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MATTEO ZACCARINI

# The Fate of the Lawgiver

The Invention of the Reforms of Ephialtes and the *Patrios Politeia*

**ABSTRACT:** a revised analysis of the tradition about the ‘reforms of Ephialtes’ in Athens (ca. 461 B. C.), focusing on the many inconsistencies regarding their contents, author, and context. The paper argues that the reforms as we know them were invented, essentially, by a fourth-century tradition that belongs to the history of ideas and to the biased debate about the democracy, rather than to constitutional history. While the reforms cannot be regarded as a pivotal enactment and cannot contribute to reconstructing the historical phases of the Athenian constitution, they shed light on how the ongoing criticism of the democracy retrospectively shaped the portrayal of the Athenian past.

**Keywords:** reforms of Ephialtes – Areopagus – constitutional history – Athenian democracy – *patrios politeia* – *Athēnaiōn Politeia*

Under the year 462/1 B. C. the ancient tradition records radical political and constitutional reforms in Athens, which were closely associated with a popular leader called Ephialtes (henceforth, ‘reforms’). Information about Ephialtes and the reforms is scant, contradictory, and scattered among distant sources.<sup>1</sup> Scholarship has devoted much effort in trying to decipher this troublesome tradition. The generally held notion that the reforms resulted in a reduction of the political powers of the aristocratic council of the Areopagus has been interpreted in a number of ways:<sup>2</sup> as a transfer of the Areopagites’ jurisdiction over public offices, especially the *euthynai* and the *dokimasia*, to other bodies;<sup>3</sup> as the institution of the prytaneis,<sup>4</sup> or of the *nomophylakes* at the expense

- 1 See e.g. P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1993<sup>2</sup>), 311–12; C. Bearzot, ‘Ancora sulle *Eumenidi* di Eschilo e la riforma di Efialte (in margine ad una pagina di Chr. Meier)’, *Prometheus* 18 (1992), 27–35, at 29–30; H.-F. Mueller, ‘*Ephialtes accusator*: a case study in anecdotal history and ideology’, *Athenaeum* 87 (1999), 425–45 (rediscussing Valerius Maximus); M. Berti, *Salvare la democrazia. L’egemonia dell’Areopago ad Atene 480–461 a. C.* (Tivoli, 2012), 102–7; E. M. Harris, ‘The flawed origins of ancient Greek democracy’, in A. Havlíček, C. Horn, and J. Jinek (edd.), *Nous, Polis, Nomos. Festschrift F. L. Lisi* (St. Augustin, 2016), 1–13, at 9–10.
- 2 E. Poddighe, *Aristotele, Atene e le metamorfosi dell’idea democratica: da Solone a Pericle (594–451 a. C.)* (Roma, 2014), 248–58, provides an overview of these and other interpretations.
- 3 R. W. Wallace, ‘Ephialtes and the Areopagos’, *GRBS* 15 (1974), 259–69; Rhodes (n. 1), 316–17; T. E. Rihll, ‘Democracy denied: why Ephialtes attacked the Areiopagos’, *JHS* 115 (1995), 87–98, focuses on the *dokimasia*.
- 4 P. J. Rhodes, *The Athenian Boule* (Oxford, 1985<sup>2</sup>), 201–7; cf. G. Kavvadias and A. P. Matthaiou, ‘A new Attic inscription of the fifth cent. B. C. from the east slope of the acropolis’, in A. P. Matthaiou and R. K. Pitt (edd.), *Αθηναίων Επισκοπος. Studies in Honour of H. B. Mattingly* (Athens, 2014), 51–72.

of the Areopagus;<sup>5</sup> as a radical process that opened the archonship to the *zeugitai*;<sup>6</sup> as a reform of institutional procedures that introduced the *graphê paranomon*<sup>7</sup> or the custom of electing a *stratêgos ex hapantôn*;<sup>8</sup> even as an actual increase of the powers of the Areopagus<sup>9</sup> or as a sort of compromise against extremists who advocated its elimination.<sup>10</sup> Some scholars have argued that, in close connection with the reforms, the Athenians promoted a regulation of the Eleusinian Mysteries<sup>11</sup> and erected important public buildings, such as the Hephaisteion,<sup>12</sup> the bouleuterion,<sup>13</sup> and the tholos.<sup>14</sup>

Despite these issues and the lack of consensus among scholars, the reforms are normally regarded as a cornerstone in Athenian political history.<sup>15</sup> Among the most recent examples, Kurt Raaflaub, while acknowledging that ‘Ephialtes’ reforms’ should only be used as a practical label, has regarded the reforms essentially as *the* origin of Athenian democracy;<sup>16</sup> David Teegarden has defined 462/1 as an ‘epochal year’;<sup>17</sup> the reforms have been addressed as a ‘rivoluzione’ by Maurizio Giangiulio,<sup>18</sup> and as a ‘largely peaceful democratic revolution’ by Christopher Carey.<sup>19</sup> Yet, a few scholars have pointed out the (ancient and modern) tendency of over-interpreting the reforms: sceptical approaches

- 5 L. O’Sullivan, ‘Philochorus, Pollux and the νομοφύλακες of Demetrius of Phalerum’, *JHS* 121 (2001), 51–62, at 53–5, considers a fourth-century invention; I. Tóth, [transl. from Hungarian] ‘Guardians of the law in Athens in the 5th century BC. Notes to the history of Ephialtes’ reforms’, *Actas* 2–3 (2006), 19–31.
- 6 K. A. Raaflaub, ‘The breakthrough of *dēmokratia* in mid-fifth-century Athens’, in id., J. Ober, and R. W. Wallace, *Origins of Democracy in Ancient Greece* (Berkeley, CA, 2007), 105–54, at 115 and 151 n. 7, with bibliography.
- 7 Contra M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford, 1991), 205, who is rightly sceptical.
- 8 See C. W. Fornara, *The Athenian Board of Generals from 501 to 404* (Wiesbaden, 1971), 26–7.
- 9 L. G. H. Hall, ‘Ephialtes, the Areopagus and the Thirty’, *CQ* n. s. 40.2 (1990), 319–28, esp. at 324–6.
- 10 Thus J. L. Marr, ‘Ephialtes the moderate?’, *G&R* 40.1 (1993), 11–19.
- 11 *APF*, 259, with bibliography, on *IG I<sup>3</sup>* 6, now dated and interpreted with much greater caution: see e.g. S. Lambert and R. Osborne in *AIO*.
- 12 See studies in J. Barringer, ‘A new approach to the Hephaisteion: heroic models in the Athenian agora’, in P. Schultz and R. von den Hoff (edd.), *Structure, Image, Ornament: Architectural Sculpture in the Greek World* (Oxford-Oakville, 2009), 105–20, at 115–16 and 117 n. 3.
- 13 Hansen (n. 7), 251.
- 14 T. J. Figueira, ‘Xanthippos, father of Perikles, and the *prutaneis* of the *naukraroi*’, *Historia* 35.3 (1986), 257–79, esp. at 269–70.
- 15 A few examples are: Rihll (n. 3); P. J. Rhodes, ‘Oligarchs in Athens’, in R. Brock and S. Hodkinson (edd.), *Alternatives to Athens* (Oxford, 2000), 119–36, esp. at 124–7 (cf. *CAH<sup>2</sup>* 5.ch. 4.2); *OCD<sup>3</sup>*, s.v. ‘Ephialtes’; V. Gouschin, ‘Aristocracy in democratic Athens: deformation and/or adaptation’, in id. and P. J. Rhodes (edd.), *Deformations and Crises of Ancient Civil Communities* (Stuttgart, 2015).
- 16 Raaflaub (n. 6), contra J. Ober’s thesis (e.g. “I besieged that man”. Democracy’s revolutionary start’, in K. A. Raaflaub, J. Ober, and R. W. Wallace, *Origins of Democracy in Ancient Greece* (Berkeley, CA, 2007), 83–104) that the process should be primarily associated with the name of Cleisthenes; cf. also P. J. Rhodes in *CAH<sup>2</sup>* 5.87–92.
- 17 D. A. Teegarden, *Death to Tyrants! Ancient Greek Democracy and the Struggle against Tyranny* (Princeton, NJ-Oxford, 2014), 99; about the general approach of the book see the review by E. M. Harris in *JHS* 2015, 224–6.
- 18 M. Giangiulio, *Democrazie greche. Atene, Sicilia, Magna Grecia* (Roma, 2015), 49: this point has been criticised by J. Kierstead (*CR* 2016, 1–3) and R. Souza (*BMCRe*, 2016.09.18).
- 19 C. Carey, ‘Solon in the orators’, *TiC* 7.1 (2005), 110–28, at 114.

have been provided by James Day and Mortimer Chambers,<sup>20</sup> Eberhard Ruschenbusch,<sup>21</sup> and, recently, by Robin Osborne,<sup>22</sup> by Christian Mann,<sup>23</sup> and by Edward Harris in a forthcoming contribution.<sup>24</sup> I hereby propose to advance the discussion on the reforms by radically reconsidering their historical relevance and coherence.

## 1. Notes on Fifth-Century Sources

The sole fifth-century explicit reference to Ephialtes is the brief mention of his murder by Antiphon (5.68), which will be analysed later along with other testimonia on Ephialtes' death (§ 4). On the other hand, modern scholarship has often tried to detect indirect, hidden hints of the reforms in other fifth-century sources. I will review these before focusing on the main evidence.

A silent, quasi-contemporary proof of Ephialtes' activity is often found in Aeschylus' *Eumenides*. Its depiction of the Areopagus as a supreme court, passing judgment on a murder that involves ritual pollution and violation, is regarded by some scholars as a reflection of Aeschylus' approval – or lack thereof – of the recent reforms,<sup>25</sup> while a few have adopted a sceptical approach.<sup>26</sup> However, the scant fifth-century evidence on the activity of the Areopagus precisely attests to judicial powers only, which reminds us of Robert Wallace's *caveat* about exercising due caution in discussing the early jurisdiction of this council.<sup>27</sup> As such, this interpretation of the *Eumenides* dangerously resembles a circular argument: since the Areopagus features no political powers in a fifth-century tragedy, we *assume* that such powers had been recently removed by reforms that are only attested by fourth-century sources (§ 2).

20 J. Day and M. Chambers, *Aristotle's History of the Athenian Democracy* (Berkeley-Los Angeles, CA, 1962), 127, on 'exaggerating the reforms of Ephialtes into the destruction of a *politeia*'.

21 E. Ruschenbusch, 'Ephialtes', *Historia* 15 (1966), 369–76; *contra* G. L. Cawkwell, 'Νομοφυλακία and the Areopagus', *JHS* 108 (1988), 1–12.

22 R. Osborne, 'When was the Athenian democratic revolution?', in S. Goldhill and R. Osborne (edd.), *Rethinking Revolutions Through Ancient Greece* (Cambridge, 2006), 10–28, at 17–28.

23 C. Mann, *Die Demagogen und das Volk. Zur politischen Kommunikation im Athen des 5. Jahrhunderts v. Ch.* (Berlin, 2007), ch. 2.

24 E. M. Harris, 'Aeschylus' *Eumenides*: the role of the Areopagus, the rule of law and political discourse in Attic tragedy', forthcoming, which independently provides several observations and conclusions similar to those presented here. I warmly thank E. M. Harris for sharing his paper and providing feedback about mine.

25 See discussion and studies in Rhodes (n. 1), 312 (also on the *Suppliants*); M. Lloyd (ed.), *Aeschylus* (Oxford, 2007), 23–9, summarises earlier scholarship (republished in the volume). D. J. Conacher, *Aeschylus' Oresteia. A Literary Commentary* (Toronto-London, 1989), 199–206, argues that the *Eumenides* actually criticised the reforms; Bearzot (n. 1) argues for Aeschylus' approval; also cf. Raaflaub (n. 6), 115–17.

26 R. Mitchell-Boyask, *Aeschylus: Eumenides* (London, 2009), ch. 5, esp. at 102–7, exercises due caution in addressing the matter; see also P. Harding, *The Story of Athens. The Fragments of the Local Chronicles of Attika* (London-New York, 2008), App. 6. I refer now esp. to Harris (n. 24), who shows that the reforms of Ephialtes had nothing to do with the Areopagus and are therefore irrelevant to our understanding of the *Eumenides*.

27 Cf. R. W. Wallace, *The Areopagos Council, to 307 B. C.* (Baltimore, MD-London, 1989), 98.

Additional fifth-century testimonia have been sought in Thucydides' passages about the incident at Ithome in the late 460s, which allegedly increased tensions between Athens and Sparta (1.102.3). Modern scholars need to supplement Thucydides' account with Plutarch's (*Cim.* 16.8) in order to argue for Ephialtes' involvement in opposing Cimon's military aid to Sparta at the time.<sup>28</sup> A second Thucydidean passage that allegedly alludes to the reforms deals with the anonymous Athenian traitors who plotted against the demos before the battle of Tanagra, ca. 457 (1.107.4 δῆμόν τε καταπαύσειν);<sup>29</sup> at best, this recurring paranoia in times of crisis<sup>30</sup> might have inspired the later addition of the character of *Aristodikos* to Ephialtes' story (§ 4). Finally, Thucydides claims that in 411 the demos was used to govern for more than fifty years, but this statement clearly refers to Athens' rule over other Greeks (8.68.4 ἄλλων ἄρχειν εἰωθότα) rather than to domestic matters.<sup>31</sup> Finally, in connection with the theme of the *archê*, sometimes the increase in Athenian public inscriptions from the mid-fifth century has been seen as a direct result of the reforms.<sup>32</sup>

These interpretations all suffer from a form of confirmation bias, since the reforms are literally unattested before the late fourth-century. The 'evidence' mentioned so far is, at best, inconclusive, and needs to be supplemented by much later sources to acquire any possible relevance. Keeping in mind this central issue, we can move to the most extensive and problematic account of Ephialtes' activity: the fourth-century Aristotelian *Athēnaiōn Politeia* (henceforth, *Ath.Pol.*).

28 See e.g. Rhodes (n. 1), 311. I refer to T. Rood, *Thucydides: Narrative and Explanation* (Oxford, 1998), 231 and n. 21, against the assumption that νεωτεροποιία in Th. 1.102.3 alludes to the reforms and to the new Athenian foreign policy. Sometimes, this assumption is tied to the hardly believable idea that Ephialtes and Pericles (cf. § 3) encouraged Cimon's Peloponnesian expedition and then exploited the absence of his 'oligarchic' hoplites from Athens to enact 'democratic' reforms (e.g. Hansen (n. 7), 37 and 126; L. Piccirilli, 'Opposizione e intese politiche in Atene: i casi di Efiante-Cimone e di Pericle-Tucidide di Melesia', in M. Sordi (ed.), *L'opposizione nel mondo antico* (Milano, 2000) 49–73, at 64–71): contra, convincingly, S. Hornblower, *The Greek World 479–323 BC* (New York, 2011<sup>4</sup>), 22–3, and esp. C. A. Thomsen, 'The 'snap vote' of 462/1 BCE: a note on the history of the Athenian democracy', *C&M* 64 (2014), 81–93.

29 This detail might be biased by a late fifth-century perspective: J. Roisman, 'The background of the battle of Tanagra and some related issues', *AC* 62 (1993), 69–85, at 79–80. The political upheaval in Boeotia following the battle at Oinophyta (e.g. *Arist. Pol.* 4.1302b 25–31; see *CAH*<sup>2</sup> 5.116) might belong to the same context.

30 Cf. the similar conspiracies reportedly uncovered before the battle of Plataea (*Plu. Arist.* 13.1) and at the time of the Four Hundred (Th. 8.54.4): see Goušchin (n. 15), at 54–7, on both episodes, and C. Bearzot, 'Spazio politico e spazio della sovversione', in P. A. Bernardini (ed.), *La città greca. Gli spazi condivisi*, *Atti del Convegno del Centro internazionale di studi sulla Grecità antica* (Urbino, 26–7 Set. 2012) (Pisa-Roma, 2014), 93–106, esp. at 93–6, on Thucydides'. The 'Themistoclean' version of the reforms in the *Ath.Pol.* is also based on the hoax of an imminent καταλύειν of the *politeia* (§ 3).

31 S. Hornblower, *A Commentary on Thucydides* 3 (Oxford, 2008), 957–8, interprets the date implied by Thucydides as '(surely) c.479'. A similar, although more cautious view in A. W. Gomme, A. Andrewes, and K. J. Dover, *A Historical Commentary on Thucydides* 5, Book VIII (Oxford, 1981), 178.

32 On the alleged connection between the increase in public inscriptions and the reforms see remarks in P. J. Rhodes, '"Alles eitel gold"? The sixth and fifth centuries in fourth-century Athens', in M. Piérart (ed.), *Aristote et Athènes / Aristoteles and Athens. Séminaire d'histoire ancienne* (Fribourg, 23–25 mai 1991) (Paris, 1993), 53–64, at 55–6 ('it seems'); J. K. Davies, *Democracy and Classical Greece* (Cambridge, MA 1993<sup>2</sup>), ch. 4; J. P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill, NC-London, 1999), at 64 and 191–2.

## 2. The Aristotelian Areopagitic Constitution

The *Ath. Pol.* claims that the Areopagus had acquired a form of *hēgemonia* οὐδενὶ δόγματι (23.1) thanks to its chief role at the battle of Salamis (διὰ τὸ γενέσθαι τῆς περὶ Σαλαμῖνα ναυμαχίας αἰτία),<sup>33</sup> when the council, having funded the Athenians with eight drachmas each, allowed them to man the fleet and defeat the Persians. As a consequence, for seventeen years after the Persian wars, the *politeia* remained under the control of the ruling Areopagites (25.1 διέμεινεν ἡ πολιτεία προεστώτων τῶν Ἀρεοπαγιτῶν). The *Ath. Pol.* later refers to this *politeia* as the sixth constitutional phase in the history of Athens (cf. 41.2 μεταβολή),<sup>34</sup> and the *Politics* briefly mention it while explaining that *metabolē* can result from the good reputation (5.1304a 18–20 ἐκ τοῦ εὐδοκιμῆσαι) acquired by an office or part of the state. Consequently, the *politeia* of the Areopagus, tied to the good reputation gained with the Persian wars (1304a 20–4 εὐδοκιμήσασα), opposed the democratic fortification of the ‘naval mob’ (ὁ ναυτικὸς ὄχλος).<sup>35</sup> These passages all deal with political *metabolē*, a fundamental notion in the Aristotelian interpretation of political history.<sup>36</sup> Once we turn to the features of the Areopagitic constitutional phase, however, we realise that they are both scant and inconsistent.

According to the *Ath. Pol.*, the political powers of the Areopagus ended when Ephialtes attacked the Areopagites with trials that, eventually, resulted in the seventh constitutional *metabolē* under the archonship of Conon, 462/1 (25.1–4; cf. 41.2). Ephialtes stripped τὰ ἐπιθέτα by which the Areopagus ‘was the safeguard of the *politeia*’ (25.2 δι’ ὧν ἦν ἡ τῆς πολιτείας φυλακή) as its prerogatives were redistributed among the *boulē* of the 500, the demos, and the popular courts. These ambiguous *epitheta*<sup>37</sup> are usually translated as ‘added powers’ and explained as adjunct, presumably political functions that the Areopagus had acquired after 479.<sup>38</sup> In fact, both the term *epitheta* and its place in the argument raise major issues.

First, significant internal inconsistencies can be found in the *Ath. Pol.* view that the Areopagus employed its *epitheta* to act as the φυλακή of the *politeia*. In fact, to the *Ath. Pol.*

33 On οὐδενὶ δόγματι as a reflection of the authority acquired by the Areopagus see M. Berti, ‘Il “dogma” e l’egemonia dell’Areopago ad Atene ([Aristot.] *Ath. Pol.* XXIII 1–2)’, *Dike* 6 (2003), 115–38, esp. at 118–20, and ead. (n. 1) more generally on these passages.

34 See E. Luppino Manes, ‘Aristotele e l’“impero dei mari” / “inizio dei mali” (Aristot. *Rhet.* 3, 11, 1412b 5–7)’, in M. S. Celentano (ed.), *Τέρψις. In ricordo di M. L. Coletti* (Alessandria, 2002), 35–63, at 51–3, for more studies on the sixth *metabolē*.

35 See 2.1274a 12–15. On the sources and relation of the *Ath. Pol.* with the *Politics* see Berti (n. 1), esp. 4–16. On εὐδοκιμῶ in the *Ath. Pol.* cf. § 3 on Pericles. On the tradition about the ‘naval mob’ see M. Zaccarini, ‘Thucydides’ narrative on naval warfare: *epibatai*, military theory, ideology’, in G. Lee, H. Whittaker, and G. Wrightson (edd.), *Ancient Warfare. Introducing Current Research, Volume I* (Newcastle upon Tyne, 2015), 210–28, at 218–26.

36 See P. Liddel, ‘*Metabolē politeion* as universal historiography’, in id. and A. Fear (edd.), *Historiae Mundi. Studies in Universal History* (London, 2010), 15–29, esp. at 20.

37 Cf. Day and Chambers (n. 20), at 84 and 128.

38 See Rhodes (n. 1), 287, 314–15, on the Aristotelian ‘democratic’ account allegedly based on Ephialtes’ definition of these powers as ‘added’; id. (n. 4), 179–207, on the political powers of the Areopagus after 480; see also Berti (both n. 1 and n. 33). Cawkwell (n. 21), however, rather argues for a *cura morum* that regulated immoral or excessive behaviour.



the archaic Areopagus already featured obviously political powers, both in pre-Draconian times (3.6; cf. 8.2) and when Solon had appointed the council ἐπὶ τὸ νομοφυλακεῖν, 'just as, even before, it had been the overseer of the *politeia*' (8.4 ὥσπερ ὑπῆρχεν καὶ πρότερον ἐπίσκοπος οὕσα τῆς πολιτείας).<sup>39</sup> This ancient νομοφυλακία that featured a specific vigilance over the *politeia* seems hardly distinguishable from the φυλακὴ of the *politeia* exercised through the *epitheta* at the time of Ephialtes – in which case, why were they 'added powers' at all, if they dated back to Solon or even earlier?<sup>40</sup>

Furthermore, in this context the very notion of *phylakê* raises issues, since literally it implies preservation, not control, and even less the power to modify or define a whole constitutional phase. One only needs to recall the use of *phylakê* by the *Ath. Pol.* in regard to the ancient *thesmothetai*, who were tasked with preserving (3.4 φυλάττωσι) the ordinances as they were so that they could be referred to during trials; or the secretary of the prytaneis, who used to preserve (5.4.3 φυλάττει) the approved decrees in Aristotle's own times; or even the fifth-century preservation of the democracy (29.1 διεφύλαττον) as long as the Athenians fared well in war. A further, internal contradiction is the claim that, despite the Areopagitic seventeen-year control, the *politeia* was gradually modified after 479 (25.1 καίπερ ὑποφερομένη κατὰ μικρόν), which implies that either the Areopagitic *phylakê* was not very strict, or that it was somehow superseded.

We should also look at the use of *epitheta* in a broader context. In an earlier passage often employed to explain 25.2, the *Ath. Pol.* states that the archon used to deal exclusively with τὰ ἐπίθετα (3.3) and had no role in τὰ πάτρια, which were reserved for the polemarch and the basileus. The context here seems to be strictly religious: the basileus is later noted for his prerogatives on τὰς πατρίους θυσίας (57.1).<sup>41</sup> In fact, during the fourth century the ἐπίθετος-πάτριος opposition often concerns religion, as found in Isocrates (7.29), Demosthenes (21.51–4; 43.66),<sup>42</sup> and on an inscription ordering women to come together κατὰ τὰ πάτρια at the *Skira* festivals (*IG* II<sup>2</sup> 1177 lines 11–12). Occurrences closer to the time of Ephialtes do not seem to be any different: on a decree dated ca. 460–50 τὰ πάτρια refers to the religious privileges of a *genos* (*IG* I<sup>3</sup> 7).<sup>43</sup> Finally, according to Harpocration's (likely limited) understanding of the matter, ἐπίθετος vs πάτριος was typical of festivals (s. v. Ἐπιθέτους ἑορτάς); as a parallel, Harpocration cites a fragment of Lysias' *Against Mixidemos*, according to which there were some other kinds of *epitheta* that 'the council of the Areopagus used to judge, being them not *patria*' (ἐλέγετο δὲ παρ' αὐτοῖς καὶ ἄλλα ἐπιθετά τινα, ὅποσα μὴ πάτρια ὄντα ἢ ἐξ Ἀρείου πάγου βουλή ἐδίκαζεν).<sup>44</sup> The *Against Mixidemos* – whose authenticity, however, is debated<sup>45</sup> – is thus often cited

39 The inconsistencies of 3.6 in regard to 8.4 are discussed by Conacher (n. 25), 200–1.

40 Cf. Wallace (n. 27), 85–6, and Rhodes (n. 1), 315–16, for a discussion of the Areopagitic *phylakê*.

41 And cf. 58.1 on the religious role of the polemarch: Bearzot (n. 1), at 29–30.

42 Cf. R. Garland, 'Priests and power in Classical Athens', in M. Beard and J. North (edd.), *Pagan Priests. Religion and Power in the Ancient World* (London, 1990), 75–91, at 88–9.

43 Cf. Wallace (n. 27), 87.

44 Lys. fr. 224 Carey (fr. 178 Sauppe); see Rhodes (n. 1), 314, on this fr. and Poddighe (n. 2), 239 and n. 59, for bibliography.

45 See R. Sealey, 'Ath. Pol. 25.2 and Lys. fr. 178: 'additional' functions of the Areopagite Council', *JHS* 111 (1991), 210, discussing a possible dating to the 340s.

as a proof that the *epitheta* of the Areopagus were discussed earlier than Aristotle's time: however, the verb *dikazein* in this fragment clearly qualifies such *epitheta* as a judicial rather than constitutional prerogative, and certainly does not prove that Lysias, whose extant corpus never mentions Ephialtes,<sup>46</sup> knew of or treated the reforms.<sup>47</sup>

Lastly, the *Ath. Pol.* claims that, as a result of the reforms, the Areopagus was deprived of its *ἐπιμέλεια* over the constitution (26.1). Isocrates also knows an Areopagitic *epimeleia*, but it is nowhere near a constitutional prerogative; it simply refers to the supervision of young citizens and civic decorum (7.37 *ἐπιμελεῖσθαι τῆς εὐκοσμίας*).

Internal inconsistencies and comparisons with earlier and contemporary sources show that the Areopagitic *epitheta* are found as constitutional powers exclusively in the *Ath. Pol.* passages about the reforms of Ephialtes. The *Ath. Pol.* seems to echo and rearrange expressions that were known to Athenian public practice, but only in relation to completely different contexts. Similarly, the Areopagitic *phylakê* over the *politeia* provides no convincing explanation of a whole phase of the Athenian constitution. These issues undermine the widespread tendency to reconstruct early fifth-century political history on the basis of the Aristotelian account.<sup>48</sup> A similar ambiguity, in fact, affects several other aspects of the tradition about the reforms.

### 3. Ephialtes and His Many Masters

One way or another, the whole of the tradition fails to provide any clear explanation of the reforms. The *Ath. Pol.* claims that Ephialtes was assisted in his attack on the Areopagites by none other than Themistocles (25.3 *ἔπραξε δὲ ταῦτα συναιτίου γενομένου Θεμιστοκλέους*). An Areopagite himself, Themistocles is here the real protagonist, who stages and directs the whole affair in order to avoid a pending accusation of medism. Eventually, in his typical literary role of deceiver extraordinaire, Themistocles manipulates both his colleagues and Ephialtes, who remains completely unaware of what is taking place (25.3–4).<sup>49</sup> According to the traditional chronology, at the time of the reforms Themistocles had been ostracised for a decade and was reportedly living in

46 Actually, to Lysias the only *nomothetai* of old – or, at least, the good ones – were Solon, Themistocles, and Pericles (30.28); generally, on the absence of Cleisthenes and Ephialtes (and Solon's prominence), see Carey (n. 19), 116–17, on this passage. Cf. §§ 5–6 on the *patrios politeia* and the *nomothetai*.

47 Cf. Cawkwell (n. 21), 2: 'the phrase is no help to understanding what the Areopagus lost in 462/1'.

48 On the lack of information available to the *Ath. Pol.* to reconstruct the 'government of the Areopagus' see Day and Chambers (n. 20), 120–33, esp. at 120–1, 126–7 (regarding it as 'palpably unhistorical'), and 129–30. Cf. D. Ambaglio, 'L'Athenaion Politeia e il V secolo', in G. Maddoli (ed.), *L'Athenaion Politeia di Aristotele, 1891–1991. Per un bilancio di cento anni di studi*, Incontri perugini di Storia della storiografia antica e sul mondo antico 6 (Acquasparta, 27–29 maggio 1991) (Napoli, 1994), 255–69, at 256, on the frequent overestimation of the *Ath. Pol.* as a historiographical source about the fifth century; cf. Harris (n. 1), 10.

49 Also cf. the *hypothesis* to Isocrates' *Areopagiticus* on 'someone Ephialtes and Themistocles' attacking the Areopagus (*hyp.* Isoc. 7 D. lines 4–9 *Ἐφιάλτης τις καὶ Θεμιστοκλῆς*): on the text, perhaps written by a sixth-century Christian author, see L. Piccirilli, 'Ephialte e l'Athenaion Politeia', *SIFC* 6 (1988), 77–90, at 78.



Asia.<sup>50</sup> Despite modern efforts,<sup>51</sup> however, historical reconstruction is not at stake here. The value of this episode is the crediting of the reforms 'of Ephialtes' to someone else. As we shall see, this re-attribution is far from isolated within the tradition in general, and in the *Ath. Pol.* specifically.

The recapitulation of the Athenian constitutional phases in the *Ath. Pol.* presents a previously unheard-of relationship: Aristides started the seventh *metabolê*, and Ephialtes completed it (41.2).<sup>52</sup> Once again, Ephialtes carries out someone else's will or, at the very least, acts as co-author of a process that he did not devise in the first place. A third version is found in relation to the Thirty Tyrants, who reportedly removed the *nomoi* of Ephialtes and Arcestratus *περὶ τῶν Ἀρεοπαγιτῶν* (35.2). We never hear of Arcestratus again: since this passage also involves Solon, the Thirty, and the *patrios politeia*, it will be examined in more detail later (§ 5). The *Ath. Pol.* even presents a fourth alternative within its chaotic overview of the democratisation of the polis, as Pericles alone, when he first rose to 'good fame' (27.1 *πρῶτον εὐδοκμήσαντος*), removed some of the powers of the Areopagites (*τῶν Ἀρεοπαγιτῶν ἔνια παρείλετο*).<sup>53</sup> The *Politics* also associates Ephialtes with Pericles, and although the latter initially seems to play a secondary role, he immediately takes precedence thanks to the mention of his introduction of the *misthos* for the courts (2.1274a 7–8).

Similarly, Plutarch provides a number of conflicting versions. In the *Life of Cimon* Ephialtes is the apparent protagonist of the reforms, which were enacted while Cimon was away on a campaign. However, by the time Cimon came back, Pericles was the leader of the people (*Cim.* 15.1–2), and Plutarch does not explain that (presumably) Ephialtes had died in the intervening period.<sup>54</sup> The *Life of Pericles* is even more explicit: among the friends and rhetors employed by Pericles for his affairs, 'they say there was Ephialtes, who destroyed the power of the council of the Areopagus' (7.6 *ὡν ἓνα φασὶ γενέσθαι τὸν Ἐφιάλτην, ὃς κατέλυσε τὸ κράτος τῆς ἐξ Ἀρείου πάγου βουλῆς*; cf. 9.5).<sup>55</sup> In the *Praecepta Gerendae Reipublicae* Plutarch first seems to credit Ephialtes (805A), but then states clearly that the attack on the Areopagus was carried out by Pericles δι' Ἐφιάλτου (812D), the same expression that denotes Aristides' practice of acting through others (*Arist.* 3.3

50 On the episode and its 'particolari incredibili' see E. Manni, 'Intorno ad Efiante di Sofonide', *RAL* 8.2 (1947), 308–20, at 309; L. Boffo, 'L'intervento di Efiante di Sofonide sull'Areopago nell'interpretazione di IV secolo', *RAL* 8.31 (1977), 435–50, at 443–4 and n. 47, on some of its features 'storicamente anche attendibili'.

51 L. A. Jones, 'The role of Ephialtes in the rise of Athenian democracy', *ClAnt* 6.1 (1987), 53–76, at 62–5, attempts to explain Themistocles' presence in historical terms. See also Piccirilli (n. 49), 85–90, and R. G. Lewis, 'Themistokles and Ephialtes', *CQ* n. s. 47.2 (1997), 358–62.

52 On this role of Aristides see Luppino Manes (n. 34), esp. 43–51.

53 The chronology is extremely confused: the chapter opens with a *μετὰ δὲ ταῦτα* (27.1) apparently referring to a period of over 10 years after the death of Ephialtes (25.4–26). On the 'good fame' of the Areopagus in the *Politics* cf. § 2.

54 On these passages in relation with the diplomatic incident at Ithome see § 1. On Cimon and his time I refer to my forthcoming monograph: M. Zaccarini, *The Lame Hegemony. Cimon of Athens and the Failure of Panhellenism, ca. 478–450 BC* (Bologna, 2017).

55 On Pericles' alleged role see A. J. Podlecki, *Perikles and His Circle* (London-New York, 1998), 46–7. L. J. Samons II, 'Aeschylus, the Alkmeonids and the reform of the Areopagos', *CJ* 94.3 (1999), 221–33, argues that Pericles' role was unknown to Aeschylus' audience.

δι' ἐτέρων) – which leaves little ambiguity as to who was the real mastermind. Finally, in a different form of literary contamination, Heraclides Lembus' inaccurate abridgement of the Aristotelian passage about Cimon's public generosity literally mistakes Ephialtes for his alleged archenemy Cimon (*Exc.Pol.* 5).<sup>56</sup>

In the vast majority of these accounts Ephialtes is definitely not the author of 'his' reforms. His presence across the different versions shows that from the fourth century the tradition was confident about his involvement, but the lack of any other detail suggests that not much else was known. Ephialtes is credited as the lone protagonist of the reforms by only a few, late sources. For example, Diodorus Siculus' hostile account clearly aims to identify a culprit for the 'lawless actions' (11.77.6 ἀνόμημα) of the reforms: Ephialtes was a troublemaker who got what he deserved when he was killed for his impulsive policy.<sup>57</sup>

To sum up, different sources, or even the same source in different passages (in particular, the *Ath.Pol.* on which we tend to rely so much), provide utterly inconsistent details, except for the shared notion that Ephialtes was a puppet piloted by greater personalities.<sup>58</sup> With the exception of the unknown Arcestratus, these are all major figures that usually belong to different factions: the politically *redivivus* Themistocles, Aristides, Pericles, and even Cimon. The scholars who believe in the reforms as a historical fact have tried to overcome these issues by arguing that Ephialtes was the leader of a political faction – an entirely modern assumption – or that the reforms took place over several years<sup>59</sup> – an idea that only reinforces the inconsistency of a notion such as 'the reforms of Ephialtes'.

None of the different versions of the reforms and their titular author features elements that allow us to regard one as more believable than the others: factual reconstruction becomes unachievable, but the literary perspective and ideological sympathy expressed by each source might yield some light. Since Diodorus mentions Ephialtes' demise, it is worth examining other sources about his death, as they are very revealing of yet a further level of literary fabrication concerning his figure.

#### 4. The 'Cold Case' of Ephialtes' Murder and the Theme of *Dikê*

Antiphon, the earliest source to mention Ephialtes, states that in the late fifth century his murderers were still unknown (5.68 οὐδέπω νῦν ἡθρήνται; cp. D.S. 11.77.6).<sup>60</sup> It is hard to believe that such a declaration could be made in public unless it was common

56 Cf. *Ath.Pol.* 27.3. On the work of Heraclides see M. Zaccarini, 'The return of Theseus to Athens: a case study in layered tradition and reception', *Histos* 9 (2015), 174–98, at 175–6.

57 On ἀνόμημα cf. § 6. Pausanias also briefly acknowledges Ephialtes as 'chiefly responsible' of the reforms (1.29.15 μάλιστα ἐλυμήνατο).

58 Cf. V. Azoulay, *Pericles of Athens* (Princeton, NJ-Oxford, 2014), 26.

59 E.g. Rhodes (n. 1), 312, and Hansen (n. 7), 37, who defines young Pericles (and Arcestratus) as Ephialtes' 'henchman'; Raaflaub (n. 6), 105, sees Ephialtes as the leader of the politicians promoting the reforms. On the reforms taking place over an extended period cf. O'Sullivan (n. 5), 54, with Jacoby.

60 On Antiphon 5, one of the few surviving speeches dealing with homicide, see D.L. Cairns, 'Revenge, punishment, and justice in Athenian homicide law', *The Journal of Value Inquiry* 49.4 (2015), 645–65, esp. at 645–8.

knowledge, and we can conclude that towards the end of the fifth century Ephialtes was a somewhat familiar figure from the recent past. Yet, the reasons for such fame are unknown, since Antiphon only reports that a famous (for something) Ephialtes had been murdered, and certainly does not mention any reform or political activity.

Despite Antiphon's rather clear statement, in the subsequent century we find remarkably different views on Ephialtes' death. Idomeneus of Lampsacus claimed that Ephialtes had been killed by none other than Pericles (*FGrHist* 338 F8 *ap. Plu. Per.* 10.6).<sup>61</sup> Plutarch, while ambiguously noting that the crime took place in secret (*Per.* 10.7 κρυφαίως), refers to Aristotle in order to discredit Idomeneus' version and exculpate Pericles. As a matter of fact, the *Ath. Pol.* does accuse of the murder a man named *Aristodikos* of Tanagra (25.4). This name is unattested in the onomastic corpus of Tanagra<sup>62</sup> and is only found rarely and late in Boeotia.<sup>63</sup> Scholars have often regarded the Aristotelian version as historically more convincing.<sup>64</sup> Some have tried to reconcile Idomeneus and the *Ath. Pol.*, usually by assuming that *Aristodikos* acted as the hired hand of Pericles.<sup>65</sup> Arthur Keaveney has rightly noted that *Aristodikos* is unknown to us, 'a nobody'.<sup>66</sup> Pretty much like his victim, I would add. However, the important point of these accounts is that, for some reason, the 'cold case' of Ephialtes' murder was resumed and allegedly solved after more than a century – likely, by the literary tradition(s) only. Once more, we face an ongoing debate rather than a real historical process. We should not mutually supplement these sources in order to solve the murder of Ephialtes, which is itself a false problem. Quite the contrary, we should take care not to mix versions that are clearly diverging: Antiphon, Idomeneus, and the *Ath. Pol.* should be treated as three independent traditions about a topic that evidently became quite appealing in the fourth century – for reasons that might be purely ideological rather than historical. Duane Roller first suggested that *Aristodikos* might well be a speaking name built on the notion of justice, *dikê*, possibly an ironic 'best justice' or 'justice of the *aristos*' invented by the tradition

61 Perhaps this fragment comes from Idomeneus' work on the demagogues: D.W. Roller, 'Who murdered Ephialtes?', *Historia* 38.3 (1989), 257–66, at 259.

62 Cf. D.W. Roller, 'The Kaphisias family of Tanagra', in J.M. Fossey (ed.), *Boeotia Antiqua* 3, *Papers in Boiotian History, Institutions and Epigraphy in Memory of P. Roesch* (Amsterdam, 1993), 57–67, at 58–9; this, alone, is only an *e silentio* datum (although, see id. (n. 61), at 265).

63 It is occasionally attested during the third century at the earliest (*LGPN* 3b, s.v.). In general, on *dikê* in (almost 200) personal names see I.N. Arnaoutoglou, 'Onomastics and law. *Dike* and *-dike* names', in R.W.V. Catling and F. Marchand (edd.), *Onomatologos. Studies in Greek Personal Names Presented to E. Matthews* (Oxford, 2010), 582–7, and App. 2 to the same volume, no. 24 on *Ἀριστόδικος*.

64 A reconstruction is given by C. Bearzot, 'La costituzione beotica nella propaganda degli oligarchici ateniesi del 411', in *La Beotie antique*, Actes du Colloque international (Lyon-St-Étienne, 16–20 mai 1983) (Paris, 1985), 219–26, at 224; ead., 'Political murder in Classical Greece', *AncSoc* 37 (2007), 37–71, at 47–8, discusses Ephialtes' case as the first significant political murder. To its advantage, the *Aristodikos* version is at least consistent with the context of the attack on democracy from Tanagra in the 450s (cf. § 1): Rhodes (n. 1), 322.

65 See Roller (n. 61). It is hard to accept the reconstruction of D. Stockton, 'The death of Ephialtes', *CQ* n. s. 32.1 (1982), 227–8; L. Piccirilli, 'L'assassinio di Efialte', *ASNP* ser. 3, 17.1 (1987), 7–17, at 10, attempts to reconstruct Pericles' plot. A review of further theories is given by A. Keaveney, 'The murder of Ephialtes', *GIF* 54 (2002), 89–94.

66 Keaveney (n. 65), 93.

to embody the rightful revenge for Ephialtes' attack on the Areopagus, by definition the council of the *aristoi*.<sup>67</sup> As a side note, we may recall that the family of the authors of the legitimate political murder par excellence, the tyrannicides Harmodius and Aristogeiton, came from Tanagra (Hdt. 5.57.1). It might be that this illustrious heritage made the Boeotian polis a suitable place of origin for a story about the demise of a political abuser.

If one keeps in mind Roller's hypothesis, it is worth discussing another, less-known version of Ephialtes' death. According to Photius (*Bibl.* 151A Bekker), Ptolemy Chennus (*floruit* ca. 100 AD) reported a short catalogue of men who were found dead with a book by their side. It seems that the body of Ephialtes, whose murder is never alluded to, was found next to a copy of Eupolis' *Hybristodikai* (K.-A. 5.466), an otherwise unattested comedy that Ephialtes could have never read for obvious chronological reasons.<sup>68</sup> Without any reference to a play, Pollux cautiously refers to Craterus of Macedonia (εἴ τι χρὴ Κρατερῷ πιστεύειν κτλ.) to explain the word *hybristodikai* as 'those who did not want to undergo judgements' (*FGrHist* 342 F4b *ap.* Poll. 8.126 ὑβριστοδίκαι δὲ ἐκαλοῦντο [...] οἱ μὴ βουλόμενοι τὰς δίκας εἰσαγαγεῖν; cf. Hsch. and Phot., s. v.). Ian Storey has translated Eupolis' *Hybristodikai* as 'Abusers in the court'.<sup>69</sup> Its literal meaning might be 'Judgements of the *hybris*-driven', and *hybris* seems remarkably close to Ephialtes' political behaviour as presented by the hostile tradition. There is nothing inherently special in finding that a Greek name speaks a certain notion: in this case, however, it cannot go unnoticed that Ephialtes' death is related to the names of an otherwise unknown man and an otherwise unknown comedy, and that these 'speak' in a way that might suggest a literary rearrangement of the matter. Both *Aristodikos* and the *Hybristodikai* link Ephialtes' demise to the notion of *dikê*. Perhaps the theme of justice was attached posthumously to Ephialtes as a mockery for his (also fictitious?) fame of being 'just towards the *politeia*' (*Ath. Pol.* 25.1 δοκῶν [...] δίκαιος πρὸς τὴν πολιτείαν),<sup>70</sup> his own reported boast of being 'just' (Ael. *VH* 13.39 δίκαιός εἰμι),<sup>71</sup> as well as his action against the Areopagus (commonly regarded as the supreme *dikastêrion* and source of a superior *dikê*: Lycurg. *C. Leocr* 12) to the advantage of the popular *dikastêria* (*Ath. Pol.* 25.2; Plu. *Cim.* 15.2; cf. § 2). Given these associations, *Aristodikos* and the *Hybristodikai* might be part of a tradition that elaborated on and polemically played with this theme, presenting Ephialtes' murder as the ultimate *dikê* and the rightful consequence of his intolerable actions.

67 D. W. Roller, *Tanagran studies 1, Sources and Documents on Tanagra in Boiotia* (Amsterdam, 1989), 55–6; esp. id. (n. 61), at 265; cf. M. T. Fau, 'La mort d'Ephialtes', *Itaca* 14–15 (1998–9), 9–18 (not entirely convincing), on *Aristodikos* as a purely literary creation.

68 Cf. P. J. Bicknell, 'Ephialtes' death in bed', *LCM* 13.8 (1988), 114–15.

69 Cf. I. C. Storey, *Eupolis. Poet of Old Comedy* (Oxford, 2003), 261–2, discussing other translations.

70 The δοκῶν possibly implies doubts on Ephialtes' fame: cf. Rhodes (n. 1), 313, following Wallace (n. 3).

71 Notoriously, this was the trademark title of Aristides who, just like Ephialtes (*VH* 2.43, 11.9), was described as very poor (Plu. *Arist.* 1). Ephialtes is occasionally compared with Aristides, along with other virtuous men, especially in Aelian's passages (cf., briefly, Plu. *Cim.* 10.8): see L. Prandi, 'Eliano lettore di Plutarco?', in A. Pérez Jiménez and F. Titchener (edd.), *Historical and Biographical Values of Plutarch's Works. Studies Devoted to Prof. P. A. Stadter by the International Plutarch Society* (Málaga-Logan, 2005), 383–97, at 393, § 2.2.2.

The inconsistencies regarding Ephialtes' death show that this was yet another way to characterise his figure by involving other themes and personalities. His varied association with *dikê* brings Ephialtes somewhat close to Solon who, according to *τινες*, established the sovereignty of the *dikastêrion* (Arist. *Pol.* 2.1274a 1–5 κύριον ποιήσαντα τὸ δικαστήριον), and provided *dikê* for everyone (fr. 36 W. vv. 18–20). Consistently, the Thirty Tyrants 'abolished the sovereignty of the judges' (*Ath.Pol.* 35.2 τὸ κῦρος ὃ ἦν ἐν τοῖς δικασταῖς κατέλυσαν) after removing the laws of Ephialtes-Archestratus and of Solon. In fact, additional connections with the tradition about Solon concur with the complex literary reworking of Ephialtes and the reforms.

### 5. The *Patrios Politeia*, Solon, and Ephialtes

Two important fourth-century passages variously connect Ephialtes and Solon. We should begin with the one, already briefly mentioned, that comes from the *Ath.Pol.*:

*Ath.Pol.* 35.2: τὸ μὲν οὖν πρῶτον μέτριοι τοῖς πολίταις ἦσαν καὶ προσεποιούντο διώκειν τὴν πάτριον πολιτείαν, καὶ τοὺς τ' Ἐφιάλτου καὶ Ἀρχεστράτου νόμους τοὺς περὶ τῶν Ἀρεοπαγιτῶν καθεῖλον ἐξ Ἀρείου πάγου, καὶ τῶν Σόλωνος θεσμῶν ὅσοι διαμφισβήτησεις ἔσχον κτλ.

In the beginning [the Thirty] were moderate towards the citizens and pretended to administer the *patrios politeia*. They removed from the Areopagus the *nomoi* of Ephialtes and Archestratus regarding the Areopagites, and those of the *thesmoi* of Solon that contained debated points etc.

Literary parallels and epigraphic evidence help to clarify the ambiguities of this passage. The 'debated points' of Solon's *thesmoi* apparently refer to their contents, as the only other occurrence of the very rare *διαμφισβήτησις* in the Aristotelian *corpus* refers to a legal ambiguity with no implications concerning authorship.<sup>72</sup> As for the reforms, this passage alone credits them to Ephialtes and the otherwise unknown Archestratus.<sup>73</sup> The reforms here seem to have affected the Areopagites rather than the Areopagus itself, which may be an important distinction. This focus on the members matches the earlier claims by the *Ath.Pol.* that the Areopagites used to control the *politeia* (25.1–2) and that Ephialtes had put the Areopagites under trial (25.4). A very close parallel is provided by the law of Eurates of 336 (*GHI* 79), which does not alter the powers of the Areopagus itself, but rather limits those of its members by prohibiting their meetings under the extraordinary

72 *Pol.* 1.1256a 14–15: 'whether (sc. money-making) is a part of *oikonomia* or has a different nature, it is debated' (πότερον δὲ μέρος αὐτῆς ἐστὶ τι ἢ ἕτερον εἶδος, ἔχει διαμφισβήτησιν). Cf. Plutarch's similar use (*Arttox.* 13.3 ταῦτα μὲν οὖν ἔχει διαμφισβήτησιν) in confronting debated casualty figures.

73 Ἀρχέστρατος is a rather common name in Attica as early as the Classical period (*LGPN* 2, s. v.). An Archestratus, *stratêgos* in 433/2 (Th. 1.57.6), has sometimes been identified with Ephialtes' colleague, for no real reason except for the possible chronological connection: *APF* 923.8, A; cf. S. Hornblower, *A Commentary on Thucydides* 1 (Oxford, 1991), 101.



and (exclusively) theoretical circumstances of a tyrannical coup (lines 11–16).<sup>74</sup> The law prescribes to erect the stele ἐπὶ τῆς εἰσόδου of the council (lines 24–6)<sup>75</sup> which, in turn, recalls the placement of the *nomoi* of Ephialtes and Arcestratus in the Areopagus as reported by the *Ath. Pol.* On the other hand, the claim that the Thirty ‘removed’ (35.2 καθεῖλον) the provisions of Ephialtes-Arcestratus and those of Solon suggests that any stele was disposed of: on an inscription dated *paulo post* 403/2, the same verb refers to a stele ‘removed’ by the Thirty (*IG II<sup>2</sup> 6* lines 11–13).<sup>76</sup> A similar measure is attested in the decree of Patrocleides on the *atimoi*, ca. 405/4, which instructs the destruction of the previous decrees, both the originals and their copies (*Andoc.* 1.76 and 79),<sup>77</sup> and an ambiguous scholion states that the Thirty ‘abused’ the provisions of Draco and Solon (*schol.* Aeschin. 1.39 lines 2–3 ἐλυμήναντο).<sup>78</sup> As they did in other cases, apparently the Thirty destroyed any epigraphical evidence of the reforms. According to the *Ath. Pol.* this measure, along with a revision of the authenticity of the Solonian regulations, was carried out in the professed interest of the *patrios politeia*, whose (re)arrangement had been ongoing from some years before.<sup>79</sup> Incidentally, this scenario implies that whatever evidence on the reforms was available to the author of the *Ath. Pol.* it was not that of an official text on public display (cf. below).

The second source that presents a clear connection between Ephialtes and Solon is Anaximenes of Lampsacus, according to whom Ephialtes himself relocated the *axones* and *kyrbeis* from the acropolis to the bouleuterion and the agora (*FGrHist* 72 F13 *ap. Harp.*, s.v. Ὁ κάτωθεν νόμος).<sup>80</sup> This seems an odd decision because, while the acropolis was a traditional and common venue of publication, the setting up of decrees in the agora was rare before the mid-fourth century, and when it happened it was usually motivated by an explicit relationship between the contents of the decree and the agora

74 See M. Canevaro and E. M. Harris, ‘The documents in Andocides’ *On Mysteries*’, *CQ* n.s. 62.1 (2012), 98–129, at 124; cf. esp. E. M. Harris, ‘From democracy to the rule of law? Constitutional change in Athens during the fifth and fourth centuries BCE’, in C. Tiersch (ed.), *Die Athenische Demokratie im 4. Jahrhundert. Zwischen Modernisierung und Tradition* (Stuttgart, 2016), 73–87, at 79–80. On the law see also Teegarden (n. 17), esp. ch. 3.

75 Actually, two stelai were to be inscribed (lines 25–7): τὴν μὲν ἐπὶ τῆς εἰσόδου τῆς εἰς Ἄρειον Πάγον τῆς εἰς τὸ βουλευτήριον εἰσίδοντι, τὴν δὲ ἐν τῇ ἐκκλησίᾳ (that is, the Pnyx?); see *GHI*, 389 and 392–3, on this rather ambiguous statement; see also Teegarden (n. 17), 105–10.

76 The same expression is found in *IG I<sup>3</sup> 229*, II<sup>2</sup> 9, and *Agora XVI* 37[1] (all restored).

77 See Canevaro and Harris (n. 74), esp. 100–1 (the decree in Andocides’ words) and 109 (providing parallels on the standard practice of destroying revoked decrees).

78 A brief discussion in Sickinger (n. 32), 228 n. 25, along with the Thirty’s removal of the laws of Ephialtes.

79 On the various stages of this process over the last decade of the fifth century see Canevaro and Harris (n. 74), esp. at 110–12. Cf. M. Faraguna, ‘Legislazioni e scrittura nella Grecia arcaica e classica’, *ZPE* 177 (2011), 1–20, at 1–3, also on the tradition about Draco’s (?) *kyrbeis*.

80 Cf. *Sud.*, s.v. (ο 104); on this fragment see G. Davis, ‘*Axones* and *kyrbeis*: a new answer to an old problem’, *Historia* 60.1 (2011), 1–35, and Sickinger (n. 32), 30; A. Aloni and A. Iannucci, ‘Writing Solon’, in C. Carey and L. Swift (edd.), *Iambus and Elegy. New Approaches* (Oxford, 2016), 155–7, at 162. A review of the interpretations of Ephialtes’ action in D. F. Leão and P. J. Rhodes, *The Laws of Solon. A New Edition with Introduction, Translation and Commentary* (London-New York, 2015), 7.



itself.<sup>81</sup> A limited parallel can be discerned, however, from a stele bearing the *nomos* of Solon, set up ἐμπροσθέν [...] τοῦ βουλευτηρίου after the fall of the Thirty (And. 1.95).<sup>82</sup>

Both Anaximenes' and the Aristotelian passages present fourth-century literary connections between Ephialtes and Solon in the context of some intervention on the ancestral *politeia*. The circulation and nonlinear arrangement of Solon's provisions in the Classical period is itself an issue,<sup>83</sup> and its connection with Ephialtes' adds a further layer of complexity to the Aristotelian access to both.<sup>84</sup> Yet, as odd as it may seem, *Ath. Pol.* 35.2 is probably among the most plausible passages about the reforms. Its mention of the laws of Ephialtes and Arcestratus being περὶ τῶν Ἀρεοπαγιτῶν finds various parallels; the mysterious Arcestratus might be a further indication of the accuracy of this version, since we can find no reason, even for the confused Aristotelian account, to invent him out of nowhere. His name might have been preserved by an intermediate source that possibly dated back to the time of the Thirty. However, it remains to be determined to what extent the fourth-century tradition could faithfully reflect fifth-century evidence on this process. As a close comparison, it is worth discussing some significant divergences between the *Ath. Pol.* and Herodotus, along with possible intermediate sources.

The section of the *Ath. Pol.* that immediately precedes the reforms of Ephialtes (chs. 20–21) features notable differences compared to Herodotus in regard to the activity of Cleisthenes, another illustrious 'colleague' of Ephialtes.<sup>85</sup> Despite this, there is evidence for considering Herodotus as a major source for this part of the *Ath. Pol.*, which enriched and rearranged the earlier account.<sup>86</sup> Furthermore, according to a fundamental point of the *Ath. Pol.*, the authority that had allowed the Areopagus to establish its *hēgemonia* derived from its decision to fund the sailors at the time of the battle of Salamis (§ 2). This contradicts Cleidemus' (probably) earlier account, according to which the funds rather came from Themistocles (*FGrHist* 323 F21 *ap. Plu. Them.* 10.6).<sup>87</sup> On the one hand,

81 Cf. J. P. Sickinger, 'Inscriptions and archives in Classical Athens', *Historia* 43.3 (1994), 286–96, at 288–9; esp. P. Liddel, 'The places of publication of Athenian state decrees from the 5th century BC to the 3rd century AD', *ZPE* 143 (2003), 79–93, at 79–81.

82 On Andocides' passages and the embedded (forged) text of the decree of Demophantus see Canevaro and Harris (n. 74), 119–25.

83 See Davis (n. 80); Aloni and Iannucci (n. 80); Carey (n. 19), esp. 113–15. On the ideological implications of the 'founding fathers' of the Athenian constitution see also Bearzot (n. 30), esp. 93–6.

84 According to Hesychius of Miletus, Aristotle devoted an entire work to Solon's *axones* (*V. Arist.* 106): see Canevaro and Harris (n. 74), 109 n. 64, on this and other debated traditions.

85 On *Ath. Pol.* 21–5 see J. P. Sickinger, 'Archon dates, Atthidographers, and the sources of *Ath. Pol.* 22–26', in G. W. Bakewell and J. P. Sickinger (edd.), *Gestures. Essays in Ancient History, Literature, and Philosophy presented to A. L. Boegehold* (Oxford, 2003), 338–50, at 338–9. On the divergences between Herodotus and the *Ath. Pol.* on Cleisthenes see E. David, 'A preliminary stage of Cleisthenes' reforms', *ClAnt* 5.1 (1986), 1–13 (6–7 on the possible use of an *Atthis* by the *Ath. Pol.*).

86 Rhodes (n. 32) argues (but not 'in detail', as noted by Sickinger (n. 85), 344 n. 18) for a substantial documentation behind the Aristotelian version, but we have no means to identify its other sources (if any); on Herodotus as a source for the *Ath. Pol.* on Cleisthenes, in terms of composition and temporal sequence, see R. Seager, 'Herodotus and *Ath. Pol.* on the date of Cleisthenes' reforms', *AJPh* 84.3 (1963), 287–9.

87 On Cleidem. F21 see Harding (n. 26), 103–5; P. Tuci, 'Clidemo di Atene', in C. Bearzot and F. Landucci (edd.), *Storie di Atene, storia dei Greci. Studi e ricerche di attidografia* (Milano, 2010), 129–79, esp. at 152 and 166–71, underlines Cleidemus' democratic stance and hostility towards the Areopagus (cf. F18).

Cleidemus' version seems consistent with the fifth-century tradition about Themistocles who, as the founding father of the Athenian naval supremacy, had previously suggested to divert the revenues from the Laurion to the construction of the fleet (Hdt. 7.144; cf. *Ath.Pol.* 22.7); on the other, the *Ath.Pol.* adopts a typically fourth-century perspective on the influence of the fleet over the development of the democracy.<sup>88</sup> The same perspective might stand behind Themistocles' reported call to arms on 'his' decree found in Troezen (lines 12–35; see ML 23). We can suspect that an Atthidographic tradition stood behind *Ath.Pol.* 25, as suggested, among the rest, by the detail of Conon's archonship.<sup>89</sup> However, in turn, the access of the Atthidographers to earlier documentation is uncertain, and it is impossible to simply assume that the sources available to the *Ath.Pol.* reached back uninterruptedly to the late 460s thanks to (undeterminable) records.<sup>90</sup> On the contrary, the discrepancies between the *Ath.Pol.*, Cleidemus, and the fifth-century sources suggest both that the tradition was far from consistent and that the author of the *Ath.Pol.* was prone to rework Athenian constitutional history on undeterminable grounds, rather than to hand it down as he may have found it in (diverging) earlier versions. In other words, the information that we have only confirms that reconstructing the fifth-century reforms of Ephialtes through the *Ath.Pol.* is both methodologically unsound and historically unreliable.

No account earlier than Anaximenes and the *Ath.Pol.* describes either Ephialtes' interest in Solon's laws or the intervention of the Thirty over both sets of provisions. As such, we should at least consider the possibility that even these traditions date to the fourth century itself. In this sense, before moving to the conclusions, we can briefly recall another period that revived and expanded the discussion of Athenian constitutional history.

## 6. Ephialtes, Demetrius of Phalerum, and the Tradition about the *Nomothetai*

Perhaps written out of desperation due to a lack of any actual information, a troublesome passage of Philochorus defined the reforms in negative terms by stating what Ephialtes did *not* remove, that is, the Areopagus' jurisdiction over blood crimes (*FGrHist* 328 F64b *a ap. Lex.Rhet.Cant.* 351.10 Nauck, s. v. νομοφύλακες). This (likely) third-century passage

88 On this theme see P. Ceccarelli, 'Sans thalassocratie, pas de démocratie? Le rapport entre thalassocratie et démocratie à Athènes dans la discussion du Ve et IVe siècle av. J.-C.', *Historia* 42.4 (1993), 444–70.

89 See Sickinger (n. 85), 338–40 and 349 (rediscovering the problems of this date); more generally Rhodes (n. 1), 330, and (n. 4), at 179–207. Usually, *Ath.Pol.* 25 is seen as a careless combination of (mainly) Atthidographic sources: cf. Roller (n. 61), 261–2; Harding (n. 26), 104–5 and 108–9, discusses the questionable assumption that the *Ath.Pol.* was based directly on Androtion.

90 That is, public archives, since the Thirty had destroyed the stele (above). See Faraguna (n. 79), 1–7, on the record-keeping of laws in (late) fifth-century Athens; Sickinger (n. 32; esp. n. 78, 289–92, on the preservation of documents in the archives). Cf. id. (n. 85), esp. at 341, underscoring that, as far as we know, sources earlier than the Atthidographers devoted little attention 'to constitutional matters like those cited by Aristotle in *AP* 22–26', and at 344–6, admitting that the existence and contents of public archives before the late fifth century – as well as their access and understanding by the Atthidographers – is uncertain.

is the only extant Athidographic mention of Ephialtes.<sup>91</sup> From the same fragment we learn that Philochorus narrated the institution of the νομοφύλακες (although, not openly associating it with Ephialtes), which is usually regarded as unreliable since Pollux credits their introduction to Demetrius of Phalerum (8.102).<sup>92</sup> The office of the νομοφύλακες recalls the *Ath.Pol.* passages about the Areopagitic powers ἐπὶ τὸ νομοφυλακεῖν at the time of Solon and about the Areopagitic φυλακή over the *politeia* after the Persian wars (§ 2). In turn, the *Ath.Pol.* passage about the Thirty removing the provisions of Ephialtes-Archestratus and Solon, with the purpose of ‘rectifying’ and clarifying the *politeia* (35.2 ὡς ἐπανορθοῦντες καὶ ποιοῦντες ἀναμφισβήτητον τὴν πολιτείαν; § 5), seems echoed by Strabo’s claim that Demetrius of Phalerum ‘not only did not dissolve the democracy, but even rectified it’ (9.1.20 ὃς οὐ μόνον οὐ κατέλυσε τὴν δημοκρατίαν ἀλλὰ καὶ ἐπηνόρθωσε), an expression that might derive from Demetrius’ own *hypomnēmata* on the *politeia* (δηλοῖ δὲ τὰ ὑπομνήματα ἃ συνέγραψε περὶ τῆς πολιτείας). Duris of Samos criticised Demetrius for his ‘most unlawful’ lifestyle (*FGrHist* 76 F10 ἀνομοθέτης), and Favorinus reported that the year in which he held the archonship was officially recorded as that of ‘lawlessness’ (D.L. 5.77 ἀνομία):<sup>93</sup> these terms recall Diodorus’ definition of Ephialtes’ reforms as ἀνόμημα (11.77.6).<sup>94</sup>

Demetrius wrote extensively about Athenian constitutional history (1 SOD),<sup>95</sup> increased the number of judges in the *dikastêria* for cases of *eisangelia* (96A-B SOD), and both promoted and enjoyed a tradition that regarded him as a successor *nomothetês* to Draco and Solon.<sup>96</sup> Despite some possible analogies with the tradition about Ephialtes, unfortunately, the only hint on Demetrius having discussed Ephialtes’ (and his contemporaries’) *andreia* and *dikaioσynê*, in contrast with Demosthenes’ lack of them, belongs to his *incerta* (156 SOD *ap. Plu. Dem.* 14.1–2).<sup>97</sup> Nevertheless, we may at least consider the possibility that Demetrius’ political works dealt with the reforms and elaborated on the previous tradition, especially in connection with the institution of the *nomophylakes* and with Demetrius’ personal interest for the illustrious *nomothetai* of old.

91 On the debated fragment see V. Costa (ed.), *Filocolo di Atene. Testimonianze e frammenti dell’Atthis* 1 (Tivoli, 2007<sup>2</sup>), 373–87; Harding (n. 26), 110 and 168; notes in M. Faraguna, ‘I *nomophylakes* tra utopia e realtà istituzionale delle città greche’, *Politica Antica* 5 (2015), 141–57, at 153–4.

92 Cf. M. Canevaro, ‘The twilight of *nomothesia*: legislation in early-Hellenistic Athens (322–301)’, *Dike* 14 (2011), 55–85, esp. at 66–9, elaborating on C. Bearzot, ‘I *nomophylakes* in due lemmi di Polluce (VIII 94 νομοφύλακες e VIII 102 οἱ ἐνδεκα)’, in ead., F. Landucci, and G. Zecchini (edd.), *L’Onomasticon di Polluce tra lessicografia e antiquaria* (Milano, 2007), 43–67, esp. at 58–66 (*contra* O’Sullivan (n. 5)).

93 On the probable mockery in these fragments see A. Bardelli, ‘La rappresentazione letteraria di Demetrio falereo nella tradizione storiografica antica. Aspetti propagandistici e motivi denigratori’, *Acme* 51.3 (1999), 3–25, at 14–16 (Duris F10) and 20–1 (Favorinus); L. O’Sullivan, *The Regime of Demetrius of Phalerum in Athens, 317–307 BCE. A Philosopher in Politics* (Leiden-Boston, MA, 2009), 95–6 (Duris).

94 See § 3; on Duris as a possible source for Diodorus on Demetrius see Bardelli (n. 93), 6–7.

95 See esp. the Περὶ τῆς Ἀθήνησι νομοθεσίας and Περὶ τῶν Ἀθήνησι πολιτειῶν; cf. 88–89, 113, 117 SOD on various Athenian lawgivers and fifth-century politicians (fr. 126, 127, 129, 131–147 W<sup>2</sup>).

96 Cf. Canevaro (n. 92), 64–6. The effects of Demetrius’ reforms on the Areopagus remain undeterminable: O’Sullivan (n. 93), 147–59.

97 On the problems of this fr. (133 W<sup>2</sup>) see O’Sullivan (n. 93), 159–60.

## Conclusion

The purpose of this paper is not to deny altogether that Athens underwent some process of institutional reform in the late 460s, or that a (minor?) politician named Ephialtes was active in the same period. However, the analysis of the extant sources in their respective context shows that approaching these topics as historical facts overlooks the major limits of the tradition and encounters serious methodological problems. These issues can be summed up as follows:

1. Tradition: information on Ephialtes and the reforms is essentially non-existent before the late fourth century, and none of the sources that dealt with the reforms took care of or was able to record their contents. The most – barely – consistent details seem to point towards a vague modification of judicial powers that involved the Areopagites, rather than a constitutional change that disempowered the council of the Areopagus of unattested political prerogatives. In this sense, the insistence of the *Ath. Pol.* on the ties between the reforms and the increased power of the popular courts seems to involve yet another form of anachronism: the ruinous development of the democracy in relation with the increased resort to political trials, which fifth-century sources tend to date after Pericles' death,<sup>98</sup> is *de facto* retrojected by the *Ath. Pol.* to the time of Ephialtes. Furthermore, the many conflicting versions about Ephialtes' achievements, masters / colleagues, and circumstances of death stand out rather clearly as literary exercises rather than historical records.
2. Ephialtes and the *nomothetai*: Ephialtes had a place in the complex, ideologically polarised tradition about the lawgivers and the *patrios politeia*. Typically, an archaic Greek lawgiver was exceptionally virtuous<sup>99</sup> and left the community soon after issuing his code: in Athens, both Solon (Hdt. 1.29) and Cleisthenes (5.72.1) famously did so.<sup>100</sup> Ephialtes responds to this pattern, in his way: from the fourth century he was regarded as the poor, incorruptible δίκαιος who issued the reforms and then disappeared, conveniently falling out of history. However, unlike his earlier colleagues, Ephialtes often plays the role of the incompetent reformer, whose actions caused his own demise, the ultimate loss of political stability for his polis and, especially for the *Ath. Pol.*, the decline of the democracy.
3. Ideological frame: due to his fame, the nature of the sources, and the contexts with which Ephialtes is often connected, it seems that most of the details about the reforms were born within a hostile tradition and produced by critics of the democracy. Perhaps the reforms were retrospectively theorised by fourth-century supporters of moderate democracy or oligarchy, in order to identify a responsibility for the altera-

98 Cf. E. M. Harris, *The Rule of Law in Action in Democratic Athens* (Oxford, 2013), 305–20, esp. on Cleon.

99 See A. Szegedy-Maszak, 'Legends of the Greek lawgivers', *GRBS* 19.3 (1978), 199–209, esp. at 202–9, on this and other *topoi*.

100 Raaflaub (n. 6), 141–2, acknowledges some similarities between Solon, Cleisthenes, and Ephialtes. On other lawgivers see Szegedy-Maszak (n. 99), 207–8.

tion of a virtuous, ancient *status quo*. This benefitted the argument for the restoration of a putative, earlier constitutional phase in which, as noted by J.M. Moore, the Areopagus was 'said to have done exactly what the fourth-century theorists wished it could have done in their own day'.<sup>101</sup> In the fourth century the Areopagus was considered responsible for the salvation (*sôtêria*) of the state after the battles at Aegospotami (Lys. 12.69) and Chaeronea (Lyc. 1.52). Perhaps these episodes contributed – in reverse order – to model the *Ath.Pol.* story on the council saving the day in 480.<sup>102</sup> The reforms of Ephialtes as we 'know' them might have been devised to reinforce the idea that the Areopagus had always stood in defence of Athens, and that it deserved to (re)acquire that prerogative in times of dire need.

In light of these issues, to assume the existence of any fifth-century tradition about the reforms constitutes an *argumentum e silentio*. To regard the reforms as a pivotal and factual phase of Athenian constitutional history is to base our inquiry on a literary mirage. The sources show that the debate on the reforms had always been ideological, and as such the moderns should address it. Like other fragments of the Athenian past, an entity such as the 'reforms of Ephialtes' was invented *a posteriori* from scant, vague memories of constitutional history. The tradition about the reforms does not record what happened around 460, but it can tell us much about the way the democracy was challenged and reinvented within the complex ideological struggles of fourth-century Athens. The reforms of Ephialtes should be regarded as the product of a distant discourse that revolved around the notion of a *patrios politeia*, debated the limits of the democracy, and searched for its models in a bygone and blurred past.

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101 J.M. Moore, *Aristotle and Xenophon on Democracy and Oligarchy* (Berkeley, CA, 1983<sup>2</sup>), 246. Against the assumption that the Areopagus held increased political authority from the mid-fourth century see Harris (n. 74). Mann (n. 23), 46, underlines that there is no tradition about the reforms that is independent from fourth-century constitutional debates; Canevaro (n. 92), 69 and n. 49, on the kind of fourth-century political aims implied by the tradition about the reforms.

102 On the Areopagus saving the state in 480, 405, and 338, cf. R. Zelnick-Abramovitz, 'The guardian of the land: the Areopagos council as a symbol of stability', in G. Herman (ed.), *Stability and Crisis in the Athenian Democracy* (Stuttgart, 2011), 103–26.