Eisangelia and *Euthyna*: the Trials of Miltiades, Themistocles, and Cimon

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POLITICAL TRIALS at Athens in the early fifth century are known to us only from brief references, but much of the reconstruction of Athenian constitutional history, from Cleisthenes to Ephialtes, depends upon the interpretation of these procedures. According to the atthidographic tradition in the *Athenaion Politeia*, the Areopagus controlled impeachments for major offenses (*eisangeliai*), as well as the accountings of public officials (*euthynai*), until Ephialtes' reforms; but other references clearly indicate that the *demos* had already assumed authority in trials for treason and conspiracy and in prosecutions for official misconduct, including the trials of Miltiades, Themistocles, and Cimon.[1] In recent work M. H. Hansen has concluded that *eisangeliai* of the pre-Ephialtic period were tried before the *ekklesia* or the court of the people, and in these trials the Areopagus had no official jurisdiction; P. J. Rhodes has argued that sovereignty in *eisangeliai* belonged to the Areopagus until Ephialtes conferred these powers upon the people, and has suggested that the partisan verdicts of the Areopagus in the trials of Themistocles and Cimon helped to provoke democratic reform.[2] Without decisive evidence for the earlier proceedings, the debate has focused upon the *nomos eisangeltikos* and political trials after 461, but there is still no consensus on the rules of jurisdiction in classical *eisangelia* and very little agreement on the origin of these rules. In regard to *euthynai* of the later fifth and fourth centuries, Marcel Piérart has contributed an important study, but its

[1] On the *demos* and the Areopagus in early *eisangelia* see J. H. LIPSIUS, *Das attische Recht und Rechtsverfahren* (Leipzig 1905–15 [hereafter 'Lipsius']) I 176–87, esp. 178–81, on the trials of Miltiades and Themistocles; G. BUSOLT and H. SWOBODA, *Griechische Staatskunde* (Munich 1926 ['Busolt/Swoboda']) II 846–52, 1005–09; and for the traditional view of Areopagite sovereignty, C. HIGNETT, *A History of the Athenian Constitution* (Oxford 1952 ['Hignett']) 146–48, 193–213.

[2] P. J. RHODES, *The Athenian Boule* (Oxford 1972 [hereafter 'Rhodes']) 199–211, argued that the Areopagus controlled these procedures until the transfer of jurisdiction to the Council of Five Hundred. M. H. HANSEN, *Eisangelia* (Odense 1975 ['Hansen']), argued that the *demos* controlled impeachments. Rhodes took issue with Hansen's arguments on early *eisangeliai* and the *nomos eisangeltikos* in *JHS* 99 (1979) 103–14; Hansen responded in *JHS* 100 (1980) 89–95.

implications for pre-Ephialtic procedure have not been fully considered;[3] and the conclusions and contradictions of recent work call for a new reconstruction of impeachments and accountings before Ephialtes' 'revolution' to reassess the authority of the *demos* and the powers of the Areopagus.

As the evidence requires, this study is divided into two major sections, dealing first with legal principles and then with specific cases: we shall need to reconsider the conclusions that have been drawn from classical procedure and the later tradition before we examine the testimonia concerning major political trials in the crucial era of constitutional change. Most of the ancient references to the 'Areopagite regime' and democratic reform derive from fourth-century sources, and they should be judged in the light of contemporary procedure. We are, for example, told twice in the *Politics* (1274a15, 1281b31) that the *demos* controlled accountings under the Solonian constitution, but it is unlikely that the assembly was any more directly involved in *euthynai* of the sixth and fifth centuries than in Aristotle's own day. To understand such evidence it will be necessary to distinguish the competent authorities at each stage of proceedings, from preliminary investigation to final verdict. It is often observed that cases described in our sources as *eisangeliai* or *euthynai* could be initiated by several procedures involving different pre-judicial authorities, and our sources sometimes suggest that these divisions of jurisdiction developed from pre-Ephialtic procedure. Thus in the first section, in order to re-define classical rules of jurisdiction and pre-Ephialtic precedent, *eisangelia* to the assembly and proceedings before the council will be treated under separate headings; in the second section, the trials of the pre-Ephialtic period will be considered in detail.

I

(*a*) Eisangelia *to the assembly:*

ἄνευ τοῦ δήμου τοῦ Ἀθηναίων πληθύοντος μὴ εἶναι θανάτῳ ζημιῶσαι

[3] M. PIÉRART, "Les ἔυθυνοι athéniens," *AntCl* 40 (1971 [hereafter 'Piérart']) 526–73; A. R. W. HARRISON, *The Law of Athens* (Oxford 1968–71 ['Harrison']) II 208–11; D. M. MacDowell, *The Law in Classical Athens* (Cornell 1978) 170–90. On the transfer of jurisdiction, see esp. E. Ruschenbusch, "Ephialtes," *Historia* 15 (1966) 369–76, and *Athenische Innenpolitik im fünften Jahrhundert v. Chr.* (Bamberg 1979) 57–65; R. Sealey, "Ephialtes," in *Essays in Greek History* (Woodhaven [N.Y.] 1965) 42–58 (=*CP* 59 [1964] 11–22), and "Ephialtes, Eisangelia and the Council," in *Classical Contributions, Studies in Honor of Malcolm Francis McGregor* (Locust Valley [N.Y.] 1981) 125–34; E. CARAWAN, "*Apophasis* and *Eisangelia*: the Rôle of the Areopagus in Athenian Political Trials," *GRBS* 26 (1985 ['Carawan']) 115–40.

The provisions of the *nomos bouleutikos* in *IG* I³ 105, including the rule that the council pass no sentence of death without verdict of the *demos* (36), constitute the only inscriptional evidence we have concerning the respective jurisdictions of council and assembly in *eisangelia*. This "tantalizing fragment" is generally agreed to be a republication of more ancient clauses of the bouleutic oath.[4] The law implies that 'the council' had previously sentenced criminals to death on its own authority, and that the council, from the date of the inscription (410/9), would continue to initiate proceedings involving the death penalty, but such cases would come to trial before the assembly or the court.[5] It is unlikely, however, that the Cleisthenic council of five hundred ever held authority for execution without reference to the people prior to the oligarchic revolutions of the late fifth century. Rhodes suggested that this and similar restrictions were introduced along with the reforms of Ephialtes, as a precaution that the council not abuse its new powers as the Areopagus had done. It is also possible that the restriction of the council's jurisdiction in classical procedure derives from earlier restrictions on the powers of the Areopagus. Some guarantee of the people's authority in *sentencing* capital cases is clearly indicated in the trials of Miltiades, Hipparchus, and Themistocles. It has been difficult, however, to define the rules for *initiating* procedures and *hearings-in-chief*, as well as for determining

[4] The prohibition against the death penalty was earlier reconstructed from *Ath.Pol.* 45.1 as μὴ εἶναι θανατοῦν (*IG* I² 114.37); *cf.* Wilamowitz, *Aristoteles und Athen* II (Berlin 1893) 195f; Lipsius I 45f. The account in *Ath.Pol.* 45.1 links this restriction with the acquittal of Lysimachus after condemnation in the council, apparently soon after the regime of the Thirty; but, as Rhodes has observed (*Commentary on the Aristotelian Athenaion Politeia* [Oxford 1981]) 538, this connection "may have been invented or misapplied to illustrate a fictitious reduction in the power of the boule." If we omit the anecdote of Lysimachus, nicknamed ὁ ἀπὸ τοῦ τυπάνου, we get a more credible account: ἡ δὲ βουλὴ πρότερον μὲν ἦν κυρία καὶ χρήμασιν ζημιῶσαι καὶ δῆσαι καὶ ἀποκτεῖναι. . . . ὁ δὲ δῆμος ἀφείλετο τῆς βουλῆς τὸ θανατοῦν καὶ δεῖν καὶ χρήμασιν ζημιοῦν, καὶ νόμον ἔθετο, ἄν τινος ἀδικεῖν ἡ βουλὴ καταγνῷ ἢ ζημιώσῃ, τὰς καταγνώσεις καὶ τὰς ἐπιζημιώσεις εἰσάγειν τοὺς θεσμοθέτας εἰς τὸ δικαστήριον, καὶ ὅ τι ἂν οἱ δικασταὶ ψηφίσωνται, τοῦτο κύριον εἶναι. For further provisions of the bouleutic oath, see Rhodes 194–207.

[5] The precise meaning of ὁ δῆμος πληθύων is still disputed. From this inscription and Xen. *Hell.* 1.7.9, Busolt/Swoboda (987) assumed that a quorum of 6,000 was sufficient to represent the body politic. Against the view that the *dikasteria* (whose panels totaled 6,000) were regarded as judicial committees of the *demos*, Hansen, *GRBS* 19 (1978) 142–46, asserted that the courts were separate and sovereign. The phrase in *IG* I³ 105.36 may best be understood as requiring a decree of the assembly in *eisangeliai* for capital offenses, whether tried before the assembly or the court. For the political context of this clause of the bouleutic oath, see Rhodes 206. In the view expressed here I am indebted to Martin Ostwald for his comments on the problem.

which authorities conducted preliminary investigations and which decided the question of guilt or innocence.

In classical procedure Hansen has observed a significant division of jurisdiction governing preliminary hearing and trial: charges of treason, punishable by death or exile, were ordinarily initiated in the *ekklesia* and (down to 361/0) many of those accused of treason were tried and sentenced in the assembly: charges of official misconduct punishable by fine, including κλοπῆς and μὴ χρῆσθαι τοῖς νόμοις, and directed against magistrates (or citizens acting in an official capacity) were ordinarily given a preliminary investigation in the council and tried before the court. The analysis of these procedures is complicated by the requirement for *probouleusis*, involving the council in cases ὑπὸ τὸν δῆμον, and by the involvement of the assembly at a preliminary stage of the investigation in some *eisangeliai* to the council. Although Hansen has assembled an impressive array of evidence, Rhodes is not persuaded, and some of his objections must be taken into account.

Against four "indisputable" instances of charges introduced in the *ekklesia* (including the first accusation against Alcibiades and the trial of the Arginusae generals [Hansen 25]), Rhodes (109) rightly objects that we have no clear indication that the investigation was not begun in the council and then submitted to the assembly for debate. Moreover the bouleutic oath clearly provides for preliminary investigation in council before trial of capital offenses, such as conspiracy. But these objections do not invalidate Hansen's analysis of official jurisdiction: given the nature and urgency of the offenses in these cases, we must allow for alternate means of introducing charges to avoid delay. In some cases, evidence of major political offenses for which the assembly appears to have official jurisdiction may have been introduced in the council, which then called a special session of the assembly. It is also inevitable that in some instances accusations of official misconduct arose in the debate of other issues in the *ekklesia* or the court and were then referred to the council for preliminary hearing. The decisive procedural criterion is the preliminary verdict (*katagnosis* or *katacheirotonia*); from the evidence we have, it is a reasonable conclusion that the council gave judgment concerning official misconduct, but the vote of the people was required in prosecutions for treason and other political offenses punishable by death.

Concerning the official jurisdictions of the council and assembly, Rhodes does not accept the conclusions that Hansen has drawn from the orators and lexicographers—and again his caution is well taken. In Harpocration's note on εἰσαγγελία, Hansen (21–28) finds confirma-

tion for his division of jurisdiction; but Rhodes has argued (*JHS* 99 [1979] 106–08) that there is no clear indication of a division between cases heard before the council and those introduced *πρὸς τὸν δῆμον*. The structure of Harpocration's article in itself seems to support Rhodes' objection: for each of three classes of *eisangelia*, the lexicographer defines first the nature of the charges, then the jurisdiction, and finally the penalties for conviction or frivolous prosecution. In the section on *eisangeliai* for major political offenses, the council and the assembly are named as the competent authorities, in contrast to the powers of the archon and the courts in lesser *eisangeliai* (not in order to distinguish the respective jurisdictions of the council and the people, as Hansen suggests):[6]

> The first class of impeachments (a) concerns the highest crimes against the state, which allow no delay, and (b) for which no magistracy holds jurisdiction . . . but the preliminary judgment is held before the council or the people, (c) for which the highest penalties are prescribed for convictions but the prosecutor is exempt from penalty unless he fails to win one-fifth of the votes [and in archaic procedure failed prosecutions brought severer penalties].[7]

Rhodes further assumes (107) that "crimes . . . for which no magistracy holds jurisdiction" refers to a second category of charges, *ἄγραφα δημόσια ἀδικήματα* (*cf.* Poll. 8.51); but the pattern of Harpocration's entry suggests that this phrase applies to the general heading, *δημόσια ἀδικήματα μέγιστα*.[8] The same outline, describing (a) the charges, (b)

[6] Harpocration *s.v. eisangelia* (=*Suda* EI 222): *τρία δ' ἐστὶν εἴδη εἰσαγγελιῶν·* (1) *ἡ μὲν γὰρ* (a) *ἐπὶ δημοσίοις ἀδικήμασι μεγίστοις καὶ ἀναβολὴν μὴ ἐπιδεχομένοις*, (b) *καὶ ἐφ' οἷς μήτε ἀρχὴ καθέστηκε μήτε νόμοι κεῖνται τοῖς ἄρχουσι καθ' οὓς εἰσάγουσιν, ἀλλὰ πρὸς τὴν βουλὴν ἢ τὸν δῆμον ἡ πρώτη κατάστασις γίνεται*, (c) *καὶ ἐφ' οἷς τῷ μὲν φεύγοντι, ἐὰν ἁλῷ μέγισται ζημίαι ἐπίκεινται, ὁ δὲ διώκων, ἐάν μὴ ἕλῃ, οὐδὲν ζημιοῦται. . . .* (2) *ἑτέρα δὲ εἰσαγγελία λέγεται* (a) *ἐπὶ ταῖς κακώσεσιν*, (b) *αὗται δ' εἰσὶ πρὸς τὸν ἄρχοντα*, (c) *καὶ τῷ διώκοντι ἀζήμιοι, κἂν μὴ μεταλάβῃ το ε' μέρος τῶν ψήφων.* (3) *ἄλλη δὲ εἰσαγγελία ἐστι* (a) *κατὰ τῶν διαιτητῶν· εἰ γάρ τις ὑπὸ διαιτητοῦ ἀδικηθείη*, (b) *ἐξῆν τοῦτον εἰσαγγέλλειν πρὸς τοὺς δικαστάς*, (c) *καὶ ἁλοὺς ἠτιμοῦτο.*

[7] The bracketed phrase is inconsistent with what we know of penalties for failed prosecutions in *eisangeliai*: only in the latter half of the fourth century were prosecutors liable to a fine for failing to win one-fifth of the votes; earlier there was no automatic penalty (*cf.* Hansen 29–31). The phrase was perhaps inspired by *probole*, another remedy against false prosecution, discussed *infra* at nn.16–18.

[8] It is not unlikely that the category *καίνα καὶ ἄγραφα ἀδικήματα* is a gloss by Caecilius for "crimes . . . for which no magistracy holds jurisdiction," *μήτε νόμοι κεῖνται τοῖς ἄρχουσι, κτλ. Lex.Cant. s.v. εἰσαγγελία* explicitly contrasts that view with the account in Theophrastus' *Peri nomon* (which appears to give an extended version of the statute in Hyp. 3.8): *εἰσαγγελία, κατὰ καινῶν καὶ ἀγράφων ἀδικημάτων. αὕτη μὲν οὐκ ἡ Καικιλίου δόξα· Θεόφραστος δὲ ἐν τῷ τετάρτῳ περὶ νόμων φησὶ γενέσθαι ἐάν τις καταλύῃ τὸν δῆμον ῥήτωρ ἢ μὴ τὰ ἄριστα συμβουλεύῃ χρήματα λαμβάνων, ἢ ἐάν τις προδιδῷ χω-*

the competent authority, and (c) the penalties, is followed in the sections for *εἰσαγγελία κακώσεως* and *εἰσαγγελία κατὰ τῶν διαιτητῶν*. Such is the extent of Harpocration's precision in describing impeachment procedures. There is no subdivision of the charges or of the authorities, and thus no clear reference to *ἄγραφα ἀδικήματα*, as opposed to crimes defined by statute. The provision that "preliminary judgment is held before the council *or* the people" cannot be taken as evidence for separate jurisdictions for the assembly, in cases of treason, and for the council, for official misconduct (as Hansen has deduced from the cases known to us); it simply indicates that the ordinary magistrates—the archons, the *thesmothetai*, and others—had no authority. Harpocration groups all such offenses under the heading *δημόσια ἀδικήματα μέγιστα*, and from this summary account there is, unfortunately, no explicit confirmation for Hansen's division of jurisdiction.

An important procedural principle is, however, indicated in Harpocration's account: impeachments for high crimes against the state, involving imminent peril and thus requiring immediate decision by the body politic, are to be given a hearing before the council or the assembly without delay.[9] It is evident that cases of treason and conspiracy against the democracy are regarded as the chief grounds for *eisangelia*; this priority is clear in other references from the orators and lexicographers.

The earliest and clearest statement of the law is given in Hyperides' speech for Euxenippus (3.8, from the early 320's): *ἐάν τις . . .* (1) *τὸν δῆμον τὸν Ἀθηναίων καταλύῃ . . . ἢ* (2) *συνίῃ ποι ἐπὶ καταλύσει τοῦ δήμου, ἢ ἑταιρικὸν συναγάγῃ, ἢ* (3) *ἐάν τις πόλιν τινὰ προδῷ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατιάν, ἢ* (4) *ῥήτωρ ὢν μὴ λέγῃ τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων*. The same order of offenses is given in the lexicographers' notes derived from Theophrastus' *Peri Nomon, Lex Cant. s.v. εἰσαγγελία*, and Poll. 8.52.[10] The priority given charges of treason and conspiracy suggests in itself that these were the princi-

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ρίον ἢ ναῦς ἢ πεζὴν στρατιάν, ἢ ἐάν τις εἰς τοὺς πολεμίους ἀφικνῆται ἢ μετοικῇ παρ' αὐτοῖς ἢ στρατεύηται μετ' αὐτῶν ἢ δῶρα λαμβάνῃ. Cf. Lipsius 194 n.53; and see n.10 *infra*.

[9] The principle that the urgency of the wrong governed the procedure was observed by Lipsius in discussing the trials of Miltiades, Hipparchus, and Themistocles (179–81): "seit Kleisthenes die Volksgemeinde selbst über Verbrechen zu Gerichte gesessen hat, die ihren Bestand oder ihre Sicherheit zu bedrohen schienen."

[10] Poll. 8.52: *ἐγίνοντο δὲ εἰσαγγελίαι καὶ κατὰ τῶν καταλυόντων τὸν δῆμον ῥητόρων, ἢ μὴ τὰ ἄριστα τῷ δήμῳ λεγόντων, ἢ πρὸς τοὺς πολεμίους ἄνευ τοῦ πεμφθῆναι ἀπελθόντων, ἢ προδόντων φρούριον ἢ στρατιὰν ἢ ναῦς, ὡς Θεόφραστος ἐν τῷ πρώτῳ περὶ νόμων*. Hansen (13) rightly observes that the reference in Poll. 8.52 and *Lex.Cant.* (*supra* n.8) to "*rhetores* involved in conspiracy against the democracy" results from corruption of the original wording, with *ῥήτωρ ὢν* misplaced before the disjunctive *ἤ*. The discre-

pal and original grounds of *eisangelia* to the assembly, and that the secondary charges, (3) betrayal of strategic posts or expeditionary forces and (4) corruption and deception, were added to the *nomos eisangeltikos.*

There were two major revisions or additions to the *nomoi eisangeltikoi* after 461.[11] It was suggested by Thalheim, and accepted by Hansen, that *ca* 411/0 provisions were added to the law forbidding *hetairika* and extending or clarifying the definition of *prodosia* to include betrayal of strategic posts or expeditionary forces. Thus the clause in Hyperides 3.8, *ἐάν τις πόλιν τινὰ προδῷ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατιάν*, was probably added about this time (and certainly not later than 405). It is also likely that the next provision against speakers who advocate policies "not in the best interest of the people" and are guilty of corruption was an addendum to the law in this period or soon afterward: earlier there appear to be separate statutes concerning prosecution for corruption and deception of the people. A second revision of the *nomos eisangeltikos* can be securely dated *ca* 361: Swoboda first observed that all *eisangeliai* after 361 were tried before the court and the death penalty was prescribed; the rôle of the assembly seems to have been restricted to preliminary debate leading to a decree for trial. It should also be noted that no instance of *eisangelia* to the council is recorded after 357/6. In considering the respective jurisdictions of the council and assembly in classical procedure, we should therefore examine the trials before 361 separately.

A clearly discernible pattern emerges from the evidence that Hansen has assembled for *eisangeliai* down to 361, suggesting that the assembly held official jurisdiction in cases of treason: for nine cases we have strong indications that the trial was held before the *ekklesia*, and only cases of treason were tried by the full assembly.

The first and most famous of these trials is that of the Arginusae generals. Upon report of the battle and its aftermath, the *strategoi* were deposed by *apocheirotonia* (Xen. *Hell.* 1.7.1, *τοὺς στρατηγοὺς ἔπαυσαν*; *cf.* Diod. 13.101.5). It is clear from the speeches in Xen-

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pancy between Pollux's reference to the first book and the reference to Book 4 in *Lex.Cant.* probably results from a misreading of A for Δ.

[11] H. Swoboda, "Ueber den Process des Perikles," *Hermes* 28 (1893) 536–98, esp. 573–75; Th. Thalheim, "Zur Eisangelie in Athen," *Hermes* 37 (1902) 339–45 and "Eisangelie-Gesetz in Athen," *Hermes* 41 (1906) 304–09; *cf.* Hansen 17, 51–53. The indictments quoted in Hyp. 3.29 and 39 give an extended version of the provision against deception, *ῥήτορα ὄντα λέγειν μὴ τὰ ἄριστα τῷ δήμῳ . . . χρήματα λαμβάνοντα καὶ δωρεὰς παρὰ τῶν τἀναντία πραττόντων τῷ δήμῳ*. On separate procedure against deception, see the discussion on *probole* nn.16–18 *infra.*

ophon's account that abandonment of the shipwrecked men was treated as *prodosia* (*e.g.* προδοσίαν καταγνόντες, 1.7.33), and this interpretation accords with the third clause in Hyperides' citation of the *nomos eisangeltikos*. Before the charges of abandonment were heard, Erasinides, one of the generals, was tried before the court and imprisoned for embezzlement. As a result of information revealed at the court hearing, the council had the other generals taken into custody and, after a preliminary hearing of its own, brought charges before the people.

The council was then ordered to draw up a *probouleuma* to determine the procedure for trial (ὅτῳ τρόπῳ . . . κρίνοιντο, 1.7.7). In the council Callixenus, one of the *bouleutai* acting *ex officio*, moved that the generals be judged collectively, by one vote, without further debate in the *ekklesia*. This proposal was adopted by the council and brought before the assembly, where it was challenged as unconstitutional by Euryptolemus, kinsman of Pericles, one of the defendants. At first the *prytaneis* refused to put the matter to a vote; but, on a motion that opponents to the procedure be subject to the same penalties as the generals, the challenge was withdrawn. A counter-proposal was brought by Euryptolemus that the generals be tried by the decree of Cannonus, ἐάν τις τὸν τῶν Ἀθηναίων δῆμον ἀδικῇ, δεδεμένον ἀποδικεῖν ἐν τῷ δήμῳ (1.7.20). Apparently this procedure was at first approved, but an objection was raised and a second vote was taken in favor of the council's proposal. After the generals had been condemned and put to death, "the people repented" and Callixenus and his supporters were tried for deception by *probole* (1.7.35).

It is sometimes assumed that the illegality of Callixenus' decree lay in judging all the generals collectively, but that does not appear to be the thrust of Euryptolemus' arguments. The decree of Cannonus does not in fact preclude the trial of several defendants *en masse*, as is sometimes supposed (*cf.* 1.7.19: καὶ τοὺς ἀδικοῦντας εἰδότες κολάσεσθε ᾗ ἂν βούλησθε δίκῃ, καὶ ἅμα πάντες καὶ καθ' ἕνα ἕκαστον). On the contrary, the illegality of Callixenus' procedure lies in the denial of due process (which would have allowed at least a full day to hear both sides). It is this rush to judgment that Euryptolemus regards not only as a violation of the rights of the accused but a deception of the *demos* (ἐξαπατηθῆναι ὑμᾶς, 19). Ironically, Euryptolemus' first objection was silenced by the outcry that "it would be a terrible precedent if the will of the people were thwarted," but the real infringement of the people's authority lay in the infringement of their right to conduct a full hearing. In essence the generals were condemned *without trial* (ἀπολλύντες ἀκρίτους παρὰ τὸν νόμον, 25); by concluding the proceedings

after no more than preliminary debate in the assembly and investigation in the council, the proposal restricted the rightful jurisdiction of the assembly.[12]

Thus the legalities in these notorious proceedings tend to confirm rather than disprove the principle that treason trials were controlled by the assembly. The procedure proposed by Euryptolemus, according to the decree of Cannonus, suggests that μέγιστα ἀδικήματα of this kind were ordinarily tried before the people; the rôle of the council was restricted to preliminary investigation and *probouleusis*. The decree of Cannonus, which is cited as a statute of venerable antiquity, is generally attributed to the era of Cleisthenes' reforms, and it is a further indication that the sovereignty of the people was established in such cases long before Ephialtes' 'revolution'.

In eight cases after 405 charges of treason were initiated and tried in the *ekklesia*, without reference to the court and without any record of a preliminary verdict by the council, including the trials of Thrasybulus and Timotheus:

(1) against Ergocles, colleague of Thrasybulus, deposed by *apocheirotonia* for the loss of the Thracian Chersonese, 389 B.C. (Hansen's catalogue no. 73);
(2) against Thrasybulus for the loss of a squadron off Abydos, 387 (no. 75);
(3) against Thrasybulus for the loss of the Cadmeia, 382 (no. 76);
(4) against Timotheus, by *apocheirotonia*, for failure to relieve Corcyra, 373 (no. 80);
(5) against Antimachus, in connection with the charges against Timotheus, 373 (no. 81);

[12] R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle* I (Chicago 1930) 208f, suggest that it was the law of Cannonus that guaranteed to the people jurisdiction in capital cases, from which the clause of the bouleutic oath in *IG* I³ 105.36f derives; but see also Hignett (155, 303–05) who suggests that the decree of Cannonus was "a later modification of the law under which Miltiades was tried." The view that the decree of Cannonus contained a guarantee of separate hearings for each defendant is unwarranted: the proposal for separate trials (δίχα ἕκαστον, Xen. *Hell.* 1.7.34) is an addition to the procedure in Cannonus' decree, not an explanation of it. See Σ *ad* Ar. *Eccl.* 1089f and G. E. Underhill, ed., Xenophon, *Hellenica* (Oxford 1906) 332 n.2. Euryptolemus also suggested, as an alternate procedure, that the people refer the case to a *dikasterion* "according to the law against sacrilege and treason" (22); here again, the point of his argument is in favor of due process rather than separate hearings for each defendant. The reference to these proceedings at *Ath.Pol.* 34.1 also tends to support this interpretation, although, as elsewhere in fourth-century tradition, there is some confusion in details: we are told, for example, that all ten generals (*cf.* Pl. *Ap.* 32B) were condemned by one vote (μιᾷ χειροτονίᾳ), tantamount to 'deception' (ἐξαπατηθέντος τοῦ δήμου). But *cheirotonia* refers not to the final verdict (by ballots) but to the procedural vote 'by show of hands', by which the defendants were denied due process; *cf.* MacDowell, *JHS* 95 (1975) 70, who knows of "no instance of χειροτονεῖν . . . not carried out by χεῖρες," and notes that this term does not apply to jury proceedings.

(6) against Timagoras, for treason and corruption on embassy to the Great King, 367 (no. 82);
(7) against Callisthenes, for armistice with Perdiccas against Athenian interests, 362 (no. 85);
(8) against Ergophilus, for betrayal of the Chersonese, 362 (no. 86).

In a number of other cases for similar offenses, trial before the *ekklesia* is possible or probable, including the prosecution of Thucydides (no. 10) and that of Dionysius (no. 74) in connection with the same losses for which Ergocles was tried before the people in 389 (*cf.* cases 64, 68, 77, 88).[13]

In the few cases before 361 for which our sources give the charges as *prodosias* and which the assembly referred to the court trial, the grounds of the indictment may also be interpreted as official misconduct. In some cases it is possible that the charges were brought in the regular accountings or by other procedures against misconduct in office: in the trial of Anytus, for the loss of Pylos in 409 (no. 65), Hansen rejects the note in *Lex.Seg.* 236.6 (*τὰς εὐθύνας διδοὺς τῆς ἐν Πύλῃ στρατηγίας*) primarily on the testimony of Diodorus that the case was initiated in the assembly (13.64.6). In the trials of the generals who acted without authorization in the liberation of Thebes (379/8, nos. 77–78) and in the trials of Callistratus and Chabrias for the loss of Oropus (366/5, nos. 83–84) *euthynai* are again likely alternatives, but Hansen is unwilling to believe that the Athenians would have waited until year's end to prosecute. Aside from the prosecution of Antiphon (to be discussed *infra*) we know of no other case before 361 in which

[13] Two sets of trials involve embassies, in which—although *prodosias* is given in our sources as the official charge—the real case for the prosecution appears to be corruption, deception, or policy 'not in the public interest'. For the trials of the generals Eurymedon, Pythodorus, and Sophocles for concluding an unacceptable peace with the Sicilians in 425/4 (Thuc. 4.65.3: Hansen nos. 7–9), we have no clear indication whether the trial was initiated in the council or assembly, or whether it was tried in the assembly or the court. The specific charges are given in Thucydides as *δώροις πεισθέντες*, and we know that one among those convicted was fined. For the case against Andocides and other ambassadors who returned from Sparta with unacceptable peace terms in 392/1 (nos. 69–72), we have more specific evidence: it is clear that a preliminary investigation was held in the council. Demosthenes (19.278f) explicitly compares the provisions of the decree against the ambassadors of 391 with the case against his own adversary; and in the wording of the decree it is evident that the principal grounds of prosecution were deception and corruption, *παρὰ τὰ γράμματα . . . ἐπρέσβευσαν . . . καὶ ἠλέχθησάν τινες αὐτῶν ἐν τῇ βουλῇ οὐ τἀληθῆ ἀπαγγέλλοντες . . . οὐδ' ἐπιστέλλοντες . . . τἀληθῆ . . . καὶ καταψευδόμενοι τῶν συμμάχων καὶ δῶρα λαμβάνοντες*. The similarity to the trials of Timagoras and Callisthenes in the 360's (*supra*) seems to indicate trial before the assembly; but the reference to preliminary investigation in the council (rather than debate in the *ekklesia*) and comparison to the case against Aeschines suggest trial before the court.

the principal charges are described as *prodosias*, for which a court trial is clearly indicated.

(*b*) Apocheirotonia *and* probole

A number of prosecutions against magistrates for treasonable offenses were initiated in the *ekklesia* by *apocheirotonia*, including cases tried before the court, as well as some cases tried before the full assembly. *Apocheirotonia* also afforded a means of bringing charges of corruption or abuse of office against public officials during their term of office, and in such cases the people decreed trial before the court. Such impeachments, whether for treason or for lesser offenses, were initiated by the vote of the people in the κυρία ἐκκλησία of each prytany. This 'vote of dismissal' led to a decree for trial; in some cases special prosecutors were named, but ordinarily the original accuser led the prosecution; in convictions the jury decided between the penalties proposed by the prosecutors and the defendants. A large number of trials in the later fifth and fourth centuries, described as *eisangeliai* or *euthynai*, were initiated in this way, and it has been suggested that a similar procedure was followed in some trials of the pre-Ephialtic period.[14] By such procedures the *demos* asserted authority in cases of official misconduct, the area of jurisdiction that belonged ordinarily to the council and, by tradition, to the Areopagus.

The case against Pericles for embezzlement in 430/29—to cite the most famous example (Thuc. 2.65.3)—was initiated by *apocheirotonia* (Diod. 12.45.4) and was, presumably, tried before the court by decree of the people (Plut. *Per.* 35.4). It has been argued, long ago by Swoboda and more recently by Hansen, that this is the same trial described in Plut. *Per.* 31f; but the preponderance of the evidence clearly indicates two separate impeachments involving two similar but distinct procedures for charges against incumbent officials.[15] The

[14] Two trials for 'betrayal of strategic posts', against Ergocles (no. 73) and against Timotheus (no. 80), were initiated by *apocheirotonia* and tried in the assembly. The trial of Leosthenes (no. 88), general in 362/1, for 'betrayal' of his ships (ναῦς προδοῦναι, Hyp. 3.1f) in the defeat at Peparethos, was probably also initiated by *apocheirotonia* and tried before the court; Autocles (no. 90) and Cephisodotus (no. 96) were tried for similar offenses in this way, as was Pericles on a charge of embezzlement or *adikia* (no. 6). For discussion of this procedure and a list of *eisangeliai* initiated by *apocheirotonia*, see Hansen 24f n.21, 41–44; *cf.* J. T. Roberts, *Accountability in Athenian Government* (Madison 1982) 14–29.

[15] Hansen 71–73 follows the view of Swoboda (*supra* n.11: 536–98) that there was one trial of Pericles (not two, as Plutarch suggests), initiated by *apocheirotonia*; that the decree of Dracontides with Hagnon's amendment governed the procedure in this trial; and that the decree and trial are to be dated to the late summer and fall of 430. Swoboda (538f) accepted the conclusions of R. Schoell (*SitzMünchen* 1 [1888] 12f) that Ephorus was responsible for a doublet in Plutarch (*cf.* Diod. 12.39.2: καὶ αὐτοῦ

procedural details of these two cases, in fact, help to define the division of jurisdiction between council and assembly.

In the earlier case Pericles, as *epistates* for the statue of Athena, was implicated in the charges of theft against Phidias (438/7): by Dracontides' decree Pericles was ordered to hand over his financial accounts to the *prytaneis* and face trial on the acropolis, the verdict to be cast with ballots sanctified on the altar of the goddess. Hagnon, by an amendment to the decree, called for a trial before a jury of 1,500 and prosecution by ὁ βουλόμενος, on charges ordinarily lodged at the annual *euthynai*. The grounds of the indictment are given as εἴτε κλοπῆς καὶ δώρων εἴτ' ἀδικίου βούλοιτό τις ὀνομάζειν τὴν δίωξιν (Plut. *Per.* 32.4; *cf. Ath.Pol.* 54.2 and the discussion *infra*, on charges in *euthynai*). The rôle of the *prytaneis* conducting the audit corresponds to the ordinary function of council members as *logistai* in the monthly audit of official accounts in each prytany: *cf. Ath.Pol.* 48.3 and 46.2 ([*sc.* ἡ βουλή] ἐξετάζει δὲ καὶ τὰ οἰκοδμήματα τὰ δημόσια πάντα . . . κἄν τις ἀδικεῖν αὐτῇ δόξῃ, τῷ τε δήμῳ τοῦτον ἀποφαίνει καὶ καταγνόντος παραδίδωσι δικαστηρίῳ). In such accountings the council's indictment only requires procedural vote of the *ekklesia* in cases involving major penalties. This procedure is thus essentially within the jurisdiction of the *boule.*

The later trial is clearly related to Pericles' duties as *strategos*, although the precise nature of the charge is undetermined. After the unsuccessful campaign of 430, he was deposed from office and fined, presumably by vote of the *ekklesia.* The notice in Plut. 35.4 suggests that the case was not referred to a *dikasterion* but tried before the *demos*, who had deposed him from office (τὰς ψήφους λαβόντας ἐπ' αὐτὸν εἰς χεῖρας καὶ γενομένους κυρίους ἀφελέσθαι τὴν στρατηγίαν καὶ ζημιῶσαι, κτλ.). Presumably the council was called upon to draft a *probouleuma* regarding the procedure for trial, although Plutarch's

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τοῦ Περικλέους κατηγόρουν ἱεροσυλίαν). Swoboda was further convinced by Pl. *Grg.* 515E that Pericles was impeached only once, ἐπὶ τελευτῇ τοῦ βίου. Relying on Thuc. 2.56f, 65, Hansen argues that "the decree was passed in Aug. 430 or later and the case was heard in Jan. 429 or earlier." F. J. Frost (*JHS* 84 [1964] 69–72) has connected this trial and Dracontides' decree with the trial of Phidias (presumably 438/7), separate from the impeachment of Pericles κλοπῆς in 430. The peculiar procedure in Dracontides' original decree seems more appropriate to the charge of *hierosylia* given in Diod. 12.39 than to the charge of embezzlement in 430. Frost's reconstruction is supported by J. Mansfeld's chronology (*Mnemosyne* SER. 4 33 [1980] 17–95; see esp. 49f on the role of the council in supervision of public works and financial audits, and 72 on Hagnon's amendment). The two-trial theory is also followed by Roberts (*supra* n.14) 31f, 59f; and by P. A. Stadter in his forthcoming commentary on Plutarch's *Pericles* (of which he kindly permitted me to see a draft of his treatment of this problem).

notice suggests that the entire proceedings, from *apocheirotonia* to final verdict, took place in the *ekklesia*.

There are a few cases not against incumbent officials but involving a procedure similar to *apocheirotonia*, initiated in the *ekklesia*, in which the charges are clearly described as corruption, deception, or actions 'not in the public interest', and an indictment was handed down by the assembly to the court for trial. In connection with the affair of the Hermocopidae, Diocleides (no. 61) was cross-examined in the council, and the assembly decreed that he be tried before the court on charges that he had falsely accused some forty defendants. He was convicted and executed in accordance with the preliminary verdict of the people (*cf.* Andoc. 1.66: ὑμεῖς δὲ ἀκούσαντες ταῦτα Διοκλείδην μὲν τῷ δικαστηρίῳ παράδοντες ἀπεκτείνατε). Callistratus (no. 87), ῥήτωρ ὢν λέγειν μὴ τὰ ἄριστα τῷ δήμῳ (Hyp. 3.1f), also came to trial before the court by *eisangelia* to the assembly, and the death penalty was proposed in the people's decree (θάνατον ἡ πόλις κατέγνῳ, Lyc. 1.93). In the latter case the phrasing of the charges corresponds to the fourth clause of Hyperides' citation of the *nomos eisangeltikos*. Both cases involved charges and procedures analogous to προβολή, which Hansen treats as a separate procedure (38f), not included in his catalogue; but the similarity of procedure (with initiation before the *ekklesia* and requiring trial before the court) suggests that *probole* was an alternate means of initiating impeachment for deception and corruption.

The procedure known as προβολή afforded a means of prosecuting public officials, as well as citizens acting in an official capacity, for deceptive practices, ἐάν τις ὑποσχόμενός τι μὴ ποιήσῃ τῷ δήμῳ (*Ath.Pol.* 43.5). By this procedure the accuser brought to the *prytaneis* a 'motion' or proposal for investigation in the *ekklesia*, and the assembly gave a preliminary verdict, presumably specifying the penalty if the defendant were convicted by the court.[16] In the classical period *probo-*

[16] For procedure in *probole* see Harrison II 59–64; Lipsius 211–15; *cf.* Pollux 8.46 for *probole* as an initiating procedure (κλῆσις εἰς δίκην) against political offenses (κατὰ τῶν κακόνως πρὸς τὸν δῆμον διακειμένων). For *probole* against violations concerning the major festivals, Dem. 21 is our most important source, and from Demosthenes' remarks it is clear that the law of *probole* underwent continual revision. Three trials are mentioned at 175ff; curiously, all involve illegal exercise of official authority during the Dionysia. The case against Euandrus (who had arrested Menippus for fraud during the Dionysia), for example, shows that (a) penalty was proposed in the people's decree, and (b) the original plaintiff was under no obligation to carry through the prosecution. The plaintiff may drop his suit if restitution is made (as in the case against Meidias), but the people may then proceed against the defendant in accordance with their preliminary decree (*katacheirotonia*). The meaning of the term προβάλλεσθαι is variously given as "proponere aliquid ad disceptandum et iudican-

le was invoked primarily against two specific categories of offenses, 'sycophancy' and violations in connection with the major festivals; but it is likely that a similar procedure was available against a broader range of public wrongs in the earlier period.

Isocrates claims that προβολαί were instituted, along with other remedies against deceptive practices, under the Solonian constitution (15.314): κατὰ δὲ τούτων [*sc.* τῶν συκοφαντῶν] γραφὰς μὲν πρὸς τοὺς θεσμοθέτας, εἰσαγγελίας δ' εἰς τὴν βουλήν, προβολὰς δ' ἐν τῷ δήμῳ. It is evident throughout his argument that Isocrates is not using the term 'sycophants' narrowly of malicious prosecutors, but, in answer to the slander against 'sophists', is referring to demagogues engaged in deceptive practices generally. Despite Isocrates' notoriously revisionist view of the *patrios politeia*, he is likely to be right in supposing some precedent for προβολή in archaic procedure.

The original grounds for prosecution by *probole* correspond to those for *eisangelia* against deception, ῥήτωρ ὢν μὴ λέγῃ τὰ ἄριστα τῷ δήμῳ, which is likely to be a late addendum to the *nomos eisangeltikos*. The grounds for introducing *probolai* in the sixth prytany are given in *Ath.Pol.* 43.5 as [κατὰ] συκοφαντῶν . . . κἄν τις ὑποσχόμενός τι μὴ ποιήσῃ τῷ δήμῳ. Similar phrasing for an 'ancient statute' against deceptive practices is found at Dem. 20 in a *graphe paranomon*: ἔστι δὲ δήπου νόμος ὑμῖν, ἐάν τις ὑποσχόμενός τι τὸν δῆμον ἢ τὴν βουλὴν ἢ δικαστήριον ἐξαπατήσῃ, τὰ ἔσχατα πάσχειν (20.100); ἔστιν ὑμῖν νόμος ἀρχαῖος, τῶν καλῶς δοκούντων ἔχειν, ἄν τις ὑποσχόμενός τι τὸν δῆμον ἐξαπατήσῃ, κρίνειν, κἂν ἁλῷ, θανάτῳ ζημιοῦν (135). From this evidence it is reasonable to conclude that *probole* was an ancient procedure against 'deception of the people'.[17]

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dum" (O. Schömann, *De comitiis Ath.* [1828] 228) or simply "jemand zu einem Amte vorschlagen" (Lipsius 215 n.); but the peculiar two-stage procedure, before the people and before the court, suggests that the original meaning of *probole* may have been 'motion for prosecution', notifying the *prytaneis* of a private suit that might warrant prosecution in the public interest. By the preliminary decree, the accused is judged guilty and penalty proposed by the people (*cf.* Berneker, *RE* 23.1 [1957] 44 *s.v.* προβολή); and the people may nominate public prosecutors, for which the term προβάλλεσθαι is also used: Plut. *Per.* 10.5 (=Stesimbr. *FGrHist* 107F5; *Dem.* 14.4= Theopomp. 115F327).

[17] On the date of the fourth clause of Hyperides' citation of the *nomos eisangeltikos*, see *supra* n.11. The antiquity of the procedure in *probolai* is indicated by its inclusion, along with ostracism, among the duties of the *prytaneis* at *Ath.Pol.* 43.5. The term προβάλλεσθαι is also used of prosecution in the public interest in a fragment of Solon (Plut. *Sol.* 18.7). On the evidence of *Against Timotheus* ([Dem.] 49.67), however, Hansen (14) insists that *eisangelia* was the proper remedy against such deceptive practices: νόμων ὄντων ἐάν τις τὸν δῆμον ὑποσχόμενος ἐξαπατήσῃ, εἰσαγγελίαν εἶναι περὶ αὐτοῦ. It is likely that this provision too was added to the *nomos eisangelti-*

The clearest case of *probole* on grounds of ἀπάτη τοῦ δήμου came as a consequence of the prosecution of the Arginusae generals: (Xen. *Hell.* 1.7.35): καὶ οὐ πολλῷ χρόνῳ ὕστερον μετέμελε τοῖς Ἀθηναίοις καὶ ἐψηφίσαντο οἵτινες τὸν δῆμον ἐξηπάτησαν προβολὰς αὐτῶν εἶναι. The case against Diocleides for false charges in the affair of the Hermocopidae (*supra*) is precisely parallel. The condemnation of Agoratus (Lys. 13.65) is also regarded as a *probole*. It has been suggested, moreover, that some *eisangeliai* of the pre-Ephialtic period were initiated by *probole* or an analogous procedure.[18]

In the classical period the people held right of initiative against official misconduct involving deception and corruption through *apocheirotonia, probole,* or analogous procedure under the *nomos eisangeltikos*; it appears to be a rule of procedure in such cases that the people handed down an indictment to the court for trial. We know of no trial before the full assembly for such charges in the period 461–361. This rule suggests that a similar division of jurisdiction governed such cases in the pre-Ephialtic period, and charges of deception and corruption initiated in the *ekklesia* were handed down to a second judicial body, whether the court or the Areopagus.

(*c*) Eisangelia *for conspiracy:* ἐπὶ καταλύσει τοῦ δήμου

> οὐδὲ δήσω Ἀθηναίων οὐδένα, ὃς ἂν ἐγγυητὰς τρεῖς καθιστῇ . . . πλὴν ἐάν τις ἐπὶ προδοσίᾳ τῆς πόλεως ἢ ἐπὶ καταλύσει τοῦ δήμου συνιὼν ἁλῷ (Dem. 24.144).

The clause of the bouleutic oath cited in *Against Timocrates* suggests that the council had special jurisdiction and right of initiative in cases involving suspicion of conspiracy to overthrow the democracy: in such cases the *bouleutai* had the right if not the obligation to arrest and imprison the suspected conspirators (without option of surety). The verb ἁλῷ in this context cannot mean 'be convicted (by a prior

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kos after 410, and that hitherto *probole* had been the usual procedure for initiating charges of deception.

[18] The second trial of Miltiades 'for deception of the people' was presumably initiated by *probole* (Lipsius 180; *cf.* Harrison I 60f). For *probole* against magistrates *cf.* Harp. *s.v.* καταχειροτονία: ἔθος ἦν Ἀθήνησι κατὰ τῶν ἀρχόντων καὶ κατὰ τῶν συκοφαντῶν προβολὰς ἐν τῷ δήμῳ τίθεσθαι. The peculiar procedure in *probole* may also account for the obscure allegations against Cleon (Theopomp. F94) for corruption in the tribute assessment, which forced him to "cough up five talents"—though the case apparently never came to trial; for discussion of the relevant fragments see W. R. Connor, *Theopompus and Fifth Century Athens* (Washington [D.C.] 1968) 53–59. Similarly, Aristophon evaded charges in *probole* by returning the crowns that he had illegally acquired (Dem. 21.151). On the condemnation of Agoratus see J. O. Lofberg, *Sycophancy in Athens* (Chicago 1917) 92; *cf.* K. Latte, *RE* 2.4 (1932) 1032 *s.v.* συκοφαντίας γράφη.

judgment)'. A convicted traitor would be subject to execution without re-trial if apprehended, and there would be no question of surety or imprisonment. It is a reasonable conclusion, therefore, that the council conducted a preliminary investigation, arrested suspected conspirators on its own authority, and handed down a preliminary verdict. The speaker of Dem. 24 refers to Solon as the author of the bouleutic oath (148: *οὐδὲ δήσω Ἀθηναίων οὐδένα*), but such attributions are suspect: even if the rule against imprisonment is part of an authentic Solonian oath, the exception, giving authority to the council to order imprisonment in cases of conspiracy, is not likely to have been part of Solon's constitution.[19]

At *Ath.Pol.* 8.4 we are told that Solon conferred jurisdiction in conspiracy cases upon the Areopagus: *καὶ τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν, Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν.* It seems inherently unlikely that Solon entrusted the guardianship of his democratic reforms to the aristocratic council; and the anachronism of the phrase *ἐπὶ καταλύσει τοῦ δήμου* has led some to suppose that Solon's *nomos eisangeltikos* is a fiction of fourth-century propaganda. It is more reasonable, however, to assume that Solon's conspiracy law is genuine but was misinterpreted by the atthidographers and *Ath. Pol.*: Plutarch cites a law of Solon excluding from amnesty those exiled for "tyrannical conspiracy" by the Areopagites (*Sol.* 19.3f), and it is therefore likely that Solon revised the Draconian statutes governing conspiracy and subversion and formalized the jurisdiction of the Areopagus. There is no evidence that the Solonian council exercised other than a probouleutic function before Cleisthenes' reforms, and thus, by default, it is assumed that the Areopagus controlled conspiracy trials. Since we have no direct testimony that Cleisthenes restricted the powers of the Areopagus, Rhodes has argued that this was among the powers transferred to the council and assembly by Ephialtes' reforms; but, as we shall see, there is ample proof that the council had assumed right of initiative in such cases long before Ephialtes.[20]

In prosecutions for conspiracy in the classical period, the limited evidence we have suggests that the council took up the preliminary investigation and handed down their findings to the *ekklesia* to decree for trial. For the period 415–404 we know of five cases in which the

[19] *Cf.* M. Ostwald, "The Athenian Legislation against Tyranny and Subversion," *TAPA* 86 (1955) 103–28, esp. 111–14, on the oath "sworn by all Athenians" against tyranny (Andoc. 1.96–98), also attributed to Solon.

[20] On the interpretation of *Ath.Pol.* 8.4 see Ostwald (*supra* n.19) 111f; Hansen 17–19 and 56f; Rhodes 156 *ad loc.* and 54 n.267; Sealey (*supra* n.3 [1981]) 129–31; Carawan 116–24.

charges included conspiracy ἐπὶ καταλύσει τοῦ δήμου: (1) the proceedings concerning the profanation of the Mysteries; (2) the case against the Hermocopidae; (3) the trial of Antiphon; (4) the trial of Aristarchus (no. 63); and (5) the prosecution based on Agoratus' information. For the trial of Aristarchus, cited by Euryptolemus as precedent for his proposal to follow the law of Cannonus in the trial of the Arginusae generals (Xen. *Hell.* 1.7.28), it would appear that *prodosias* was the principal charge, and we have no indication that the council took up the preliminary investigation as in the other cases.

The trials in connection with the profanation of the Mysteries also involved the council in the preliminary investigation of charges to be handed down to the assembly to decree for trial (nos. 13–42). The council was made *autokrator*, and a board of special investigators was appointed. It is likely that the procedure in this case was dictated by suspicion of conspiracy. In the prosecution of the Hermocipidae (nos. 43–60) and in the original procedure adopted against those accused of conspiracy on Agoratus' information, it is clear that the council took up the case and rendered a preliminary verdict. Unfortunately, both cases proceeded under unusual circumstances: in the case of the Hermocopidae, as a result of the council's investigation, Diocleides' information was discredited and those under suspicion were released; in the case of Agoratus' *menusis*, after charges had been drawn up by the council and submitted to the assembly to decree for trial, the Thirty came to power and ordered the case to be tried in the council, without reference to the assembly or the court. Despite the irregularities, these cases clearly indicate that the council was ordinarily invoked for investigation of charges of conspiracy and subversion.[21]

The trial of Antiphon is the only case of the four that is listed in Hansen's brief catalogue of *eisangeliai* to the council (no. 137). The formal charges are given in our sources as *prodosias* in connection with the embassy to Sparta, but it is evident from the fragment of Antiphon's *apologia* that a principal issue was his complicity in the conspiracy that brought to power the Four Hundred, and he was accused of intrigue against the moderate government that succeeded them.[22] Again, the constitutional setting is unusual, but the council's

[21] For the investigation based on Agoratus' *menusis*, see Lys. 13.19–38; *cf.* Hansen 86 (no. 67). In the profanation of the mysteries and mutilation of the herms, suspicion of conspiracy to overthrow the democracy is indicated at Thuc. 6.27.3, 28.2, 53.3; Andoc. 1.36; Diod. 13.2. *Cf.* Hansen 79–82 (nos. 43–60); D. MacDowell, ed., *Andocides, De mysteriis* (Oxford 1962) 67–104, esp. 73f, 80–82, 87, 94, with reference to the rôle of council members.

[22] *Cf.* Harp. *s.v.* στασιώτης· κατηγόρηκεν ὡς στασιώτης ἢ καὶ ἐγὼ. . . . The papyrus (coll.1–3) also indicates suspicion of conspiracy: πῶς εἰκός ἐστιν ἐμὲ ὀλιγαρχίας

authority for preliminary investigation and decree for trial is consistent with the legal principles in other cases involving suspicion of conspiracy and in the bouleutic oath. Antiphon was brought to trial under the interim regime of the Five Thousand, and it is likely that the council of five hundred, who prepared the case for trial, was an elected council, not chosen by lot in the usual way. From the council's decree ([Plut.] *Mor.* 833E–F) the procedure can be reconstructed as follows: the generals brought charges against Antiphon and the other ambassadors for plotting against national security; the council ordered that the accused be held in custody and (apparently without reference to the Five Thousand) handed over to the court for trial. The generals themselves acted as prosecutors, along with *synegoroi* co-opted from among the members of the council; in addition to the indictment of the *strategoi*, it was provided that "any concerned citizen" (ὁ βουλόμενος) could bring further charges, according to the law of treason. Under the constitution of the Five Thousand, the council was empowered to decide issues ordinarily submitted to the assembly (*cf. Ath.Pol.* 30.4–31.2); thus the apparent procedural anomaly, that capital charges were decided ἄνευ τοῦ δήμου πληθύοντος, is irrelevant. The council's right of initiative in cases involving suspicion of conspiracy was founded on pre-Ephialtic precedent.

It is likely that the council and assembly assumed jurisdiction in trials for conspiracy (τυραννίδος) in the era of Cleisthenes' reforms. The decree against the followers of Isagoras is the only case ἐπὶ τυραννίδι known to us from this period, and by any reconstruction of these events it is highly unlikely (*pace* Hignett) that it was the Areopagus that opposed the coup: *cf. Ath.Pol.* 20.3, τὴν μὲν βουλὴν ἐπείρατο καταλύειν [*sc.* ὁ Κλεομένης],'Ισαγόραν δὲ καὶ τριακοσίους τῶν φίλων μετ' αὐτοῦ κυρίους καθιστάναι τῆς πόλεως. τῆς δὲ βουλῆς ἀντιστάσης καὶ συναθροισθέντος τοῦ πλήθους . . . ; Hdt. 5.72.4, (although Isagoras escaped) τοὺς δὲ ἄλλους Ἀθηναῖοι κατέδησαν τὴν ἐπὶ θανάτῳ. It is the prevailing view that Isagoras was opposed by the Solonian council of 400 in support of Cleisthenes' proposed reforms; Hignett insisted that the βουλή that opposed Isagoras was the Areopagus, but on this assumption he is forced to argue that the members of the Areopagus, including many former supporters of the Pisistratids, had joined the party of Cleisthenes against the Pisistratid loyalist Isagoras (φίλος ὢν τῶν τυράννων, *Ath.Pol.* 20.1). It is more likely that the aristocratic families who supported Isagoras were strongly represented in the Areopagite

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ἐπιθυμεῖν; These fragments are considered genuine, but Hansen 113f does not seem to accept the authenticity of this charge or its implications for the procedure.

council, whereas the Alcmeonidae, exiled under the tyranny (Hdt. 6.123), would not have had a strong voice in the Areopagus.[23] In both Herodotus and *Ath.Pol.* it is clear that there was a popular uprising against Isagoras, and the phrasing of *Ath.Pol.* 20.3 suggests that the revolt of the people was directed by the democratic council. Herodotus indicates that a decree against the followers of Isagoras was passed by the assembly, and a scholium on Ar. *Lys.* 273 suggests that the same decree passed sentence of banishment upon Isagoras and any of his followers who had escaped. Although we have no specific information concerning the initiating procedure, there is a close parallel to the trials of Hipparchus and Themistocles in the rôle of the council in asserting the people's right of initiative and in the decree for exile or execution. This decision may be regarded as our earliest instance of *eisangelia* to the assembly for treason and conspiracy against the democracy; indeed, it is likely that the emergency procedure in this instance set precedent for the later trials.[24]

(*d*) Eisangelia *to the council and* euthyna

> κρίνει δὲ τὰς ἀρχὰς ἡ βουλὴ τὰς πλείστας, καὶ μάλισθ' ὅσαι χρήματα διαχειρίζουσιν· οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἣν ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις· ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον ἐὰν αὐτῶν ἡ βουλὴ καταγνῷ (*Ath.Pol.* 45.2).

Of ten cases listed in Hansen's brief catalogue of *eisangeliai* to the council (leaving aside the trial of Antiphon), all involve charges of official misconduct that may be construed as μὴ χρῆσθαι τοῖς νόμοις (although in some instances our sources also refer to charges of *prodosia*). Rhodes acknowledges that "it was clearly not normal for charges μὴ χρῆσθαι τοῖς νόμοις to be considered by the *ekklesia*," but he argues that such major political offenses as embezzlement and corruption could be prosecuted by either procedure, initiated before either the council or the assembly and tried before the court or assembly according to the people's decree.[25] We have seen, however, that all

[23] *Cf.* P. Cloché, *REG* 37 (1924) 1–26. Hignett is nearly alone in arguing that the council that opposed Isagoras was the Areopagus, 94f, 128, 146–49 (against the view of G. de Sanctis, Ἀτθίς [Rome 1912] 353). See also M. Ostwald, *Nomos and the Beginnings of Athenian Democracy* (Oxford 1969) 143–45; Rhodes (*supra* n.4) 246.

[24] See Busolt/Swoboda 1007; Ostwald (*supra* n.19) 109 n.31. *Cf.* Σ *ad* Ar. *Lys.* 273: τῶν δὲ μετὰ Κλεομένους Ἐλευσῖνα κατασχόντων Ἀθηναῖοι τὰς οἰκίας κατέσκαψαν καὶ τὰς οὐσίας ἐδήμευσαν, αὐτῶν δὲ θάνατον ἐψηφίσαντο.

[25] Rhodes (*JHS* 99 [1979] 112) rightly observes that a number of cases initiated in the *boule* may be described as *prodosias* or official misconduct; but we should be wary of the orators' hyperbole. Rhodes objects, for instance, that Aristophon's prosecution

known trials before the full assembly involved charges of treason, although we know of many cases involving charges of corruption and official misconduct that were tried before the court. Rhodes is right to insist that the same offenses might be initiated before the people by *apocheirotonia* or before the council; but we should not disregard the important division of jurisdiction indicated in the catalogue of known cases and in the *Ath.Pol.*: along with their jurisdiction in the regular accountings, the council members had special competence to investigate and initiate proceedings against wrongdoing in public office. It is this area of their authority that is most likely to be an inheritance from the Areopagus.

Most of the cases in Hansen's list involve financial misconduct by such officials as the secretary to the *thesmothetai*, *poristai*, *praktores*, and trierarchs. In two cases (nos. 134 and 138) we have no indication whether the case came to trial before the council or the court. Cleophon (no. 139) was tried for dereliction of duty in 404 by a joint panel of the council and the court; and in the last known case, against Theophemus in 357/6 for withholding trierarchic equipment and obstruction of the expeditionary force, the trial was held before the council. In the case of the grain dealers (no. 141: Lys. 22) the council first passed judgment on its own authority before a council member proposed trial before the court.

There is also inscriptional evidence for the council's jurisdiction in cases involving abuse of office by public officials or citizens acting in an official capacity. In an amendment to the decree honoring the assassins of Phrynichus, the council is authorized to investigate charges of bribery in regard to the decree granting citizenship to Apollodorus, and to punish the offenders on its own authority or hand down an indictment to the court.[26] In all other cases that came to trial, the council handed down a preliminary verdict to the court without reference to the assembly. Thus the limited evidence on *eisangelia* to the council bears out Hansen's division of jurisdiction; given the rôle of council members in the regular accountings, the council's authority in cases involving official misconduct seems secure.

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of the trierarchs (no. 142) is an example of *eisangelia prodosias* for which the council assumed jurisdiction, but it is clear that the chief charges were official misconduct and corruption: the trierarchs were charged with "taking bids" on the trierarchy.

[26] *IG* I³ 102.41–46: *τὲν βολὲν βολεῦσ]αι ἐν τῆι πρότει hέδ[ραι ἐν τοῖ βουλευτερί]οι καὶ κολάζεν, τὸν [δ]ορο[δοκεσάντον καταφσ]εφιζομένεν καὶ ἐς δικασ[τέριον παραδιδόσα]ν καθότι ἂν δοκεῖ αὐτε[ι]· τ[ὸς δὲ βολευτὰς τὸς] παρόντας ἀποφαίνεν . . .* (*IG* I² 110; M/L 85). *Cf.* Lipsius 184; Hansen 115f (no. 138).

In the later fourth century the accountings of magistrates for their terms of office were ordinarily initiated before the *logistai* and the *euthynoi*, the latter chosen from among the *bouleutai*. If the charges were admissible, these officials referred the indictment to the *thesmothetai* or the Forty for trial before the court; but the examiners were competent to accept or reject the charges of plaintiffs, on the basis of their own preliminary investigations. The regular accountings are defined in *Ath.Pol.* 48.3–5 and 54.2, but we should be wary of the assumption that these formalized procedures were followed in the period before 361. Accountings underwent extensive revision in the period after 403, from which much of our evidence regarding actual cases derives.[27]

In regard to the nature of the charges, the penalties, and the procedures involving council members in preliminary investigations leading to trial before the court, *euthynai* were essentially analogous to *eisangeliai*; our sources sometimes refer to cases initiated in the regular accountings as 'impeachments', and to cases initiated by *eisangelia* as 'accountings'. Four speeches in the Lysianic corpus have to do with *euthynai*, but two of the four involve procedural anomalies: Eratosthenes was probably prosecuted under a special provision for accountings of the Thirty; the speech for Polystratus is described in Harpocration as δήμου καταλύσεως ἀπολογία; only speeches 27 (*Epicrates*) and 21 can be safely regarded as arguments in *euthynai*. The speeches of Demosthenes and Aeschines *On the Embassy* are generally regarded as involving a prosecution initiated in accountings, but it has never been satisfactorily explained how the case was delayed three years before coming to trial. Moreover, Demosthenes explicitly compares the case to the trial of the ambassadors in 392/1, which Hansen rightly regards as *eisangelia* to the assembly. Furthermore, it should be noted that several earlier cases, including the trials of Anytus (409) and Cimon (462/1), which our sources describe as *euthynai*, appear to be initiated in the assembly by *apocheirotonia*.[28]

The board of *logistai* probably was established as a committee of the council in the era after Ephialtes' reforms, but the office of the

[27] Piérart 558f, 571–73; *cf.* O. Schulthess, *RE* 13.1 (1926) 1012–19 *s.v.* λογίσται. *Logistai* for final audit are mentioned at *Ath.Pol.* 54.2, among other officials chosen by lot, apparently from among the entire citizen body; it is inherently unlikely, however, that these officers were originally chosen among all citizens. Auditors in each prytany (*Ath.Pol.* 48.3) were chosen by lot among *bouleutai*, which was probably the original method of selecting *logistai* for annual accountings.

[28] On procedure in *euthynai cf.* Lipsius 286–98, Harrison II 208. On initiating procedures in the cases against Cimon (no. 5) and Anytus (no. 65), and a comparison of procedures in *eisangelia* and *euthyna*, see Hansen 44–49.

euthynoi is likely to be more ancient.[29] It is reasonable to assume that in pre-Ephialtic procedure the duties of these examiners were performed by Areopagites. In the later tradition we are often told that the Areopagites controlled the *euthynai*, and it is likely that they ordinarily tried cases initiated by members of the Areopagus *ex officio* or by Areopagite examiners. The most useful reference is *Ath.Pol.* 4.4 (*ἐξῆν δὲ τῷ ἀδικουμένῳ πρὸς τὴν τῶν Ἀρεοπαγιτῶν βουλὴν εἰσαγγέλλειν ἀποφαίνοντι παρ' ὃν ἀδικεῖται νόμον*), which suggests that the plaintiff did not himself carry through the prosecution but made his complaint to the Areopagite *euthynos*, who then assumed responsibility to prosecute the case. We are also told that the people were given authority in the accountings of elected officials by Solon, but such passages probably refer to the right of citizens to bring charges before the *euthynoi* and to initiate prosecutions by *apocheirotonia* or an analogous procedure.[30]

There is also inscriptional evidence in the classical period (assembled in Piérart: 530ff) that the *euthynoi* were charged to enforce specific regulations, generally concerning religious institutions and matters of national security, and that the examiners themselves were held to account for failure to fine or prosecute other magistrates for violation of these statutes.[31] It is likely that the *euthynoi* held such enforcement authority under the Areopagite regime and that the rule requiring the *euthynoi* themselves be held to account was an archaic formula, as Wilamowitz argued, with little practical significance in the later period. The accountability of the *euthynoi*, however, strongly suggests that in the earlier period the examiners had abused their magisterial authority by acquitting other magistrates without reference to the court, and at some point a procedure was prescribed to remedy this abuse. From the fourth century we have no clear indication how the *euthynoi* were to be held to account for such abuses. The only case in which we know of specific allegations against an examiner is the prosecution of Timarchus, but this was not the principal

[29] *IG* I³ 244.B (*IG* I² 188), a decree of the deme Scambonidae, mentions the *euthynos*, apparently with tribal jurisdiction. Piérart (572) further asserts that use of *εὐθύνεσθαι* indicates the authority of the *euthynoi* as early as 485/4.

[30] Arist. *Pol.* 1274a15: *Σόλων γε ἔοικε τὴν ἀναγκαιοτάτην ἀποδιδόναι τῷ δήμῳ δύναμιν, τὸ τὰς ἄρχας αἱρεῖσθαι καὶ εὐθύνειν*; 1281b31: *ἐπί τε τὰς ἀρχαιρεσίας καὶ εὐθύνας*. *Cf.* Hignett 204; Rhodes (*supra* n.4) 155. On the plausibility of *Ath.Pol.* 4.4 *cf.* Sealey (*supra* n.3 [1981]) 128.

[31] Reconstructed in *IG* II² 127.18–20 (dated after 430) as: *ὁ δὲ εὔθυνος καὶ οἱ πάρεδροι καταγιγνωσκόντων αὐτῶν ἢ αὐτοὶ πραττέσθων ἐπάναγκες*. *IG* I³ 133 follows Raubitschek in omitting the phrase *ἢ αὐτοὶ πραττέσθων κτλ*. *Cf.*, however, *IG* II² 1629. 238–42: *καὶ ὁ εὔθυνος καὶ οἱ πάρεδροι ἐπάναγκες αὐτῶν καταγιγνωσκόντων ἢ αὐτοὶ ὀφειλόντων*; Wilamowitz (*supra* n.4) II 237.

grounds of charges against him.[32] We may speculate that in the later period such charges could be initiated in the internal accountings of council members or by *eisangelia*, but it is reasonable to assume that before Ephialtes' reforms the Areopagites themselves controlled such proceedings.

It is likely that the Areopagus controlled the accountings of its own members for unelected official duties. This principle of self-regulation is evident in the accountings of the *bouleutai* in classical procedure and in the fourth-century procedure for investigating charges against members of the Areopagus, *i.e.*, *apophasis* 'on initiative' (*αὐτὴ προελομένη*). For some time after the reform of 487, Areopagites continued to play a prominent rôle in public affairs as judges and examiners and in other administrative capacities. In these duties members of the Areopagus were ordinarily accountable only to the Areopagites themselves, and this in-house procedure served as a guarantee of autonomy.[33]

Despite the uncertainties, it is generally assumed that the substance of Ephialtes' reform had to do with the transfer of *euthynai* from the Areopagus to the council, the assembly, and the court. It is difficult, however, to assume that this transfer of jurisdiction would not have also involved *eisangelia* for official misconduct. It should be noted that we have no clear reference to a single case arising from regular annual accountings in the period before 461, and it is possible that in this period *euthynai* and *eisangeliai* for official misconduct were synonymous: the people held authority to initiate charges against elected officials during their term of office by *apocheirotonia* and *probole*, and at the end of their term before the *euthynoi*. Rhodes has argued that both procedures came to trial before the Areopagus, and we have no evidence (*pace* Hansen) to indicate that *dikasteria* were involved in political trials before 461.[34]

[32] Aeschin. 1.106: *λογιστὴς γενόμενος πλεῖστα μὲν τὴν πόλιν ἔβλαψε δῶρα λαμβάνων παρὰ τῶν οὐ δικαίως ἀρξάντων, μάλιστα δ' ἐσυκοφάντησε τῶν ὑπευθύνων τοὺς μηδὲν ἠδικηκότας*. *Cf.* Lipsius 107f.

[33] On the internal accountings of Areopagites see Carawan 117f; for discussion of the trial of Themistocles at *Ath.Pol.* 25.3f, hyp. Isoc. 7, and Plut. *Arist.* 4.3 see *infra* 197ff with nn.44–50. In fourth-century tradition, cases of official misconduct came within the special jurisdiction of the Areopagus; *cf. Ath.Pol.* 3.6, 4.4 (*διετήρει τὰς ἀρχάς*), 8.4 (*τὰ μέγιστα τῶν πολιτ<ικ>ῶν διετήρει*). Isocrates' claim that this supervisory authority extended to broad censorial powers (7.39f) should not be taken too seriously.

[34] Hansen has argued (*GRBS* 19 [1978] 140–46) that Solon introduced a plurality of jury courts; and in *Eisangelia*, in discussing the trials of Miltiades (no. 2) and Cimon (no. 5), he assumes that the courts already held political jurisdiction; *cf.* Rhodes, *JHS* 99 (1979) 103f. The notion of regular *dokimasiai* upon advancement to the

In regard to *euthynai*, then, the following specific reforms are indicated: (1) first, with regard to the trial itself, the hearing-in-chief and final verdict were transferred from the Areopagus to the court of the people; (2) regarding the examiners, the rule was established that the *euthynoi* themselves be held to account for failure to prosecute violations of specific statutes; (3) the *logistai* were established as a special committee of the council to review financial accounts; and, perhaps last of all, (4) the office of the *euthynoi* was transferred from the Areopagites to the council. We have little evidence by which to reconstruct the sequence of events, but it is more likely that the trial was transferred to the people (1) before the reforms with regard to the accounting officers (2–4). The first reform is likely to be the work of Ephialtes, and one or more of the later reforms were probably brought about by Pericles (*τῶν Ἀρεοπαγιτῶν ἔνια παρείλετο*, *Ath.Pol.* 27.1). The evidence to be considered concerning the trials of Themistocles and Cimon will shed some light on this problem. First, however, it will be useful to summarize our findings regarding classical procedure.

(*e*) *Summary*

The fundamental division of jurisdiction evident in classical procedure, whereby the assembly directly controlled treason trials and the council prosecuted official misconduct, seems to derive from a pre-Ephialtic arrangement between the *demos* and the Areopagus. From later procedural developments and the limited evidence we have concerning jurisdiction under the Solonian and Cleisthenic *politeiai*, we can make the following assumptions regarding pre-Ephialtic procedure.

(1) The decree against Isagoras, the decree of Cannonus, and some sections of the bouleutic oath suggest that at the end of the Cleisthenic era, trials for treason and conspiracy were controlled by the *demos*, with right of initiative and final verdict. In cases of conspiracy *ἐπὶ καταλύσει τοῦ δήμου* (or *τυραννίδος*), the council held preliminary investigation and handed down to the assembly their findings for debate and decree for sentence. Solon's law at *Ath.Pol.* 8.4, affirming Areopagite jurisdiction in impeachments for subversion, may have been abrogated by the opponents of Isagoras; but it is also possible

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Areopagus is much disputed, but it is not unlikely that the regular annual accountings arose from the frequent, if not regular, challenges to the qualifications of incoming members as 'confirmation hearings' of the Areopagites; *cf.* Hignett 208.

that Solon's law only guaranteed to the Areopagus the right to initiate proceedings and render a preliminary judgment, subject to the verdict of the people in capital cases.
(2) Cases of deception and corruption involving public officials and citizens acting in official capacity could also be initiated in the *ekklesia* by procedures analogous to later *apocheirotonia* and *probole*, although such charges against magistrates were ordinarily prosecuted in the Areopagite accountings. Isocrates supposed that *probolai* were introduced under the Solonian constitution, and the tradition that Solon gave the people the power to hold elected officials to account (Arist. *Pol.* 2.12.5, 3.11.8) can best be understood as a reference to these initiating procedures. For such charges it appears to be the rule that the assembly decreed for trial to be held before a second judicial body—in the later period the court, in the earlier period the Areopagus. In the era of Areopagite jurisdiction, as in later *probolai*, it is also likely that the people, in their preliminary verdict, proposed the penalty to be assessed if their conviction were upheld.
(3) Charges of official misconduct by *eisangelia* and *euthyna* were ordinarily tried by the Areopagus. Abuse of this authority led to a series of reforms: the hearing-in-chief and final verdict were transferred to the courts; the initiating procedures were transferred to the council.

From these observations, the pre-Ephialtic constitution appears to have been based upon a complex balance of powers. Both the aristocratic council and the popular assembly had available procedures to initiate legal action against urgent dangers to the state as well as lesser political offenses; but each body had full jurisdiction in only one of the two areas. The assembly, with its probouleutic council, had the authority to initiate proceedings for treason or subversion and carry those proceedings through to final verdict without reference to the Areopagus. The council of the ruling class, however, continued to control public office through the accountings; the fines and other penalties they imposed could not be reversed by appeal to the people; and if the Areopagites acquitted one of their number out of prejudice, the *demos* had little recourse until the reforms of the mid-fifth century. The surviving testimonia to the major trials of the pre-Ephialtic era yield many procedural details that have been disputed or disregarded by scholars who assume the sovereignty of one body or the other, the people or the Areopagus, in both areas of jurisdiction. Much of this evidence can now be taken into account and these procedures more fully described.

II

(*a*) *The trials of Miltiades and Phrynichus*

In the first decade of the fifth century our sources suggest that the people had already assumed authority in political trials: three cases in the years 493–489, the two trials of Miltiades and the judgment against Phrynichus, are described by Herodotus as tried before the *demos* or *dikasterion* or sentenced by *Athenaioi*. Hansen includes both trials of Miltiades in his catalogue of *eisangelia* to the assembly; and even Rhodes concedes that Phrynichus was fined by decree of the people.[35] The evidence is slim, and we should be wary of inferring too much from so little; but the meaning of the testimony in Herodotus—in particular the value of such terms as *dikasterion*—can be more clearly defined.

For the first trial of Miltiades we have only a note by Marcellinus to corroborate the word of Herodotus, and neither author is noted for precision in constitutional issues:

> Hdt. 6.104.2: . . . δοκέοντά τε εἶναι ἐν σωτηρίῃ ἤδη τὸ ἐνθεῦτέν μιν οἱ ἐχθροὶ ὑποδεξάμενοι καὶ ὑπὸ δικαστήριον ἀγαγόντες ἐδίωξαν τυραννίδος τῆς ἐν Χερσονήσῳ. ἀποφυγὼν δὲ καὶ τούτους στρατηγὸς οὕτως Ἀθηναίων ἀπεδέχθη, αἱρεθεὶς ὑπὸ τοῦ δήμου.
> Marcellinus *Vita Thuc.* 13: οὐκ ἀπέδρα δὲ καὶ τὴν τῶν <ἐχθρῶν> συκοφαντίαν· ἐγκλήματα γὰρ αὐτῷ <ἐπέφερον> διεξιόντες τὴν τυραννίδα. ἀποφεύγει δὲ <καὶ τούτους καὶ> στρατηγὸς τοῦ πρὸς τοὺς βαρβάρους πολέμου γίγνεται.

In Herodotus the charge is described as τυραννίδος τῆς ἐν Χερσονήσῳ, but it is not clear on what grounds the hereditary tyranny could have been an indictable offense. Marcellinus says simply that the prosecutors discussed the tyranny in detail in their arguments; and although his note seems to be taken directly from Herodotus, it is possible that his version was influenced by other accounts. His comment, ἐγκλήματα ἐπέφερον διεξιόντες τὴν τυραννίδα, suggests that the tyranny itself was not the charge but that Miltiades was held to account for his

[35] Hansen (nos. 1–2) 19, 69, who does not include the trial of Phrynichus "because we have no evidence about the procedure or the court hearing the case" (*JHS* 100 [1980] 91). Rhodes supposes "cases heard by τὸ δικαστήριον or ὁ δῆμος may have been cases which had gone on appeal from one of the archons to the *heliaea*. This could have happened in the cases of Phrynichus and Miltiades" (*JHS* 99 [1979] 105). This explanation assumes that these trials could have been initiated by *graphai doron* or *klopes*, but such procedures seem to be originally directed against wrongs to individuals, and there is very little evidence that they became important procedures in prosecutions for the state; *cf.* Harrison II 15f; E. Ruschenbusch, *Untersuchungen zur Geschichte des athenischen Strafrechts* (=*GrazAbh* 4 [1968]) 52f.

involvement in Athenian affairs during his tenure as *hegemon* in the Chersonese. It may have been alleged that he acted in the interests of the Pisistratids when he took power in the Chersonese with their encouragement (Hdt. 6.39.1), or that he acted against Athenian interests during Darius' Scythian campaign (6.41.3; *cf.* 4.139). It should be noted that the charge is not given as *prodosias*, and the usual meaning of *tyrannidos*, 'conspiracy to overthrow the democracy', is nowhere indicated. These would be the most likely allegations if the procedure was in fact *eisangelia* to the assembly as Hansen suggests.

As for the question of jurisdiction, Herodotus tells us that Miltiades was arrested and prosecuted 'in court', ὑπὸ δικαστήριον; but Herodotus should not be expected to distinguish between the courts of the people and the ancestral court of the Areopagus. In fact, he uses the same term of the Spartan *gerousia* in his account of the trial of Leotychidas (6.72.2: ὑπὸ δικαστήριον ὑπαχθείς).[36] By contrast, in his account of the second trial of Miltiades (*infra*), Herodotus reports that he was prosecuted before the people, ὑπὸ τὸν δῆμον. Moreover, in regard to the first trial, it is unlikely that the charges would have been accepted by the assembly, since strong popular support is indicated in his election to the generalship for the following year. On balance there is no reason to suppose that Miltiades was indicted before the assembly or tried before a court of the people in 493/2.

The traditional interpretation, that Miltiades was charged and tried before the Areopagus, is consistent with the testimony in Herodotus and is supported by procedural considerations. Herodotus' phrase ὑπὸ δικαστήριον ἀγαγόντες ἐδίωξαν suggests that Miltiades was arrested and arraigned before the same court in which he was tried, and such a summary procedure in the courts of the people would be unparalleled. Miltiades was himself an Areopagite, and it is reasonable to assume that upon his return to public life at Athens his political adversaries immediately brought charges in *euthynai* in the Areopagus. These procedures, it has been argued, were then entirely controlled by the Areopagites, without reference to the people.[37]

For the second trial of Miltiades (489) Herodotus is again our chief

[36] The term δικαστήριον is used four times in Herodotus, and none of the other three passages refers to an Athenian court. Two instances refer to the trial of Leotychidas (6.72.2, 6.85.1), which must have been prosecuted by the ephors before the *gerousia*; *cf.* Busolt/Swoboda 681, esp. n.6, "Zu einer solchen Verteilung war nur die Gerusia befugt."

[37] See the discussion of *euthyna supra*, with nn.27–32; *cf.* Carawan 117f. It is now generally assumed that the younger Miltiades was archon for the year 524/3; *cf.* T. J. Cadoux, *JHS* 68 (1948) 110 and n.217, followed by K. Kinzl, *Miltiades-Forschungen* (diss.Vienna 1968) 13–15 and, with reference to the opposing arguments, n.21.

source (6.136.1–3), but here the charges and the procedure are described in greater detail, and the difference in terminology is instructive. Upon his own proposal Miltiades had been given a special command against Paros, but had failed in his mission, and was prosecuted for 'deception': Ξάνθιππος ὁ Ἀρίφρονος, ὃς θανάτου ὑπαγαγὼν ὑπὸ τὸν δῆμον Μιλτιάδεα ἐδίωκε τῆς Ἀθηναίων ἀπάτης εἵνεκεν. . . . προσγενομένου δὲ τοῦ δήμου αὐτῷ κατὰ τὴν ἀπόλυσιν τοῦ θανάτου, ζημιώσαντος δὲ κατὰ τὴν ἀδικίην πεντήκοντα ταλάντοισι. Here the procedure is initiated ὑπὸ τὸν δῆμον, and it appears that the penalty was assessed by vote of the assembly. The nature of the charges is defined as τῆς Ἀθηναίων ἀπάτης, which in later procedure corresponds to the grounds for *eisangelia* against deception and *probole*, ἐάν τις ὑποσχόμενός τι τὸν δῆμον . . . ἐξαπατήσῃ (Dem. 20.100). As we have seen, *probole* is said to have been introduced by Solon as a means of initiating prosecution against deceptive practices in the *ekklesia*; and Lipsius suggested that this was the procedure followed in the second case against Miltiades.[38] In classical procedure *probole* led to a hearing before the assembly, and a preliminary verdict was passed, the penalty was assessed, and the indictment was handed down to the court for final judgment. Given the division of authority between the assembly and the court in classical procedure, it is unlikely that in the pre-Ephialtic period the assembly conducted the full proceedings, from preliminary hearing to final verdict. It is more likely that the people, having debated the penalty as well as the question of guilt or innocence, handed down their indictment to a second judicial body; without further evidence that the courts of the people held jurisdiction in political trials, it is more reasonable to assume that the Areopagus gave this case its final hearing.[39]

In the case against the dramatist Phrynichus (492) a similar procedure is indicated by the nature of the charges. Herodotus (6.21.2) tells us that Phrynichus was fined for reminding the Athenians of their own loss at the fall of Miletus: ποιήσαντι Φρυνίχῳ δρᾶμα Μιλήτου

[38] See the discussion of *probole supra*, with n.18. Lipsius, however, with most other commentators assumes that the debate on the penalty ὑπὸ τὸν δῆμον proves that the final verdict was determined in the assembly or *heliaia*.

[39] The assessment of the penalty at 50T is confirmed by Plut. *Cim.* 4 and Nep. *Milt.* 7 (an account independent of Herodotus and possibly derived from Ephorus: *cf. FGrHist* 70F64). The note in Pl. *Grg.* 516E, that only the vote of the *prytanis* saved Miltiades from execution, undoubtedly refers to these proceedings. It may have been on the initiative of the *prytanis* that the charges were introduced as a *probole* for deception rather than *eisangelia prodosias*, for which the penalty would surely have been death.

ἅλωσιν καὶ διδάξαντι ἐς δάκρυά τε ἔπεσε τὸ θέητρον καὶ ἐζημίωσάν μιν ὡς ἀναμνήσαντα οἰκήια κακὰ χιλίῃσι δραχμῇσι, καὶ ἐπέταξαν μηκέτι μηδένα χρᾶσθαι τούτῳ τῷ δράματι. In later procedure among the offenses actionable by *probole* were included violations in regard to the Dionysia (*cf.* Dem. 21.11.16f, 76f). How exactly the charges are to be construed is another difficult question. Herodotus cites the case against Phrynichus as evidence of the close ties and sense of loss felt by the Athenians for the Milesians, but it is unlikely that the sole grounds of the prosecution was the feeling that Phrynichus' tragedy was too disturbing a spectacle; he may have been technically in violation of the conventions of the Dionysia by introducing contemporary issues, directly concerning Athenian national interests (οἰκήια), twenty years before Aeschylus' *Persae*; it is likely that his theme was viewed as provocative and politically motivated. It was probably argued that Phrynichus and his *choregos*, Themistocles, were inciting the people to war, and that his demagogic drama was a deception of the people.

The date of the case against Phrynichus has been questioned: traditionally, from the sequence of events in Herodotus' testimony, it has been assumed that Phrynichus was fined in connection with a production entitled Μιλήτου ἅλωσις in the spring of 492. Recently Lenardon has suggested that the prosecution took place in 476 in connection with a production of the *Phoenician Women*, and it was then that Themistocles was *choregus*.[40] But it is not likely that the trilogy of that year involved an explicit treatment of the fall of Miletus, nor that the recollection of that disaster would have so moved the Athenians to bitterness as Herodotus suggests, in an era when the Athenians were proud of their vengeance. Thus we have no reason to question the sequence of events in Herodotus. Themistocles was the target of this attack in the year of his archonship (493/2), after the first trial of Miltiades. Both prosecutions were directed against emerging popular leaders, and both trials were probably conducted before the Areopagus.

(*b*) *The trials of Hipparchus and Themistocles*

The trial of Hipparchus for treason soon after 480 is one of only two *eisangeliai prodosias* that can be dated to the period before 461. Lycurgus 1.117f gives the only direct reference to the procedure: Ἵππαρχον γὰρ τὸν Χάρμου, οὐχ ὑπομείναντα τὴν περὶ τῆς προδοσίας ἐν τῷ

[40] See R. J. Lenardon, *The Saga of Themistocles* (London 1978) 38, 105f; *cf.* E. Badian, "Archons and *Strategoi*," *Antichthon* 5 (1971) 15f n.44.

δήμῳ κρίσιν, ἀλλ' ἔρημον τὸν ἀγῶνα ἐάσαντα, θανάτῳ τοῦτον ζημιώσαντες, κτλ. *Ath.Pol.* 22.3f reports that Hipparchus, the son of Charmus, kinsman of the Pisistratids, was the first to be ostracized (in 488/7), and it is often assumed that the chief complaint against Hipparchus was simply that he refused to return to Athens when the exiles were recalled during the crisis of 481/0. From the phrase οὐχ ὑπομείναντα τὴν κρίσιν, however, Hansen assumes that he had returned to Athens by the amnesty of 481 but went into exile to evade prosecution (and that is clearly the most obvious meaning of the phrase); thus the trial should be dated no earlier than 480. We have no specific information concerning the evidence or the charges, but it is reasonable to assume that he was accused of medism.[41]

The case against Themistocles in 467/6 affords many points of comparison with that against Hipparchus. In both, the charges are given as treason (*prodosia* or medism); both cases were introduced and debated before the assembly; and in each case the defendant was convicted *in absentia.* Hansen has argued convincingly that the Areopagus had no official jurisdiction in these proceedings. A summary procedure in the *ekklesia* is indicated by the nature of the charges, alleging an urgent danger to the state, and by the absence of the accused, who forfeited the case (ἔρημον τὸν ἀγῶνα).

For the treason trial of Themistocles we have many references from which to reconstruct the initiating and sentencing procedures: from synchronism with the siege of Naxos (Thuc. 1.137.2) and the death of Pausanias (1.135.1) the trial has been dated to 467/6. It is clear from Thucydides' account that he was tried *in absentia* after his ostracism; Spartan emissaries revealed, presumably in the *ekklesia*, that Themistocles was incriminated in the correspondence of Pausanias, and deputies were sent to arrest him "wherever he could be found." He was sentenced to death, punished with hereditary *atimia*, and denied burial in Attica. The decree for his arrest and execution was included in the *synagoge psephismaton* of Craterus; we may therefore presume that the procedure was *eisangelia* to the assembly.[42] The extreme measures specified in the decree show that the charges were regarded as a

[41] Lycurgus refers to a stele recording the decree against Hipparchus and other *prodotai.* For the traditional interpretation, that Hipparchus was suspected for refusing to return under amnesty, see G. Busolt, *Griechische Geschichte* II² (Gotha 1895) 661 n. There was some confusion about the identity of this Hipparchus (*PA* 7600; *cf.* Davies, *APF* 451). The MSS. of Lycurgus give the father's name as 'Timarchus' (emended from Harp. *s.v.* Χάρμος).

[42] *Lex.Cant. s.v.* εἰσαγγελία (=*FGrHist* 342F11): ἢ ἐάν τις εἰς τοὺς πολεμίους ἀφικνῆται . . . συνομολογεῖ δὲ τοῖς ὑπὸ Θεοφράστου ἡ κατὰ Θεμιστοκλέους εἰσαγγελία, ἣν εἰσήγγελεν, ὡς Κρατερός, Λεωβώτης Ἀλκμέωνος.

matter of the greatest urgency, and we may reasonably conclude that the issue was decided on the evidence of the Spartan envoys, without a defense by Themistocles' supporters. We are told that he later wrote to the Athenians in his own defense, arguing that, as he had been earlier charged with rebellion, it was not likely he would willingly submit to the Great King (Plut. *Them.* 23.3f).

It has been argued that the Areopagites took a rôle in these proceedings, and that their responsibility for the verdict against Themistocles was one of the causes of resentment that led to their overthrow.[43] Hansen, however, has shown (to my mind convincingly) that the treason trial was controlled by the *ekklesia*: the decree for arrest and execution, without an adequate hearing for the defense, and the extreme penalties specified in the decree show that a summary judgment was given by the assembly on the evidence of the Spartan envoys *prima facie*, without referring the case to a second judicial body (the Areopagus or the court). Leobotes, the prosecutor named in the decree, cannot be identified as a member of the Areopagus (*PA* 9071). It is not unlikely, however, that prominent Areopagites supported the charges of the Spartan envoys. Thus, although Hansen's view of procedure in *eisangelia prodosias* is cogent, we cannot dismiss Rhodes' suggestion that the dominance of the Areopagites in the notorious political trials of the 460's brought about the reforms of Ephialtes and Pericles.

There are three references to an earlier trial of Themistocles that have been discounted: (1) *Ath.Pol.* 25.3f; (2) Diod. 11.54f; and (3) the hypothesis to Isocrates' *Areopagiticus*.[44] The episode in *Ath.Pol.* 25, which is usually thought to connect the treason trial of Themistocles with the reform of 462/1, has thus been rejected on grounds of chronology and legality. Diodorus' brief reference to an earlier trial of Themistocles, in which he was acquitted, has been disregarded as a doublet for the later treason trial, in which he was convicted. The hypothesis to the *Areopagiticus* has also been rejected as a confused paraphrase of the Aristotelian account:

[43] Rhodes (199–203; *cf. JHS* 99 [1979] 104f) assumes that Solon's law in *Ath.Pol.* 8.4 has some basis in fact, and that Themistocles was prosecuted by *eisangelia* to the Areopagus.

[44] The "fable" in *Ath.Pol.* 25.3f was "firmly disposed of" by Wilamowitz (*supra* n.4) 140–42; for further references *cf.* G. Sandys, ed., *Aristotle's Constitution of Athens*[2] (London 1912) 107f; Rhodes 319f. Against P. Ure's suggestion (*JHS* 41 [1921] 165–78) that Themistocles returned from exile in the late 460's (relying on Cic. *Fam.* 5.17.5) see A. J. Podlecki, *The Life of Themistocles* (Montreal 1975) 117 n.75. For the first trial in Diodorus see Lenardon (*supra* n.40) 113–19; for hyp. Isoc. 7 see n.47 *infra*. Reference to an earlier prosecution for embezzlement appears at Plut. *Arist.* 4.3 (see nn. 49f *infra*), and Cimon is mentioned among his accusers at 25.7.

> βουλόμενος δὲ καταλυθῆναι τὴν βουλὴν ὁ Θεμιστοκλῆς πρὸς μὲν τὸν Ἐφιάλτην ἔλεγεν ὅτι συναρπάζειν αὐτὸν ἡ βουλὴ μέλλει, πρὸς δὲ τοὺς Ἀρεοπαγίτας ὅτι δείξει τινὰς συνισταμένους ἐπὶ καταλύσει τῆς πολιτείας. . . . καὶ μετὰ ταῦτα συναθροισθείσης τῆς βουλῆς τῶν πεντακοσίων κατηγόρουν τῶν Ἀρεοπαγιτῶν ὅ τ' Ἐφιάλτης καὶ <ὁ> Θεμιστοκλῆς, καὶ πάλιν ἐν τῷ δήμῳ τὸν αὐτὸν τρόπον, ἕως περιείλοντο αὐτῶν τὴν δύναμιν.

It has been convincingly argued that this episode is a late addendum to the text, probably derived from a source different from that of the earlier material in 25.1f.[45] Therefore the chronological objection to connecting this episode with the treason trial of Themistocles and the reform of 462/1 should be reconsidered.

From the procedural details in the episode itself, it is evident that the scenario belongs to the first phase of Ephialtes' campaign, before Themistocles' ostracism, when he prosecuted individual Areopagites for official misconduct (25.2: καὶ πρῶτον μὲν ἀνεῖλεν πολλοὺς τῶν Ἀρεοπαγιτῶν, ἀγῶνας ἐπιφέρων περὶ τῶν διωκημένων). Although this episode follows the note ἔμελλε δὲ κρίνεσθαι μηδισμοῦ, nothing in the episode indicates that these were the charges against Themistocles; on the contrary, the stratagem seems designed to secure appeal to the people from a procedure that would have been controlled ordinarily by Themistocles' opponents in the Areopagus. As we have seen, in the earlier trial of Hipparchus and in the later trial of Themistocles himself, final verdict in *eisangelia prodosias* was determined by decree in the *ekklesia*. The note that Themistocles himself was a member of the Areopagus (25.3) suggests that he faced charges of official misconduct in the Areopagite accountings, and the hypothesis to Isoc. 7 tends to confirm that assumption. We have no indication that the people had gained the right to intervene or hear appeals in the Areopagite accountings before Ephialtes' reform, and thus it is unlikely that Ephialtes could have successfully prosecuted the Areopagites without the support of a member, such as Themistocles, or without some precedent such as this scenario suggests. The rôle of the council and assembly in the investigation of conspiracy ἐπὶ καταλύσει τῆς πολιτείας is a convincing detail. We have seen that the council took the initiative in opposing Isagoras, and the assembly passed a decree against the conspirators; in later procedure the council and assembly had the same responsibilities. Thus it is a reasonable conclusion that Themistocles faced charges in the Areopagite accountings, before his ostracism, and, perhaps with the collusion of Ephialtes, secured for himself

[45] J. H. Schreiner, *SymbOslo* Suppl. 21 (1968) 63–71, attributes 25.1f to Cleidemus, the episode in 3f to Androtion; see further Carawan 121–23.

a more favorable hearing before the people by invoking the procedure against conspiracy.

If the account in Diodorus[46] in fact alludes to this episode, it allows us to date the first trial to the year of Themistocles' ostracism, 471/0. Several details in Diodorus' account tend to disprove the assumption that his reference to the first trial of Themistocles is a doublet for the later treason trial. The statement that the Spartans engineered the first prosecution (for complicity in the plot of Pausanias) may well be Diodorus' own assumption or that of his source, Ephorus. The note that Themistocles was acquitted in the first trial, again, may simply be his own inference; but the reference to the earlier trial in connection with the later proceedings before the Hellenic Congress (55.7f) clearly indicates that Diodorus had before him an account in which Themistocles was prosecuted in two separate trials, one before the ostracism and one afterward. Although Diodorus does not mention the second trial at Athens (and it may be argued, therefore, that the first trial is simply a mistaken deduction from references to the second), it is unlikely that he would have dated the trial before Themistocles' ostracism without explicit testimony in his source. Plutarch, in a similar note, relates that Themistocles wrote to the Athenians in his own defense, making reference to the earlier charges (*Them.* 23.3f). Thus it is more likely that Diodorus or Ephorus was using a version of these events similar to that in *Ath.Pol.* 25.3f and made the same assumption that modern commentators have made, that the scenario has something to do with the charges of medism.

The hypothesis to Isocrates' *Areopagiticus*, however,[47] clearly indicates that the proceedings began in financial accountings in the Areopagus and that a result of these proceedings was that the Areopagus relinquished some measure of their sovereignty. This may mean only that convictions in the Areopagite accountings were thereafter subject to appeal or review by the assembly, and that is a likely enough inno-

[46] Diod. 11.54.4f: διελέγοντο [*sc.* Λακεδαιμόνιοι] δὲ καὶ τοῖς ἐχθροῖς τοῦ Θεμιστοκλέους, παροξύνοντες αὐτοὺς πρὸς τὴν κατηγορίαν . . . οὐ μὴν ἀλλὰ κατηγορηθεὶς ὁ Θεμιστοκλῆς τότε μὲν ἀπέφυγε τὴν τῆς προδοσίας κρίσιν. . . . μετὰ δὲ ταῦτα οἱ μὲν φοβηθέντες αὐτοῦ τὴν ὑπεροχήν, οἱ δὲ φθονήσαντες τῇ δόξῃ, τῶν μὲν εὐεργεσίων ἐπελάθοντο, τὴν δ' ἴσχυν αὐτοῦ καὶ τὸ φρόνημα ταπεινοῦν ἔσπευδον; *cf.* 55.1: πρῶτον μὲν οὖν αὐτὸν ἐκ τῆς πόλεως μετέστησαν, τοῦτον τὸν ὀνομαζόμενον ὀστρακισμὸν ἐπαγαγόντες αὐτῷ. . . . ; 55.4: οἱ δὲ Λακεδαιμόνιοι . . . πάλιν εἰς τὰς Ἀθήνας ἐξαπέστειλαν πρέσβεις κατηγοροῦντες τοῦ Θεμιστοκλέους ὅτι τῷ Παυσανίᾳ κεκοινώνηκε τῆς προδοσίας.

[47] Ἐφιάλτης τις καὶ Θεμιστοκλῆς χρεωστοῦντες τῇ πόλει χρήματα καὶ εἰδότες ὅτι, ἐὰν δικάσωσιν οἱ Ἀρεοπαγῖται, πάντως ἀποδώσουσι, καταλῦσαι αὐτοὺς ἔπεισαν τὴν πόλιν, οὕτως οὔπως τινὸς μέλλοντος κριθῆναι (ὁ Ἀριστοτέλης λέγει ἐν τῇ πολιτείᾳ τῶν Ἀθηναίων ὅτι καὶ ὁ Θεμιστοκλῆς αἴτιος ἦν μὴ πάντα δικάζειν τοὺς Ἀρεοπαγίτας) δῆθεν μέν, ὡς δι' αὐτοὺς τοῦτο ποιοῦντες, τὸ δ' ἀληθὲς διὰ τοῦτο πάντα κατασκευάζοντες.

vation in the first phase of Ephialtes' campaign. The assumption that the hypothesis is a confused paraphrase of *Ath.Pol.* 25, with Pericles mistaken for Themistocles, was first put forward by Valentin Rose before the publication of the London papyrus. Without that document to compare, it was a reasonable assumption, and most commentators have since adopted it despite the discrepancies that show that the hypothesis does not derive directly from the *Ath.Pol.*[48] The note that Themistocles and Ephialtes faced prosecution in financial accountings is not likely to be the inference of a sixth-century scholiast who seems to be otherwise unfamilar with the reforms of Ephialtes reported in the *Ath.Pol.*.

These three references, then, bear witness that Themistocles was acquitted by vote of the people in a trial during the year before his ostracism. The account in *Ath.Pol.* 25 suggests that he was prosecuted in the Areopagite accountings, and the hypothesis to Isoc. 7 reveals that financial misconduct was the charge. As we shall see, a further reference to the charges against him in Plut. *Arist.* 4.3 tends to support this reconstruction. Ordinarily, on such charges punishable by fine, Themistocles could not appeal to the court of the people. Ephialtes was in some way implicated, and the Areopagites determined to initiate conspiracy proceedings, which brought the case before the council and the assembly. The Areopagites were discredited, and, on the pattern of the *ad hoc* procedure in this case, their accountings were made subject to appeal.

Despite this innovation, however, there is no reason to assume that the Areopagites would have lost the power to acquit on their own authority those charged with corruption and official misconduct. It has been argued that just such a partisan verdict for acquittal in the 'accountings' of Cimon helped to provoke the reform of 462/1.

(*b*) *The 'accountings' of Aristides and Cimon*

Two cases from the decade before Ephialtes' reforms—the trials of Aristides and Cimon—are described in our sources as 'accountings' but were probably initiated by *eisangelia* or *probole*. The account of embezzlement charges against Aristides ἐν ταῖς εὐθύναις at Plut. *Arist.* 4.3 is suspect because of the sensationalism of Idomeneus, Plutarch's source; it is generally ignored in discussions of *eisangelia*. The infor-

[48] V. Rose, *Aristoteles Pseudepigraphus* (Leipzig 1863) 423, regarded the hypothesis as the work of a Christian writer of the sixth century who mistook Pericles for Themistocles. As for the discrepancies, see further in Carawan 123; Schreiner (*supra* n.45) suggested that the two accounts, *Ath.Pol.* 25.3 and the hypothesis, derive from the same source.

mation in another account (attributed to Craterus: *Arist.* 26.1f= *FGrHist* 342F12), indicating that Aristides was convicted of corruption, fined fifty minas, and died in exile, is rightly rejected by Plutarch himself, and may well be a doublet for the 'accountings' described at 4.3.[49]

In Idomeneus' account (F7) there are numerous significant procedural notes, including the claim that a majority verdict of the people was reversed by οἱ πρῶτοι καὶ βέλτιστοι:

> τῶν δὲ δημοσίων προσόδων αἱρεθεὶς ἐπιμελητὴς οὐ μόνον τοὺς καθ' αὑτόν, ἀλλὰ καὶ τοὺς πρὸ αὐτοῦ γενομένους ἄρχοντας ἀπεδείκνυε πολλὰ νενοσφισμένους, καὶ μάλιστα τὸν Θεμιστοκλέα. . . . διὸ καὶ συναγαγὼν πολλοὺς ἐπὶ τὸν Ἀριστείδην ἐν ταῖς εὐθύναις διώκων κλοπῆς καταδίκῃ περιέβαλεν, ὥς φησιν Ἰδομενεύς. ἀγανακτούντων δὲ τῶν πρώτων ἐν τῇ πόλει καὶ βελτίστων, οὐ μόνον ἀφείθη τῆς ζημίας ἀλλὰ καὶ πάλιν ἄρχων ἐπὶ τὴν αὐτὴν διοίκησιν ἀπεδείχθη.

Having been appointed 'comptroller of revenues', Aristides prosecuted former archons—Themistocles prominent among them—for embezzlement. In retaliation Themistocles roused popular support for prosecution against Aristides, presumably in the assembly. Evidently a fine was assessed against him, but that sentence was later reversed.

Much of the terminology and procedural detail probably derives from Idomeneus. The office of ἐπιμελητὴς τῶν δημοσίων προσόδων is usually rejected as an anachronism, but we should not discount the

[49] The credibility of Idomeneus is doubted precisely because of such stories as this. It was also Idomeneus who claimed that Pericles plotted the assassination of Ephialtes (*Per.* 10.5), a charge that Plutarch rejected on Stesimbrotus' 'testimony' to Pericles' magnanimity (*cf.* n.55 *infra*). On Idomeneus' sources, Theopompus among them, see Jacoby *ad FGrHist* 338 (pp.84f), who observed the apparent connection between F7 and Craterus' account of Aristides' death in exile for a fine he could not pay, and supposed the scenario should be set in 465/4. The two accounts differ, however, as to the author of the charges and the circumstances, Idomeneus indicating that Themistocles himself was responsible, Craterus naming one Diophantus; Idomeneus claims that Aristides carried out a campaign of prosecution against corruption, presumably before Themistocles' ostracism; Craterus asserts that the arrogance of the *demos* after Themistocles' conviction "engendered a throng of sycophants" who maliciously brought charges against the nobility, Aristides among them. These discrepancies prevent us from concluding with any confidence that the two accounts refer to the same trial; if they do, we can be reasonably sure that the two versions do not derive from the same tradition. Assuming that F7 is a doublet for Craterus F12, Jacoby remarked (p.88), "Der charakter des berichtes erinnert an das schlechte c. 25 der Ἀθπ., wo wir die gleiche vernachlassigung der chronologie konstatieren." As we have seen, however, the sequence of events in *Ath.Pol.* 25 seems to have some basis in fact. It is more likely that Craterus' chronology is faulty—indeed, though we have no reason to discount the trial of Aristides, the story of his death in exile appears to be no more that a fiction: thus W. Judeich, *RE* 2 (1896) 883 *s.v.* "Aristeides."

testimony that Areopagite examiners, such as Aristides, as ἐπιμεληταί or εὔθυνοι held special authority to prosecute members of the Areopagus for corruption and misconduct in their official duties.[50] The term ἐπιμελητής may have been misinterpreted by Idomeneus or by Plutarch: the same term is used of 'comptrollers of the tribute' in the later fifth century, and it is not an unlikely title for such officers in the age of Aristides. In Craterus F12, moreover, we are told specifically that Aristides was charged in connection with the tribute assessment. From the term *euthynai* we should not assume that Aristides was charged in regular annual accountings, such as Aristotle describes in the fourth century; as in the case against Cimon, our sources describe any prosecution for misconduct in office, whatever the procedure, as *euthynai*.[51] The note that Themistocles roused popular support for the prosecution, συναγαγὼν πολλούς, suggests that charges were brought in the assembly and the fine assessed by vote of the people; but it is unlikely that the 'outrage of the *optimates*' would have prevailed against the verdict of the majority in the *ekklesia*. Instead, it is likely in this case, as in the case against Cimon, that the preliminary verdict of the *demos* was reversed by the Areopagus.

The trial of Cimon in 463/2 for corruption as *strategos*, in which Pericles led the prosecution, is linked to the 'overthrow' of the Areopagus at *Ath.Pol.* 27,[52] and that linkage has led Rhodes to suppose that the partisan verdict of the Areopagus provoked democratic reform. In the *Ath.Pol.* the proceedings are called accountings (*euthynai*), and it

[50] The office of *epimeletes* is first mentioned in an inscription of 425/4 (*IG* I³ 68; M/L 68) regarding the 'comptrollers of the tribute'; *cf.* Busolt/Swoboda 1115. Jacoby (*supra* n.49: p.88) insists that the phrase ἐπιμελητὴς τῶν δημοσίων προσόδων is suspicious; he is followed by I. Calabi Limentani, ed., *Plutarchi Vita Aristidis* (Florence 1964) 18. It is reasonable to assume, however, that the same term may refer to supervisors of finance in the early years of the Delian League; and Aristides is certainly the most likely candidate for such an office in the later 470's, after his *strategiai* of 480–477. This solution is all the more tempting in the light of Craterus F12, where the charges against Aristides are given as ὡς ὅτε τοὺς φόρους ἔπραττε παρὰ τῶν Ἰώνων χρήματα λαβόντος; for the rôle of Aristides in the assessment of tribute *cf.* *Ath.Pol.* 24.

[51] Calabi Limentani (*supra* n.50) finds the scenario in *Arist.* 4.4 "incredibile" but wrongly assumes that "*euthynai*" before Ephialtes' reforms followed much the same procedure as classical accountings, with financial audits before the *logistai*. For other trials described as *euthynai* but initiated by *eisangelia* or related procedures *cf.* Hansen 45–49. We cannot be sure that the term *katadike* derives from Plutarch's source: Plutarch himself uses the term (as noun or verb) thirty-four times in the *Lives*, consistently of fines, as opposed to other judgments; in fact he uses the same phrase, καταδίκῃ περιέβαλεν, in *Cat. Mai.* 15.2 of the verdict against L. Scipio.

[52] 27.1: Περικλέους καὶ πρώτου εὐδοκιμήσαντος ὅτε κατηγόρησε τὰς εὐθύνας Κίμωνος στρατηγοῦντος νέος ὤν, δημοτικωτέραν ἔτι συνέβη γενέσθαι τὴν πολιτείαν. καὶ γὰρ τῶν Ἀρεοπαγιτῶν ἔνια παρείλετο.

is assumed that the Areopagus controlled this procedure before Ephialtes' reforms. Plutarch (*Per.* 10.5=*Cim.* 14.4) suggests, however, that charges against Cimon were initiated in the *ekklesia*, and on this evidence Hansen has argued that the assembly handed down an indictment to the court of the people without reference to the Areopagus. Plutarch suggests that Pericles was elected public prosecutor in the assembly (10.5: *ὑπὸ τοῦ δήμου προβεβλημένος*) and that the case was handed down to the court for trial, *πρὸς τοὺς δικαστάς* (*Cim.* 14.3).[53] Although Hansen concedes "we cannot be sure that Plutarch uses the word *δικαστής* in its technical sense," he assumes that the case was heard before a *δικαστήριον*, as in later procedure, not before the Areopagus, as *Ath.Pol.* implies. The rôle of Pericles as prosecutor is confirmed by *Ath.Pol.*, and it is reasonable to assume that charges were *initiated* in the assembly, as Plutarch suggests; but *δικασταί* may refer to other judicial bodies, and it is not a necessary conclusion from Plutarch's remark that the case *came to trial* before a jury of the people.[54]

[53] *Cf.* Plut. *Cim.* 14.3f (=Stesimbr. *FGrHist* 107F5): *αἰτίαν ἔσχε δώροις ὑπὸ τοῦ βασιλέως Ἀλεξάνδρου συμπεπεῖσθαι, καὶ δίκην ἔφυγε τῶν ἐχθρῶν συστάντων ὑπ' αὐτόν. ἀπολογούμενος δὲ πρὸς τοὺς δικαστὰς οὐκ Ἰώνων ἔφη προξενεῖν . . . ἀλλὰ Λακεδαιμονίων. . . . μνησθεὶς δὲ τῆς κρίσεως ἐκείνης ὁ Στησίμβροτός φησι τὴν Ἐκπινίκην ὑπὲρ τοῦ Κίμωνος δεομένην ἐλθεῖν ἐπὶ τὰς θύρας τοῦ Περικλέους (οὗτος γὰρ ἦν τῶν κατηγόρων ὁ σφοδρότατος), τὸν δὲ μειδιάσαντα "Γραῦς εἶ," φάναι "γραῦς, ὦ Ἐλπινίκη, ὡς τηλικαῦτα διαπράττεσθαι πράγματα" πλὴν ἐν γε τῇ δίκῃ πρᾳότατον γενέσθαι τῷ Κίμωνι καὶ πρὸς τὴν κατηγορίαν ἅπαξ ἀναστῆναι μόνον ὥσπερ ἀφοσιούμενον. Per.* 10.5: *ἐδόκει δὲ καὶ πρότερον ἡ Ἐλπινίκη τῷ Κίμωνι τὸν Περικλέα πρᾳότερον παρασχεῖν, ὅτε τὴν θανατικὴν δίκην ἔφευγεν. ἦν μὲν γὰρ εἷς τῶν κατηγόρων ὁ Περικλῆς ὑπὸ τοῦ δήμου προβεβλημένος. ἐλθούσης δὲ πρὸς αὐτὸν τῆς Ἐλπινίκης καὶ δεομένης μειδιάσας εἶπεν· "Ὦ Ἐλπινίκη, γραῦς εἶ . . . ὡς πράγματα τηλικαῦτα πράσσειν." οὐ μὴν ἀλλὰ καὶ πρὸς τὸν λόγον ἅπαξ ἀνέστη τὴν προβολὴν ἀφοσιούμενος, καὶ τῶν κατηγόρων ἐλάχιστα τὸν Κίμωνα λυπήσας ἀπεχώρησε.*

[54] Hansen's argument (46, 71) depends upon the assumption that a plurality of jury courts were established before Ephialtes' reform (a point Rhodes disputes: *JHS* 99 [1979] 105; *cf. supra* n.35) and—a more important point—that they were regularly given jurisdiction in political trials. On the contrary, whatever the number and predominance of the *dikasteria* before Ephialtes, there is no other reference to suggest that the courts of the people held jurisdiction in political trials except the first trial of Miltiades, in which, as we have seen, Herodotus uses the term *δικαστήριον* without regard for its constitutional implications. Similarly, the term *dikastai* in Plutarch—and, for that matter, in other authors as well—does not appear to be used exclusively of the juries of the popular courts (*e.g.* Antiph. 1.23, for homicide proceedings ordinarily heard before the Areopagus). Of 153 references to *dikastes* or *dikasterion* in the corpus of Plutarch, nearly half refer to judges or juries other than the Athenian courts of the people; at least 40 refer to trials at Rome, by no means analogous to the democratic judiciary at Athens. Moreover, *Cim.* 15.2 implies that the Areopagus controlled *dikasteria* before Ephialtes' reforms and that the same term would be used to refer to the court of the Areopagus: *οἱ πολλοὶ . . . ἀφείλοντο τῆς ἐξ Ἀρείου πάγου βουλῆς τὰς κρίσεις πλὴν ὀλίγων ἁπάσας, καὶ τῶν δικαστηρίων κυρίους ἑαυτοὺς ποιήσαντες.*

Plutarch's versions in *Per.* 10 and *Cim.* 14 derive in part from Stesimbrotus' *On Themistocles, Thucydides, and Pericles*; but it is evident, despite Plutarch's favorable treatment, that Stesimbrotus was hostile to the democratic reformer.[55] The focus of the episode in Plutarch is Elpinice's plea with Pericles to relent in his attack on Cimon; and although Pericles turned her away with the insult, "You are an old woman, too old to carry on such arduous affairs," he nonetheless prosecuted the case with restraint, merely fulfilling his obligation to prosecute in the public interest: τὴν προβολὴν ἀφοσιούμενος. For Plutarch the episode is proof of Pericles' magnanimity. Elsewhere in Stesimbrotus, however, Pericles treated the family of Cimon with contempt, and he may have allowed the acquittal of Cimon from motives other than compassion. Despite Plutarch's interpretation, the scenario probably tended to discredit Pericles' reforms.

Plutarch's account of Cimon's defense πρὸς τοὺς δικαστάς (*Cim.* 14.3) does not appear to derive from Stesimbrotus, who is cited for the Elpinice episode after the note on Cimon's defense; and in *Per.* 10.5 it is likely that the key phrase ὑπὸ τοῦ δήμου προβεβλημένος derives not from Stesimbrotus but from the same tradition that inspired *Ath.Pol.* 27f.[56]

The procedural details in *Per.* 10.5 are the more plausible as they are irrelevant to Plutarch's proof of character, and the terms προβολή and προβεβλημένος are not likely to be Plutarch's own choice of wording. The specific procedure (*probole*) against 'deception' is never mentioned elsewhere in Plutarch, and the version in *Cim.* 14.4 suggests that Plutarch regarded προβολή as a legalistic synonym for κατηγο-

[55] *Cf.* K. Meister, *Historia* 27 (1978) 274–94, who appears to assume that Stesimbrotus' account of the trial of Cimon showed Pericles' magnanimity (280f, 284), as in Plutarch's version; but the comment at *Per.* 36.6 (F11), where the appointment of Lacedaemonius to command a token force at Corcyra is taken to indicate Pericles' contempt for the family of Cimon, probably shows the true tenor of Stesimbrotus' account. A further insult to Elpinice after the conquest of Samos (*Per.* 28.5) may also derive from Stesimbrotus (FF8f). Jacoby (*ad* F5) connects the Elpinice episode with Pericles' "erotische unmässigkeit," prominent in Stesimbrotus' characterization. For the tradition that Cimon and Pericles were allies in empire-building see Plut. *Mor.* 812F; *cf.* Sealey, *Essays* (*supra* n.3) 63.

[56] Even in the scant testimony we have, Stesimbrotus' interest in political trials is evident: in F4 (=*Cim.* 4.4), giving the details of Miltiades' fine and imprisonment; and in F3 (=*Them.* 24.5), our only source for Cimon's prosecution of Epicrates, who aided Themistocles in his escape. For the case against Cimon, it is not unlikely that the account in Stesimbrotus was adapted by Theopompus, and the latter historian's interpretation influenced the author of the *Ath.Pol.*: *cf.* A. W. Gomme, *Historical Commentary on Thucydides* I (Oxford 1945) 47–49; see Connor (*supra* n.18) 110; Rhodes (*supra* n.4) 22f.

ρία.[57] By the procedure described as προβολή, prosecutors in the public interest were nominated and supported by a preliminary verdict of the people; such a procedure is also indicated in Plutarch's phrase ὑπὸ τοῦ δήμου προβεβλημένος. As we have seen, classical προβολή was invoked primarily against false prosecutions and violations concerning the major festivals, but it is evident that the earlier προβολή afforded a means of initiating charges in the *ekklesia* against 'deception of the people'; the second trial of Miltiades, on charges much like those against Cimon, seems to have followed this procedure. We have no evidence that courts of the people had yet assumed jurisdiction in political trials of this kind. Instead, the two-stage procedure in προβολή appears to derive from the era when the Areopagus held jurisdiction in cases involving official misconduct: charges were initiated and given a preliminary verdict in the assembly, but the Areopagus gave final verdict.

Thus the testimonia on the 'accountings' of Aristides and Cimon suggest that they were indicted in the *ekklesia* but acquitted by the Areopagus, and it is a reasonable conclusion that Cimon's acquittal led to restriction of the Areopagite powers.[58]

[57] *Per.* 10.5 is the later of the two versions (*cf.* C. P. Jones, *JRS* 56 [1966] 67f); although it appears to derive substantially from Stesimbrotus, we should not discount Plutarch's eclectic method in treating episodes for which abundant materials were at hand. Undoubtedly he relied upon *hypomnemata* or quoted from memory; *cf.* O. Pelling's work on the later Roman lives: *JHS* 99 (1979) 74–79 and 100 (1980) 127–40. Thus it is entirely possible (and I believe quite likely) that the key terms προβολή and ὑπὸ τοῦ δήμου προβεβλημένος derive not from Stesimbrotus (whom he cited by name for the earlier version in *Cim.* 14) but from Theopompus. The verb προβάλλεσθαι is occasionally used for the nomination of public prosecutors: cf. *Dem.* 14.4 (=Theopomp. F327). The term προβολή is never used elsewhere in Plutarch for legal proceedings, not even of Demosthenes' suit against Meidias, the most famous example of this procedure. It is possible that Plutarch interpreted προβολή as referring only to the *nomination* of public prosecutors, and the term need not imply the specific procedure against 'deception of the people'; but the case against Cimon is closely parallel to the second trial of Miltiades (*supra*), in which he was charged with ἀπάτη τοῦ δήμου, presumably by προβολή. For my conclusion that Plutarch regarded προβολή as a legalistic synonym for κατηγορία, see n.53 *supra*: in *Cim.* 14.4 we must either assume that κατηγορίαν is the implied object of ἀφοσιούμενον, parallel to the phrase τὴν προβολὴν ἀφοσιούμενος, or suppose that Plutarch has used the verb transitively in *Per.* 10.4 but without an object ('to satisfy his conscience') in the parallel passage in *Cim.* 14.

[58] I have argued in a paper presented at the December 1986 meeting of the American Philological Association that the one procedural detail identical in both versions—leaving aside the liaison with Elpinice—is the note that Pericles "rose but once for the prosecution"; and it is the one point of fact that could have been disputed in the record of a notorious trial, still within the memory of some among his audience when Stesimbrotus' work was published. In fact the whole Elpinice episode may have been invented to discredit this surprising tactic. It is difficult to see how Pericles could have made his reputation as an advocate of the people in a losing cause

III

The evolution of the democratic procedure in political trials at Athens was obviously subject to ideological bias and rhetorical embellishment in the fourth-century tradition, and the contradictions that arise from that revisionism must be carefully considered in any study of this kind. No satisfactory solution can be reached by rejecting out of hand one set of conflicting testimony for another. The references in Isocrates and Aristotle, which suggest that the sovereignty of the people in impeachments goes back to the founding of the democracy, are not sufficient grounds to reject the testimony, in the same tradition, that the Areopagus held specific jurisdiction over the duties of public officials. Partisan fabrication is all too evident in the tradition that the Areopagus controlled cases of treason and subversion under the *patrios politeia*: I have previously argued (*supra* n.3) that this view of the ancestral powers was inspired by the crises of the later fourth century; and the evidence presented here regarding specific trials of the early fifth century tends to confirm that conclusion. But it is also evident from both studies that the tradition of Areopagite jurisdiction in cases involving the official duties of magistrates has a much more secure basis. The discrepancies derive in part from the 'open texture' of Athenian procedural law: the same offense may be indictable by two or more alternate procedures; the applicability of such charges as treason, deception, and conspiracy was often open to interpretation. We have no reason to doubt that the same principle applied in pre-Ephialtic procedure, and no grounds *prima facie* to reject testimony either that the people held public officials to account or that the Areopagus controlled impeachments. Much of the contradiction arises out of the 'double-think' of Athenian popular ideology, by which the Areopagus, a body whose oligarchic character is revealed not only in the era before Ephialtes but also in the age of Demosthenes, becomes the "guardian of the democracy."[59]

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if he refused to speak in rebuttal to Cimon's defense of his Spartan sympathies, unless he abandoned the case in protest against a partisan jury. As Martin Ostwald observed, the clause of the bouleutic oath in *IG* I³ 105 (*supra* n.4) may represent an ancient restriction of the powers of the older council, and he argues that this case would have come before the assembly for a final vote. I see no contradition, however, between this guarantee of the people's verdict in capital cases and the procedural details in Plut. *Per.* 10.5 (suggesting that the case was initiated before the people and then tried before a second judicial body) if the death penalty was prescribed in the people's decree for trial.

[59] For the 'open texture' of Athenian procedural law *cf.* most recently R. Osborne, *JHS* 105 (1985) 40–58, esp. 41f regarding Isoc. 15.314, on the availability of alternate procedures including *probole*. Concerning the oligarchic character of the Areopagus

The most trustworthy evidence on the development of procedure lies not in the generalities posed by fourth-century authors, but in the record of actual cases. The testimony on eight political trials of the early fifth century reveals two aspects of pre-Ephialtic procedure that have not been generally acknowledged.

(1) The evidence concerning the trials of prominent Areopagites, Miltiades, Themistocles, and Aristides, tends to confirm rather than disprove the atthidographic tradition that the Areopagus controlled impeachments for official misconduct. The account of investigations in the Areopagus involving Themistocles (*Ath.Pol.* 25.3; hyp. Isoc. 7) and the rôle of Aristides in the prosecution of archons and former archons, notably Themistocles (Plut. *Arist.* 4.3), suggest that cases concerning the official duties of archons and members of the Areopagus were, before Ephialtes' reforms, ordinarily initiated by Areopagite examiners and tried within the jurisdiction of the Areopagus, without appeal to the people. The first trial of Miltiades, "concerning the tyranny in the Chersonese," may also have been initiated and tried before the Areopagus.

(2) There were also procedures, analogous to later *apocheirotonia* and *probole*, to initiate prosecution in the *ekklesia* for deception and official misconduct. The evidence for the trials of Aristides and Cimon indicates that the *demos* had the authority to pass sentence against public officials, but those indicted by the people could still be acquitted by the Areopagus. The second trial of Miltiades probably followed similar procedure, although in that case the verdict of the people was upheld. The curious remark in *Gorgias* 516 that Miltiades would have been put to death "if not for the prytany" may indicate that the presidents of the assembly, who introduced the charge as ἀπάτη τοῦ δήμου rather than προδοσία, thereby saved Miltiades from the death penalty—though it was but a brief reprieve.

Such proceedings appear to be the basis of Aristotle's judgment that the *demos* held public officials to account under the ancestral constitution (*Ath.Pol.* 1274a15, 1281b31). We have no evidence, before the

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see further Carawan 117–20, 132–36; for the nature of political groupings before the rise of Pericles see W. R. Connor, *The New Politicians of Fifth-Century Athens* (Princeton 1971) esp. 25–32. Moreover, the political significance of the reform of 487 (whereby the archons were no longer elected by vote of the people) should be reconsidered: Badian (*supra* n.40: 9) regards the usual view, that this reform was a democratic innovation, as "patent and ignorant nonsense." It is possible that the archons, afterward members of the Areopagus, were selected by lot only from among the *pentakosiomedimnoi* in the 480's or later; *cf.* Plut. *Arist.* 1. The effect of this change and of ostracism in the 480's and 470's was to strengthen the coalition of families and *philiai* represented in the Areopagus.

reforms of Ephialtes and Pericles, of regular annual accountings whereby officials automatically submitted their accounts for examination at the end of their term of office. The strict accountability and formalized procedures of classical *euthynai* developed from the democratic reforms of the mid-fifth century.

Prosecutions for treason were ordinarily initiated and tried in the *ekklesia*, as the decrees against Hipparchus and Themistocles indicate. The sovereignty of the assembly of the people in such cases appears to be as old as Cleisthenes' reforms. It is reasonable to assume that the Areopagus was denied authority to order execution ἄνευ τοῦ δήμου πληθύοντος. The Areopagites may have retained the right to bring charges of conspiracy to overthrow the democracy (as *Ath.Pol.* 8.4 and 25.3f suggest), but the democratic council seems to have borne the responsibility for investigating charges in preliminary hearings from the time of Isagoras' coup.

Thus the people controlled proceedings against urgent wrongs to the state, as Lipsius long ago observed. The Areopagus continued to control proceedings against corruption and misconduct on the part of public officials, although the *demos* held right of initiative. This division of jurisdiction is consistent with the development of classical procedure and what we know of the reforms of Ephialtes and Pericles: the jurisdiction of the Areopagus in 'accountings' and impeachments for official misconduct was transferred to the council and courts of the people; the *euthynoi* themselves were then chosen from among the *bouleutai* rather than the Areopagites. Before these reforms the Areopagus, as a council of the ruling class, was virtually autonomous in its control of public office. That autonomy was made more secure in the early fifth century by ostracism and the reform of 487, whereby archons and Areopagites were chosen by lot from the highest property classes, and such activists as Themistocles were no longer elected by vote of the people.[60]

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