

Ephialtes and the Areopagos

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THE TESTIMONIA supporting the Areopagos' assumption of leading position in the Athenian *politeia* 479–462 have been the subject of some controversy. According to Aristotle (*Ath.Pol.* 23.1–2, 41.2; *Pol.* 1304a17ff), after the Persian Wars the *politeia* underwent a *μεταβολή*—though without formal 'constitutional' change¹—by which the Areopagos *διώκει τὴν πόλιν*. The immediate cause for this domination was its alleged presence of mind before Salamis, in distributing emergency pay to Athenian sailors. Aristotle records no further activities of the Areopagos during this period, but informs us that the Athenians *ἐπολιτεύθησαν καλῶς*, particularly in their military capabilities and their reputation abroad (*Ath.Pol.* 23.2); while at home, presumably in the face of democratic reforms mentioned in the previous chapter, Areopagite supremacy was "slipping a bit" (25.1). "Later, in the archonship of Konon, Ephialtes deprived the Areopagos of *ἅπαντα τὰ ἐπίθετα δι' ὧν ἦν ἡ τῆς πολιτείας φυλακή*" (25.2). The Areopagos' current function, though not its strict 'constitutional' competence,² is described as a "guardianship of the *politeia*." In this lay the essence of its *δύναμις* after 479;³ but it was attained through *ἐπίθετα*, precise and 'constitutional' powers since Ephialtes is said to have distributed them elsewhere.⁴

¹ οὐδενὶ δόγματι, *Ath.Pol.* 23.1; cf. R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle I* (Chicago 1930) 251.

² *φυλακή τῆς πολιτείας* is a reflection of its 'unconstitutional' authority after 479, not part of a regenerated constitutional competence established in an earlier period. In previous chapters of the *Ath.Pol.* only a *φυλακή τῶν νομῶν* is recorded (4.4, 8.4), and Aristotle distinguished between *νόμοι* and *πολιτεία* (e.g., *Pol.* 1273b30ff, setting apart 'law-givers' dealing strictly with *νόμοι* from those dealing with *πολιτεία* as well).

³ Cf. the parallel terminology in *Ath.Pol.* 25.2 and 25.4, each with *περιαιρέω*; *δύναμις* (25.4) refers to the domination 479–462, as *ἐπιμέλεια* in 26.1 and the powers left to the Areopagos confirm.

⁴ On *ἅπαντα τὰ ἐπίθετα* Jacoby's regrettably unelaborated suggestion (*FGrHist IIIb Supp.* II [Leiden 1954] 106 n.20) is the most satisfactory, that Aristotle is using the term in an apolitical, historical sense to denote all the powers that had accrued to the Areopagos after its establishment as a homicide court in primaeval Athens. The Atthis tradition seems unanimous in accepting this as its original function (Jacoby *ad FGrHist 323a F 1* [Supp.] I 22). Admittedly, the *πάτρια versus ἐπίθετα* issue had become politicized since the revolu-

Aristotle is our only source for the domination of the Areopagos in this period, and we are not bound to accept him. As has often been pointed out, his version of Salamis is unknown to Herodotos, contradicted by Kleidemos,⁵ and ignored, though implied, by Aristotle himself in the *Politics* (1304a17ff), stressing the rôle of the *demos*. Furthermore, the Areopagos is nowhere assigned the measure of financial control this story requires—granted the sketchy information on its competence before 462. We may agree with Jacoby that “no Atthidographer could have treated as a *politeia* in the sense of Aristotle . . . the predominance of the Areopagos *μετὰ τὰ Μηδικά*.”⁶ But neither these nor the more theoretical objections posed by Day and Chambers⁷ necessarily challenge the basic fact of that predominance which Aristotle believed, even to the extent that he imported an improbable story to explain it.

Both general political considerations and documented cases offer support for the testimony of the *Athenaion Politeia*. After 487/6, when a hitherto paramount archonship ceased to be a significant or predictable factor in personal politics, political activity would intensify around the other officials in power through personal motivation, chiefly Areopagites and *strategoí*.⁸ It is reasonable that a certain time

tionary period in and after 412 (Lysias fr.178 Sauppe, Ephoros-Diodoros 11.77.6; for an earlier period, cf. K. J. Dover, *JHS* 77 [1957] 234), particularly in regard to the Areopagos. But by prior dating, Aristotle has avoided a rhetorical tradition claiming one *politeia* or another as *ἡ πάτριος*: when used by Aristotle himself—that is, not necessarily by other sources referred to in the *Ath. Pol.* (e.g., 34.3)—the term *πάτριος* applies strictly to the period of the kings (e.g., 3.6; 57.1). Aristotle’s distinction renders 25.2 prone to confusion precisely because the Areopagos was in the forefront of this controversy. But once having determined his use of *πάτριος*, he could not have written it in 25.2, while *ἐπιθερα* suited exactly the extent of Ephialtes’ reforms. This takes the force from Wilamowitz’ influential interpretation (*Aristoteles und Athen* II [Berlin 1893] 186–87; cf. G. Busolt, *Griechische Staatskunde* I [Munich 1920] 94 n.1; C. Hignett, *A History of the Athenian Constitution* [Oxford 1952] 195, 198; Dover, *op.cit.* 234; J. Day and M. H. Chambers, *Aristotle’s History of Athenian Democracy* [Univ. Calif. Publ. Hist. 73, Berkeley 1962] 121–22) that *ἐπιθερα* reflects democratic propaganda. In addition, democratic sources are scarcely if at all evident in the *Ath. Pol.* Details in both 25.1–2 (e.g., *δοκῶν*) and 25.3–4—these halves seem to be based on different sources—reveal an oligarchic origin which reduces us to the hypothesis that for exactly one word Aristotle turned from his familiar sources.

⁵ *FGrHist* 323 F 21. Cf. Day and Chambers, *loc.cit.* (*supra* n.4).

⁶ F. Jacoby, *Atthis* (Oxford 1949) 388 n.62, cited by Day and Chambers, *op.cit.* (*supra* n.4) 120.

⁷ Day and Chambers, *ibid.* and *passim*.

⁸ Professor Calder has called to my attention a law forbidding Areopagites to write comedies (Plut. *Mor.* 348b, which Calder suggests may derive from the lost part of Aristotle’s *Poetics* on comedy). This law would be useful in revealing the politicization not only

might have passed before the archons suffered a serious loss of prestige, before the balance of political forces had been reassessed; in any case, Aristotle's date for the Areopagos' resurgence would not be far wrong. Although this period witnessed an Areopagos increasingly composed not of politicians but of *pentakosiomedimnoi* and *hippeis* selected ἐκ προκρίτων by lot, in one respect the significance of this need not have been dramatic. *Πρόκρισις* allows for the political citizen, and with life tenure, Areopagites would have been in a position to develop and retain their influence. Perhaps not the most competent; but practice would make, if not perfect, at least reasonably good. In addition, at least during the 470's there were prominent politicians in the Areopagos—Themistokles, Aristeides—who might have sought to manipulate the poorly defined powers of a venerable, newly prestigious and potentially effective body.

The judicial competence is critical. Even when the Areopagos was merely doing its job this would have become a political tool and a powerful one; its presence may be detected in Aristotle's "guardianship of the *politeia*," basis of Areopagite supremacy. With late, vague and tendentious sources, however, the Areopagos' competence cannot be precisely known. The fullest account, the *Athenaion Politeia*,⁹ attributes to the court after Solon the right to supervise the affairs of the city, to punish wrong-doers and impose fines without explanation, by *εἰσαγγελία* to check conspiracy against the people, and *νομοφυλακία*, which Bonner and Smith consider probably "the duty of watching over the magistrates and insuring that their administration should be entirely in accord with the laws."¹⁰ Partly on this basis the Areopagos may be assigned superintendence of magistrates' *εὐθυναί* and *δοκιμασίαι*.¹¹ Finally from Plutarch it seems the court's decisions were not subject to appeal.¹² The defensive tone of moderation and compromise in Solon's poetry may confirm that the Areopagos retained a significant rôle in the state. There is no evidence that Kleisthenes

of the Areopagos but of early Old Comedy as well, could we be sure that it was political and was passed sometime between 486, when comedy was introduced to the *Dionysia*, and the reforms of Ephialtes.

⁹ Contradicted nowhere by the relevant fragments of the *Atthides*. For Aristotle's evidence, *Ath. Pol.* 8.4.

¹⁰ Bonner and Smith, *op.cit.* (*supra* n.1) 262. Cf. Aesch. *Eum.* 681ff.

¹¹ Bonner and Smith, *ibid.* Cf. the well-argued case of E. Ruschenbusch, discussed below.

¹² *Sol.* 18, with Bonner and Smith, *op.cit.* (*supra* n.1) 151–52, 269.

diminished this,¹³ and Aeschylus' *Eumenides* seems again some sort of confirmation.

What this vague information actually entailed has been much debated; part of this debate we shall have to deal with later, when its relevance becomes clearer. For the present, it suffices to note that the evidence points to a broad range of powers permitting of loose interpretation, and that this was a basis for any Areopagite influence in the state.

Political affiliation of the Areopagos and an indication of its effectiveness in politics may be revealed in the two known cases assigned to it in this period.¹⁴ According to Krateros, Themistokles was involved in an *εἰσαγγελία*, on a charge specified by Plutarch to be *προδοσία*, brought after his ostracism. On this charge he would have been tried before the Areopagos, and this is supported by the curious story in *Ath. Pol.* 25.3–4. In 463 at his *εὔθυναί* Kimon was prosecuted for taking bribes: hence also before the Areopagos. Kimon was acquitted, Themistokles condemned. We cannot tell what justice lay behind these decisions; at the least they would fit a pattern reflecting the conservatism implicit in the Areopagos' religious and judicial functions—*νομοφυλακία*, for example—and the power which both it and the classes that composed it derived from the *status quo*. Yet intended or not, political prosecutions lead to political decisions: the defeated would claim, politics to the exclusion of justice. Rhodes observes that in the 460's at Athens these verdicts "would make excellent political sense"¹⁵—but tension as well, between Areopagos and

¹³ See P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 199ff.

¹⁴ *FGrHist* 342 F 11 and Plut. *Them.* 23 for Themistokles; Plut. *Kim.* 14.3, 15.1, *Per.* 10.6, and *Ath. Pol.* 27.1 for Kimon; cf. Rhodes, *loc.cit.* (*supra* n.13). It is reported (Arist. *Eth. Nic.* 3.1, Clem. Al. *Strom.* 2.461) that Aeschylus was prosecuted for *ἀρέβεια* and acquitted, presumably during this period. But Aeschylus was neither a politician nor necessarily a strict radical. Though I believe he favored the pro-Argos, anti-Sparta foreign policy of the radicals (Dover, *op.cit.* [*supra* n.4] 235f) and was a friend of Themistokles (W. G. Forrest, *CQ* n.s. 10 [1960] 236, though other men as well are praised in the *Persai*), the evidence for his views on domestic issues supports nothing further than simply a hatred of *stasis*. Regardless of when Aeschylus started to write the trilogy, the *Eumenides* is not a (pointless) retrospective justification of reform, but, within a balanced acceptance of what had happened, looks ahead to the crises of its own period. That *stasis* is at least one theme in the play nobody denies; it is less easy to see how the poet could juxtapose this express purpose of reconciliation with a display of democratic propaganda. See, further, Wilamowitz, *op.cit.* (*supra* n.4) 329ff.

¹⁵ Rhodes, *op.cit.* (*supra* n.13) 200–01.

the radicals. And responsibility for this need not be laid exclusively on the aristocratic council.

After 487/6 the number of offices through which ambitious Athenians could seek power and influence was restricted to one, the *strategia*. Before this such men had less cause to want a reduction in the Areopagos' powers. Elected archons, they would join the court after their term of office and have their influence perpetuated. After the introduction of sortition—though we may hesitate to go so far as Aristotle—the Areopagos retained, even increased its influence, conservative, hostile to any political competition and in particular to politicized, ambitious *stratego*i of the left. Prestige would magnify its rôle in the official machinery of the *polis*. Radical politicians working through this machinery would meet at best impartiality, which yet in many cases would constitute *per se* a conservative bias. Impartial or not, either would heighten contention, the polarization. No less important, the *stratego*i could see in the Areopagos' constitutional prerogatives, most directly in the superintendence of *δοκιμασίαι* and *εὔθυνα*, powers tantamount to control over their own political futures. In the trials of Kimon and Themistokles there may be evidence that these powers were exploited; so long as they existed there was such a danger.

And Kallisthenes reports¹⁶ that on expeditions beyond the Chelidonian islands dated shortly before 462¹⁷ two radical politicians, Ephialtes and Perikles, were *stratego*i.

In 462/1 Ephialtes deprived the Areopagos of what must be considered significant judicial powers.¹⁸ By contrast, its competence afterwards seems almost intentionally restricted to the areas in which its traditional religious authority was essential,¹⁹ and the apolitical: jurisdiction in cases of premeditated homicide and arson, and suits involving the sacred olive.²⁰ He would not have done so had the

¹⁶ *FGrHist* 124 F 16, in Plut. *Kim.* 13.4. Cf. Hignett, *op.cit.* (*supra* n.4) 193–94; Swoboda, *RE* 5 (1905) 2850.17–30

¹⁷ Both expeditions probably occurred in the same campaign season; Perikles could not have been *strategos* before 30, and the standard opinion places his date of birth *ca* 494: see J. K. Davies, *Athenian Propertied Families* (Oxford 1972) 457 *s.n.* At this time Kimon was entangled at Thasos, thus leaving the comparative glory of “bashing the Persian” to his political opponents.

¹⁸ Cf. R. Sealey, “Ephialtes,” *CP* 59 (1964) 19 = *Essays in Greek Politics* (New York 1967) 52; E. Ruschenbusch, “Ephialtes,” *Historia* 15 (1966) 373; Hignett, *op.cit.* (*supra* n.4) 200.

¹⁹ Hignett, *op.cit.* (*supra* n.4) 199.

²⁰ *Ath.Pol.* 57.3; 60.2; *Lys.* 7; cf. Bonner and Smith, *op.cit.* (*supra* n.1) 258.

Areopagos not been active in blocking or hampering both greater democracy and his own political ambitions which were dependent on it. An analysis of the political situation has shown how this might have been. But it is unclear in what way Ephialtes presented these issues in his 462 campaign. He could have passed over with profit the personal ambitions—*δοκῶν καὶ ἀδωροδόκητος εἶναι καὶ δίκαιος* (*Ath.Pol.* 25.1)—and a basis of attack in the general, perhaps even theoretical question of self-government is attractive but unsupported, and disputed.²¹ The *Athenaion Politeia* asserts that before proposing his reforms Ephialtes brought to trial many Areopagites for maladministration. It is safe to assume this was an issue later as well. Yet only in the context of the remaining evidence for Ephialtes' activities 463/2 does the real significance of these prosecutions emerge, to reveal a more specific source of dissatisfaction, directly related to Ephialtes' own political position, that seems to have provided the focus or at least the catalyst for reforms however much broader their ultimate extent.

This focus was the administration of *εὔθυναί*. There was an immediate precedent: Kimon's prosecution by radical democrats in 463 and subsequent acquittal. Now Plutarch (*Per.* 10.8) calls Ephialtes relentless in the *εὔθυναί* and public prosecutions of enemies of the *demos*. Bearing in mind possible tension between Areopagites and *strategoí* for influence during this period, a natural aversion Areopagites would feel toward an increased democracy that would restrict their competence, and the aversion they expressed for men such as Themistokles, the inference that Ephialtes had no great success in his *εὔθυναί* prosecutions would not seem unreasonable. Yet we know an exception: Ephialtes' successful prosecution of many Areopagites *περὶ τῶν διωκημένων* (*Ath.Pol.* 25.2). This might have taken place at their own *εὔθυναί*, if they were subject to them at this early date—or at any rate, before a popular body sitting in judicial capacity.²² In conducting these *εὔθυναί* Ephialtes was attempting not merely to dramatize Areopagite injustices, or even its anti-democratic nature—it may be included among Plutarch's "enemies of the *demos*"—but also to illustrate his contention that *εὔθυναί* should be administered by a popular body. Thus the campaign for reform; but finally, though perhaps the

²¹ Cf. Sealey, *op.cit.* (*supra* n.18).

²² Cf. Bonner and Smith, *op.cit.* (*supra* n.1) 269, for the possibility that the Areopagos was subject to scrutiny at this time. In any event it seems unlikely—and see Sealey's arguments below—that Ephialtes' prosecutions would have been held in the archon's court.

truest cause the most concealed, the *εὔθυναι*-reforms would have had the useful effect of removing a powerful and not necessarily benevolent control over Ephialtes himself, having chosen the *strategia* and direct popular support as the basis of his own political career.²³

In 462/1 the Areopagos lost jurisdiction over cases in which, by almost any one of its powers, it could indict and convict virtually any Athenian on a minimum of evidence. Yet the *demos* was not feeling much oppressed: the Areopagos was neither discredited nor liquidated. Nevertheless, it was the worse for the Areopagites that, pri-

²³ C. W. Fornara, *The Athenian Board of Generals from 501 to 404* (*Historia, Einzelschr.* 16, Wiesbaden 1971), argues that the introduction of election to the *strategia ἐξ ἀπάντων*, replacing a system requiring one general per tribe (*Ath. Pol.* 61.1, cf. 22.2), occurred between 469/8 and 460/59, and therefore probably belongs to Ephialtes' reforms. If so, we have further proof that Ephialtes was concerned with the political position of *strategoι* at Athens. But the evidence is less than clear. On uncertain demes or years of tenure Fornara's conclusions uniformly accord with his thesis' requirements; but many remain questionable at best. Under 418/7, for example, both Alkibiades and Nikostratos are entered as generals of the tribe Pandionis. Yet we know that Alkibiades was not a general in the early part of that year (*Thuc.* 5.61.2, *Diod.* 12. 79; cf. R. Meiggs and D. M. Lewis, *A Selection of Greek Historical Inscriptions* [Oxford 1969] 235). His *strategia* later depends on an epigraphic restoration (Meiggs and Lewis, *op.cit.* no.77 line 17 and notes *ad.loc.*) which Fornara calls "unexceptionable," though Meiggs and Lewis reserve judgement. Fornara obviously wants the double representation; yet Alkibiades' *strategia* must therefore have been obtained in a by-election (cf. H. T. Wade-Gery, *CQ* 24 [1930] 34 n.2), perhaps after Nikostratos' death at Mantinea; and this practice vitiates Fornara's entire thesis. The three lynch-pins of his argument for election ἐξ ἀπάντων are *Plut. Kim.* 8.8, where the ten generals are said to be from the ten tribes in 469/8, the Erechtheid casualty list (Meiggs and Lewis, *op.cit.* p.73 no.33) showing double representation in 460/59, and the *strategoι* for 432/1, with a double and a triple representation. Double representation in the casualty list depends on a resolution of three *cruces*. One of the generals must be restored, e.g., Φ[ρόνι]χος, not, e.g., φ[ύλαρ]χος (D. Bradeen). Unlike Hippodamas (line 62) this person is called not *στρατηγός* but *στρατηγῶν*, "unexpected" to Meiggs and Lewis. Fornara's case depends on a genitive plural, not a participle which might signify an acting command (for which see, e.g., *Thuc.* 6.16.1, and further A. W. Gomme, A. Andrewes and K. J. Dover, *A Historical Commentary on Thucydides* IV [Oxford 1970] *ad loc.*). Third, the list may refer not to an official year but to a campaign season spanning two official years. And we must discount the possibility of by-elections (though this is, after all, a casualty list), the existence of which, despite Fornara's "Note B" (pp.74-75), remains uncertain. The case for 432/1 is vulnerable in the date of Kallias' *strategia* (Gomme, *A Historical Commentary on Thucydides* I [Oxford 1945] 222-24, supposes 433/2, but cf. Fornara 52); the frequency of the names Kallias Kalliadou (e.g., attested in both Pandionis and Kekropis: D. M. Lewis, *JHS* 81 [1961] 118) and Eukrates (cf. *Ar. fr.* 143 Kock, and Nikias' brother); and Phormion's tribe (cf. Lewis, *loc.cit.*). In addition, it may be significant, for example, that the generals' tribes are recorded at all, when the demotic is the norm. Nevertheless, between 501/0 and 441/0 some constitutional change must have permitted some type of multiple representation. I suspect the choice was not 'either-or'; perhaps some option was made available within the old system. If this be dated to 462/1, it serves to confirm the thesis of this paper.

marily and in their official capacity, they exercised only the negative power of restricting and punishing, while the functions of the *strategoï*, and military leaders usually, were in essence positive and popular—at least for Athenians. Whatever its feelings toward Areopagites, the *demos* was well-disposed to the *strategoï*, whom it elected annually. Furthermore, the generals were ten individuals, against an unwieldy body of some two hundred. And finally, it may not be irrelevant that by 462 nearly all the Areopagites were not former politicians but simply upper-class citizens.

To sum up. The causes for the Athenian constitutional revolution in 462/1 revolve around the conflict for political supremacy that developed after 480 between radical democratic leaders and the powerful aristocratic Areopagos. The constitution gave the court the upper hand, but on a number of issues and *qua strategoi* the radicals could muster support. The purpose behind the subsequent democratic reforms was the destruction of the Areopagos' nascent political power, as Aristotle saw; and paramount within this was the liberation from that court's control of the *strategoï* and the *strategia*, the only significant office open to political ambition.

Two objections may be raised against this interpretation which require some examination. First, because of the imprecision of the ancient sources we must acknowledge considerable uncertainty concerning the actual reforms of Ephialtes. If we cannot determine the Areopagos' competence before 462, perhaps he did not affect it in the manner I have suggested; and therefore his intentions cannot be perceived. Secondly, some scholars attribute to Ephialtes reforms that may seem irrelevant to his purposes.

The first problem may be resolved without sorting through scholars' complex variations on the shadowy theme of Areopagite competence. If the court possessed any of the vague powers and *cura morum* which Aristotle reports, Ephialtes would want to deprive it of these. Such authority could readily be exploited for personal or political purposes. But of these powers only the superintendence of *δοκιμασίαι* and *εὔθυναί* is central to our interpretation; and, as E. Ruschenbusch has demonstrated,²⁴ the only certain attributions are in fact this superintendence and the powers the Areopagos retained after 461.

Recently R. Sealey has argued that the only power Ephialtes

²⁴ Ruschenbusch, *op.cit.* (*supra* n.18).

removed from the court was its supervision of *εὐθυναί*.²⁵ He first asserts, from several events in 340–338 B.C., that “Ephialtes did not deprive the Areopagite Council of wide prerogatives amounting to a right of initiation.” Then he presents a case against attributing the formation of popular *δικαστήρια* to Ephialtes. “But he must have done something, or no one would have murdered him; and it must have been possible for contemporaries to represent his work as decreasing the rights of the Areopagite Council.” Sealey proceeds to make a case for Ephialtes’ transference of the *εὐθυναί* from the Areopagos. Removed from the sphere of personal politics, Ephialtes’ motivation was simply to “remedy a particular abuse” in that the Areopagos “had its defects as a court for the hearing of *euthynai*.”

Sealey’s only positive evidence for this hypothesis is provided by incidents that occurred one hundred and twenty years after Ephialtes’ reforms. In addition to any changes that may have taken place during this time, we have seen that after 461 the Areopagos remained a respected voice in the state. The incidents Sealey refers to are (1) the incident involving Antiphon in 340, acquitted by the people on a charge of planning to burn the docks, but brought before the people again by the Areopagos and condemned (Dem. 18.132–33; Dein. 1.62–63; Plut. *Dem.* 14); (2) the removal of Aeschines as *κύνδικος* in an affair concerning the sanctuary of Delos, ca 339 (Dem. 18.134); (3) an incident in which the Areopagos persuaded the people to elect Phocion general after the Athenian defeat at Chaeronea (Plut. *Phoc.* 16). Incident 1 involves a case of arson, which remained within the competence of the Areopagos after 461. Incident 2 is religious in character, and we know that the Areopagos retained a certain influence in this area. Incident 3 occurred after Chaeronea, when the generals must not have been in the best of positions; consequently the Areopagos gained in significance. Furthermore, as in all of these cases, the Areopagos merely acted as advocate; it did not have the power to choose Phocion general on its own. Sealey’s argument about Ephialtes’ reform is based on no evidence and must be discounted.

Until recently, the most important reform of Ephialtes was generally considered to be the establishment of the popular courts. To be sure, there are no testimonia from antiquity that support any reforms in 462/1 other than a diminishing of the Areopagos’ power.

²⁵ Sealey, *op.cit.* (*supra* n.18).

Nevertheless, the arguments set forth by S. B. Smith against the view that Solon established the dikasteries are cogent.²⁶ Social, political and economic factors support a date between the end of the Persian Wars and 462/1.

In his article referred to above, Sealey has suggested that popular courts of first instance developed gradually after the introduction of the allotted archonship. From this point, archons, inexperienced in state affairs and hesitant "where the interests of powerful men were at stake," might have preferred, to a greater and greater extent, reference to the popular court, or urged one of the parties to appeal. "Thus by custom without specific enactment the archon's hearing of each case might decline to the status of a mere preliminary inquiry; and such a custom could become rigid." He cites several possible examples of the *demos* acting as court of first instance between 510 and 463; and his argument is partly founded on silence: "fourth-century students of the Athenian constitution were very much aware and at times highly critical of power wielded by the popular courts, yet no statement has survived to say how the popular court became a court of first instance."

If Sealey is correct we have found an easy solution to the second objection raised above. For this is the only reform attributed to Ephialtes which might not directly affect the political career of a *strategos*. The problem (which he admits but avoids), however, is that the system of Athenian dikasteries must have been established by specific legislation. It seems most logical to assign this to Ephialtes, while retaining Sealey's arguments insofar as they suggest that the time was ripe for such a change.

But given that the time was ripe, it is not unreasonable that Ephialtes as the radical popular leader would propose it. Furthermore, the archons may well have been guided by the Areopagos, both by its jurisdiction over magistrates' conduct in office and because archons would not want to offend their future associates. If this situation did in fact occur, dikastery legislation becomes an explicable and integral part of Ephialtes' program, and we have safely removed both objections to our interpretation of the 462/1 reforms.

There is an interesting piece of evidence which further suggests that Ephialtes was bent on removing the constitutional checks which the

²⁶ S. B. Smith, "The Establishment of the Public Courts at Athens," *TAPA* 61 (1925) 106-19.

Areopagos had over *strategoï*. After 461 Perikles became *προστάτης τοῦ δήμου* and, officially *strategos*, leader of the state. Of course Perikles may have been a competent leader and commander. At least in his earlier years he was ruthless in his devices for popular support. But other democrats had preceded him of perhaps equal talent. It looks very much as if one political force in the state, the *strategoï*, had paralysed the other's, the Areopagos', constitutional restraints which had previously been effective. Furthermore, Perikles' *strategia* ca 463, his participation in the prosecution at Kimon's *εὔθυναί*, his support for the 462/1 reforms and, no less significant, the actual murder of Ephialtes suggest that both men were aiming for the same goal. For, after a fragment of Idomeneus (*FGrHist* 338 F 8), it has ingeniously been suggested that Perikles was responsible for Ephialtes' demise.²⁷ He clearly had the most to benefit: Ephialtes was *προστάτης* (*Ath. Pol.* 25.1), higher in the radical faction. Assassination was simple. An attempt to ostracize a political associate and popular figure might have brought discredit or backfired. There is also no other satisfactory explanation for the silence surrounding the incident. Had the radicals not been involved, they could reasonably be expected to have raised a witch-hunt. Ephialtes would have become a martyr for the democratic cause. But there is no trace of this.

Consequently, it may not be an unreasonable inference that the vision behind Perikles' *strategia* and rise to power had been formulated in 462, originally intended for the earlier leader.²⁸

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²⁷ By W. M. Calder and Morton Smith, in conversations with the author. Suggested for different reasons by J. A. Davison, *Ancient Society and Institutions: Studies Presented to Victor Ehrenberg* (Blackwell 1966) 105. Further, after the embargo against Megara in the late 430's, Perikles, who thought war inevitable and delay to Athens' detriment, had the herald Anthemokritos sent to protest that city's activities (see K. J. Dover, *AJP* 87 [1966] 203ff). Anthemokritos was murdered. The Megarians firmly denied responsibility and accused Perikles (*Plut. Per* 30). Although they may have wished to incriminate the Athenian and thus discredit his policies, their denial would have been ludicrous at least *flagrante delicto*; the herald was sent almost gratuitously only after the second Megarian decree; and again, *cui bono*? Pro-war Athenians exploited his death and elaborate state funeral to pass a ferocious decree against their neighbor and drum up popular support for their militant ambitions.

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