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# The Mixed Constitution in Plato's *Laws*

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## ABSTRACT

In Plato's *Laws*, the Athenian Visitor says that the best constitution is a mixture of monarchy and democracy. This is the theoretical basis for the institutions of Magnesia, and it helps the citizens to become virtuous. But what is meant by 'monarchy' and 'democracy', and how are they mixed? I argue that the fundamental relations in Plato's discussion of constitutions are those of authority (represented by monarchical institutions) and equality (represented by democratic institutions). These principles are centrally about the extent to which citizens submit to the judgment of an authority and the extent to which they decide for themselves respectively—the extent to which they are ruled by themselves or ruled by another. The institutions of Magnesia reflect these principles in practice and provide a more nuanced way to understand Plato's assessment of democratic institutions.

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## 1. Introduction

The *Laws* is Plato's longest and most detailed work on politics. In the *Laws*, he provides the theory and lawcode for the establishment of a new colony in Crete called Magnesia. However, the justification for the structure of the political institutions of this city remains obscure. Specifically, the commentary on the theoretical basis of Magnesia in Book III is underdeveloped and logically unsatisfactory, leaving a substantial gap in our understanding of the principles of Plato's later political philosophy. My project here is to explore his justification for the structure of Magnesia, which is seen primarily in Book III of the *Laws* and in the application of the principles introduced throughout that dialogue. The main speaker, the Athenian Visitor, claims that a good constitution is a constitution that is the mean between monarchy and democracy, and is comprised of a mixture of both monarchical and democratic elements.<sup>1</sup> Thus, a good constitution is a kind of mixed constitution.

But despite this interesting (and suggestively Aristotelian) way of thinking about constitutions, the discussion has received little detailed analysis in the secondary literature and many of its key concepts remain unclear. Most centrally, we should ask, first, *what are the monarchical and democratic elements of a constitution*, and, second, *how*

<sup>1</sup> 'Constitution' translates *politeia* and refers to the arrangement of political offices and institutions. I assume that the Athenian Visitor presents Plato's views; readers who do not share this assumption should substitute 'The Athenian' for 'Plato' throughout.

are we supposed to mix these elements? Moreover, what little has been written on the mixed constitution in the *Laws* normally occurs in discussions of democracy, where the sense in which Magnesia is democratic is often dismissed as being mere talk, as though Plato could never *really* reconcile himself to democratic institutions; indeed, scholars have found it difficult to identify democratic elements in the *Laws* at all, beyond the participation of citizens in government and the occasional begrudging use of the lottery (see for example, Morrow [1993: 532], Rowe [2001: 74–5], Kraut [2010: 52], Schofield [2013: 290], and Prauscello [2014: 68]). Nonetheless, Plato thinks that Magnesia *is* democratic in important ways, and we should wonder what he means by monarchy, democracy, and their mixture in order to grasp the normative basis for his project in the *Laws*.

More specifically, the secondary literature fails to make sense of the theoretical role that monarchy and democracy play in *Laws* III. For, in the crucial discussion of Athens and Persia, both democracy and monarchy are treated as items on a single continuum, and each of those items permits of *excess* and *deficiency*. Ancient Persia was at times *excessively monarchical* and Athens became *excessively democratic*. Conversely, Plato uses ‘monarchy’ in this passage in such a way that there must be a way in which monarchy can be understood as a deficiency of democracy, and democracy as a deficiency of monarchy. A good mixed constitution, the Athenian claims, is a mean between these two extremes. Thus, an important theoretical constraint that *Laws* III introduces is that, however monarchy and democracy (and the related concepts of authority and freedom) are understood, they must permit of *more* and *less*.<sup>2</sup> Although it is possible that Plato is here using a model of the mean that is sometimes attributed to Aristotle, whereby the mean is simply a matter of getting it right, Plato’s discussions of the mean in closely related dialogues, the *Statesman* [283d–287b] and the *Philebus* [23c–26d], are more straightforwardly quantitative.<sup>3</sup> While what determines the mean for Plato is not purely arithmetic—the discussion of weaving in the *Statesman* was *appropriately* long, not just the average length of such a discussion—the underlying unit must permit of more or less. To use examples from the *Laws*, a city would simply get it wrong if it

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<sup>2</sup> See Morrow [1993: ch. 10], Annas [2017: ch. 3], and Schofield [2006: 74–89]. Morrow follows Aristotle in analysing the mixture in terms of combining oligarchic and democratic institutions, but recognises that this approach has limited application; he then adopts a looser conception of what could be ‘mixed’ about the constitution, but at the cost of conceptual unity (see [1993: 535] for just how many things can count as mixed). Annas reads monarchy as authority and democracy as freedom, but her central understanding of the mixed constitution in Magnesia is a combination of Spartan and Athenian institutions. It is unclear why Sparta should be paradigmatic of the monarchical principle, and although Annas is right that Magnesia uses Spartan institutions extensively, this seems to be the *result* of the theory of the mixed constitution and not its theoretical *basis*. Schofield identifies the ‘moderate freedom’ in Athens as being a combination of (a) ‘voluntary acceptance of the rule of law’ and (b) ‘freedom of participation in the political system that citizens must enjoy if they are to be proper citizens, and not simply the slaves of their rulers’ [2006: 80]. These claims are correct, but they fail to explain the logic of Book III—in particular, how monarchy and democracy form a single continuum (the importance of which Schöpsdau [1994: 452] emphasises). Stalley [1983: 78] and Lane [2018, *ms.*] emphasise willing subjection in their accounts of freedom. This is a crucial feature of a lawful city, but the reading fails to make sense of the continuum requirement, as monarchy cannot be understood in terms of unwilling subjection; rather, willing subjection *results* from a good constitution and education system. Klosko understands the mixed constitution as ‘a mean between the extremes of arbitrary rulers and an unbridled, tyrannical mob’ [2006: 239–41], but Cyrus had just as much power for arbitrary rule as Cambyses. If Klosko’s point is that Cyrus ruled for the benefit of the ruled and Cambyses didn’t, then Plato should have used, not a *continuum*, but instead a discrete analysis of constitutions, as in Aristotle’s *Politics* III. Schöpsdau takes the continuum to be between slavery and freedom, but leaves unclear how we are to understand these concepts [1994: 452]. He claims that freedom is doing what you want or ‘free right of disposal [*freie Verfügungsgewalt*]’ [ibid.: 448], but he does not explain how this analysis illuminates the difficult passage about Athens.

<sup>3</sup> The non-quantitative readings of Aristotle are defended by, e.g., Annas [1993: 59–61] and Hursthouse [2006].

focused only on courage rather than on the whole of virtue as a goal of legislation. In contrast, a city that used only lottery to elect officials would be *excessively democratic*, but the use of lottery could be moderated—that is, made *less democratic*—by incorporating rounds of election by vote. It is this latter quantitative kind of error that is the focus of the discussion of *Laws III*, and so we must find a way to understand monarchy, democracy, and the mean mixed constitution within the framework of the continuum model.

I thus propose a richer way of interpreting *Laws III* that does justice to these theoretical constraints—understanding monarchy in terms of hierarchy and other-rule while understanding democracy in terms of equality and self-rule (section 2). I then consider how Magnesia implements this theory in practice (section 3). Thus, I defend the view that the fundamental political relations that structure the city of the *Laws* are those of *authority* and *equality*—that is, the extent to which citizens submit to the judgment of another (thus being ruled by others) and the extent to which they decide for themselves (thus ruling themselves).<sup>4</sup> These principles correspond to the principles of monarchy and democracy, respectively, and a good constitution is one in which these principles are applied in their proper place in the institutions of the city. Plato intends Magnesia to be neither too authoritarian nor too free, letting citizens decide for themselves and to rule when they are fit to do so, while also training them to respect legitimate hierarchies and to defer to the judgment of others when appropriate. That is his vision of the good mixed constitution—his political ideal—in the *Laws*.

## 2. The Analysis of Constitutions in Book III

Let us begin by laying out the political theory from *Laws III*. The Athenian claims that there are two ‘mother constitutions’ from which all others are derived or of which they are variations [693d2–3].<sup>5</sup> A good constitution is one that partakes in both forms proportionately so that a city can have ‘freedom and friendship combined with wisdom’ [693d7–e1]. The final quasi-historical analysis of the constitutions of Persia and Athens demonstrates that both monarchy and democracy, when unmixed and excessive, create defective and unstable constitutions, whereas good constitutions are mixed [693e5–694a5, 698a5–b2]. This discussion precedes the actual laws that occupy the rest of the dialogue and acts as a theoretical foundation for those laws: for example, in Book VI we are reminded that the institutions proposed are supposed to reflect the ‘mean between a monarchic constitution and a democratic constitution’ because ‘midway between these our constitution should always stand’ [756e8–757a1]. So, the *Laws* adopts a classification of constitutions where there is a continuum from extreme monarchies to extreme democracies, and good constitutions somehow hit a mean between the two.

What does Plato mean by ‘monarchy’ and ‘democracy’? The Visitor first discusses monarchy in his discussion of Persia. Persia was ruled by kings. Therefore, on a simple analysis of constitutions (as in the *Statesman*), it is a monarchy. But under Cyrus, the Athenian claims, the Persians ‘maintained the mean between slavery and freedom (τὸ μέτριον ... δουλείας τε καὶ ἐλευθερίας)’. He continues [694a2–b6]:

<sup>4</sup> This shares the core of Meyer’s [ms.] proposal that the continuum concerns the concentration or dispersal of rule and authority.

<sup>5</sup> Translations are from Bury [1926], with modifications. I use the Greek texts of Des Places [1951] and Diès [1956].

For when the rulers gave a share of freedom to their subjects and advanced them to a position of equality (ἐλευθερίας γὰρ ἄρχοντες μεταδιδόντες ἀρχομένοις καὶ ἐπὶ τὸ ἴσον ἄγοντες), the soldiers were more friendly towards their officers and were spirited (προθύμους) in times of danger; and if there was any wise man amongst them, able to give counsel, since the king was not jealous but allowed free speech (παρρησίαν) and respected those who could help at all by their counsel—such a man had the opportunity of contributing to the common stock the fruit of his wisdom. Consequently, at that time all their affairs made progress, owing to their freedom, friendliness and shared reason (δι' ἐλευθερίαν τε καὶ φιλίαν καὶ νοῦ κοινωνίαν).

Thus, Persia under Cyrus was institutionally a monarchy in one respect, but it also gave the citizens freedom and brought them into more equal relations with the king, allowing them to speak freely and to bring counsel to the ruling powers. This meant that the king, recognising their wisdom, sometimes did what other people said that he should do.

Things began to decline when Cyrus' son Cambyses came into power. Because Cyrus had neglected education, Cambyses was spoiled in the palace and was brought up by women who never opposed him and who made sure that everybody praised him in everything that he did [694d1–8]. Thus, Cambyses was without the harsh military training that his father had had, was 'over-pampered and undisciplined', and killed his brother 'through annoyance at his being put on an equal-footing with himself... mad with drink and debauchery' [695b2–6]. The better part of Persian empire was lost in fighting against the Medes, 'who despised the stupidity of Cambyses' [695b7]. The Persian constitution improved again under Darius [695c6–d6]. He introduced laws that brought about a greater degree of equality (ἰσότητα) and regulated the tribute-money so that the wealth was distributed to the people 'whereby he secured friendliness and fellowship amongst all classes of the Persians' [695d2–3]. But, like Cyrus, Darius neglected education, and his son Xerxes was spoiled like Cambyses was [695d6–e3].

The Athenian summarises the lesson from the Persian constitution as follows, highlighting what happens when a monarchy becomes excessive [697c5–698a3]:

By robbing the commons unduly of their liberty and introducing despotism in excess, [the Persians] destroyed in the State the bonds of friendliness and fellowship. And when these are destroyed, the policy of the rulers no longer consults for the good of the subjects and the commons, but solely for the maintenance of their own power; if they think that it will profit them in the least degree, they are ready at any time to overturn States and to overturn and burn up friendly nations; and thus they both hate and are hated with a fierce and ruthless hatred. And when they come to need the people to fight in their support, they find in them no patriotism or readiness to endanger their lives in battle; so that, although they possess countless myriads of men, they are all useless for war, and they hire soldiers from abroad as though they were short of men, and imagine that their safety will be secured by hirelings and aliens. And besides all this, they inevitably display their ignorance, inasmuch as by their acts they declare that the things reputed to be honourable and noble in a state are never anything but dross compared to silver and gold.

First, depriving citizens of freedom and forcing them to obey the monarch destroys the bonds of community between the rulers and the ruled. In ancient discussions of friendship, friendship and equality are closely related, so hierarchies impede friendship and community.<sup>6</sup> When the hierarchies become excessive, rulers stop caring for others in

<sup>6</sup> Aristotle reports the saying, 'friendship is equality [ἰσότης φιλότης]' [EN VIII.8, 1168b8]. This is not to say that friendship cannot exist between unequals, but rather that inequality works against the bonds of friendship. Note, though, that Plato in the *Laws* [757a–c] does not think that equality needs to be arithmetic. See Sheffield [forthcoming] for further discussion.

their society, ruling for their own sake and not for the sake of the whole, seeking to preserve their own power and to make wealth even if it means invading friendly neighbouring states. This lack of concern for the ruled, and the corresponding breakdown in friendship, also undermines the loyalty that the ruled have for their country, and thus undermines the morale and dedication of the army, making the state weak and vulnerable despite having large numbers. Finally, when the rulers are only aiming to make money, the integrity of the state is ruined: who is going to believe that a war is for a noble cause when everybody knows that the king is just trying to fill the coffers? Thus, the downfall of the Persian regime is ‘due to excess of slavery and of despotism (διὰ τὴν σφόδρα δουλείαν τε καὶ δεσποτείαν)’ [698a6]. So much, then, for excessive monarchy; what of excessive democracy?

The discussion of democracy begins by stating the point of the analysis—namely, to ‘show how complete liberty, unfettered by any authority, is vastly inferior to a measured rule by others (ἢ παντελῆς καὶ ἀπὸ πασῶν ἀρχῶν ἐλευθερία τῆς μέτρον ἐχούσης ἀρχῆς ὑφ’ ἑτέρων οὐ σικρῶ χείρων)’ [698a10–b2].<sup>7</sup> Athens during the Persian Wars was institutionally a democracy, but it is described as moderated. Under Solon’s constitution, the Athenians had shame (αἰδώς) as their ruler ‘because they were living as willing slaves to the laws then (δι’ ἣν δουλεύοντες τοῖς τότε νόμοις ζῆν ἠθέλομεν)’ [698b6]. Shame kept the populace law-abiding, and the fear of the impending invasion brought the people together, enslaving them to the rulers and the laws [698b7–c2]. This common attitude greatly increased the friendship that the citizens felt towards each other [698c2–3]. Plato writes that fear, shame, subjection before the laws, and mutual friendship saved the Athenians at the battles of Marathon and Salamis [699c1–d2].

After the Persian Wars, however, Athens ‘suffered the same fate as the Persians—they through reducing their people to the extreme of slavery, we, on the contrary, by urging on our populace to the extreme of liberty’ [699e2–5]. Athens became excessively democratic. Initially, ‘under the older constitution, the people were in no way authoritative, but they were in a way voluntarily enslaved to the laws (οὐκ ἦν ... ἡμῖν ἐπὶ τῶν παλαιῶν νόμων ὁ δῆμος τινων κύριος, ἀλλὰ τρόπον τινὰ ἐκῶν ἐδούλευε τοῖς νόμοις)’ [700a3–5]. Although Athens was a democracy, the Visitor claims that the people (δῆμος) were not authoritative (κύριος). Athenian lawfulness and subjection to the laws was best exemplified in their musical practices: categories and forms of musical performance were clearly delineated, and standards of good performance were determined by ‘the authority that knew about these things and used its knowledge to judge them’ [700c1–2]. People who were well educated would listen attentively and performers would not pay attention to the clapping, catcalls, and shouts of the audience showing approval or disapproval during the performance; instead, ‘the majority of citizens were willing to be ruled in an orderly fashion, and did not dare to judge by the applause’ [700d1–2]. Things started going downhill, however, when composers started mixing musical genres and took the pleasure of the audience as the criterion for a good performance, even though the audience members were ‘ignorant about what is just and lawful for the Muse’ [700d4–5]. Consequently, the Athenian says, ‘they bred in the populace a spirit of lawlessness in regard to music, and the effrontery of supposing themselves capable of passing judgment on it’ [700e5–6].

This is a puzzling passage, but it reveals something important about Plato’s understanding of freedom in the *Laws*. Athens did not literally have what we would call ‘laws’

<sup>7</sup> Bury [1926] reads αἰρετῶν rather than the transmitted ἑτέρων. On my reading, the emendation is unnecessary.

about music; *nomoi* refers not only to written laws but to conventions, social norms, and established practices. Plato's point, then, is that there were conventions, based on expertise or established collective experience, that determined the correct styles for particular musical genres and how these ought to be judged. Much of the first two books of the *Laws* is occupied with this topic [656d5-660d3, 668b4-671a1]. The Athenians are called 'slaves to the law', then, in the sense that they recognised the authority of their musical conventions, deferring to these *nomoi* in their own judgments.

The significance of this discussion of music is that Athenians became excessively free when they started to ignore the opinions of others—in this case, their epistemic superiors—and set themselves up as the standard of correctness. They stopped caring what musical authorities thought. So, they began to break the rules whenever they wanted to do so: 'music proved to be the starting point of everyone's belief that he was wise about everything and of lawlessness, and freedom followed along with it' [701a5-7]. The Athenian continues [701a7-b3]:

for thinking that they *knew* made them unafraid, and freedom from fear begat effrontery. For to be fearless of the opinion of a better man, owing to self-confidence, is nothing else than base effrontery; and it is brought about by a liberty that is audacious to excess.

People thought that they could disregard others who were better or wiser than they were [England 1921 (2013): 407, 412].

So, unchecked freedom first led to a disregard for the opinions of authorities and the established conventions, but then it led the Athenians to ignore morality and law altogether [701b5-c2]:

Next after this freedom would come the sort that involves the loss of the willingness to be enslaved to the rulers; following upon this is the rejection of the enslavement to and guidance by one's father and mother and elders; the next to last stage involves seeking not to have to obey laws; after this comes the ultimate freedom when they cease to give any more thought to oaths and pledges and everything pertaining to the gods ...

The sequence is that the person who does not have their freedom limited sets up their judgment as superior to those who possess skill and expertise (as in the musical example), then as superior to family, then to the law, then to the gods themselves, overturning the hierarchies that ought to be respected (cf. Schofield [2013: 294]). A small amount of unchecked freedom grows and leads eventually to hubris, injustice, and a lack of respect for anybody else's judgment.<sup>8</sup>

So what, exactly, does Plato mean by 'democracy' and 'monarchy'? It helps to start by thinking about freedom and slavery, as excessive democracy is characterised by excessive freedom, and excessive monarchy is characterised by excessive slavery. But the Athenians were not *literal* slaves; that would make nonsense of the argument. The idea is that the Athenians were slaves to the laws and to the rulers when they *subjected* themselves to the laws and rulers: during the 'slavery' period, they were law-abiding, respected the authority of the laws and of their superiors, and did not hesitate to follow what they were commanded to do.<sup>9</sup> The sense of slavery here is derived from the extended sense in which slaves don't decide for themselves what to do; they do

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<sup>8</sup> Schöpsdau [1994: 513] worries that freedom is both a cause and an effect. But Plato's point is that freedom pushes itself to excesses when it is not limited. The small freedom with respect to music started a process whereby people thought that they ought to be free in other areas too.

<sup>9</sup> See Meyer [ms.] for a robust defence of 'servitude' as the best translation of *douleia* here. See also Lane [2018: 714-15].

what they are told. Notably, the Athenians were *voluntary* slaves to the laws during the Persian wars, and so they realised that it was best that they and everyone else followed what the law prescribed. Conversely, the Athenians became excessively free, not when they were interfered with minimally or were released from bondage, but when they decided for themselves what to think and what to do in an increasingly large number of domains. So, freedom here should be understood as *self-rule* and slavery as *other-rule*.<sup>10</sup> Thus, there is a continuity with another important thought that Plato develops in the *Laws* (and that Aristotle emphasises), that of *ruling and being ruled*: rulers decide for themselves what ought to be done, and the ruled obey what someone else decides. When you rule someone else, you create *hierarchy*; when each rules themselves, there is *equality*; so, fundamentally, the question concerns *who is assigned authority to rule*.

This reading of the Persia-Athens passage makes good sense of the basic political point underlying the analysis of constitutions in Book III: a well-functioning society has to achieve a balance of people deciding for themselves, and people deferring to the judgments of others and of the law. A society that is excessively authoritarian fails to recognise the capacities that people have to manage their own lives and to participate in political deliberation and judgment; on the other hand, an excessively democratic society where everybody relies on their own judgment will not be unified, nor will it receive the benefits from people who have superior wisdom and expertise, nor will it have stable and widely followed *nomoi*. A good constitution must let people rule themselves in some areas and be ruled by others in other areas.

Plato's analysis of monarchy and democracy also shows how ruling and being ruled are conceptually related to a number of other political ideas. In the discussion of Persia under Cyrus and Darius, the Persian constitution was more measured because it brought about more equality between rulers and ruled, allowing free speech (*parrhesia*) in the court, which resulted in civic friendship. Similarly, in the discussion of Athens during the Persian Wars, there is a strong emphasis on the *shame* (*aidôs*) that was widespread among the citizens, whereas the decline of lawfulness is in part explained by an increasing propensity towards pleasure (cf. [647a4–b1]). Plato's use of 'shame' here is especially important, given that *aidôs* conveys a strong sense of awareness of social position, respect for limits and one's superiors, and internalisation of what is conventionally appropriate or lawful [Cairns 1993].

Thus, monarchy and democracy in *Laws* III are much more than rule by one or rule by many. Plato links monarchy and democracy with more general political principles, embodied by sets of institutions and different social attitudes. Monarchy and democracy are on a single continuum because they reflect different ways in which people rule themselves or are ruled by others, see themselves as authorities or see others as authorities. The governing institutions are one manifestation of this underlying social ethos, but the concepts of self-rule and other-rule are the explanatory basis.

This framework also explains why Aristotle's criticism of the mixed constitution of Magnesia is misguided. Aristotle criticises Plato for saying that he is mixing monarchy with democracy when really he is mixing oligarchic institutions and democratic institutions [*Pol.* 1266a5–7]. Notably, this is what Aristotle thinks a mixed constitution is,

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<sup>10</sup> England suggests a similar conception of freedom [1921 (2013): 391–392]. There is not space to show how my understanding of freedom here engages with other conceptions, although I would note that it differs both from freedom as non-interference and from freedom as non-domination. Cf. Miller [2018], who argues that in the *Laws*, as in the *Republic*, to be free is to be virtuous, and Lane [2018, ms.] who argues that freedom is a kind of voluntariness. See also Stalley [1998] and Young [2018].



but he misses Plato's point. In so far as oligarchic institutions reflect monarchic *principles*—namely, those of hierarchy and authority (for example, that some are more qualified than others to decide political matters, that equality should be proportional and not arithmetic, etc.)—oligarchic institutions in Magnesia *do* mix monarchical elements into the constitution, because they reflect monarchical ideas about when particular citizens are competent to rule. The reason why Plato doesn't talk about oligarchy in *Laws* III is that oligarchy doesn't have its own principle; rather, oligarchy expresses a moderated version of monarchical principles, and thus can be explained as a derivation from, or variation on, the mother-constitutions [693d7]. Saying that constitutions should be mixtures of oligarchies and democracies, then, would contort Plato's underlying theory of *what it is* that is being mixed when constitutions are mixed. Aristotle is too literal in his interpretation of Plato.<sup>11</sup>

This reading of Book III also helps to explain why it is that the analysis of mixed constitutions is *normative*, and normative *for Plato*, who explicitly sets out to make virtue the goal of his legislation. Different constitutional arrangements for allowing citizens to rule and be ruled in various capacities have different effects on character and civic culture. Thus, when the Athenian says that a city should partake in both monarchy and democracy 'if it is to have freedom and friendliness combined with wisdom' [693d8–e1], and again that it must be 'free, intelligent, and a friend to itself' [701d8–9], these effects are caused in part by democratic institutions that foster freedom in the citizens, monarchical institutions that establish hierarchies of authority that allow the city to be intelligent and wise, and the harmonisation of these elements that produces friendship and agreement between the citizens (cf. Laks [2007: 138] and Schofield [2013: 286–7]).

A further pragmatic lesson to gain from the histories of Athens and Persia is that when constitutions are well-mixed, they are *stable*. The simple constitutions contain the seeds of their own demise in so far as they lead to excess and breed faction when they are not moderated. Moderated constitutions, on the other hand, are more likely to last through the challenges that politics provides. But it is significant that the mixed constitution is not justified merely in terms of stability. Consider, by contrast, the discussion of the Dorian cities in Book III. Argos, Messene, and Sparta originally had kingships, but the Athenian says that only Sparta survived because it divided the power of the king and provided checks on their power [691d8–692c8]. This passage is important because it is one of the few discussions of the constitutional *division of powers* before Polybius' writings about the Roman republic [Hahn 2009]. The Athenian recognises that the division of powers, in putting a limit on the potential corruption of the rulers or power of the people, makes for a very stable and long-lasting constitution. But because this kind of divided constitution is not the same thing as a mixed constitution, and it does *not* cultivate the whole of virtue in the way that a mixed democracy and monarchy does, the divided-powers constitution of Sparta is normatively inferior to Plato's own proposal in the *Laws*.<sup>12</sup> Stability is one concern in this dialogue and is

<sup>11</sup> Aristotle has a point, though: it's unhelpful to say that a good constitution should mix monarchy and democracy when no obvious monarchical institutions end up being in the mixture.

<sup>12</sup> Schöpsdau [1994: 450] claims that, of the modern states, Sparta is the best example of the well-mixed constitution, but it is how Sparta shows the mixing of monarchy and democracy, as that is why the Athenian introduced the examples of Persia and Athens. Schöpsdau also recognises that Sparta was mixed differently (through checks and balances) to how Persia and early Athens were [ibid.: 452].

recognised as a politically interesting problem, but the primary concern is that of improving the citizens, and this goal is achieved with a well-mixed constitution.

A good constitution, then, is a constitution that mixes together democracy and monarchy well, promoting both the ability of citizens to rule and be ruled (an explicit goal of education [643e6]), and also their ability to decide for themselves, or to defer to others, depending on their place in the hierarchy of the city. But does Magnesia actually do this in practice? It is one thing to have a theory about what the best state should be like; it is quite another thing to implement the theory well with laws and institutions that instantiate these principles. Does Magnesia deliver on the mixed constitution, or has Plato failed by his own standard?

### 3. The Institutions of Magnesia: Implementing the Mixed Constitution

In this section, I explain how the institutions and laws of Magnesia blend monarchy and democracy, first by looking at the authoritative and hierarchical aspects of the *Laws*, and then by looking at the respects in which freedom and equality are promoted. The idea is that, while these institutions have different effects on the souls of the Magnesians, they work together towards a common goal. Thus, the final result should be that the beliefs and habits instilled in the citizen body by these different institutions are harmonised with each other. Magnesians should think that deferring to others and hierarchy are good in some respects and regarding particular matters, and that deciding for themselves and treating others as equals are good in other respects and in other matters. Thus, the mixed constitution reflects the idea that democratic and monarchical institutions are appropriate in particular areas, but avoids the overgeneralizing tendencies that each of those constitutions has in their pure form. Notably, Plato sometimes moderates existing democratic or oligarchic institutions by combining both principles into a single institution—but this is no problem. Just as the harmony of democratic and monarchical institutions teaches citizens the respects in which hierarchy or equality are justified, so too do particular mixed institutions reflect the fact that both of these political systems get something important right about how politics should be done and what is good for the citizens.<sup>13</sup> Let us begin, then, with the monarchical institutions of Magnesia and the way in which the *Laws* establishes hierarchy in the city.

#### 3.1 Monarchical Institutions: Hierarchy and Authority

Magnesia clearly has no kings or queens, and we have seen why it would be a mistake to think of monarchy in the *Laws* in such a flat-footed way. What we are looking for are institutions that reflect the idea that someone or something has standing to determine what you ought to do or believe, and in that way are justified to *rule* over you. Rather than choosing for yourself how to conduct your life in some respect, you defer to the authority of something or someone external. This is monarchical because the position of a citizen in a monarchy is that of being ruled.

The clearest place to see hierarchy in the *Laws* is in the subjection of all the citizens to the laws themselves, as this is the most important authority relation in the city. The

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<sup>13</sup> Aristotle reports three ways of mixing a constitution: (1) having a combination of oligarchic and democratic laws, (2) having a combination of oligarchic and democratic institutions, and (3) having institutions that are the mean between oligarchic and democratic institutions [*Politics*, IV.9].

Magnesians are raised to be strictly law-abiding and to comply with the laws as a matter of well-established disposition and character [Schofield 2006: 81–3; Annas 2017: ch. 4]. A consequence of the education system and penal code is to make the citizens ‘slaves to the law’ [715d5], and the citizens are to think of the law as divine. Moreover, the laws do much more than prescribe and prohibit particular actions; they give the citizens beliefs about the value of money, honour, virtue, and about what the good life consists in. While the goal is to inculcate these beliefs in the individual citizens (ideally through persuasion) and to form stable habits, the incentive structure provided by the rewards and punishments also creates a publicly recognised culture of Magnesia’s architectonic purpose—the promotion of virtue in the citizens. This end is made central in lives of the Magnesians through the authority of law, and citizens are taught to revere its directives.

In order to identify other kinds of authority in Magnesia, let us return briefly to the hierarchies that the Athenians were said to overturn in their excessive freedom. First, they overturned the conventions regarding music and art established by authorities, arrogantly thinking that they knew best; then they refused to be subject to the rulers, then to their parents and elders, then to the laws themselves, then to the gods [700e4–701c2]. In Magnesia, all of these hierarchies are established and enforced. There are objective standards of goodness in music and dance that are learned, and the public performances are to be judged not by the crowd but by chosen judges whose reactions of pleasure and pain are well-cultivated [656d5–660d3, 668b4–671a1]. Additionally, the magistrates are the primary vessel through which the law is implemented and enforced, so citizens follow orders in so far as they are habituated to follow the law. But Plato is emphatic that the magistrates and rulers are servants to the law and must act within its confines, lest the state be ruined [715d5]. In Book VI, the Athenian says that [762e1–7]

every man should hold the view, regarding men in general, that the man who has not been a servant will never become a praiseworthy master, and that the right way to gain honour is by serving honourably rather than by ruling honourably—doing service first to the laws, since this is service to the gods, and secondly, the young always serving the elder folk and those who have lived honourable lives.

Rulers and officials hold positions of authority, but they must think of themselves as enacting what the laws prescribe, and they must understand ruling as delivering the commands of the laws rather than their own dictates. And while many Magnesian offices are relatively mundane, the highest officers—the Guardians of the Law—do have far-reaching authority. Morrow [1993: 526] notes that ‘the guardians of the law are a board possessing powers without parallel in the democracies of Plato’s time’ and he believes that this is one of the primary ways in which Magnesia includes monarchical institutions. The 37 people who hold this office are experienced in politics and renowned for their virtue [753e4–5], and thus their discretion over the most important matters of the city is justified on the grounds that Magnesians have been taught to value. They are to be obeyed, not merely because they have been elected, but because they are almost certainly going to be able to make better decisions than the other citizens.

Plato’s hierarchies also extend into the private sphere. Throughout the *Laws*, Plato places an emphasis on the importance of family in a way that is striking after the radically counter-cultural proposals of the *Republic*. Within the family as well as in the city,

there is a hierarchy of authority that is enforced. In Book IX, the Athenian says this [917a4–9]:

Now the better are the superiors of the worse, and the older in general of the younger; wherefore also parents are superior to their offspring, men to women and children, rulers to ruled. And it will be proper for all to reverence (αἰδεῖσθαι) all these classes of superiors, whether they be in other positions of authority or in offices of state above all; and to enforce this is just the purpose of our present discourse.

One might rightly worry about Plato's position here regarding the superiority of men over women and of the old over the young, as it's not obvious that such a position can be justified on the basis of superior wisdom in Magnesia. What's important for our purposes, though, is that Plato clearly thinks that there is a natural hierarchy in the family and in the polis, and that this hierarchy is manifested in the city's institutions and the attitudes of the citizens.

Finally, Magnesians are to be servants of the gods. Daily life in Magnesia involves regular religious festivals, and a whole book of the *Laws* is dedicated to issues of piety [Prauscello 2014]. More generally, the authority of the law can be traced to the fact that it is divine, and that doing service to the laws *just is* doing service to the gods in Magnesia. Moreover, it is clear from Book X that the Athenian's views have sophisticated theological underpinnings. The details of this complex picture are not necessary here, but the main idea is that there is a natural hierarchy and order in the universe, governed by reason, of which the hierarchies in Magnesia are a microcosm [Morrow 1954, 1993: 400, ch. 8; Laks 1990; Mayhew 2008; Annas 2017: ch. 5; O'Meara 2017: ch. 7]. Thus, the citizens' respect for the gods reflects a deeper appreciation for the order and harmony of the universe, and for the rule of reason in the city and the cosmos. The rule of divine reason also explains why citizens should honour the soul over the body, and should value virtue over bodily and external goods [726a1–729a4].

So, it is important that the Magnesians are trained to recognise and respect the appropriate hierarchies, and to understand their place in this hierarchy. Indeed, much of the orderliness of the city depends on the acknowledgement of, and compliance with, such relations. Notably, the most extensive list of these various hierarchies is introduced in Book III, right before the discussion of Persia and Athens. Here, the Athenian explains the various claims to rule that are put forward. First is the right of parents over children; second is the right of noble over the ignoble; third is the right of older over younger; fourth is the right of masters over slaves; fifth is the right of stronger over weaker; sixth (called 'the most important') is the right of those with understanding over those without understanding; seventh is the rule of those with good luck (for example, those chosen by random lottery) over those without such luck [690a1–c8]. Although it is not obvious that the Athenian endorses these claims at this stage of the dialogue, it is noteworthy that, as the work progresses and more institutions are proposed, all of these hierarchical relations find a place in Magnesia in one form or another. Each of the claims to rule gets something right, but they need to be ordered in a coherent system. One major project of the *Laws*, then, is to find the appropriate place for these hierarchies in the city, and then to habituate the citizens to recognise them as legitimate. These institutions that establish hierarchy and authority reflect the monarchical element of Magnesia's constitution.

### 3.2 Democratic Institutions: Equality and Freedom

While it is true that the hierarchical authoritative elements are the most striking in the *Laws*, once we start to think about democracy in Magnesia in terms of equal relations between citizens, citizens deciding for him- or herself and, in particular, the active participation of citizens in ruling, we can see how the hierarchical elements do in fact get balanced out in a rather surprising way. Plato in the *Laws* retains the thought from the *Republic* that those with understanding and virtue ought to rule over the ignorant, but in Magnesia there is no class that reliably produces virtuous people, nor is it assumed that in each generation there will be somebody so outstanding in virtue that he or she should rule unilaterally over everyone else. Some people will be more virtuous than others, but nobody is so virtuous that they can be entrusted with rule over the whole city. Thus, many of the institutions in the *Laws* run along relatively egalitarian grounds, and any citizen can rise to the highest offices if they prove themselves worthy. So, let us turn to the institutions that reflect this commitment to the equality of citizens and the ways in which citizens exercise their capacities for ruling.

First, while citizens are to obey the laws, the laws have preambles that are designed to persuade the citizens that they ought to follow the prescriptions of the law. Persuasion is owed to them in virtue of their status as free people.<sup>14</sup> One commands and uses force on slaves, not on free citizens. Force, then, is used on citizens only as a back-up for when persuasion fails [Lane 2011]. The importance of persuasion comes out most clearly in the analogy between the free doctor and the slave doctor, presented in Book IV [720a2–e8]. The Athenian there explains that it is unfitting for a free person to be forced or to be the mere passive recipient of actions—even actions that might be beneficial for them. This persuasion happens by means of the preambles that generate obedience to the laws. The point of the double method employed, however, is that if persuasion fails then the laws are justified in threatening punishment to incentivize citizens to act in accordance with the law. Plato does not think that if a citizen fails to be persuaded of the goodness of a law, then that law is unjustified for that person; rather, he thinks that the person is owed a justification for the law, but if they reject the explanation then the threat of punishment is applied. So, the person is treated as free; but ultimately the law is right, regardless of whether or not the person recognises this. At any rate, the addition of the preambles is a major innovation on Plato's part, and his own justification for them depends on what is owed to free people in virtue of their status as free people. The use of persuasive preambles, then, is a democratic institution (even though it has no precedent in actual democratic practices of Plato's time).

Second, many of the Magnesian offices and magistracies are open to all of the citizens, regardless of their level of wealth or property.<sup>15</sup> Magnesia has a democratic conception of who can exercise political power, in that no citizen is excluded outright from political participation on the basis of property qualifications [Morrow 1993: 133–4, 528–9]. More oligarchically inclined ancient polities put property requirements on citizenship and office-holding that would disenfranchise some of the poorer landowners.

<sup>14</sup> See, e.g., Bobonich [2002: 105], Schofield [2006: 84–8], and Greene [ms.]; cf. Klosko [2006: 242–4]. Whether the preambles persuade by rational, or by non-rational, means is controversial, but what is important here is that they are to be persuaded first and commanded second.

<sup>15</sup> The exceptions are all relatively minor magistracies: the offices of temple treasurer and city warden are limited to the top property class [760a1, 763d4–e3]; the market wardens are limited to the top two property classes [763e4–764a2]; officers of the athletic competitions are chosen from the middle two property classes [765c1–d3].

Nonetheless, Magnesia does have a low-level property requirement in so far as the craftspeople who live in the city are not granted citizen status.<sup>16</sup> Thus, Plato is here mixing oligarchic and democratic elements, but he is very much on the democratic side with respect to who gets to be a citizen and who gets to rule. What follows is that Plato thinks that democracy gets something importantly right in so far as every citizen could actively participate in the running of the city in one way or another over their life, and that the exclusion of local citizens (including women) from office breeds dissent and discord. Any of the citizens, then, could end up as a Guardian of the Law or an Auditor and, most importantly, many citizens will end up gaining experience in ruling and in giving orders to others [Schofield 2006: 80].

Third, property in Magnesia is distributed and maintained at egalitarian levels, and it is impossible for a citizen to become outstandingly rich. Land is distributed by lottery to the head of the family, and after that the buying or selling of land is prohibited [741b1–c6]. Upon the death of the head of the family, the owner may bequeath it to one of his children [740b1–d5, 923c5–d6]. With respect to movable property, the Athenian says explicitly that it would be best if everyone entered the colony with equal levels of wealth; but this is impossible, and so it is necessary to have unequal property classes [744b1–c3]. Subsequently, the Athenian establishes four property classes. But Magnesians assess public contributions relative to the class that a citizen is in, and thus relative to the resources that each citizen has with which to make those contributions [744b2–c4]. Plato thus recognises that different levels of wealth allow people to make contributions to public life more or less easily. So, the virtue of someone cannot be measured by looking at their action alone; rather, they must be assessed in light of their economic position. This equalises the contributions, making the judgments of worth ‘symmetrical’ despite being quantitatively different. Directly following this passage, however, is Plato’s ban on either excessive wealth or excessive poverty (as both are harmful), and his law stating that anybody who manages to make money exceeding the allotments limits for the classes must give the full surplus to the state [744d3–745a3]. With respect to the actual classes, no man in the upper property class may be more than four times richer than the man in the poorest property class, with the remaining two classes determined by the man owning twice or three times as much as the man in the poorest class. Thus, wealth levels are relatively egalitarian in Magnesia and there are no disparities in political power generated by wealth. If Plato had oligarchic intentions with respect to property and political power, minor magistracies would be given to the poor and the most important ruling offices would be given to the rich—but instead property levels are relatively equal and the differences in wealth have almost no effect on rule or representation in the Magnesian government.<sup>17</sup>

Fourth, Magnesia makes extensive use of popular courts, decided by citizen jurors, which exemplify the ideas that (a) every citizen is skilled and competent enough to pass judgment on the conduct of fellow citizens (in most cases), and (b) that nobody is so far above the authority of anyone else that they cannot be subject to their judgment, especially in matters of justice. Nobody is immune to prosecution on grounds of status. Magnesia has three court circuits—the neighbourhood court, the tribal court, and the high court [766d3–767a4]. Minor cases normally begin in the neighbourhood court

<sup>16</sup> Note that slaves and foreigners are also excluded.

<sup>17</sup> Cf. [832c9–d6] for the claim that Magnesia is free in so far as the citizens enjoy great leisure and are free from the domination of others, and are thus the *least likely to be money-lovers*.

(basically local arbitration), and if the parties are unhappy with the result they can appeal the decision in the tribal court; serious cases (like homicide) go straight to the high court. Cases can be brought before the courts either for private injuries or for the public interest [767b4–c2]. The details are difficult here, but the germane point is that people ought to be involved in judging as much as possible in lower courts, and, with respect to those crimes done against the public, the whole public should have a share in judging them [767e9–768b1]. In the appellate or high court, however, the judges are elected from the full body of officials, and settle particularly difficult or controversial cases where higher levels of juridical skill are required [767c1–e1, 855c6–856a8, 926d2–d7, 938a7–c5, 948a1–4].<sup>18</sup> Here Plato notices that most people are competent to judge most cases, and that they should do so in so far as they are invested in the well-being of the city and they are affected by injustices. This is the prominent democratic element of the proposal. But the inclusion of an additional court of appeals constituted by experts strongly suggests that Plato wants to find a place for skill and juridical knowledge in his legal system. So, under this arrangement, the people are equal and are authoritative in most cases, but there are also safeguards in place so that those with additional skill and competence can exercise their judgment in difficult cases. Given our contemporary court system, it is easy to take this for granted as good common sense, but Plato ought to be commended here on his ingenuity in combining both popular authority and juridical skill in a single institution. The court system in the *Laws* is the mixed constitution at its most elegant.

Fifth, Magnesians office-holders are subject to scrutiny before taking office, and every office (but one) is audited at the end of the term [761e5–6].<sup>19</sup> This institution, which was extensively used in the Athenian democracy, extends the basic idea about accountability to one's fellow citizens and extends the scope of the judgment of one's peers. While Plato would have associated these offices with democratic constitutions—kings do not get audited—there is also an important sense in which they mix the constitution.<sup>20</sup> The office of the auditor requires someone of the utmost virtue on account of the far-reaching powers for indicting corrupt public officials. Auditors are thus selected for their superior character and power of judgment: indeed, the Athenian says that 'all the auditors should have amazingly complete virtue' [945e2–3], and they are to be appointed through a series of complex rounds of nominations and elections [945b3–946c2]. Notably, though, these men are not immune to corruption and there are penalties in place for those who abuse their position when they themselves are audited [946e1–948b2]. Nonetheless, the auditors have special powers for punishing public officials, and the extent of their influence reflects the idea that nobody is by status above the judgment from their fellow citizen.

Sixth, many offices are filled by the public vote of all citizens. This strikes us as a democratic procedure, but it might be objected that *Greeks* would not have agreed; indeed, Aristotle himself calls election an oligarchic or aristocratic way of appointing officials, as those who get elected tend to be the rich or the skilled [*Pol.* IV.9, IV.15]. We need to be careful here, though. Aristotle's point is that election by vote is *less* democratic than election by lottery, but it doesn't follow from this that it is a *completely* undemocratic procedure, especially in a city with relatively small differences in overall wealth

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<sup>18</sup> For the appeals process in historical Athens, see Hansen [1991: 189–91].

<sup>19</sup> The exception is the high court, but presumably this is to stop an infinite regress of appeals.

<sup>20</sup> For the audit as a democratic institution, see Robinson [1997: 50, 63, 126].

and with no way to use one's personal wealth to get elected [Morrow 1993: 529]. Consider, by contrast, a procedure whereby officials are appointed by an existing council or authoritative figure, as happens in the British House of Lords and in the United States Supreme Court. Such a procedure is clearly not at all democratic, as the people have no say in, or power over, who ends up being in office. Plato could have had the Guardians of the Law fill the magistracies and offices, but instead he consistently prefers to have public votes that involve all of the citizens. Everybody's vote in Magnesia only counts for one, and voting clearly encourages political participation from the citizens. Moreover, Plato thinks that even bad people are relatively good at judging virtue in others [950b6–c6], and so it is far from clear that he should be disparaging of the abilities of the masses to vote well for the people who ought to hold the offices. Finally, Aristotle is not the only representative of Athenian thought on this issue. Consider the following from Isocrates' *Areopagiticus*, which provides a democratic justification for election [7.23]:

Furthermore they [*sc.* those ruling in the time of Solon and Cleisthenes] considered that this way of appointing magistrates was also more democratic than the casting of lots, since under the plan of election by lot chance would decide the issue and the partisans of oligarchy would often get the offices; whereas under the plan of selecting the worthiest men, the people would have in their hands the power to choose those who were most attached to the existing constitution.

Thus, we should understand the systems of popular voting in Magnesia as being a moderated democratic institution, and the voting of the smaller councils (like that which establishes who sits on the final court of appeals) as being a moderated oligarchic or monarchical institution. This is in line with the text where the Athenian says that a system of popular voting, combined with fines for those in the highest property classes who do not attend the election, produces a mixed constitution [756e8–757a1]. In addition, Magnesia does occasionally make use of election by lottery—for example, in the appointment of religious offices [759b7–c6], and in the final stages of elections to determine the winning candidates [756c3–e8, 763d4–e3, 763e4–764a2, 765a5–d3].<sup>21</sup> The use of lottery is clearly a democratic institution, even though it has a more restricted scope than it did in Athenian practices. At any rate, the Athenian hails this selection by election and lottery as exemplifying the mixed constitution.

Finally, there is something especially anti-monarchical about many of the highest authorities and offices in Magnesia being *groups* rather than *individuals*. The smaller the number of people in a position of authority, the more relative authority those individuals have over the other citizens in exercising the power of that office. Plato in the *Laws* rarely gives one citizen extensive power to do anything that concerns the public (the exception is the Officer of Education, who is to be the most outstanding in virtue), and the most powerful officials, the Guardians of the Laws, are comprised of 37 individuals. Thus, there are always others with whom even the most powerful citizens are equal, and with whom they must share authority.<sup>22</sup> In this sense, Magnesia is far more cautious of monarchical concentrations of power than are Sparta, the

<sup>21</sup> Klosko [2006: 242] emphasises the use of lottery as a democratic institution, but he incorrectly claims that it is used in 'selecting virtually all officials'.

<sup>22</sup> In the *Statesman*, Plato claims that it is difficult to find a group of people who are experts of checkers, let alone experts of politics [292e–293a]. There might be an implication in the *Laws*, then, that nobody can make an uncontested claim to rule on the basis of expertise in Magnesia. Magnesian office-holders pool their collective experience in ruling, instead of dictating directly from the *politiké techné*.



Roman Republic, and indeed most contemporary constitutional democracies, all of which have prominent offices that concentrate power.

Thus, despite first appearances, once we better understand what Plato means by democracy and how it is to be mixed into the constitution of Magnesia, we can see that there is a surprisingly large number of ways in which the *Laws* incorporates democratic institutions and moderates them to better suit the overall goal of his political project. This way of thinking about the mixed constitution also provides a substantive contribution to the ongoing debate about whether Plato was ‘pro-democratic’ or ‘anti-democratic’. For Plato recognises the worth of some of democracy’s normative claims (particularly regarding how people who are free and relatively equal ought to be treated) and the value of some of its central institutions. But insightful thinkers rarely leave things as they find them, and Plato also has a number of criticisms of and improvements to Athenian democracy that are worked out in detail in the *Laws*. Skill and knowledge are always supreme for Plato, but the kind of skill necessary to judge an ordinary court case is not as demanding as the kind of skill necessary to adjudicate a complex piece of legislation in a difficult appeal case. Similarly, most people are capable of voting well on who will do a good job of making sure that the local farming laws are enforced; but determining who ought to be in charge of watching the watchmen requires more experience and expertise. Magnesia is ingenious in how it apportions and moderates power in accordance with these facts about political competence.

This way of thinking about the mixed constitution also gives us a way to think differently about our own political institutions. There are a number of live debates regarding the scope of democratic power and the empowerment of epistemic authorities in a society of free and equal citizens. We recognise in our own institutions a number of legitimate hierarchies (U.S. Supreme Court Justices are not determined by majority vote), and there are ongoing controversies about what ought to be a matter of majority opinion and what should be left to the experts. But, rather than resorting to a simplistic debate about whether ‘democratic’ or ‘epistocratic’ constitutions are superior, perhaps we should follow Plato in the *Laws* and ask how democratic and epistocratic institutions can be most effectively mixed. To be sure, it is more fun to ask people whether they would rather live in Plato’s *Republic* or democratic Athens—but if we really care about good institutional design and feasible political reform, then we need to get into *Laws*-like detail about when and why particular democratic or epistocratic institutions work well, and then consider how we might try to harness the virtues of both constitutions.<sup>23</sup>

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