

Apophasis and *Eisangelia*: The Rôle of the Areopagus in Athenian Political Trials

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οὕτω γὰρ ἡμῶν οἱ πρόγονοι σφόδρα περὶ τὴν σωφροσύνην ἐσπούδαζον ὥστε τὴν ἐξ Ἀρείου πάγου βουλὴν ἐπέστησαν ἐπιμελεῖσθαι τῆς εὐκοσμίας . . . ἐπιτιμῶν . . . τοῖς ὀλίγω πρὸ ἡμῶν τὴν πόλιν διοικήσασιν. ἐκείνοι γὰρ ἦσαν οἱ προτρέψαντες ἐπὶ ταύτας τὰς ὀλιγωρίας καὶ καταλύσαντες τὴν τῆς βουλῆς δύναμιν. ἧς ἐπιστατούσης οὐ δικῶν οὐδ' ἐγκλημάτων . . . ἡ πόλις ἔγεμεν (Isoc. 7.37, 50f).

The Council of the Areopagus had become in the mid-fourth century a familiar symbol of the old aristocratic order lost as a casualty of the radical democracy: tradition held that the Areopagus, guardian of the *patrios politeia*, had been stripped of political authority by the party of Ephialtes. Soon after Isocrates' *Areopagiticus* (356/5), power of impeachment (through the procedure known as *apophasis*) was restored to the Areopagus.¹ In recent work early impeachments (*eisangeliai*) have been thoroughly re-examined: M. H. Hansen, for example, has argued, against the testimony of the *Athenaion Politeia*, that Solon's provision for *eisangelia* before the Areopagus (8.4) was a fiction of fourth-century propaganda, while P. J. Rhodes has defended the tradition that the Areopagus heard cases of conspiracy and corruption down to 462/1.² *Apophasis*, however, based on the supposed

¹ For general discussions of the power of the Areopagus, see Ulrich Kahrstedt, "Untersuchungen zu athenische Behörde," *Klio* 30 (1937) 10–33 (= *Zur griechische Rechtsgeschichte, Wege der Forschung* 45 [1968] 197–223); and Gertrude Smith, "The Jurisdiction of the Areopagus," *CP* 22 (1927) 61–79; among earlier studies, B. Keil, *Beiträge zur Geschichte des Areopags* (Berlin/Leipzig 1919); and A. Philippi, *Der Areopag und die Epheten* (Berlin 1874); cf. Thalheim, *RE* 2.1 (1895) 627–33 s.v. "Ἀρειος πάγος," esp. 630–32.

² P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 201–11, follows the traditional view of *Ath. Pol.* 8.4 and Solon's *nomos eisangelitikos*. M. H. Hansen, *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians* (Odense 1975) [hereafter 'Hansen, *Eisangelia*'] 17–20, suggests that classical *eisangelia* to the council was introduced with the reforms of Cleisthenes. Rhodes, *JHS* 99 (1979) 103–14 and *Commentary on the Aristotelian Athenaion Politeia* (Oxford 1981) 156, acknowledges the pervasive influence of fourth-century propaganda, but insists upon the substantive accuracy of *Ath. Pol.* 8.4; cf. Han-

model of ancient *eisangeliai* in the Areopagus, has been relegated to the footnotes of Athenian constitutional history; not all the evidence has been carefully considered, and many procedural questions have yet to be answered.³ In this paper I shall attempt to clarify the process of *apophasis* and its ancient precedents. It will be necessary first to reassess the fourth-century tradition as it stands, and then to reconsider the reform of political trials in the same period, to determine, as precisely as the evidence will allow, what changes in procedure were based on conceptions of the *patrios politeia* then current, and what other motives influenced tradition and reform in the fourth century.

I. *Eisangelia* to the Areopagus

The chief function of the Areopagus prior to the Solonian constitution is broadly described in our sources as ‘supervision of the laws’, *νομοφυλακία* οἱ τὸ τηρεῖν τοὺς νόμους, but we are not given a clear idea of how this guardianship was carried out.⁴ The *Ath. Pol.* and related sources suggest that the Areopagus served to maintain the

sen’s reply, *JHS* 100 (1980) 89–95, with summary of his arguments elsewhere. On the transfer of jurisdiction from the Areopagus to the Council of Five Hundred, see H. T. Wade-Gery, *Essays in Greek History* (Oxford 1958) 180–200; E. Ruschenbusch, “Ephialtes,” *Historia* 15 (1966) 369–76; and R. Sealey, “Ephialtes, *Eisangelia*, and the Council,” *Classical Contributions. Studies in Honor of Malcolm Francis McGregor*, edd. G. S. Shrimpton and D. J. McCarger (Locust Valley 1981) 125–34, who concludes that much has been attributed to specific reforms developed in practice and by precedent. On *eisangelia* in the archaic period, see Ruschenbusch, *Untersuchungen zur Geschichte des athenischen Strafrechts* (*GraezAbh* 4 [1968]) 53–57, 73f. In regard to fifth-century reforms and fourth-century testimonia, see Ruschenbusch, *Athenische Innenpolitik im fünfsten Jahrhundert v. Chr.* (Bamberg 1979). For the *patrios politeia* as a slogan of the fourth century, see K. R. Walters, *AJAH* 1 (1976) 129–44.

³ D. M. MacDowell has given a sound, if succinct, account of *apophasis* in *The Law in Classical Athens* (Cornell 1978) 190f. M. H. Hansen has contributed greatly to our understanding of procedural reform in the later fourth century, although his account of *apophasis* has been at times tentative (*Eisangelia* 18f, 39f; but cf. *GRBS* 20 [1979] 38 n.24; and see n.37 and discussion *infra*). J. H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig 1905–1915), mentions *apophasis* only in passing (403, 801); cf. Smith (*supra* n.1) 78. A. R. W. Harrison, *The Law of Athens II* (Oxford 1971), gives no account of *apophasis per se*, and only two brief notes on these procedural questions (105, 160). On these questions see the discussion of *apophasis infra* and nn.36–40.

⁴ For the tenor of the fourth-century tradition on the guardianship of the Areopagus see *Ath. Pol.* 3.6 and 4.4 (quoted with discussion *infra*); cf. Isoc. 7.46 *et passim*; and Androton *FGrHist* 324FF3–4. Androton F3 is typical of the general description of the powers of the Areopagus, but suggests nonetheless that the Areopagus was especially concerned with illegality and wrongdoing in office: ἐδίκασον οὖν Ἀρεοπαγῆται περὶ πάντων σχεδὸν τῶν σφαλμάτων καὶ παρανομῶν. For various interpretations of ἡ τῆς πολιτείας φυλακή, see Rhodes, *Commentary* 315.

constitution through its authority to hold public officials to account for their conduct in office. The power to initiate such *euthynai*, or formal accountings, is represented as a guarantee against infringement of citizens' rights, even though the archons were accountable to their peers rather than to the *demos*, and the Areopagites co-opted their membership "according to nobility and wealth" (3.6). In these *euthynai* any citizen had the opportunity, as plaintiff (*ὁ ἀδικούμενος*), to bring charges against an archon for wrongdoing in office, but it is likely that formal charges were introduced by Areopagites: *ἡ δὲ βουλή ἢ ἐξ Ἀρείου πάγου φύλαξ ἢ τῶν νόμων καὶ διετῆρει τὰς ἀρχὰς ὅπως κατὰ τοὺς νόμους ἀρχῶσιν. ἐξῆν δὲ τῷ ἀδικουμένῳ πρὸς τὴν τῶν Ἀρεοπαγιτῶν βουλήν εἰσαγγέλλειν ἀποφαίνοντι παρ' ὃν ἀδικεῖται νόμον (*Ath. Pol.* 4.4).⁵*

In this context (*διετῆρει τὰς ἀρχὰς ὅπως κατὰ τοὺς νόμους ἀρχῶσιν*) the term *εἰσαγγέλλειν* describes the prosecution of magistrates in *euthynai* for abuse of office (*pace* Rhodes *ad loc.*). The grievance procedure described here along with the principle of constitutional safeguards (*φύλαξ τῶν νόμων*) seems to suggest some precedent for classical *euthynai*; but it is evident that the Areopagite accountings were designed to preserve the autonomy of the aristocracy, and the last clause may be an accurate account of Draco's law.⁶ The phrase *ἀποφαίνοντι παρ' ὃν ἀδικεῖται νόμον* suggests that a summary procedure was followed to initiate prosecution: the plaintiff, if he was not an Areopagite, was not privileged to prosecute his noble adversary, but simply reported the violation of law. It is likely that he first appealed privately to individual members, who later prosecuted before the council in session. Areopagites carried out the investigation as they had done formerly as archons in office; Areopagite prosecutors called for evidence and arguments from accuser and accused. Unlike the adversarial system of classical procedure, the Areopagites controlled these hearings and limited the rôle of citizen accusers: just

⁵ For the rôle of the Areopagus in *euthynai*, see R. Sealey, *CP* 59 (1964) 18–20, and *A History of the Greek City States* (Berkeley 1976) 258–61; cf. Smith (*supra* n.1) 62–64, Kahrstedt (*supra* n.1) 213. For the value of *Ath. Pol.* 4.4 and the 'Draconian constitution', see Rhodes, *Commentary* 84–88, and Sealey (*supra* n.2) 128f; on the crucial clause, *εἰσαγγέλλειν ἀποφαίνοντι κτλ.*, Sealey concludes, "even if it rests on conjecture, the conjecture is in accord with what may be presumed about the history of *eisangelia*."

⁶ The autocratic power of the Areopagus in archaic procedure may be compared to that of the Roman senate in prosecutions *de rebus repetundis* (Liv. 43.2), or to impeachments in the Spartan *gerousia*; cf. J. J. Keaney, *TAPA* 104 (1974) 179–94, esp. 190f. The Areopagus continued to exercise right of initiative in some areas of jurisdiction, not relying upon citizen-prosecutors, into the fourth century; cf. Kahrstedt (*supra* n.1) 211f.

as in *eisangeliai* to the archons, the plaintiff made denunciation and the magistrates carried out the investigation and gave final verdict.⁷

Eisangelia to the Areopagus was the only appeal from an archon's unjust verdict, and in these impeachments the Areopagites held sole authority.⁸ In the fourth century this procedure was evidently interpreted as a precedent for *apophasis*, in which the Areopagus acted as a commission of inquiry for the *ecclesia* and the courts of the people. But in the early sixth century the Areopagites continued to govern in their own interests; elected archonships were powerful executive and judicial offices, and most major political leaders, as former archons, became members of the Areopagus. The early accountings are therefore best understood as internal investigations, initiated by members and generally concerning prospective members or fellow members of long standing and their clients. Through these accountings, the Areopagus effectively governed the state; and it is this authority that is described as τὸ τηρεῖν τοὺς νόμους and νομοφυλακία.⁹

Under Solon's reform, according to one tradition, the rôle of the Areopagus as guardian of the laws remained unchanged, although there may have been some modifications in procedure (*Ath. Pol.* 8.4):

⁷ On *εἰσαγγέλλειν* see Ruschenbusch, *Untersuchungen* (*supra* n.2) 56f, 73f; Lipsius (*supra* n.3) 177; Rhodes, *JHS* (*supra* n.2) 103; but *cf.* Hansen, *JHS* (*supra* n.2) 90 n.7. From a detailed study of procedure in public suits in the classical period, Ruschenbusch argued that *εἰσαγγελία* describes the initiating procedure in any denunciation to the competent magistrate in the archaic period; from extant laws concerning such procedures as *εἰσαγγελία κακώσεως ὀρφανῶν* he concluded (53–55) that the archon assumed responsibility for prosecution in some public suits in the archaic period; thus far I find his arguments convincing, despite the objections of Hansen (on the classification of *eisangelia* in the later period) and Rhodes (on the meaning of *ἔφεσις* in Solon's reform, *CR* 20 [1970] 359). The adversarial system of classical procedure, based upon the initiative of ὁ βουλόμενος, had not yet developed, and the rôle of the *antidikoi* was limited. A further indication of some restriction against prosecution by non-Areopagites is indicated in the introduction of public prosecutors elected by the *ecclesia* (as in the *euthynai* of Cimon, *Plut. Per.* 10.6). Ordinary citizens could not be expected to carry on the prosecution against powerful members of the aristocracy. For the general meaning of *apophainein*, we may compare the use of the same term for the arbitrator's decision; in *antidosis*, *apophasis* refers to the inventory or statement of property value (*cf.* Lipsius 230, 928 n.104). Thus, in legal contexts *apophasis* appears to mean generally 'report', 'pronouncement', or 'disclosure', and seems to describe a preliminary to court proceedings.

⁸ Smith (*supra* n.1) 64 suggested that this procedure included "the denunciation of a magistrate for an unjust decision . . . in effect an appeal from a magisterial hearing"; *cf.* Kahrstedt (*supra* n.1) 213f on *euthynai* and other archaic powers of the Areopagus.

⁹ Many aspiring politicians may have sought archonship not only for the power of the office itself, but for entry into the Areopagus; *cf.* R. Sealey, *CP* 59 (1964) 14. On the character of the archaic Areopagus and Solon's reform, see Wade-Gery, "Eupatridai, Archons, and Areopagus" in *Essays* (*supra* n.2) esp. 100–15. For a prosopography of the Athenian archon-list, see T. J. Cadoux, *JHS* 68 (1948) 70–123. Ruschenbusch, *Innenpolitik* (*supra* n.2) 559–61, has reasoned that the *euthynai* were the chief instrument of Areopagite power.

τὴν δὲ τῶν Ἀρεοπαγιτῶν ἔταξεν ἐπὶ τὸ νομοφυλακεῖν, ὥσπερ ὑπῆρχεν καὶ πρότερον ἐπίσκοπος οὖσα τῆς πολιτείας . . . καὶ τοὺς ἀμαρτάνοντας ἠϋθνην κυρία οὖσα καὶ ζημοῦν καὶ κολάζειν, καὶ τὰς ἐκτίσεις ἀνέφερεν εἰς πόλιν, οὐκ ἐπιγράφουσα τὴν πρόφασιν δι' ὃ [τὸ ἐ]κτ[ί]ν[ε]σθαι, καὶ τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκριεν, Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν.

Areopagites continued to hold public officials to account for wrongdoing in office, and since they assessed fines for deposit in the public treasury without any record of the charges, we are led to believe that there was no appeal from their verdict against violations punishable by fine.¹⁰ Thus, in the *Ath.Pol.* the Areopagus is represented as the sole guardian of the new democratic order against abuse of office by the ruling class. Other references suggest, however, that the *demos* enjoyed some right of initiative or appeal in *euthynai*.

In the *Politics* we are twice told that Solon gave the *demos* authority in the *euthynai* of elected officials (1274a15, Σόλων γε ἔοικε τὴν ἀναγκαιοτάτην ἀποδιδόναι τῷ δήμῳ δύναμιν, τὸ τὰς ἀρχὰς αἰρεῖσθαι καὶ εὐθύνειν; cf. 1281b31). Therefore, while the *Ath.Pol.* reports that the Areopagus continued to control *euthynai* in cases punishable by fine, we must also allow for right of initiative by the *ecclesia* (by *apochheirotonia*) or, in some cases, for appeal to the court. It is possible that this Solonian guarantee for ἔφεσις εἰς τὸ δικαστήριον was made to apply in impeachments as well as in ordinary public suits,¹¹ but in cases concerning their own membership it is unlikely that the Areopagus would have relinquished control of the proceedings. The close connection in these passages between “election and accounting” (τὰς ἀρχαιρεσίας καὶ εὐθύνας, 1281b31) suggests that the Areopagus was forced to concede some authority to the *demos* in the accountings of elected officials for their term in office, but retained final verdict in cases involving members of the Areopagus.

In *Ath.Pol.* 8.4, however, we are told that Solon confirmed the Areopagus in their traditional “guardianship of the laws, just as formerly [the Areopagus] had been overseer of the constitution and . . . supervised the highest public office.” At the conclusion of this

¹⁰ On the authority of the Areopagus to impose penalties without appeal, see Smith (*supra* n.1) 62f; but cf. Lipsius (*supra* n.3) 30f and Rhodes, *Commentary* 155f.

¹¹ In the *Ath.Pol.* the three democratic principles of Solon's reform (9.1), including (most powerful of all) ἡ εἰς τὸ δικαστήριον ἔφεσις, closely follow the discussion of the Areopagus and *eisangelia* in 8.4–5. Sealey (*supra* n.2) 129–31 suggests that the *demos* gained *epheisis* to the court and “official jurisdiction,” in *eisangelia* as in other cases, by precedent and practical expediency, rather than by an “enabling act.”

section it is noted further that the Areopagus also judged cases of “conspiracy to overthrow the democracy,” and that Solon introduced a law concerning these procedures. This statement has been a special object of suspicion: the phrase ἐπὶ καταλύσει τοῦ δήμου is anachronistic, and the author seems to interpret Solon’s reform in terms of fourth-century ideology.¹² From Plutarch’s citation of a law of Solon it seems certain that the Areopagus had held authority to exile conspirators ἐπὶ τυρρανίδι prior to Solon’s reform. If there is any substance to Solon’s laws against conspiracy, he must have revised an established procedure.¹³ Since the same term (εἰσαγγέλλειν, εἰσαγγελία) describes the initiating procedure in trials for tyranny or conspiracy (8.4) as well as in the accountings (4.4), it seems to have been assumed that the same reform affected both procedures. The tradition in *Ath.Pol.* 8.4 suggests that Solon confirmed the sovereignty of the ancient council, as guardian of his reforms, in tyranny trials as well as in the accountings of public officials. In the fourth-century view they became the grand jury of the democratic judiciary, despite the evidence that the *euthynai* of members of the Areopagus were ordinarily tried as internal investigations, by Areopagite prosecutors and judges, and that impeachment for conspiracy served as a safeguard against any threat to Areopagite sovereignty.

The only testimonia that describe *eisangelia* to the Areopagus in any detail concern Themistocles and Ephialtes in their struggle against a rival faction. Although the version of this incident in *Ath.Pol.* 25.3–4 was discredited soon after the London papyrus was published, some commentators seem convinced that there is some truth in it. As it is usually interpreted, the story is legally implausible and chronologically impossible. Moreover, the episode was not included in the edition of the *Ath.Pol.* known to Plutarch, for he makes no mention of it even

¹² On the anachronism cf. Kahrstedt (*supra* n.1) 207; Hansen, *Eisangelia* 56f; and Rhodes, *Commentary ad* 8.4. Most authors seem inclined to accept the substance of Aristotle’s testimony, if not the letter. On the teleological perspective, J. J. Keaney, “The Structure of Aristotle’s *Athenaion Politeia*,” *HSCP* 67 (1963) 115–46 (esp. 120–31), has argued that the reforms of Ephialtes were central to the second of three divisions in the *Ath.Pol.*, concerned with the triumph of the *demos* over the Areopagus.

¹³ On archaic tyranny law and fourth-century tradition see M. Ostwald, “The Athenian Law against Tyranny and Subversion,” *TAPA* 86 (1955) 103–28. The authenticity of Solon’s laws in the *Ath.Pol.* has been argued, in regard to 8.4, most recently by Rhodes, *JHS* (*supra* n.2) 103f, and Hansen, *JHS* (*supra* n.2) 90f. Cf. E. Ruschenbusch, ΣΟΛΩΝΟΣ ΝΟΜΟΙ (*Historia Einzelschr.* 9 [1966]) 1–10. For the wording of conspiracy charges cf. Plut. *Sol.* 19.3–4, ὄσοι ἐξ Ἀρείου πάγου . . . ἐπὶ τυρρανίδι ἐφενγον; *Ath.Pol.* 16.10, εἰάν τις τυραννῆν ἐπανιστῶνται; 25.3, συνισταμένους ἐπὶ καταλύσει τῆς πολιτείας.

where it is pertinent to his narrative and where he cites the *Ath. Pol.* among his sources.¹⁴ It is obviously a later addition, and again underlines the discrepancy among Aristotle's sources: in the earlier material, as we have seen, the Areopagites were guardians of the constitutional order by ancient right; in *Ath. Pol.* 25 the guardianship of the constitution is based upon "assumed" powers (τὰ ἐπίθετα).

Ath. Pol. 25.2 tells us that Ephialtes first removed many Areopagites by bringing charges "concerning their administration" (περὶ τῶν διωκημένων), and afterward, in the archonship of Conon, deprived the Areopagus of the assumed powers by which the Areopagites had exercised guardianship of the constitution. Ephialtes (not himself an Areopagite) accomplished this end "with the complicity of Themistocles" (συναιτίου γενομένου Θεμιστοκλέους, 25.3), "who was a member of the Areopagus" (archon eponymos, 493). This detail suggests that Themistocles was involved in the first phase of Ephialtes' campaign, when he removed many Areopagites by prosecution περὶ τῶν διωκημένων, since, as we have seen, there is no indication that the *demos* had yet gained the right to intervene in the internal accountings; charges against members of the Areopagus must still have been introduced by Areopagite prosecutors. The author seems to confuse the sequence of events and the procedures involved: the next detail, ἐμελλε δὲ κρίνεσθαι μηδισμοῦ, suggests that the incident that follows is meant to come shortly before the treason trial of Themistocles (*eisangelia prodosias*); but from other references it seems certain that he was prosecuted for medism in absentia, subsequent to his ostracism (471), in 467/6.¹⁵ Since the account in *Ath. Pol.* 25.3–4 is clearly a late addition to the text, we should carefully reconsider the conclusions

¹⁴ The chronological impossibility of this anecdote was first observed by Théodore Reinach, *REG* 4 (1891) 143–58 (esp. 149–51). Various solutions have been offered: V. von Schoeffer, in Bursian's *Jahresbericht* 83 (1895) 333f, hinted that the episode refers to an earlier phase of Ephialtes' campaign, but his suggestion has not been followed; P. N. Ure, *JHS* 41 (1921) 165–78, suggested that Themistocles, ostracized in 474 or 473, returned from exile to attack the Areopagus in 463; see also J. E. Sandys, *Aristotle's Constitution of Athens*² (London 1912) 107f. More recently Mabel Lang noted that the episode is credible only if we place it in 470 or shortly before; "this collaboration must have taken place before the ostracism [in 470] . . . and provides a likely basis for the ostracism itself": *GRBS* 8 (1967) 273. Rhodes himself cites the episode as evidence of a kind, *Commentary* 319f and *JHS* (*supra* n.2) 105. That the episode is a late insertion absent in the ancient edition that Plutarch consulted is indicated by *Them.* 10.6, *Per.* 10.8. Wilamowitz, *Aristoteles und Athen* I (Berlin 1893) 140–42, suggested that Plutarch's silence shows his discretion (rather than a different text); recognizing that the episode was inserted out of chronological order, he nonetheless rejected the "fable" on chronological grounds.

¹⁵ For the date and details of Themistocles' trial for medism see Diod. 11.54; Hansen, *Eisangelia* 70; but cf. Rhodes, *Historia* 19 (1970) 392–99.

that have been drawn from the connecting statements (2–3).¹⁶ In the episode that follows, the author seems to assume that the Areopagus controlled conspiracy trials until Themistocles betrayed their trust.

The essence of the episode is this: Themistocles warned Ephialtes that a faction in the Areopagus intended to arrest him, and to the Areopagites, in turn, he gave information implicating Ephialtes in a conspiracy; he led deputies to arrest Ephialtes, who took refuge at an altar nearby; the Council of Five Hundred took cognizance and brought the case before the people. According to the *Ath. Pol.*, the purpose of this stratagem was to overturn the political authority of the Areopagus (βουλόμενος δὲ καταλυθῆναι τὴν βουλήν . . . ἕως περιείλοντο αὐτῶν τὴν δύναμιν); apparently the council accomplished this end by discrediting the Areopagites as ‘guardians of the constitution’ in *eisangeliai*. Hansen, however, has argued convincingly that in the early fifth century the *ecclesia* and the council already held official jurisdiction in *eisangeliai*;¹⁷ it is thus unlikely that the sovereignty of the Areopagus depended upon their rôle in this procedure.

Another version of the incident, found in the hypothesis to Isocrates’ *Areopagiticus*, gives a more plausible motive and suggests a clearer explanation of the procedure:

Ἐφιάλτης τις καὶ Θεμιστοκλῆς χρεωστοῦντες τῇ πόλει χρήματα καὶ εἰδότες ὅτι, εἰν δικάσωσιν οἱ Ἀρεοπαγῖται, πάντως ἀποδώσουσι, καταλύσαι αὐτοὺς ἔπεισαν τὴν πόλιν, οὕτως οὕπως τινὸς μέλλοντος κριθῆναι (ὁ Ἀριστοτέλης λέγει ἐν τῇ πολιτεία τῶν Ἀθηναίων ὅτι καὶ ὁ Θεμιστοκλῆς αἴτιος ἦν μὴ πάντα δικάζειν τοὺς Ἀρεοπαγίτας). δῆθεν μὲν, ὡς δι’ αὐτοὺς τοῦτο ποιοῦντες, τὸ δ’ ἀληθὲς διὰ τοῦτο πάντα κατασκευάζοντες.

¹⁶ Reinach (*supra* n.14) first suggested that the story was derived from a second source and inserted after 25.2, before the last sentence of 25.4 (murder of Ephialtes), which has no connection with this episode but follows closely the conclusion of 25.2 (dissolution of the assumed powers of the Areopagus in 462/1). More recently J. H. Schreiner, *SymbOslo* Suppl. 21 (1968) 63–71, has attributed 25.1–2 to Cleidemus, and this episode (which certainly portrays the democratic reformers in no favorable light) to Androtion.

¹⁷ Of six *eisangeliai* in the early fifth century (against Phrynichus, Miltiades, Themistocles, and Cimon), all appear to have been tried before the *ecclesia* or the court of the people. Hansen argues that these trials were initiated in the *ecclesia* (*Eisangelia* 19, 52, 69), assuming that classical *eisangelia* was first established by Cleisthenes as a province of the new *boule* and the assembly. Rhodes objects that we have no evidence that Cleisthenes tampered with the Areopagus in any way, and seems inclined to assume that some of these *eisangeliai* were tried before the courts on appeal from the Areopagus (*Boule* 199–207). Sealey (*supra* n.2) 130–33 reasonably assumed that the Solonian guarantee of *ἔφεσις εἰς τὸ δικαστήριον* also applied in *eisangelia*, and that the “transfer of jurisdiction” developed “by practice and custom without statutory change.”

Although the *Ath. Pol.* is cited to confirm Themistocles' responsibility, the scholiast seems unfamiliar with the historical rôle of Ephialtes, whom he introduces as Ἐφιάλτης τις (and who is never mentioned by name in the corpus of Isocrates).¹⁸ Their motive, he contends, was to evade debts to the state, and "in fact they contrived the whole incident on this account [to avoid prosecution]"; their objective was reform of the Areopagite accountings, οὕτως οὕπως τινὸς μέλλοντος κριθῆναι. Thus the hypothesis gives a very different account of the incident. It seems certain that the reference to the *Ath. Pol.* was added by a second hand: after the parenthesis, the explanation "as though indeed doing this on their account" (ὡς δι' αὐτοὺς τοῦτο ποιοῦντες κτλ.) is grammatically and logically dependent upon the main sentence, καταλύσαι αὐτοὺς ἔπεισαν τὴν πόλιν. Apparently the original author of the hypothesis had not drawn directly upon the Aristotelian account; instead, it has been suggested, both versions derive from the same source.¹⁹

Of the two, the hypothesis to Isoc. 7 gives a more credible picture of the methods by which Ephialtes began his campaign, by prosecuting prominent Areopagites for their administrative performance (*Ath. Pol.* 25.2): he could not have initiated prosecution in the Areopagite accountings without the support of a member such as Themistocles; and on such charges (relating to official misconduct) he could not have brought the Areopagites to trial before the people without reform of the accountings. In this chapter of the *Ath. Pol.* (25.3–4), the scenario depends upon the author's view of the rightful rôle of the Areopagus in treason trials, based upon Solon's law (8.4) for *eisangelia* against conspirators ἐπὶ καταλύσει τοῦ δήμου. It seems to be assumed that such cases were initiated and tried within the jurisdiction of the Areopagus until the *demos* intervened through Ephialtes' reform. In the scholiast's version (hyp. Isoc. 7) Themistocles and Ephialtes must first bring to an end the autonomy of the Areopagus in the accountings of their own members; in the Aristo-

¹⁸ V. Rose, *Aristoteles Pseudepigraphus* (Leipzig 1863) 423, dated the hypothesis to the sixth century A.D., regarded it as a confused paraphrase of the *Ath. Pol.* (before the London papyrus was published), and assumed that the scribe had mistaken Pericles for Themistocles. I have followed the text given in *Isocratis Orationes*² I, edd. G. E. Benseler and F. Blass (Leipzig 1888) lvi, which includes some emendation; cf. Sandys (*supra* n.14) 107, and W. Dindorf, *Scholia in Aeschinam et Isocratem* (Oxford 1852) 111. Where Blass reads ἐὰν δικάσωσιν, the MS. has ἐὰν δικασθῶσιν: "realizing that, if the Areopagites were prosecuted, they would (be forced to) give up all authority."

¹⁹ See Schreiner (*supra* n.16) 68–71, who suggested that hyp. Isoc. 7 represents a more radical version of Androtion's account, and that the version in *Ath. Pol.* 25.3–4 shows some intent to balance a patently hostile treatment.

telian account the Areopagites are deprived of the ancient authority in *eisangeliai* for conspiracy that Solon himself had made law.

In general, then, the author of the *Ath.Pol.* tends to disregard the oligarchic character of the ancient Areopagus,²⁰ in favor of the 'guardians of the constitution' who played so important a rôle in the crises of his own time, and in this view he follows the popular ideology of Isocrates' *Areopagiticus* and the *Atthis* of Androtion.²¹ In regard to specific rules of procedure, the Aristotelian account of the *patrios politeia* seems to reflect the recent reform of political trials involving *eisangelia* and *apophasis*.

II. *Apophasis*

The conservative ideology expressed in Isocrates' *Areopagiticus* and the pragmatic policies of Eubulus suggest plausible motives for a series of procedural reforms in the mid-fourth century. *Eisangeliai* were no longer tried before the *ecclesia*: by the new procedure of *apophasis*, charges of treason and corruption—ordinarily debated in the council and assembly through *eisangeliai*—were investigated in the Areopagus and tried in the court. These reforms saved some of the cost of proceedings in *eisangelia* before the full assembly, and restored authority to a venerable court whose members had gained experience and proved their character in office as archons.²² The date and occasion of each of these changes has been determined only within broad *termini*: we know of no *eisangelia* tried before the full assembly after 362/1;²³ the *Areopagiticus* provides a *terminus post quem* for the restoration of impeachment proceedings to the Areopagus, since the author of that partisan pamphlet could not have failed to

²⁰ Ruschenbusch, *Innenpolitik* (*supra* n.2) 18, pointed out that the selection of archons by lot from among the *pentacosimedimni* and *hippeis*, beginning in 487, strengthened aristocratic interests in the Areopagus. It is likely that sortition from the upper classes brought about a realignment within the Areopagus that may have provoked the attack of Themistocles and Ephialtes described in *Ath.Pol.* 25.3–4 and hyp. Isoc. 7. Against the notion that the stature of the archons and the Areopagus declined drastically after 487 as the power of the *demos* advanced, see E. Badian, *Antichthon* 5 (1971) 1–34, esp. 10–21.

²¹ For the importance of Androtion in the *Ath.Pol.* and the Atthidographic tradition on the Areopagus, see L. Pearson, *The Local Historians of Attica* (Philadelphia 1942) 81–86; and Jacoby, *FGrHist* III B Suppl. 1 (1954) 112–17; cf. Rhodes, *Commentary* 17–21.

²² On the reform of *eisangelia* see Hansen, *Eisangelia* 53–57, and, regarding the connection with *apophasis*, 39f and 56f.

²³ Lipsius (*supra* n.3) 188–92; cf. Hansen, *Eisangelia* 51–54.

mention so congenial a reform if it had been recent. The earliest case to which we have any clear reference is that against one Antiphon for plotting to destroy the dockyard. The trial is dated ten years after the *Areopagiticus*, and the conflicting testimonia, fifteen and twenty years after the event, are difficult to reconcile.²⁴

In the case against Antiphon, as in other cases described in our sources as *apophaseis*, it is difficult to determine what procedure was followed to initiate the investigation. In Dinarchus 1.50, 55 (*infra*), we are told that impeachment before the Areopagus could be initiated by either of two procedures: by decree of the *ecclesia* or by the Areopagites on their own initiative. No one, however, has addressed the question whether the two procedures were introduced together or at different times to meet different demands. It is generally assumed that these were alternate procedures, by which the Areopagus had regained broad jurisdiction over all Athenians against any violation of law; but the evidence suggests that the two procedures were not invoked against the same offenses nor available in all instances. Because the Areopagus held jurisdiction in many areas, however, it is difficult in some instances to decide whether the case was prosecuted as an impeachment for treason or corruption, or investigated on other grounds.²⁵

It is generally assumed that the *apophasis* against Antiphon began with investigation by the Areopagus on its own initiative.²⁶ In Dem. 18.133 we are told that Antiphon, who had been deprived of citizenship (in the *diapsephisis* of 346) and had promised Philip to set fire to the dockyards, was arrested by Demosthenes and brought before the *ecclesia* (by *eisangelia* or *apagoge*).²⁷ In the *ecclesia* the charges were

²⁴ On the date of the case against Antiphon, see H. Wankel, *Demosthenes, Rede für den Kranz* II (Heidelberg 1976) 722–24; but cf. R. Sealey, *AJP* 79 (1958) 72 and *CP* 59 (1964) 12. Cf. A. D. Schaefer, *Demosthenes und seine Zeit*² II (Leipzig 1885) 369–72. It is tempting to connect this Antiphon with the family of Timocrates and Polyuctus; on the latter see J. K. Davies, *Athenian Propertied Families* (Oxford 1971) 513f (13772). Antiphon, the father of Timocrates (whom Demosthenes accused as a state debtor, 24.200f), would have been in his late eighties in 346/5; but perhaps a son or nephew of Timocrates was Demosthenes' adversary in this case.

²⁵ The Areopagus retained right of initiative in several areas of jurisdiction, including arson (*πυρκαϊάς*), assault (*τρανύματος ἐκ προνοίας*), and homicide; cf. Kahrstedt (*supra* n.1) 212. It is sometimes suggested that right of initiative in the investigation of political offenses was reaffirmed by the decree of 403 cited in Andoc. 1.84, but we know of no instance until the 340's; cf. Smith (*supra* n.1) 71, and Sealey, *CP* 59 (1964) 11–14; but see at n.36 *infra* the discussion of Andoc. 1.81–84.

²⁶ MacDowell (*supra* n.3) 191; cf. Sealey (*supra* n.25) 12; Smith (*supra* n.1) 78. Some have suggested that the charge of arson was 'trumped up' precisely because such offenses were within the jurisdiction of the Areopagus; cf. F. Wust, *Münchener Historische Abhandlungen* 1.14 (1938) 51.

²⁷ Hansen, *Apagoge, Endeixis and Ephegesis* (Odense 1976) 136f, includes this case in his catalogue of *apagoge* and related procedures, although he concedes that *eisangelia* is

dismissed (in the debate on decree for trial) through the arguments of Aeschines. In Demosthenes' view, "had not the council of the Areopagus taken cognizance and reopened the investigation . . . he would have been released without trial . . . by this solemn-sounding advocate (Aeschines)."²⁸ In Din. 1.63, however, the speaker suggests that Demosthenes, in the case against Antiphon as in many others, initiated the investigation; and the scholiast on Dem. 18.133 regarded Demosthenes as responsible.²⁹

The connection between Antiphon's execution and Demosthenes' campaign against the party of Aeschines is evident in the section that follows (Dem. 18.134, *τοιγαροῦν* . . .), and it seems likely that the case against Antiphon was reopened in connection with a special scrutiny of Aeschines in the Areopagus. Aeschines had been nominated to negotiate claims with Delos as *syndikos* in the Amphictyonic Council. Demosthenes proposed that the Areopagus review the qualifications of the nominees; the Areopagus rejected Aeschines and recommended Hyperides.³⁰ From Dem. 18.134 it is clear that their own investigation led them to disqualify Aeschines, at a time when the evidence against Antiphon was not as yet common knowledge. In their report to the *ecclesia* rejecting Aeschines (for "not speaking in the best interest"), the Areopagus cited charges against Antiphon, which led to a decree for trial; the Areopagites did not give final verdict but brought the case before the people (*ἐπανήγαγεν ὡς ὑμᾶς*). The charges against Antiphon would then have been included in the report of the Areopagus against Aeschines, the *apophasis* proper, just as in the Harpalus affair the Areopagus reported all those implicated (see discussion *infra* and n.46). The two hearings, against Aeschines and Antiphon, can be dated from other references to the

a possible alternative. In the latter procedure, he argues, the arrest would not have been left to a private citizen, and there is "nothing to support Schaefer's assumption (II² 370) that Demosthenes was performing a public charge."

²⁸ 18.133: *καὶ εἰ μὴ ἡ βουλὴ ἢ ἐξ Ἀρείου πάγου τὸ πράγμα αἰσθημένη καὶ . . . ἐπέζητησε τὸν ἄνθρωπον . . . ἐξήρπαστ' ἂν ὁ τοιοῦτος καὶ τὸ δίκην δοῦναι διαδύς ἐξεπέπεμπτ' ἂν ὑπὸ τοῦ σεμνολόγου τουτουί.* On the procedures *cf.* Wankel (*supra* n.24) 716–20.

²⁹ Dindorf, *Demosthenes* VIII (1851) 310.4–9: *τοιγαροῦν εἰδῦια ταῦτα ἢ βουλὴ ἢ ἐξ Ἀρείου πάγου συνάπτει καὶ ἕτερον πολίτευμα τῆς βουλῆς εὐκαιρῶς κατ' Αἰσχίνου λεγόμενον . . . ἵνα γὰρ μὴ δόξη χάριτι Δημοσθένους γεγονέναι τὸ τοῦ Ἀντιφάντος εἰσάγει τὴν βουλὴν αὐτὴν καθ' αὐτήν, οὐκ ἐκ τοῦ ῥήτορος καταγινώσκουσαν.* Kahrstedt, however, discounts the scholiast's interpretation (*supra* n.1: 221 and n.65).

³⁰ On the connection between the *apophasis* against Antiphon and the investigation of Aeschines, see Wankel (*supra* n.24) 727–29. Despite Dem. 18.134, it seems certain that the Areopagites were not authorized to elect the *syndikos* outright, but must submit their nominee to the *demos* for confirmation; *cf.* Plut. *Phoc.* 16.3 and n.35 *infra*.

same period, in 346/5 or soon after. From Aeschines' own comments, it is possible to conclude that the first defense of Antiphon may have preceded the *dokimasia* of Timarchus (in which Aeschines had high praise for the traditions of the Areopagus); but the scrutiny of Aeschines as *syndikos* and the condemnation of Antiphon almost certainly followed the speech against Timarchus.³¹ If the *apophasis* against Antiphon was initiated in this way, it should be regarded as *apophasis* 'by decree', rather than 'on initiative' of the Areopagus.

Demosthenes' decree for the special scrutiny of Aeschines (346/5) may have been justified on ancient precedent and by the unquestioned jurisdiction of the Areopagus in religious issues. Any legal action involving Delos and the Amphictyonic Council would come within this religious jurisdiction. It is likely that Demosthenes cited the decree of Teisamenus of 403 (though long in abeyance), which had given the Areopagus special powers to safeguard the constitution.³² No doubt he recalled the traditional rôle of the Areopagus as 'guardian of the laws' in the accountings of public officials under the *patrios politeia*. On this basis Demosthenes may have introduced the new procedure in *apophasis* by decree without legislative review (*nomothesia*). On such precedent he continued to invoke the new procedure in the prosecution of his political adversaries, and he relied upon his supporters in the Areopagus to block charges against him.³³

In the same period Proxenus, the general of 347/6 (*PA* 12270), was prosecuted before the Areopagus; although he was arrested and held in custody, he was probably acquitted.³⁴ While we have no

³¹ See Wankel (*supra* n.24) 729; Wust (*supra* n.26) 48f suggested that the condemnation of Antiphon may have come before the trial of Timarchus, but he was forced to assume that Aeschines' praise of the Areopagus (1.92) is ironic. For my suggestion that the *apophasis* against Antiphon was included in the findings of the Areopagus in their investigation of Aeschines, compare the *apophasis* in the Harpalus affair, in which some suspects were identified in the decree but the Areopagus reported all those implicated; see discussion at n.46 *infra*.

³² It is often assumed that the procedure for *apophasis* κατὰ πρόσταξιν was prescribed by statute, but there is no reason to suppose that an enabling act was needed for the *ecclesia* to commission investigations by the Areopagus. On the religious jurisdiction see Smith (*supra* n.1) 77; on the decree of Teisamenus in *Andoc.* 1.84, see Kahrstedt (*supra* n.1) 217f; but *cf.* n.36 *infra*.

³³ *Cf.* *Din.* 1.7-8, πολλά πρότερον τῶν κοινῶν ἐκείνη ζητεῖν προσετάξατε . . . πολλοὺς ἀνήρηκας σὺ ταῖς τῆς βουλῆς ἰσχυρίζομενος ἀποφάσεσιν. Evidently an earlier investigation was decreed against Demosthenes himself *ca* 335 (*Din.* 1.10-11), but never came to trial. On the view that *apophasis* was introduced as a political *Werkzeug* by Demosthenes against Aeschines, see Wust (*supra* n.26) 51.

³⁴ Hansen, *Eisangelia* 63; Proxenus has been identified as the descendant of Harmodius mentioned in *Din.* 1.62 (*cf.* *schol. Dem.* 19.280). Schaefer (*supra* n.24) 369f disputes the responsibility of Demosthenes in the prosecution of Proxenus, whom he calls "ein Gesinnungsgenosse des D."; as no mention is made of misconduct he as-

reference to the specific charges, it is likely that he was accused in connection with his command at Oreus and his responsibility to transport the second embassy to Philip late in the spring of 346. As he was not charged in the regular accounting later the same year, we should assume that this prosecution before the Areopagus came soon afterward, no later than 344/3. This special investigation was initiated by decree (*κατὰ πρόσταγμα*); again, this prosecution can be seen as part of a campaign against those accused of acting against Athenian national interests.

The Areopagus was commissioned to undertake yet another special scrutiny in 338 when Charidemus was nominated to take command after Chaeronea (Plut. *Phoc.* 16). As in the investigation of Aeschines as *syndikos*, the Areopagites rejected the people's nominee and recommended another, Phocion, who was then confirmed by vote of the *ecclesia*.³⁵

These three verdicts are the earliest *apophaseis* that can be dated with any confidence, and they all represent special investigations of public officials, corresponding to scrutinies (*dokimasiai*) and final accountings (*euthynai*) before the Council of Five Hundred under ordinary procedures. All three were initiated by decree of the *ecclesia* (*κατὰ πρόσταξιν*), not by the Areopagites themselves. The case against Antiphon was reopened in connection with the special scrutiny of Aeschines, and the report of the Areopagus in this instance is not to be confused with the special investigations of treasonous offenses after Chaeronea. In the years after the Peace of Philocrates the Areopagites were given official jurisdiction governing the conduct of public officials, and within this jurisdiction they were once again regarded as 'guardians of the laws'.

In the second procedure, *apophasis* 'on initiative' of the Areopagus (*αὐτὴ προελομένη*), the Areopagites seem to serve as a standing committee for investigation of public wrongs and to exercise right of initiative, to act without decree of the people: therefore it seems likely that this procedure was introduced separately, and the innova-

sumes that the investigation was on the order of a financial accounting. We may conclude that he was fined (or acquitted), for he was active again in public life, as trierarch, in 342/1.

³⁵ Plut. *Phoc.* 16.3: γενομένης δὲ τῆς ἥττης καὶ τῶν θορυβοποιῶν καὶ νεωτεριστῶν ἐν ἄσσει τὸν Χαρίδημον ἐλκόντων ἐπὶ τὸ βῆμα καὶ στρατηγεῖν ἀξιούντων, ἐφοβήθησαν οἱ βέλτιστοι, καὶ τὴν ἐξ Ἀρείου πάγου βουλὴν ἔχοντες ἐν τῷ δήμῳ δεόμενοι καὶ δακρύνοντες μόλις ἔπεισαν ἐπιτρέψαι τῷ Φωκίῳ τὴν πόλιν. It is likely that οἱ βέλτιστοι were represented by Demosthenes (whose speech 23, *Against Aristocrates*, opposed special protections for Charidemus).

tion may have taken the form of a statute of procedural law (by *nomothesia*). It is sometimes suggested that the decree of Teisamenus (403) had restored to the Areopagus broad investigative powers, and this was the legal basis for *apophaseis* on initiative in the later fourth century; but from the wording of the decree and its context in Andocides 1.81–84, it seems more likely that the extraordinary powers were valid only for the period of transition.³⁶ Isocrates 7 suggests that the Areopagus had taken no part in political trials in recent memory, and we know of no other reference to right of initiative by the Areopagites in *apophasis* until some years after the decree for Aeschines' scrutiny and the *apophasis* against Antiphon.

The testimony most often cited for the procedure and the jurisdiction of the Areopagus in *apophasis* 'on initiative' is Din. 1.62:

ἀλλὰ μὴν πρότερον ἔγραψας σύ, ὦ Δημόσθενες, κατὰ πάντων
τούτων καὶ τῶν ἄλλων Ἀθηναίων κυρίαν εἶναι τὴν ἐξ Ἀρείου
πάγου βουλήν κολάσαι τὸν παρὰ τοὺς νόμους πλημμελοῦντα,
χρωμένην τοῖς πατρῶσι νόμοις· καὶ παρέδωκας σύ καὶ ἐνεχείρι-
σας τὴν πόλιν ἅπασαν ταύτην.

According to the speaker's paraphrase, the Areopagus had been restored to their ancient sovereignty in the prosecution of political offenses; but it is unclear precisely how that jurisdiction was defined in Demosthenes' decree and for what period these special powers were valid. The speaker's hyperbole has led some to suppose that the Areopagites were given the authority to investigate any Athenian for any alleged violation, that this ordinance was valid for an indefinite period and was the legal basis for *apophaseis* on initiative.³⁷ From the following examples, however, it seems certain that the speaker refers not to a single statute conferring unlimited jurisdiction, but to a legislative agenda leading to the martial-law decree after Chaeronea (62f):

³⁶ 1.84: ἐπειδὴν δὲ τεθῶσιν οἱ νόμοι, ἐπιμελείσθω ἡ βουλή ἡ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται. C. Hignett, *History of the Athenian Constitution* (Oxford 1952) 200, argued that this clause was part of the provisional constitution, later abridged. D. M. MacDowell, *Andokides on the Mysteries* (Oxford 1962) 124f, objects unconvincingly that "the words ἐπειδὴν δὲ τεθῶσιν οἱ νόμοι are virtually an explicit statement that the guardianship of the laws by the Areopagus was to be part of the permanent constitution." On the contrary, the specific office ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται can only be valid for the transition government of the Twenty (Andoc. 1.81–82); "after the revision of the laws was completed" they were to stand their accountings before the Areopagus; afterward, under the revised constitution, the regular machinery for *euthynai* (*Ath. Pol.* 45.2) was restored.

³⁷ See Hansen's comment, *Eisangelia* 18: "A decree proposed and carried by Demosthenes authorized the Areopagus to pass sentence on all criminals brought before it"; but cf. Hansen, *GRBS* (*supra* n.3) 39. See also Thalheim (*supra* n.1) 631f.

καὶ τεθναῖσι κατὰ τὸ σὸν ψήφισμα δύο τῶν πολιτῶν, πατὴρ καὶ υἱός, παραδοθέντες τῷ ἐπὶ τῷ ὀρύγματι· ἐδέθη τῶν ἀφ' Ἄρμοδίου γεγονότων εἰς κατὰ τὸ σὸν πρόσταγμα· ἐστρέβλωσαν Ἀντιφῶντα καὶ ἀπέκτειναν οὗτοι τῇ τῆς βουλῆς ἀποφάσει πεισθέντες· ἐξέβαλες σὺ Ἀρχῖνον . . . ἐπὶ προδοσίᾳ κατὰ τὰς τῆς βουλῆς ἀποφάσεις καὶ τιμωρίας.

For rhetorical emphasis, the speaker has cited cases initiated by three separate decrees (not one decree, as it is often assumed), involving not only proceedings in *apophaseis* 'by decree' and 'on initiative' but also the emergency powers for arrest and immediate execution, conferred upon the Areopagus in the crisis after Chaeronea.³⁸ The case against Antiphon, as we have seen, was probably reopened in the investigation of Aeschines; the case against Proxenus, "a descendant of Harmodius," was initiated by a separate *prostagma*; the execution of "two citizens, father and son," was warranted under martial law; the last case, against one Archinus (or Charinus) ἐπὶ προδοσίᾳ, was probably tried by the Areopagus under martial law, for the speaker stresses "the council's verdict and penalty." Although the latter investigations were initiated in the Areopagus (by Demosthenes' decree and at his instigation), they constitute a separate series of proceedings under martial law, distinct from the regular procedure which the speaker later describes as *apophasis* "on initiative of the Areopagus" (αὐτὴ προελομένη).

The regular procedure for *apophasis* on initiative was probably adopted in the same period (soon after Chaeronea) as an internal investigation of members of the Areopagus. Isocrates (7.38) suggests that there had not been any recent prosecution or expulsion of Areopagites, and there is no clear reference to any such case in the period 355–339/8. The speaker of Din. 1 mentions three cases of this kind as though alluding to recent and familiar incidents.³⁹ At 1.50 and 55 the speaker describes the two initiating procedures as follows:

ἀνάγκη τὴν βουλήν . . . τὴν ἐξ Ἀρείου πάγου κατὰ δύο τρόπους ποιεῖσθαι τὰς ἀποφάσεις πάσας . . . αὐτὴν προελομένην καὶ ζητήσασαν ἢ τοῦ δήμου προστάξαντος αὐτῇ . . . ἢ βουλή . . . ζητεῖ τὰ προσταχθένθ' ὑφ' ὑμῶν καὶ τὰ γεγενημένα παρ' αὐτοῖς ἀδικήματα.

³⁸ Lycurg. *Leocr.* 52, cf. Din. 1.83; see MacDowell (*supra* n.3) 191.

³⁹ In Din. 1.56, the speaker refers to "the theft of the ferryman's fare, receiving the five-drachma allowance under false pretences," etc.

The phrase τὰ γεγενημένα παρ' αὐτοῖς ἀδικήματα suggests that the second procedure, *aprophasis* on initiative, ordinarily involved charges against members of the Areopagus initiated by their colleagues acting *ex officio*. In this regard *aprophasis* on initiative resembles the accounting of *bouleutai* in the *boule*, and recalls the supervisory authority that the Areopagus had held over their own members under the *patrios politeia*.⁴⁰ From the examples given in Din. 1, this internal investigation appears to be essentially a procedure for holding Areopagites to account, even for trivial offenses (1.56):

τὸν παρ' αὐτῶν ἀποστερήσαντα τὸ ναῦλον τὸν πορθμέα ζημιώσασα πρὸς ὑμᾶς ἀπέφηνε· πάλιν τὸν τὴν πεντεδραχμίαν ἐπὶ τῷ τοῦ μῆ παρόντος ὀνόματι λαβεῖν ἀξιώσαντα, καὶ τοῦτον ὑμῖν ἀπέφηνε, καὶ τὸν τὴν μερίδα τὴν ἐξ Ἀρείου πάγου τολμήσαντ' ἀποδοῦσθαι παρὰ τὰ νόμιμα τὸν αὐτὸν τρόπον ζημιώσασ' ἐξέβαλε.

These examples are meant to show the strict code of the Areopagites, often compromised by the mercy of the court. The last phrase, τὸν αὐτὸν τρόπον ζημιώσασ' ἐξέβαλε, suggests that the other cases also involved fining and expulsion of members; trial before the court of the people was essentially an appeal procedure. The speaker acknowledges that such cases seem insignificant, and he seems to suggest that in them the juries had become indifferent to the verdict of the Areopagus. In one of the most surprising arguments in all Attic oratory, he concedes that these *aprophaseis* by the Areopagites on their own initiative had become notorious as a means of bringing frivolous prosecutions: πολλοὺς ἢ βουλὴ ἀποπέφαγκεν ἀδικεῖν τὸν δῆμον, οἱ ἀποπεφεύγασιν εἰσελθόντες εἰς τὸ δικαστήριον, καὶ ἡ βουλὴ ἐπ' ἐνίῳν τὸ πέμπτον μέρος οὐ μετείληφε τῶν ψήφων (54). But this argument leads to an interesting constitutional principle: acquittals in such cases do not discredit the Areopagus but simply show the mercy of the court. In principle the jury trial is regarded as a hearing for sentence; the Areopagites have convicted the accused, the court determines whether the penalties prescribed are deserved.⁴¹

In the late 330's prosecutors in *eisangeliai* were subject to the same penalties as applied in *graphai* for failure to receive one fifth of the

⁴⁰ Smith (*supra* n.1) 76 and others assumed that this authority to prosecute and expel members was never denied to the Areopagus, although by the fourth century appeal to the court was guaranteed. Under archaic procedure, surely, the Areopagus exercised authority to expel and penalize its own members (*cf.* Kahrstedt [*supra* n.1] 214); but Isoc. 7.38 suggests that this form of internal investigation had been seldom invoked, and indeed we know of no instance before 346/5.

⁴¹ *Cf.* Din. 1.55–59. The principle is summarized as follows: τὸ μὲν γὰρ ἀληθὲς τῆ βουλῆ προσετάχθη ζητεῖν, τὸ δὲ συγγνώμης ἄξιον . . . τὸ δικαστήριον ἔκρινε (59).

votes.⁴² As a new procedure against similar offenses, *apophasis* afforded an alternate means of prosecuting partisan disputes without risking the fine for unwarranted prosecution. Rather than clear the docket of costly proceedings in the *ecclesia*, *apophasis* gave political adversaries greater access to legal action involving the assembly and the court. As a result, investigation in the Areopagus seems to have become a familiar tactic of Demosthenes to discredit his opponents: *cf.* Din. 1.7–8 (*supra* n.33).

The decrees for investigations of public officials by the Areopagus, to which the speaker refers, seem to be primarily concerned with charges of corruption or misuse of office by public officials (including private citizens acting in official capacity). The only prosecutions by *apophasis κατὰ πρόσταξιν* for treason (*prodosias*), even by broad interpretation of that term, are to be dated to the period soon after 338, when the Areopagus was given additional powers under martial law to try suspected traitors. It may be more than an accident in the transmission of the evidence that the only clear references to *apophaseis prodosias* by decree involve charges against Areopagites; the case against Polyuctus involves charges of deserting the state in the crisis after Chaeronea; the *apophasis* was initiated in the *ecclesia* and public prosecutors were appointed.⁴³ The case against Autolycus (Lycurg. *Leocr.* 53) is parallel to the action against Polyuctus and should be included here as an example of *apophasis κατὰ πρόσταξιν* against Areopagites.⁴⁴ The procedure in these cases, as in other *apophaseis prodosias*, was probably defined in legislation of the immediate post-Chaeronea period: we know of no *apophaseis* before Chaeronea initiated by decree concerning treason (as opposed to corruption or de-

⁴² Hansen, *Eisangelia* 30f.

⁴³ Among others whom the Areopagus reported for wrongdoing within its own membership, *έτέρους άδικείν παρ' έαυτοίς άποφηνάσης τής βουλής* (57), the speaker names Polyuctus, who is probably the defendant addressed in Din. 1.100. The proceedings were initiated, however, in the *ecclesia*: *τοῦ δήμου προστάξαντος ζητήσαι τήν βουλήν, ει συνέρχεται τοις φυγάσιν . . . και ζητήσασαν άποφῆναι προς ύμās, άπέφηνεν ή βουλή συνιέναι. κατηγορους ειλεσθε κατὰ τόν νόμον, εισηλθεν εις τὸ δικαστήριον* (58).

⁴⁴ Autolycus, an Areopagite (Harp. s.v. "Αυτόλυκος") who had sent his family out of the city to safety after Chaeronea, was condemned for treason "for fleeing the city in time of crisis" (*Leocr.* 53). The case against him is nowhere expressly defined as an *apophasis*, and Hansen, admitting the uncertainty, includes it among the *eisangeliai* in his catalogue (104). The only evidence he can cite is Lycurgus' reference to the case as a precedent for his prosecution against Leocrates, which is generally regarded as an *eisangelia*; but the parallel between the two procedures (*eisangelia* to the assembly and council and *apophasis* by the Areopagus) is sufficient to permit the orator to regard conviction in one as precedent for another; Lycurgus suggests just such an analogy in the speech, *Leocr.* 12 and 52–53.

ception); and the only notable instance of *apophasis κατά πρόσταξιν* after the mid-330's, in the Harpalus affair, seems to have been initiated as an investigation of public officials on charges of corruption (*dorodokias*) rather than treason. It is possible that provision was made to initiate special investigations of Areopagites to balance their extraordinary powers. A similar safeguard is indicated in the law of Eucrates in the same period.⁴⁵

The Harpalus affair is our only well-documented case of *apophasis* by decree, and for the most part the evidence concerning procedure and the nature of the charges is unambiguous. All the defendants were prominent public officials or citizens acting in official capacity as *rhetoires*. Evidently some suspects were named in the initiating decree, while others were named in the report of the Areopagus, the *apophasis* proper; all were charged with *δώρα λαβεῖν κατά τῆς πατρίδος*.⁴⁶ It is significant that the charges are nowhere defined as treason or conspiracy *ἐπὶ καταλύσει*, although the speaker would like to suggest a connection between the official charges and an imminent threat to the state. The nature of the charges is further confirmed by the penalties prescribed: for each conviction the ordinary penalty would have been a fine ten times the bribe rather than exile or execution. An alternative penalty of death or exile may have been proposed, but, despite the speaker's cries for vengeance, it does not appear that the extreme penalty was seriously considered.⁴⁷ Thus in regard to the nature of the charges and the penalties proposed, the

⁴⁵ SEG 12.87. See Benjamin Meritt, *Hesperia* 21 (1952) 355–59; cf. Ostwald (*supra* n.13) 119–28. For suspicion of partisanship in the Areopagus cf. Din. 3.7, *ψευδεῖς πεποιήται τὰς ἀποφάσεις . . . ἢ δ' ἐξ Ἀρείου πάγου ταῦτα προεῖται χάριτος ἢ λημμάτων ἔνεκα*; 1.7–10, *κατέψενσται γὰρ ἡ βουλή . . . ψευδεῖς ἀποφάσεις πεποιήται*; 6.2, *φήσεις ὀλιγαρχικὴν εἶναι*; 2.2.

⁴⁶ Din. 1.60, 64, 67; Hyp. *Dem.* 21; cf. Plut. *Dem.* 25f, *Phoc.* 21.3. It is clear from all accounts that those under suspicion were *rhetoires*, and it is likely that certain individuals were singled out for investigation under Demosthenes' decree; Din. 1.4, *ψηφισαμένοι τοῦ δήμου . . . εὐρεῖν τίνες εἰσὶ τῶν ῥητόρων οἱ τολμήσαντες ἐπὶ διαβολῇ καὶ κινδύνῳ τῆς πόλεως χρήματα παρ' Ἀρπάλου λαβεῖν . . . γράψαντος . . . σοῦ καὶ ἐτέρων πολλῶν, ζητεῖν τὴν βουλήν περὶ αὐτῶν, ὡς αὐτῇ πατριῶν ἐστίν*; cf. Hyp. *Dem.* 34, *τιμωρίας καθ' αὐτῶν καὶ ζητήσεις ἔγραφον*. See also Schaefer (*supra* n.24) III 320–30.

⁴⁷ Demosthenes was fined fifty talents (Plut. *Dem.* 26), although he had proposed the death penalty if he were himself convicted (Din. 1.8, 61); it is evident that the speaker's epithet *προδοτῆς* is hyperbole rather than the wording of the charges (Din. 1.66). The speaker also calls for the death penalty against Aristogiton (Din. 2.4). Demades and Aristonicus were also convicted and fined. For the regular penalty of a tenfold fine cf. Din. 1.60, 2.17. Evidently Philocles (*strategos*) was deposed by *apochirotionia*, convicted and fined, but paid the fine or was exonerated and returned to public life; cf. *Dem. Ep.* 3.31; J. A. Goldstein, *The Letters of Demosthenes* (New York 1968) 276–81; and Hansen, *Eisangelia* 42f.

apophaseis in the Harpalus affair are best understood as prosecutions of public officials for corruption or wrongdoing in connection with their official duties; the rôle of the Areopagites in these cases is much the same as it had been in earlier special accountings of public officials.

In response to a decree of the *ecclesia* (Din. 1.4), the Areopagus, after a lengthy investigation, submitted a list of indictments specifying only the amounts each suspect had received (Din. 1.51): Hyp. *Dem.* col. 6, οὐδεμίᾳ προσγέγραφεν διὰ τί ἕκαστον ἀπο[φαί]νει, ἀλλὰ ἐπὶ κεφαλαίου γράψασα ὅπόσον ἕκαστος εἴληφεν. Public prosecutors were elected in the *ecclesia* (Hyp. *Dem.* 38), and there may have been some debate on the decree for trial. It is possible that the evidence given at the hearing before the Areopagus was submitted to the *ecclesia* in the report of the Areopagus. It does not appear that any detailed statement of the evidence was given at the trials, but it is likely that the evidence was known to the court only from the report of the Areopagus and the debate on the decree for trial in the *ecclesia*.⁴⁸ Hansen observed that the documents cited in the extant speeches do not bear directly on the Harpalus investigation, and concluded that testimony was submitted in the *apophasis* proper. It is of course possible that the evidence was presented by other speakers, but it is a compelling argument from silence that nowhere in the extant speeches is any reference made to specific evidence, although Demosthenes issued ‘challenges’, *proklesseis*, to discover the evidence against him.⁴⁹ Because the speakers focus upon the constitutional issue (the competence of the Areopagus), it seems the more likely that the evidence itself (chiefly the testimony of witnesses) was not presented to the *dikastai* for their judgment; instead, the report of the Areopagus represented the sum of the evidence, and the jurors were asked to accept the judgment of the Areopagus on the facts of the case.

From these examples the development of the political jurisdiction of the Areopagus in the later fourth century may be summarized as follows:

⁴⁸ See Hansen, *Eisangelia* 39f. The speaker of Din. 1 suggests that the first speaker, Stratocles, had made a brief *diegesis* concerning the charges, the procedure, and the verdict of the Areopagus (1.1), but nowhere mentions *martyria* or other evidence.

⁴⁹ Cf. Alexander Numen, *Peri schematon*, in Walz VIII 457f (=Hyp. fr.2 *Dem.* col. 3): προκλήσεις ἐκτιθεῖς καὶ ἐρωτῶν ἐν ταῖς προκλήσεσιν, πόθεν ἔλαβες τὸ χρυσίον, καὶ τίς ἦν σοι ὁ δούς, καὶ πῶς. Earlier (in fr.1 col. 2) the speaker uses the term *πρόκλησις* ironically, in reference to the initial decree for investigation in the Areopagus, as if describing a private dispute between Demosthenes and the *demoi*. Evidently, Demosthenes sought to have the evidence released through a procedure analogous to ‘discovery’ in civil suits; cf. Harp. s.v. “πρόκλησις”; Harrison (*supra* n.3) 135f.

(1) *Apophasis κατὰ πρόσταξιν* was the first and chief means by which the Areopagites reasserted their ancestral powers as guardians of the constitution. Their jurisdiction in this procedure was not so unrestricted as is sometimes supposed. In each case, by decree of the people, the Areopagites were commissioned to investigate charges against public officials (or citizens acting in official capacity): the earliest known instances were special investigations of Aeschines (*rhetor*) and Proxenus (*strategos*); the last and most notorious case was initiated as an investigation of Demosthenes and other *rhetores*. It is precisely this jurisdiction that is clearly described as “the council’s ancient authority” (Din. 1.4). Public prosecutors were elected as *synegoroi* to support the Areopagite indictment. The rôle of the Areopagites in these investigations is analogous to that of the *bouleutai* acting *ex officio* in *eisangeliai* to the *boule*, which ordinarily involved charges against public officials. This analogy is all the more suggestive because the new procedure appears to coincide with some reform or restriction of *eisangeliai* to the council and the *ecclesia*.⁵⁰

(2) *Apophasis* by the Areopagus on their own initiative, *αὐτῆ προελομένη*, ordinarily involved charges of corruption against members of the Areopagus. These *apophaseis* were initiated by the Areopagites as internal accountings. Members who were disqualified for wrongs connected with their official duties or civic responsibilities were tried before the court; in such cases their fellow members served as prosecutors at the trial.⁵¹

(3) By a martial law decree of 338, the Areopagites on their own authority arrested and executed suspected traitors: two of the four cases listed in Din. 1.62f are of this type; *cf.* Lycurg. *Leocr.* 52. In the same period charges of treason against public officials, including members of the Areopagus, were also initiated by decree: the prosecutions for treason against the Areopagites Polyeuctus and Autolycus were initiated by decree in this period (Din. 1.57–59, Lycurg. *Leocr.* 53). These procedures against treasonous offenses, however, do not appear to be part of the ordinary political jurisdiction; after 337/6 we know of no other impeachment for treason prosecuted in this way. The speaker of Din. 1 seems to regard these measures to safe-

⁵⁰ On reform of *eisangelia* to the *ecclesia* after 361 see Hansen, *Eisangelia* 30f, 39f. It should also be noted that *eisangelia* to the *boule* was probably put under some restriction in the same period, as no case is known after 357/6.

⁵¹ Hansen, *Eisangelia* 39, assumes that public prosecutors served in these cases, as in *apophaseis κατὰ πρόσταξιν*; but there is a clear indication in the speaker’s remarks (Din. 1.52–54, *ἡ βουλή ἐπ’ ἐνίων τὸ πέμπτον μέρος οὐ μετείληφε*) that the Areopagus itself was responsible for prosecuting such cases.

guard the constitution as emergency powers, rightfully granted to the Areopagus in time of crisis but only valid until the crisis has passed.⁵²

The martial law decree to investigate treasonous offenses, as well as *apophaseis κατὰ πρόσταξιν* against public officials for wrongdoing in office, were not established as law by legislative review (*nomothesia*) but were valid only in specific instances, by historical precedent. There was nothing to prevent the *ecclesia* from charging the Areopagus to undertake special investigations that had been traditionally assigned to their jurisdiction. On the other hand, *apophasis* by the Areopagites on their own initiative may have been established by law in the era after Chaeronea, not as a constitutional safeguard against subversion or corruption by other public officials but as an internal investigation of charges against Areopagites. Some requirement for internal supervision of members suspected of corruption is consistent with other legislation of the time, such as the law of Eucrates (337/6), which indicates strong suspicion of oligarchic sympathies in the Areopagus (see *supra* n.45); and the decrees against the Areopagites Polyeuctus and Autolycus seem to reflect popular disillusionment with the character of the ancient council.

These procedural developments have not been clearly recognized for three reasons. First of all, in the speeches, to which we owe almost all that we know of these proceedings, the speakers continually remind their audience of the months after Chaeronea when the Areopagus had taken extreme measures as guardian of the constitution, without drawing the proper distinctions between the emergency powers of that crisis and the ordinary procedures. Second, by the nature of investigations in the Areopagus, other incidents were often brought to light and other persons implicated beyond the names and events about which the *apophasis* was initiated. Thus in the investigation of Aeschines the case against Antiphon was reopened; and in the Harpalus affair the investigation, directed against Demosthenes and other *rhetores*, led to charges against other officials as well. Finally, the verdict of the Areopagus was essentially different from the rulings of other archons in *anakriseis* in other procedures. In ordinary *graphai* or *eisangeliai*, the pre-judicial authorities simply rule upon the admissibility of the case *prima facie*, without judging guilt or innocence. In *apophaseis*, as we have seen, the verdict of the Areopagus

⁵² He refers to this jurisdiction to investigate charges of treason as belonging to "the council . . . to whom the people have entrusted the constitution and the democracy many times" (1.9: *πολλάκις*, not *ἀεί*); cf. *supra* n.36.

is said to determine guilt or innocence beyond a reasonable doubt; the jurors simply decide the sentence.

These procedural distinctions should help clarify the vague references we have concerning two other cases often mentioned in connection with *apophasis*. The case of the Areopagite Pistias against the speaker of Din. 1 was apparently initiated in the Areopagus, but ended in court in a successful prosecution of Pistias by *eisangelia*. We are told nothing of the charges against the speaker. Pistias (though he is called a “traitor”) was prosecuted for corruption and convicted of taking bribes from Pythocles, who was active as a speaker in the assembly after 338 and opposed the nomination of Demosthenes to deliver the funeral oration for the dead at Chaeronea. It is therefore likely that the case against Pistias came after the period of martial law. Evidently the Areopagite Pistias was under investigation in *apophasis* on initiative, but managed to cast suspicion upon the speaker, who then brought countercharges by the alternate procedure (*eisangelia*).⁵³

There is an oblique reference to another *apophasis* in the fragment of Hyperides’ speech for the merchant Chaerephilus (*P.Oxy.* XXXIV 2686), but this does not prove that Chaerephilus was charged in an *apophasis*, as Hansen assumes. From Harpocration’s reference to the case against Chaerephilus (*s.v.* “καταχειροτονία”) and from his own interpretation of the case as an *apophasis*, Hansen assumes that “the most probable explanation of καταχειροτονίας in *Ath.Pol.* 59.2, is in fact that the word denotes a preliminary verdict passed by the Assembly in connection with an *apophasis*” (*Eisangelia* 44). There are several passages in which the decree for trial in *apophasis* is described as καταχειροτονία (*Din.* 2.20, *Hyp. Dem.* 22), but in most instances the term refers to other procedures, *eisangelia* or *probole*; thus καταχειροτονία seems to be used as a general term for the assembly’s decree for trial in several related procedures, including *apophasis*. Hansen may be right in supposing that the term refers to *apophaseis* in *Ath.Pol.* 59.2 (which appears to contain no other direct reference to *apophasis*), but there is no proof that the case against Chaerephilus was an *apophasis*.

Although we have a fragmentary description of the interrogation in an *apophasis*, the investigation in question must have been preliminary to another legal action (not the case against Chaerephilus), for the speaker says clearly “the council (of the Areopagus) made no

⁵³ Cf. *Din.* 1.48–53: εἶτ’ οὐ δεινόν, ὦ Ἀθηναῖοι, εἰ, ὅτι μὲν εἰς ἀνὴρ ἔφησε Πιστίας Ἀρεοπαγίτης ὧν ἀδικεῖν με, καταψευδόμενος κάμου καὶ τῆς βουλῆς, ἴσχυσεν ἂν τὸ ψεῦδος . . . διὰ τὴν ἀσθένειαν τὴν τότε καὶ τὴν ἐρημίαν τὴν ἐμήν. See Hansen, *Eisangelia* 105f.

report against Chaerephilus for wrongdoing.” We know of not a single instance in which the *ecclesia* overturned an Areopagite verdict for acquittal, and, to judge by the arguments of the orators, any such decree would have been indicted as an unconstitutional measure. The speaker of Dem. 1 mentions another episode (10–11) in which the defendant (Demosthenes himself) was acquitted by the Areopagus, and there seems to have been no question of reversing their verdict. The case against Chaerephilus, therefore, was probably prosecuted by an alternate procedure, as had been assumed before the fragment was found.⁵⁴

III. Conclusion

The rôle of the Areopagus in political trials of the later fourth century was shaped by party rivalry and popular ideology in reaction to the failings of the regular machinery of government in time of crisis. If we look beneath the speakers’ amplification to count the references to actual cases, it seems clear that specific procedural reforms were adopted in succession, first to offset the reversals of 346, and then to meet the threat of 338: the earliest known *apophaseis*, soon after the peace of Philocrates, were directed against public figures held accountable for that ignominious peace, Aeschines and Philoxenus; many of the most notorious cases involving exile or execution came soon after Chaeronea, when the Areopagites were given special authority against treason and conspiracy. In the embezzlement trials of 324, however, Hyperides and the other prosecutors found themselves in a rhetorical predicament: they must convince their audience of the integrity of the Areopagus, but remind them that the special investigations had been often used as a political weapon by the defendant Demosthenes. That irony has not been lost

⁵⁴ Hyp. *Chaerephilus*, *P.Oxy.* 2686.4–13: *περὶ δὲ ὧν ἡ βουλὴ ζητή[σα]σα ἀπέφηνεν εἰς τὸν δῆμον, οὐδαμοῦ ἡ βουλὴ ἀπέδειξε τῷ δήμῳ Χαιρέφιλον ἀδικούντα· καὶ ἐκ τῶν βασάνων, φησὶν, ὑπ[ανα]γνώ[σκο]ντος τοῦ γραμματέως τὰ [ὀνό]ματα οὐδεὶς τῶν βασανιζομένων εἶπεν κατὰ αὐτοῦ ὡς ἀδικούντός τι.* The case must be dated some years after Chaeronea, perhaps not long before the Harpalus affair: *cf.* Din. 1.43, and Schaefer (*supra* n.24) III 296f. Chaerephilus had been granted citizenship as a public benefactor during the grain shortage (probably of the late 330’s). Hansen, *Eisangelia* 39f, suggests that the passage proves that Chaerephilus was prosecuted by *apophasis*, assuming evidently that even an acquittal by the Areopagus could lead to a decree for trial; but we know of no other trial based upon an *apophasis* in which the Areopagus returned a verdict of not guilty. In the closest procedural parallel, *eisangelia* to the *boule*, the case was not brought to trial without a *katagnosis* against the defendant; *cf.* Hansen, *Eisangelia* 22.

on modern commentators, but because the speakers were intent on praising the Areopagites as guardians of the democracy, they have not given us a clear record of the sequence of events leading to specific reforms or the ideological basis that was given to these innovations.

The new procedures may be seen as a challenge to the sovereignty of the court and the *ecclesia* in political trials; cf. Plut. *Dem.* 14.5, σφόδρα δ' ἀριστοκρατικὸν αὐτοῦ πολίτευμα καὶ τὸ περὶ Ἀντιφῶντα· ὃν ὑπὸ τῆς ἐκκλησίας ἀφεθέντα συλλαβῶν ἐπὶ τὴν ἐξ Ἀρείου πάγου βουλήν ἀνήγαγε, καὶ παρ' οὐδέν τὸ προσκροῦσαι τῷ δήμῳ θέμενος ἤλεγξεν. In their investigations the Areopagites reasserted the magisterial authority they had held in archaic times, when their verdicts were not subject to appeal. In the fourth century the Areopagites were given special competence to judge the facts of the case, a competence not shared by the other magisterial authorities. Even when those convicted by the Areopagites were acquitted by the *dikastai*, the verdict of the Areopagus on questions of fact was not disputed: the defendant was said to be acquitted by the mercy of the court (Din. 1.55–59).

This special competence was often used by Demosthenes to great advantage. It is evident that Demosthenes, who introduced these innovations, persistently invoked the Areopagus to prosecute political adversaries who might otherwise have made a stronger case under the old procedure in *eisangelia*, with preliminary investigation by the *boule*, debate on the decree for trial in the *ecclesia*, and evidence presented to the court. Also in his own defense, Demosthenes relied upon the new procedures: in the mid 330's the Areopagus rejected charges against him; and in the Harpalus affair, Demosthenes first blocked an *eisangelia* to the people by a decree for investigation in the Areopagus (Hyp. *Dem.* col. 2), although he then failed to discover the evidence against him by *πρόκλησις*.

The regular procedures against corruption and the emergency powers against treason were introduced separately, and though they may be part of the same political agenda, they do not seem to have the same ideological basis. In the first *apophaseis*, the Areopagus held public officials to account for corruption and misconduct in office, based strictly upon the tradition that they had been sovereign in *euthynai* until Ephialtes' reform. The authors of the second innovation claimed precedent in the tradition that the Areopagus had acted as guardian of the democratic constitution in impeachments for treasonous offenses. These two separate strands of the tradition can also be discerned in the *Athenaion Politeia*.

It has long been suspected that some sections of the *Ath.Pol.* concerning the authority of the Areopagus in impeachments ἐπὶ κατάλυσει τοῦ δήμου (8.4, 25.3–4) were added, from a second source, to the earlier material where the chief political authority of the Areopagus derives from the accountings. From the outline of procedural reform that I have suggested in this study, it seems all the more likely that the source for the later sections was influenced by the debate on the emergency powers decreed to the Areopagus after Chaeronea, when the Areopagites resumed their rôle as τὸ τήν φυλακὴν ἔχον συνέδριον (Din. 1.67).

THE UNIVERSITY OF VIRGINIA
June, 1985