar of demotic power: 'for once master of the voting-pebble, the People becomes master of the polity' (9.1); and secondly, that because the language of Solon's laws was neither simple nor clear, numerous disputes arose over their interpretation (πολλὰς ἀμφισβητήσεις γίγνεσθαι) which, being settled in the court(s), placed in the jurors' power 'everything public and private'; hence, some people thought (but not this time Aristotle, who expressly disavows this view), Solon had of set purpose made his laws unclear in order to leave the People with supreme control of affairs (9.2).

These remarks resonate with theoretical objections to Athenian democracy current for much of the fifth and fourth centuries.²⁸ For Aristotle, irked like other critics by the 'sovereign' power that the courts at Athens in practice possessed,²⁹ it was natural that the Thirty, being in no way kindly disposed to democracy, but still wearing the lawful guise of a commission for constitutional reform,³⁰ should have repealed 'those of Solon's laws which gave rise to disputes' and destroyed the κύρος of the dicasts.

So for Aristotle, the oligarchs' abolition of the 'laws of Ephialtes' was closely connected with other measures specifically designed (he thought) to dismantle the institutional apparatus wherein had developed the most unacceptably extensive popular powers – in the courts. That ought to suggest that the purpose of abolishing 'laws about the Areopagus' was similar – that is, to limit its powers, rather than to increase them.³¹

The analogy is open to two objections. First, fourth-century 'conservatives' liked the idea that the Areopagus had once counterbalanced the wilder excesses of the

κατὰ τὰ πατρία. But in light of Bonner, *CPh* 19 (1924), 175, cited with approval by T. C. Loening, *The Reconciliation Agreement of 403/402 BC in Athens*, *Hermes Einzelschr.* 53 (1987), p. 40 n. 61, I have avoided making my argument depend upon it.

²⁷ Though a contentious passage in certain other respects, *Pol.* 1273b38ff. unambiguously confirms that Aristotle believed in the courts' central importance as instruments of popular power.

²⁸ Cf. Rhodes, *Comm.* p. 162.

²⁹ Cf. n. 27. Studies by M. H. Hansen have established that this is a tolerable statement of the actual position in the fourth century, esp. *The Sovereignty of the People's Court in Athens in the Fourth Century BC and the Public Action against Unconstitutional Proposals* (Odense Univ. Classical Studies 4, Odense, 1974), pp. 9ff.; cf. *GRBS* 19 (1978), 127ff. = *The Athenian Ecclesia: A Collection of Articles 1976–83* (Copenhagen, 1983), pp. 139ff. Though Hansen's studies are restricted to fourth-century Athens, his conclusion is valid in all senses that matter for the fifth century too, as I hope to show in a later study of Ephialtes' political legacy.

³⁰ Against the view of the Thirty as a constitutional commission, Krentz, *Thirty*, p. 50 points out that they are always treated by our sources as a government. Quite so – in retrospect; but that bears not a whit upon the issue of what they were notionally appointed to do.

³¹ Cf. Krentz, *Thirty*, p. 61 and n. 3.

popular institutions,³² so very likely fifth-century 'conservatives' did too. Secondly, the Areopagus' membership was differently composed from that of the ordinary dicastic juries. The first objection can be waived, on the grounds that it assumes what is to be proven, namely that the Thirty would be disposed to restore Areopagite powers. And reflection on the second yields a further support for the case here being put.

The Thirty did not at first³³ abolish the regular magistracies and the Council, but merely made sure, as once the Peisistratidai had done (Thuc. 6.54.6), and as the oligarchs had in 411 (Thuc. 8.67.3, cf. 70.1), that their own partisans were appointed (Xen. *Hell.* 2.3.11; *Ath. Pol.* 35.1; Diod. 14.4.1f.). As a legal commission, moreover, they could change the means by which officials were appointed without monstrous interference with the existing constitution; after all, such modifications were sometimes made during periods of democratic government too.

The technique could not, however, be applied to the Areopagus. Sortition for the archonship, in force since 487/6 (*Ath. Pol.* 22.5), and the admission of *zeugitai* in 458/7 (26.2), will have ensured that a generation after Ephialtes, the Areopagites were tolerably representative of the citizenry as a whole, even if the upper census-classes still enjoyed some imbalance in their numerical favour. So although in 404 there may have been some among the Areopagites, as there were within any group of Athenians, who privately disliked democracy, these will not have been many, and certainly not a majority upon which the Thirty could rely.

Indeed, for the Areopagites to continue performing even the limited duties which Ephialtes had left them could have been embarrassing for the oligarchs. As a homicide court, they could have been called upon to hear allegations against the Thirty themselves or their henchmen;³⁴ and for want of any other democratically reliable body, efforts might have been made, like those of Demosthenes and others in the fourth century, to engage the Areopagus in the service of more directly political ends as a tribunal for treasonable or anti-democratic activities. That risk will not have been lost on the Thirty: shortly before Athens' surrender and their installation, the Areopagus was taking emergency counsels *περὶ σωτηρίας*, and by opposing Theramenes was implicitly opposing the oligarchs' designs in general (Lys. 12.69).³⁵

So long as the Thirty were to sustain any pretence of legality, outright abolition of the Areopagus was hardly on the cards; and even they might have harboured qualms about abolishing a body with the Areopagus' antique aura of sanctity. The courses open to them were therefore limited. They could choose to do nothing: gradually their own appointees to the archonship³⁶ would replace the existing personnel by natural

³² Isocrates' *Areopagitic* is the prime statement; but Aristotle too regarded the Areopagus favourably as an aristocratic or oligarchic element in Solon's 'mixed constitution': *Pol.* 1273b39f.

³³ The sources agree in identifying a distinct change for the worse in the administration of the Thirty, after a spell in which their nastiness was directed only against sycophantic malefactors (Xen. *Hell.* 2.3.12f.; *Ath. Pol.* 35.3f.; Diod. 14.4.2f.).

³⁴ So Ruschenbusch, p. 372 n. 28.

³⁵ Cf. Ruschenbusch, loc. cit.; G. A. Lehmann, 'Die Machtergreifung der Dreißig und die staatliche Teilung Attikas (404–401/0 v. Chr.)', in G. A. Lehmann, R. Stiehl (edd.), *Antike und Universalgeschichte: Festschr. H. E. Stier* (Münster, 1972), 201ff. at p. 207 n. 16. Wallace's attempt (*Areop.* p. 142) to reconcile this Areopagite opposition in 405 with the orthodox interpretation of *Ath. Pol.* 35.2 is forced. The thing is less of a mystery than has been thought, cf. *infra*.

³⁶ I assume that the 'archon' of 404/3, Pythodoros, was appointed by the Thirty or at their behest, and venture no opinion on his identity with the activist in 411 immortalised by *Ath. Pol.* 29.1.

wastage; but several years would have to pass before their own men joined the Areopagus in large enough numbers to matter.³⁷ Alternatively, they could sack the existing Areopagites and appoint their own nominees at one fell swoop. That course, even if perhaps feasible, would be a more flagrant affront to constitutional propriety than merely engineering the selection of annual magistrates. So while the Thirty might keep a veneer of legitimacy for themselves as a board *rei publicae constituendae*, and for the working, albeit manned by their own supporters, of such other political institutions as it suited them to preserve, the Council of the Areopagus was not a body they could bring round without unacceptably radical interference.

So far, then, from wishing to re-instate powers which the Areopagus had once lost, the Thirty had reasons for drawing its remaining teeth. But this runs directly counter to the orthodox inference from Aristotle's statement about the Thirty repealing Ephialtes' laws. What is to be done?

It is now time to pull the rabbit from the hat, and expose a fallacy. Behind modern belief in the 'restoration' of Areopagite powers in 404 lurks an absolutely unjustifiable assumption that it is the same thing for Ephialtes' laws to be repealed and for the purpose and effects of their original enactment to be undone. Turn back to 462/1, and consider what kind of laws³⁸ Ephialtes would have to enact in order to curtail the Areopagus' powers: is he to have forbidden the Areopagites to carry out certain specific ('additional') functions which hitherto they had performed? That is, were his laws a series of prohibitions?

This is most unlikely. First, Ephialtes did not only curtail the Areopagus' constitutional powers. Before his reforms took effect, his denunciations for official malpractice had removed 'many' sitting members (*Ath. Pol.* 25.2).³⁹ Not all, of course, for he will hardly have sought the dismissal of those of their number who supported him. Most Areopagites who survived this purge, then, will have acquiesced in the more limited public role marked out for them by his later constitutional enactments. And he need not have been eager to give his sacked opponents the satisfaction of knowing that the Areopagites who remained were bereft of all political significance.

Secondly, it would not do enough. Forbidding Areopagites to do certain things would not prevent them from acquiring further 'additional functions' in future, provided only that these new *ἐπιθετα* were not anathematized in Ephialtes' list of 'Ye shall not' injunctions. Nor could prohibitive orders have supplied the new legal footing for functions transferred to the other constitutional bodies.

Thirdly, Athenian legislative habits. Laws regarding the powers of different bodies of state or officials normally take imperative or conditional forms: one or another board of magistrates shall do this, whereas such and such others shall do that; or else, if someone does a, b or c, then this, that or another body shall adopt the following procedure.... To assign to the democratic bodies powers previously exercised by the Areopagus, Ephialtes had to define the procedures and duties they were to carry out, positively instructing them what to do and in what circumstances: the Council of Five Hundred will do this, the People's Assembly will do that, the courts will decide such and such matters, and so forth.⁴⁰

³⁷ Even on the lowest estimate of total Areopagite numbers I have encountered ('about 90': G. L. Cawkwell, *per litteras*), five years or so would be needed before the Thirty could regularly expect to command a majority.

³⁸ Or perhaps more accurately, decrees with legislative effect: Rhodes, *Comm.* pp. 315, 321.

³⁹ Jones, art. cit. (n. 11), pp. 62ff., chews over various possibilities about what this involved.

⁴⁰ P. J. Rhodes, *JHS* 99 (1979), 112f., seems to envisage some such prescription for the conduct of *εἰσαγγελίαι*, but draws no further inference for the form of Ephialtes' laws.

What then were 'the laws of Ephialtes concerning the Areopagites'? If the discussion thus far is broadly right, then Ephialtes will have had a positive prescription for the Council of the Areopagus as well as for the other organs of state:⁴¹ the Areopagites shall try cases of homicide, wounding and arson, be responsible for the maintenance of the sacred olive-trees, try disputes over matters of cult and so on.⁴² It does not here matter whether these or any other specific domains of authority were explicitly conferred on the Areopagus by Ephialtes' laws (homicide jurisdiction, though, is generally and rightly assumed, in light of the *Eumenides*).⁴³ It is enough if it be accepted that those laws amounted to positive, even if incomplete, instructions about the Areopagus' future functions.

Mention once again of the *Eumenides* makes this an apt point at which to return to Aischylos. Of course the optimistic and civilised message of the *Oresteia* sits ill with the notion of contumacious and purely restrictive anti-Areopagite legislation by Ephialtes only three years before. But it is easy to square with the hypothesis that by that legislation, an Areopagus now purged of reactionaries was given its own legal 'charter', specifying its future procedures and domains of jurisdiction.⁴⁴ Even without the *Oresteia*, we should have to allow that there was an important place for the Areopagus in Ephialtes' constitutional scheme of things; with that evidence, it is easier to believe that, in form if not in substance, Ephialtes' laws conferred powers upon the Areopagus, rather than took them away.

A further point cries out to be made. We have been aptly warned against the seductive delusion which hindsight proffers, of fathering on Ephialtes a 'democratic' political vision, and assuming that the institutional developments which ensued from his reforms were intended by him.⁴⁵ In fact we know of a number of subsequent modifications which Ephialtes' work may have facilitated, but for which he was not responsible: the admission of *zeugitai* to the archonship, and hence the Areopagus, in 458/7, Perikles' introduction of dicastic pay, probably more legislation with the effect if not the intention of further reducing Areopagite political power (*Ath. Pol.* 27.1), and, later, increasingly frequent recourse to the *γραφὴ παρανόμων* as a political tool,⁴⁶ all contributed to the picture of 'radical' democracy, courts and all, which late fifth-century dissenters disliked and fourth-century philosophers criticized. Had he lived, Ephialtes himself might have frowned on some of these further developments. In light of which, it becomes likely that Ephialtes' prescription for the Areopagus conferred on it a wider range of competences than it still had by the time of the Peloponnesian War; competences, perhaps, of a scope sufficiently wide to be described in 462/1 as *νομοφυλακία*. That too makes the language of Athena's 'charter' for the Areopagus in the *Eumenides* easier to understand at face value.

Now to return to 404/3. What happened when the Thirty repealed 'the laws of Ephialtes concerning the Areopagites'? As current doctrine has it, they either gave

⁴¹ As often, Wilamowitz was alert where later scholars have erred, cf. *Aristoteles und Athen*, ii.188.

⁴² Perhaps too some form of general *νομοφυλακία*. See below.

⁴³ Cf. J. Martin, *Chiron* 4 (1974), 29.

⁴⁴ It is worth remarking here Aristotle's statement that the Areopagus' enhanced political authority after the Persian Wars proceeded from no *δῶγμα*, i.e. no enabling enactment (*Ath. Pol.* 23.1). Which fits nicely with the burden of Cawkwell's discussion, that until Ephialtes the Areopagites had exercised a wide but unspecified discretionary jurisdiction, a *cura morum* in Roman terms: Ephialtes' 'laws about the Areopagites' will then have limited, literally, Areopagite powers by defining them.

⁴⁵ J. Martin, art. cit., pp. 29ff.

⁴⁶ For that matter, there may have been other changes too of which we know nothing but the name of their author, Archestratos.

back to the Areopagus its former constitutional clout, or claimed, or promised, to do so. This, it now emerges, is radically mistaken. If Ephialtes' laws about the Areopagites were positive instructions setting out their future role and powers, then by destroying them (for that is what the Thirty will have done to the stones or boards on which they were inscribed: *καθεῖλον*, *Ath. Pol.* 35.2, is strong language).⁴⁷ the oligarchs were not announcing constitutional authority restored to a reliably 'conservative' Areopagus: rather, in accordance with their policy of divesting the people's courts of their power, the aim of the Thirty was precisely to suspend the competences of a prestigious, popular and central organ of the democratic constitution.

Teisamenos' invocation of the Areopagites in 403 as a constitutional anchor (*Andoc.* 1.83f.) no longer baffles explanation. It is not only because they formed the highest homicide court in the land, although this perhaps did count at a time when, if other things could be forgiven, the answerability of the Thirty for the fate of the *desaparecidos* during their *régime* was an urgent, maybe even a divinely enjoined,⁴⁸ requirement. It was also for a more important reason, or pair of reasons. Some of the magistrates and *βουλευταί* assembling for the first time in Pyanopsion 403 or thereabouts⁴⁹ would be acquainted; but the majority would be relative strangers to one another. What guarantee, then, for any individual among them that his neighbour in the Council-chamber or elsewhere going about public duties had been properly appointed, and was a reliable patriot and democrat? The Areopagus was a different case. Tenure of office for life had made the Areopagites' Council the only constitutional body standing in the way of the Thirty, who had manipulated the other state institutions by controlling the selection of annual officials. Now, in 403, for the same reason, the Areopagites would know each other at once, even if they had not met for up to a year.⁵⁰ The risk therefore that any of them had been improperly appointed was negligible; and if any of them, having indeed shown ill-advised sympathy towards the oligarchy during the previous year, then dared to re-assume his seat in 403, his record is likely to have been known to his fellows, and himself thence visited with internal disciplinary action⁵¹ of a kind from which he could hardly look to the general Amnesty to protect him. Unlike the other organs of democracy, the Areopagus provided a palpable focus of constitutional and civic continuity between the *status quo ante* 404 and the future.

There was also a practical reason. To set the complex machinery of democracy back in operation was no small task of organisation. The appointment of a board of Twenty chosen *ad hoc* to serve as a caretaker government (*Andoc.* 1.81) was one of several interim expedients. Another will have been the arrangement of extraordinary elections and sortitions to appoint new magistrates and a new Council of Five Hundred, without which it was practically speaking awkward, and constitutionally improper, even to hold an Assembly. In normal years, *dokimasiai* tested candidates'

⁴⁷ Compare the decree of Patrokleides (*Andoc.* 1.76ff.), with MacDowell's *Commentary* on the word *ἐξαλείψαι ad loc.*, p. 113.

⁴⁸ Cf. R. J. Bonner, art. cit. (n. 26), pp. 175f.

⁴⁹ The return from Phyle on 12th Boedromion ([Plut.] *Mor.* 849f.) supplies a *terminus post*, and at least some days if not weeks must be allowed thereafter for the final hostilities, amnesty negotiations, and the organisation and conduct of bouletic sortitions.

⁵⁰ Areopagites would also be well known to many private citizens too, for during their archonships they would be in the public eye when performing ceremonial functions, and Areopagite Council sessions were open anyway (U. Kahrstedt, *Stud. zum öffentl. Recht Athens* (Stuttgart, 1936 repr. Aalen, 1969), ii.295, with references).

⁵¹ For which, Kahrstedt, op. cit., ii.109f.

fitness for public office. But in 403, not only were there no outgoing ἀρχοντες or Council who could be trusted to oversee their successors' appointments and hand on their responsibilities properly: there were no courts still in session to hold *dokimasiai* before the new appointments could even be made. Yet if ever it mattered that the new appointees not only were men of literally unimpeachable democratic commitment, but acted as such and were seen to do so, it mattered in 403.

This was not only because of the general political shock which the oligarchy had caused. It was also because of specific concerns about the fragility of democracy. Many members of the Council of Five Hundred in 405/4 had been suspected of complicity with the Thirty (Lys. 13.20), so the new Councillors for 403/2, and other officials too, will have needed spotless reputations in order to carry public confidence. Democratic unease will have been further fuelled by two other circumstances. First, it is likely that the Amnesty was not wholly motivated by spontaneous clemency and goodwill, but was to some extent forced upon Athens by Spartan insistence that there should be no reprisals against the former men of the City:⁵² willing though they might be to forgive those of the City party who now chose to accept this generosity and remain among them in humble obscurity, few democrats would relish, even if they had to accept as inevitable,⁵³ the prospect of many such men holding office as well.⁵⁴ Secondly, everyone was a democrat now. Once it was clear that sooner or later democracy would in any case be reinstated, those who had stayed in the city probably found it expedient to dissociate themselves as far as they could from the Thirty: some suspiciously fulsome protestations of loyalty to democracy will have been heard. Added to which, there had been waverers on both sides, such as Kallimachos, who deserted the democrats when Lysander besieged Peiraieus (Isocr. 18.49); while renegades from the party of the City might be regarded as doubly unreliable, having not only stood by and watched democracy go under, but having ratted on their oligarchic friends as well. All of which will have made it hard to tell whose professions of democratic attachment and patriotism one could trust and whose one could not. Such circumstances might also foster all manner of false insinuations, which could themselves hamper the work of the new officials.

In this state of affairs, even if some sort of dokimastic hearings could be arranged, Athenians might well feel that an especially close watch should be kept on the new officials' conduct, at least until the routine machinery of supervision and accountability was re-established. The Areopagites were well qualified to carry out this task, indeed were the sole body to which Athens could safely look for the purpose: they were made up of a passably representative cross-section of the citizenry, chosen, originally, by the democratic lot; they were experienced in judicial procedures and business; they were widely known and respected among the People at large, and enjoyed the mythological sanction of Athens' patron goddess; and above all they, and only they, represented the continuity of the 'ancestral' constitution, and required no appointment procedure, no *dokimasiai* to prove their suitability for office, no lengthy or special arrangements to recommence their normal sessions.

Here, as elsewhere in fifth-century matters, Aristotle has misled historians. Ephialtes' laws were not an *Entmachtung*, but an *Ermächtigung* of the Areopagus; and it is an agreeable irony that, in consequence, this former stronghold of

⁵² P. Funke, *Homonoia und Arche: Athen und die griechische Staatenwelt vom Ende des pelop. Krieges bis zum Königsfrieden*, *Historia Einzelschr.* 37 (1980), pp. 12ff.

⁵³ Krentz, *Thirty*, p. 117.

⁵⁴ Rhinon earned himself a place in history, after his εὐθυνα, because this vindication was exceptional (*Ath. Pol.* 38.3f.).

aristocratic power and privilege would one day play a salubrious role as the real and perceived guardian of the democratic *πολιτεία* in Athens' darkest hour. One notes that more modifications to government legislation in the U.K. in the last ten years have issued from the House of Lords than from the House of Commons.

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