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Cleisthenes' wager Democratic rationality

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Chapter 5 of *The Greeks and the Rational* (provisional title)

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Abstract: In Plato's typology of non-ideal regimes in *Republic* book 8, democracy comes second to last: below timocracy and oligarchy and just above tyranny. The reason for democracy's low ranking is its irrationality: the democratic citizen and citizenry are characterized by Plato's Socrates as having incoherent preferences, as well as opinion-based beliefs. As a result, democratic decision-making was inherently chaotic. Although the oligarch's preference for wealth accumulation is not admirable, it is consistent over time. As a result, the oligarch is at least capable of instrumentally rationality. Democratic irrationality is associated by Plato with psychological liberty (the democrat is free to form a new preference at any moment) and equality (he fails to rank-order his preferences). Variants on Plato's charge of irrationality are frequently repeated by modern critics of democracy. But a review of Athens' citizen-centered institutions, established after the democratic revolution of 508 BCE, and recent scholarship on legislative, judicial, and executive institutions of democratic Athens in the age of Plato, refutes Plato's charge: The citizens of Athens did indeed value political freedom and equality, yet they proved collectively capable of sustaining the conditions of state-level rationality. They did so through norms and institutionalized processes that enabled identification of available options and rational choice among options, based on coherent preferences over outcomes and orderly beliefs about the relevant state of the world.

*NOTE: This chapter remains incomplete. it lacks an introduction and conclusion; section 5.7 remains to be finished; endnotes are only briefly sketched; the Works Cited is yet to come.*¹

Introduction: To come.

5.1 Callipolis and its successors

Most of Plato's *Republic* is devoted to constructing, through philosophical argument, the ideally and ethically (as well as instrumentally) rational state that comes to be called Callipolis. The imagined state is intended, as we have seen (Chapter 4), as a large-scale model of an idealized human moral psychology, with the right arrangement of the elements of reason, moral emotions, and desires. Those

elements are schematically represented by the occupation-classes of rulers, warriors, and producers. When the theoretical project is complete, Callipolis is a perfectly harmonious *koinônia* that functions effectively as a *sustêma*, capable of providing security and adequate resources, material and moral, for all of its residents. It is governed by a *politeia* that fully instantiates the primary virtues of courage, moderation, wisdom, and justice. It exemplifies Plato's conception of true rationality in respect to both ends and means.

Harmony is sustained in Callipolis by the moderation (*sophrosunê*) that is characteristic of all residents, and the omnipresence of justice (*dikaiosunê*), understood as each resident being appropriately assigned to, and staying within, his and her own proper domain of activity. Each scrupulously avoids interference (*polypragmosunê*) in any domain beyond his or her own. Violations of this fundamental rule are recognized as errors, arising from a failure of knowledge (per the "Socratic paradox" that no one does wrong knowingly), rather than from willful criminality. Punishment by the Guardians benefits both the punished individual and the community. Justice, so understood, defines the constraints on each resident's choices, both from the rules and from the expected choices of others. Those constraints serve to limit each resident's actions to the pursuit of options lying within his or her proper domain. Justice thus enables each resident, even one whose own soul is not ruled by reason itself, to act rationally in the instrumental sense of the folk theory. The "high-order rationality of ends" manifest at the level of the state facilitates the "low-order rationality of means" of even its humblest member.²

The population of Callipolis is organized into relevant categories (gold, silver, bronze, iron) as defined by the Noble Lie myth of metals. Membership in a given category, based on an individual's capacities, defines each person's proper sphere of activity. That activity ensures the welfare of each and of all, answering the demands of interdependence (see chapter 7). The activities of the "iron- and bronze-souled" producers and merchants ensure an adequate supply and efficient distribution of material necessities. Security, internal and external, is provided by the "silver-souled" warrior-class of auxiliary Guardians. The auxiliary Guardian class is also the primary locus of the virtue of courage. Callipolis is ruled by the true Guardians, philosophers, each of whom manifests the virtue of wisdom. The philosopher-rulers are – borrowing and adapting the concept employed by Thrasymachus for his hypothetical self-interested tyrant (in book 1) and by Glaucon for his hypothetical "unjust man" (in book 2) – unerring craftsmen (*demiourgoi*) of interests and outcomes. But the goal that the hypothetical craftsmen-rulers of Callipolis seek and unerringly achieve is the common interest of the state and its people, rather than merely their own egoistic self-interest.³

By virtue of their perfected knowledge of both the right end of human life (encompassed by the Form of the Good), and of all the relevant subsidiary forms, the

philosopher-rulers of Callipolis make no errors in reasoning from preferences (what they value), via beliefs (what they know), to outcomes. The philosopher-rulers derive their value preferences from certain knowledge of the forms, rather than from ordinary desires (primitive or otherwise). Consequently, they necessarily go for the best outcomes for each and all. If a philosopher should, somehow, come to elevate his own private good (spending all of his time in the “sun” of philosophical contemplation) to the good of the whole (taking his turn in the “cave,” doing to work of ruling) in his preference order, he will be corrected by the other philosophers. Unlike merely instrumentally rational persons, who must be persuaded in part by “noble” deceptions, the truly rational philosopher’s preference order is assumed to be corrigible through reasoned argument.⁴

The philosopher-rulers calculate the right plan of action leading to those best outcomes, based on their valid (justified, true) beliefs about the actual state of the world. As we will see (chapter 6), those valid beliefs include an expert method for accurately measuring the probability of a given outcome under conditions of uncertainty (the example is the likelihood of winning a given battle against external rivals). The rulers are, therefore, expected to make the best humanly-possible judgments about risk. And so, again borrowing from Glaucon in book 2, if we could follow each of the philosopher-rulers on his path, we would arrive at an identical, perfectly just, destination – that is, at Callipolis itself.

Callipolis cannot, however, last forever, even in theory. In book 8 of the *Republic*, Plato sketches a hypothetical degenerative history of regimes, beginning with the fall of Callipolis, due to a mistake concerning the algorithm governing breeding among Guardians. The catastrophic result of that error is a violation of domain-action-of segregation: in the language of the myth, the metals in the souls of the residents become impurely mixed. Because domain segregation is the founding principle of justice on which Callipolis is predicated, the regime collapses. The degenerative sequence of regimes that begins with the end of the rule of the knowledgeable lovers of wisdom (Callipolis), results first in the rule of the courageous lovers of honor (timocracy) and continues to the rule of the acquisitive lovers of wealth (oligarchy). This initial sequence is readily explained by reference to Plato’s hierarchy of value: knowledge (Callipolis) > honor (timocracy) > material acquisition (oligarchy).

5.2 Democratic irrationality? Plato’s critique of democracy

The two final regimes described in *Republic* book 8 are, in order, democracy and tyranny. Tyranny, as a candidate for the worst regime, had been in Plato’s cross-hairs from the beginning of the *Republic* – at least since the interchange with Thrasymachus in book 1 and implicitly in the banter about force and persuasion in the opening scene. Book 9 is largely devoted to detailing the misery of the tyrant,

whose soul, rather than being governed by reason, is pushed and pulled hither and yon by powerful, chaotic, self-destructive desires. Ultimately the profound irrationality of the tyrant's soul, conjoined with his need for associates to fulfill his lusts, results in the putative absolute ruler living in an abject condition as a "slave of slaves." This is the final demolition of the claims of Thrasymachus for the tyrant's happiness, and likewise the long deferred definitive refutation of the putatively happy lives of Gyges with the ring and the "godlike" completely unjust man in Glaucon's cleaned-up version of the folk theory of instrumental reason.⁵

But we are left with a puzzle: Why is democracy ranked below oligarchy? Based on the hierarchy of value, oligarchy and democracy might seem to be inverted. Democracy is ranked above oligarchy in Plato's later work, the *Statesman*, as it is by Aristotle in the *Politics*.⁶ Plato has little good to say about the oligarchs and their focus on acquisition in the *Republic*. Their behavior, based on placing a preference for material goods at the top of their ranking, is obviously mistaken and blameworthy in Socratic terms. Moreover, it may occur to the reader that it is odd that, in the *Republic*, Plato's primary "philosophical" characters (Socrates, Glaucon, Adeimantus), like the real Plato and Socrates, choose to live their lives in a democratic state, rather than in one of the readily available oligarchic alternatives (assuming, perhaps, that no real-world analogue of timocracy, e.g. Sparta, would have them). Finally, and perhaps relatedly, Plato has some evidently positive (if perhaps also ironic) things to say about democracy: *Inter alia*, with its supermarket-like diversity of values and behaviors, a democratic state is the proper place for philosophers to engage in a project of ideal political theorizing, as the participants in the dialogue, and Plato in writing the *Republic*, were doing.⁷

The answer to the apparent puzzle about the ranking of democracy and oligarchy can, I believe, be solved by assuming that Plato structured the sequence of regimes not only according to a second-order value hierarchy noted at the end of the previous section (wisdom > courage > wealth), but also according to a first-order rationality hierarchy: Rationality of ends *and* means (Callipolis) > rationality of means alone (timocracy, oligarchy) > irrationality (democracy, tyranny).⁸

In *Republic* book 8, the locus of democratic irrationality is manifest, in the first instance, in a failure, on the part of the democratic individual and the democratic state, to sustain ordered preferences over outcomes, understood as goods. That lack of order is most evident (inverting the original premise of the greater visibility of justice in the big polis to justice in the small individual soul in book 2) in the revealed preferences of the democratic individual. Each regime in Plato's degenerative sequence is exemplified by its model citizen, whose moral psychology accurately represents the *politeia* of his state. Each model citizen values certain goods. Maximizing his possession of those goods is his goal. The timocrat consistently ranks honor among all other goods. He acts according to his beliefs

(valid or otherwise) to achieve outcomes (in the first instance, victory in battle, due to exemplary courage) that will maximize his honor. Likewise, the oligarch consistently places possession of wealth at the top of his preference order. He seeks outcomes that he believes will maximize the security of his hoarded wealth. Each does so at the expense of his pursuit of other goods.

By the eighth book, Plato's reader has learned that neither honor nor wealth has a valid claim to be top-ranked in the order of preferences by a truly (ends and means) rational person or state – the timocrat and oligarch each makes a mistake about value. But the timocrat and the oligarch, and the regimes they exemplify, can claim to be instrumentally rational in the “cleaned-up” folk theory sense of Glaucon's thought experiment in *Republic* book 2: Each manifests a complete, ranked, transitive set of preferences. Based on their own orderly preferences, the timocrat and the oligarch act according to their beliefs, including their expectations, based on the revealed preferences of other “players” and calculations of risk, to maximize their own (subjective) advantage. The behavior of the democrat lacks this base-line instrumental rationality.

Democratic irrationality arises from the underlying commitment of the model democrat, and thus the democratic *politeia*, to the values of freedom and equality. Those values are closely related in Plato's view, a view that was shared by Aristotle, other critics of democracy, and indeed by the democratic Athenians themselves.⁹ What is distinctive about Plato's account of democratic value is his identification of individual psychological states with state-level institutional arrangements. Moreover, unlike honor or wealth, freedom and equality are not taken by Plato's democrat to be clearly defined “ultimately most-choiceworthy” goods in themselves. Nor do they point to any specifiable set of ranked outcomes. Rather the embrace of freedom provides the democrat with a doorway onto a wide range of goods and a comparably diverse range of potentially desirable outcomes and actions aimed at securing them.

Meanwhile, equality leads the democrat to be indifferent (over time, and in the choice-theoretical sense of indifference as equally strongly preference) to the possession of any one good or outcome, among the diverse range of possibilities that his freedom has opened to him, over any other. Each seems to him, over time, to be of equal value. As a result of the interaction of freedom with equality, each good can catch his attention momentarily, be pursued as a desired outcome with avidity, and then suddenly dropped in favor of some other equally desirable alternative. The democrat's indifference among the diverse array thus takes the form of pursuing different ends seriatim, just as they happen to strike his fancy. Given that each is, ultimately, equally desirable, abandoning the one and taking up the next is costless in terms of his internal accounting.

In sum, the democrat is free, and delights in his freedom, to pursue, at any moment, any of the wide variety of goods that seem to him, over time, to be equally fine. And thus the individual who is the model for the regime of democracy and who is rightly called democratic (561e),

... lives on, yielding day by day to the desire at hand. Sometimes he drinks heavily while listening to the flute; at other times, he drinks only water and is on a diet; sometimes he goes in for physical training; at other times he's idle and neglects everything; and sometimes he even occupies himself with what he takes to be philosophy. He often engages in politics, leaping up from his seat and saying and doing whatever comes into his mind. If he happens to admire soldiers, he's carried in that direction, if money-makers, in that one. There's neither order nor necessity in his life and he calls it pleasant, free, and blessedly happy, and he follows it for as long as he lives (561c-d).¹⁰

Notably, included among the diverse ends that the democratic man may to pursue is the soldier's life, recalling the timocrat, and that of the money-maker, recalling the oligarch. He even may delve into what he supposes to be the domain of the philosopher. But, unlike any of those model individuals, the democrat does not make wealth or honor or wisdom as his primary end, nor does he pursue it consistently.

Along with orderly preferences, instrumental rationality requires reasonably coherent (whether or not valid) beliefs about the state of the world to guide actions aimed at securing most-favored available outcomes. Plato does not give us reason to suppose that the timocrat or the oligarch, any more than the democrat, is possessed of beliefs that are true in the strong sense of being based on actual knowledge – as are the true beliefs held by the philosopher-rulers of Callipolis – rather than on mere opinion. But democracy, as a *politeia*, may be subject to epistemic disabilities that are peculiar to itself.

The diversity of the democratic *koinônia* means that there is, at any given moment, a corresponding diversity in skills (whether *technai* or mere *empeiriai*) and information sets among the populace. Because, in a democracy, all adult male natives are citizens who are free and, according to Plato's description of the democratic man, eager to attend the legislative assembly, this diverse body of empirical know-how and information – call it generically “data” – is brought into the public space of collective decision-making. But how is this mass of data to be organized, such that only the relevant bits are taken into account, and properly weighted and sorted, so as to yield the set of coherent beliefs that will allow the demos, as a mass of free and equal persons, to make a choice that will further its collective interests? To the extent that each of the thousands of citizens in the democratic assembly, “engages in politics [by] leaping up from his seat and saying

and doing whatever comes into his mind,” the collective belief formation process seems likely to be as disordered as the democratic man’s preferences.¹¹

Each of Plato’s two sources of democratic irrationality – disorderly preferences and inadequately coherent, as well as frequently invalid, beliefs about the state of the world – has been highlighted by contemporary critics of democracy. Joseph Schumpeter 2008 [1950]) defined the issue in his still-influential mid-century book, *Democracy, Capitalism, and Socialism*. Schumpeter claimed that what he called the “Classical Theory of Democracy” – that is, the idea that a mass of citizens could be capable of ruling themselves – was incoherent: It grafted Rousseau’s implausible conception of the general will onto Jeremy Bentham’s narrowly materialistic conception of utility as pleasure. Schumpeter denied that a collective will (a rational judgment connecting coherent shared preferences over outcomes to collective action) could ever be formed by a mass of citizens, and scoffed at the notion that democratic citizens, as individuals or in the aggregate, knew, could know, or had any motivation to learn enough, to govern themselves.¹²

Picking up where Schumpeter left off, William Riker (1982) zeroed in on the problem of ordering collective preferences. Rather than leaning on Plato’s account of the individual democrat’s irrational moral psychology, Riker appealed to Kenneth Arrow’s (1962) “impossibility theorem” of voting, which demonstrates that, under plausible conditions, a group faced with deciding by voting among three or more alternatives cannot avoid the possibility of falling into a cycle in which A is chosen over B, B over C, and C over A (see chapter 3). Since cycling violates transitivity, Riker pronounced democracy irrational and, in principle, fatally subject to strategic manipulation by those who understand the mechanism of cycles. Riker also sought to show that cycles were indeed prevalent in democratic decision-making; an empirical conclusion that has been challenged.¹³ More recently, epistemic critics of democracy and democratic realists have revived Schumpeter’s concerns about the capacity and motivation of democratic citizens to know enough to vote according to their interests – even if they happened to be capable of identifying them.¹⁴

Modern critics who contend that democracy is beset by inherent irrationality tend to focus their worries on the negative impact of irrationality on the performance of democratic states as organizations – that is, in Greek terms, the capacity of the state as *sustêma* to deliver the goods of security and material welfare. The constitutional fixes the critics suggest (insofar as they make practical recommendations) are meant to enable democracy to perform as well as a hypothetical alternative: a better organized, more rational, meritocratic and/or autocratic regime.¹⁵ Plato’s concern was quite different.

Rather than worrying about the under-performance, in material terms, of democratic regimes relative to actual or hypothetical non-democratic alternatives, Plato’s criticism of democracy centered on the capacity and tendency of democratic

culture to corrupt individual souls. The superficially attractive diversity of the democratic ethos turned people with the capacity to be at least instrumentally rational and possibly even ends-and-means rational, who might otherwise pursue virtue, away from objectively better ends. The dire result was denying to individuals and to their communities the possibility of achieving any part of true *eudaimonia*.

In terms of producing high levels of wealth and power, Plato worried that democracies performed all too well. In the *Gorgias* (518e–519c; cf. Ober 1998: 209–210) Plato’s Socrates disparaged various of Athens’ famous fifth-century leaders – including Themistocles and Pericles (see chapter 1) – who, “they say,” had made the city great. In fact, Socrates claims, these so-called leaders were mere flatterers who turned the polis into a swollen tumor. They failed to inculcate *sophrosunê* or *dikaiosunê* in the population, instead filling the polis with just the sort of trash the demos happened to desire: harbors, city-walls, ship-sheds, and tribute.

Of course, for an ordinary Athenian, one concerned with the basic goods of welfare and security, those things were far from despicable. Having a good supply of those things was a testament to the state’s strength and to its success at providing the material conditions of secure prosperity: harbors for trade, tribute for distributable state income, ship-sheds and city-walls for security against attack by sea or by land. So the ordinary Athenian might assert that the things that the demos desired, insofar as Plato’s Socrates had accurately listed them, fell within a rational calculus. Plato might, however, be supposed to be pointing his contemporary (early fourth-century) reader to the fact that the equipment that Socrates of the *Gorgias* alludes to (and that had been manifest at the later fifth-century dramatic date of the dialogue) had been lost after the Peloponnesian War. By the time Plato’s first readers would have had access to his dialogues, the Athenian empire with its tribute was gone. The walls had been slighted by the victorious Spartans. The ship-sheds of the Periclean era had been dismantled and sold for scrap by the Thirty.

And yet, by the probable date at which the *Republic* was first circulated, Athens had at least partly recovered: The city walls and the navy of trireme warships (along with the ship-sheds to house them) had been rebuilt. The harbor at Piraeus was once again attracting a substantial trade. Later readers would be even less likely to take the point. By the end of Plato’s life, despite a severe downturn in the mid 350s, Athens was again a leading Greek city-state and a center of a thriving Mediterranean trade. By the 330s BCE, when Aristotle was writing the *Politics* and criticizing some of Plato’s arguments, Athens’ state revenue and per capita income equaled or exceeded its fifth-century imperial height, even though its citizen population never regained fifth-century, imperial-era level and the empire was just a memory. And in any event, it seems odd on the face of it to suppose that Plato would be so attentive to the contingencies of the historical moment in which he wrote.

We are left with a puzzle: If democracy was a fundamentally irrational form of *politeia*, and Athens was a democracy, how is it that Athens' had such an effective and resilient *sustêma* – both in the imperial fifth century, the dramatic date of most of Plato's dialogues, and in the post-imperial fourth century, when Plato was writing them? At least part of the answer must be that the portrait of the democratic man in the *Republic* ought not be taken literally, at least insofar as a literal reading would imply a complete failure of society-wide or state-level instrumental rationality. The "democratic man" of *Republic* book 8 appears to be assured a certain background welfare and security: Unlike the miserable creatures of Hobbes' state of nature, Plato's democratic man is not said to be threatened by material deprivation or to live in fear of threats to his security. As the *Gorgias* passage clearly indicates, Plato knew that the diverse members of the *demos*, in their role as citizens participating in key democratic institutions, were capable of making collective decisions that conduced, if certainly not to *eudaimonia*, then (at least more often than not) to the ends of the security and welfare of the state.

That is precisely the point of the anonymously authored (attributed to Pseudo-Xenophon, nicknamed "The Old Oligarch") *Politeia of the Athenians*, probably written in the early 420s BCE. The author is highly critical of democracy as the immoral rule of the "bad" many over the "good" elite, but the main point of his essay is to show his reader just how well the Athenian many manage affairs in their own interests (1.1). Their effective management includes resisting efforts of similarly self-interested members of the Athenian elite to capture the government. As the Old Oligarch bluntly notes, were the elite to rule, they would enslave the many, and the many had no interest in being slaves (1.9). The Old Oligarch has no doubts about either the instrumental rationality or the efficacy of the "bad" *demos*, indeed the gravamen of his text is to explain to his reader the difference between rationally self-interested behavior and moral value: The intrinsic "badness" of the poor, uneducated many (1.5) did not impede their capacity to form ordered preferences (with top-ranked preferences for not being enslaved, living well from redistribution and public goods, being catered to by imperial subjects). And evidently, despite their lack of education, the many had formed beliefs about the state of the world that were adequately coherent to enable their preferred outcomes to be realized through collective action – that is, through democratic institutions and policy.¹⁶

We may discount the possibility that avoidance of elite capture, security, and state-level welfare were achieved by mere luck: It is simply implausible that superior (in a material sense) outcomes were arrived at through democratic decision-making processes incapable of doing other than (at best) randomly making a better choice among options and equally incapable of consistently acting in a coherent manner to pursue the chosen option once a choice was made. The

alternative is that those outcomes were quite consistently highly-ranked, as preferences, by an authoritative majority of the many citizens who participated in the making of state policy. Moreover, the beliefs that were held among an authoritative majority of participating citizens concerning the state of the world must have been sufficiently coherent. Indeed, the beliefs informing democratic policy (and enabled the state to be relatively prosperous and secure) – must have tracked reality well enough to connect preferences with real-world results.

The shared beliefs that allowed the Athenian demos' preferred outcomes of (at least) security, welfare and non-tyranny to be realized depended, in many cases, on the presence of true expertise in the decision-making process, and on the willingness of the mass audience in the citizen assembly to attend to known experts when making highly salient choices about diplomatic and military policy relevant security and economic and financial policy relevant to welfare. And indeed, in the *Protagoras*, Plato's Socrates points out to his cosmopolitan audience (evidently from personal experience: "we") that, when deliberating on salient technical matters, the "wise Athenians" were willing to attend only to those they regarded as true experts, summarily rejecting speakers who are regarded as lacking the relevant expertise:

I say, just as do the rest of the Greeks, that the Athenians are wise. Now I observe, when we are gathered in assembly, and the polis has to deal with an affair of building, we send for builders as advisors (*sumbouloi*) on what is proposed to be built; and when it is a case of warship-construction, we send for naval architects; and so in all other matters which are considered learnable and teachable. But if anyone else, whom the people do not believe to be an expert craftsman (*demiourgos*), attempts to advise them, no matter how handsome and wealthy and well-born he may be, not one of these things induces them to accept him. They laugh and shout him down, until either he shuts up, having been shouted down, or else the archers [state-owned slaves, employed as bouncers] either pull him down or expel him altogether by order of the *prutaneis*. That is how they proceed in matters in which they believe there is relevant expertise (*technê*: *Protagoras* 319b-c).¹⁷

Socrates' point about the practices of the "wise Athenians" implies, of course, that the Athenians do know, collectively, *what kinds* of expertise are called for in coming to particular categories of decision (say, architects for building projects), and that they are able to identify *who* is truly expert in each field and who is not. The "collective wisdom" sorting mechanism that identifies the categories of expertise relevant to a given project, and that separates experts from non-experts, is not specified. But Plato's Socrates implies that the Athenians do get the expert input necessary for the assembly to make a choice (a vote on a specific proposal) at the

end of the deliberative process in which advice is offered and the assemblymen respond vocally to those who seek to advise them. The Athenians were not, therefore, burdened with the peculiar notions that are central to the deflationary arguments of contemporary epistocratic and, alternatively, neo-Rousseauian democratic, critics of participatory and deliberative democracy: They did not suppose, on the one hand, that to be an effective participant in decision-making a democratic citizen must *himself* be expert on all matters on which (or on the basis of which) he might end up casting his vote. Nor did they suppose that the proper role of an assemblyman was to sit silently, attending to speeches from his betters, formulating a private judgment, until it came time to vote.¹⁸

Socrates' description of the Athenians as "wise" is ironic, in that he immediately points out that when considering genuinely important matters the Athenians suppose that there are no experts and so they attend to just anyone. When the Athenian Assembly deliberates "concerning the governance (*διοικησεως*) of the polis" – presumably referring to something like a law governing choice-making procedures or the election to the generalship of a leading figure like Pericles – the Athenians willingly attend to almost anyone, whether he be "a smith, a shoemaker, a merchant, a sea-captain, a rich man, a poor man, of good family or of none." Socrates argues that they do so because they accept that general political expertise is not something that can be mastered or taught (319d). Given that there are no acknowledged experts in governance as such, everyone's opinion on matters of general governance is regarded as just as likely to be valuable as anyone else's.

For Socrates of the *Protagoras*, "governance" and the true expert in governance (the master of *politikê technnê*) must be centrally concerned with the rationality of ends, that is the perfection of souls, and not just the material conditions of security and welfare. The Athenians reject the very idea that there could be knowledgeable experts on the vital (for Plato) question of what they *ought* to prefer or how to go about getting it, even if, counterfactually, they knew what it was. But they were, it seems, adequately rational in the instrumental sense of (1) consistently preferring to live with security (e.g. building ships) and welfare over any available alternatives, (2) formulating the relevant beliefs with expert assistance, and (3) carrying through with actions that led, more or less reliably, to what they regarded as the best available outcome.

The question remains: How did the *koinônia* of the Athenians (or the citizens of other democratic Greek poleis) come to have a *politeia* capable of sustaining a *sustêma* that delivered the basic goods of security and welfare? And how, moreover, did they do so in ways that pushed back against elite domination – such that (after the fall of the Peisistratid tyrants, and with the notable exception of the crises of the last years of the fifth century), the Athenian state was not captured by a junta or a tyrant for close to 200 years? Because that is a question to which I have devoted

much of my career, much of what follows in this chapter draws on my own earlier work. But recent scholarship by other historians of Greece has gone a long way towards fundamentally revising our understanding of the Athenian *politeia* and how it operated in practice. In the remaining sections of this chapter I have highlighted some of this new work that is especially salient in addressing the question of the rationality of Greek democratic states.

5.3 Cleisthenes' wager: Rational democratization

Democracy, understood as collective self-government by an extensive and socially diverse citizenship (Ober 2017), was established in Athens in 508 BCE in the aftermath of a revolutionary uprising succinctly described by Herodotus and the Aristotelian *Ath. Pol.*¹⁹ A quasi-constitutional tyranny (the tyrants retained the laws of Solon), established after two false starts a half-century after Solon's constitutional reforms, ended with a Spartan military intervention in 510 BCE. In the ensuing power struggle between aristocratic coalitions, the faction led by Isagoras, who had a personal relationship with Cleomenes, one of the two Spartan kings, was initially dominant. Faced with defeat, Cleisthenes, the leader of the rival faction, tried something new. He wagered that radically enlarging his coalition, by "inviting the demos to be his trusted comrade,"²⁰ would give him an advantage in the power struggle. The practical means by which Cleisthenes sought to enlist a mass following was the promise of constitutional reform, which would allow ordinary citizens a fuller role in the *politeia*. His wager quickly paid off: the demos accepted the invitation and Cleisthenes now dominated his rivals. Isagoras, however, responded by requesting aid from Cleomenes. Confronted by the threat of Spartan-led organized violence, Cleisthenes and many of his closest allies fled Athens. A mixed force of Spartiates and mercenaries, led by Cleomenes, then occupied the city.

Isagoras and Cleomenes sought to consolidate their position by ordering an Athenian government council (it is not clear which one) to dissolve.²¹ When the councilors refused the order, the rest of the Athenians rose up in arms. Confronted with this turn of events, unexpected given that Cleisthenes and his core supporters had fled Athens, Isagoras and his Spartan allies retreated to the Acropolis stronghold, where they were besieged by the Athenian demos. After three days, the besieged force surrendered under terms. Isagoras and Cleomenes were expelled from Athens; some of the mercenaries who had accompanied them were executed. Cleisthenes was recalled by the demos to the city and immediately set about implementing the promised reforms.

The new political order, like the tyranny that had preceded it, was predicated on the foundation of Solon's earlier constitutional bargain (chapter 4). It was instituted in the face of a serious external security threat: an imminent, large-scale Spartan military response to the humiliation of their king. In 506 BCE the Spartans

and their Peloponnesian allies duly marched against Athens in coordination with invasions launched by the poleis of Boeotia to the north and by Euboean Chalkis to the northeast. Again unexpectedly, the Spartan-led army turned back at the Athenian border following the defection of the Corinthians, a key Spartan ally. The two other invasion forces were quickly defeated. The victorious Athenians then attacked Chalkis, seizing land and booty.²² The dramatic Athenian victory against the Spartan coalition paved the way for a quarter-century of constitutional reforms, before the great Persian invasion of 480 BCE. We do not know exactly when in the late sixth or early fifth century, or by whom, the term *dēmokratia* was first coined and employed as the name of the Athenian *politeia*.²³ But, as a practical matter, the revolutionary uprising of the Athenian demos and the reforms that followed established democracy, as collective self-governance by an extensive and socially diverse body of citizens. In the late sixth and early fifth century, other Greek states experimented with more citizen-centered forms of government (Robinson 1997, 2007), but Athens' democratic *politeia* is by far the best documented of them.

We will consider, below, certain of Cleisthenes' institutional innovations and later constitutional adjustments made in the course of the fifth and fourth centuries. In terms of assessing the rationality of Athenian democracy, the prior puzzle is, however, explaining the sequence of events that led to the creation of the new order. From the standpoint of instrumental rationality, among the key questions are why Cleisthenes chose to invite the demos into his coalition, why the demos rose up against the Spartans after Cleisthenes was expelled, and why Cleisthenes carried through on the promised reforms after the Spartans had left and he was recalled.

As in the Sparta game (Chapter 4), an Athenian Democratization game highlights the relevant counterfactuals - the choices that might have been made, but were not made, by various agents. The game, played between Cleisthenes plus his original aristocratic faction, Isocrates in collaboration with the Spartans, and the Demos of Athens, helps to make sense of the choices that the historical actors actually made. Based on the accounts of Herodotus and [Aristotle] *Ath. Pol.*, we assign the players' preferences in the order listed in Figure 5.1. As in other extensive form games in the previous chapters, preferences are ordinally ranked.²⁴

[Figure 5.1: Athenian Democratization Game about here]

At the root of the game, with Isagoras' faction having become dominant, Cleisthenes chooses among acquiescence to the status quo (Yield); opposing Isagoras, employing the traditional method of enlisting his aristocratic coalition (Fight), with probability of victory $p1$; and making the wager of seeking to expand his coalition (Invite Demos). Acquiescence assures his worst payoff. Fighting and winning would give him his best payoff. But, given that Isagoras was currently

dominant, had won the position of archon, and could count on the backing of Cleomenes, the probability of victory was low. This left the wager of inviting in the Demos, which, if it paid off, would give Cleisthenes his second-best payoff. The Demos then chooses between accepting the invitation and rejecting it. Based on Herodotus' account of the events, it appears that Cleisthenes had established his credibility by proposing constitutional reforms advantageous to the demos, perhaps even passing those reforms in the citizen assembly. Accepting the invitation gives the Demos a chance of realizing its top-ranked outcome, while rejecting Cleisthenes' invitation leads to the less-preferred outcome of Isagoras ruling. Note that the Demos is assumed to be indifferent between the rule of Isagoras or Cleisthenes (without the Demos). If the Demos accepts Cleisthenes' invitation, Isagoras/Sparta decides whether to yield or to expel Cleisthenes. Yielding means that Isagoras/Spartans get their worst payoff; expelling gives them a chance at their best.

If Cleisthenes is expelled, the Demos in turn chooses whether to acquiesce or to fight with some probability (p_2) of success. Estimating that probability would not have been easy. On the one hand there was the Demos' lack of experience in acting as a collective agent, and Sparta's reputation for military effectiveness. But there were reasons to think that the Demos, if it is able to coordinate, had a reasonable chance of victory: Herodotus points out that the force led by Cleomenes was relatively small and mixed-nationality – the Demos certainly had a big advantage in numbers. A key factor, then, was the presence of a focal point (Schelling 1960; see Chapter 2) facilitating coordination by the members of the Demos. The Acropolis, the natural fortress in the middle of the city and the center of the state cult, provided the obvious focal point on which mass action could be (and was) coordinated, without the need for advance planning and communication. Numbers and the potential for coordination increase the probability of the Demos' victory, which in any event we can set as higher than p_1 .

If the Demos fights and wins, Cleisthenes, recalled from exile, chooses to follow through on reforms and fight the Spartans with the support of Demos or renege on the reforms and fight Sparta without the Demos. Reneging offers a chance for Cleisthenes to gain his best outcome, ruling without the Demos, whereas democratizing gives him, at best, his second-best payoff of the Demos ruling (and himself leading). In either case, democratize or renege, we assume that the Spartans (joined by Isagoras) will attack based on their own commitment to avenging the insult to their king, so there is no third option for Cleisthenes of reneging without fighting.

If, at either of the subsequent win/lose forks, Sparta wins, Isagoras rules, getting his best payoff, while Cleisthenes gets his worst payoff. Cleisthenes' choice of democratize or renege is thus predicated on the difference between the probabilities of victory with the Demos (after democratizing) or without the Demos

(having reneged). Note that the Demos has no reason to support Cleisthenes if he reneges on his promise, being indifferent between the rule of Isagoras and Cleisthenes (and no doubt resentful to boot). The probability of victory against the Spartans without the Demos ($p3$) must be set as very low, certainly even lower than Cleisthenes' chance of victory against Isagoras at the root of the game ($p1$). The chance of victory with the Demos ($p4$) would have been difficult to measure, but it was certainly was substantially better than $p3$. The probabilities of Cleisthenes' and the Demos' being victorious in the four possible fights can thus be listed as $p4 > p3 > p1$; $p2 > p1$. Even without specifying intensity of preferences or actual probabilities, the game is readily solved on the equilibrium path of the heavy straight line.

It is, of course, unclear how far up the game tree any of the *actual* historical actors might have seen. The probabilities at various nodes (notably the likelihood that the Demos would twice be victorious over Spartan-led forces) would have been very difficult to assess. The extensive form of the game illustrates the options faced by each presumptively self-interested party and highlights the role of Sparta in Athenian democratization. It shows that it is at least possible to explain the origins of democracy at Athens by assuming, in accordance with the folk theory of instrumental rationality, more or less rational choices by at least partially self-interested agents. That is to say, it is not necessary to posit that Cleisthenes was either an idealistic democratic visionary or a "Thrasymachean" strategic egoist. Nor need we suppose that Athens' path to democratization was either an inexplicable product of random contingencies or in some sense inevitable in the wake of Solon's early reforms.²⁵

Sparta clearly played a key role in the story: It is not possible to demonstrate that Isagoras' relationship with Cleomenes was a central factor in his early domination of Cleisthenes' faction (signaled by his victory in the competition for the archonship) and thus in precipitating Cleisthenes' wager. But, given that the faction fight arose in the immediate aftermath of the Spartan intervention that ended the tyranny, and in light of Herodotus' (5.70.1) claim that Isagoras had a prior relationship with Cleomenes, it is certainly quite plausible that Sparta was a factor in Cleisthenes' fateful choice of inviting the Demos into his coalition. Next, Sparta threatened the standing of the demos. Unlike Cleisthenes and the members of his aristocratic faction, the demos lacked the option of exit. If, unopposed by the demos and backed by Sparta, Isagoras had renounced the Solonian bargain, non-elite Athenians could have faced an Athenian analogue of helotage: The gains from the Solon bargain would be lost, and, with Sparta backing a new Elite, the Athenian Mass lacked a backstop. These considerations would have made the option of fighting after Cleisthenes had been expelled more attractive in spite of the risk, thereby motivating the search for a means of coordination. Finally, at the last nodes of the game, the Spartan threat is the factor that blocks a putatively self-interested

Cleisthenes from reneging on his bargain with the Demos.

The origins of democracy may, therefore, be explained in terms of the rational choices of the relevant players, given the particular circumstances in which their choices were made and the options available to them. Both practical reasoning and contingency (the presence of the Spartan threat, victories in battles that might have been lost) seem to have played decisive roles in the story of Athens' democratization. Absent the instrumental rationality of the relevant parties in the face of the persistent Sparta factor, Cleisthenes would not have made his wager and subsequently stuck to its terms. The wager might not have paid off: The uprising following Cleisthenes' expulsion might have failed; the Spartan invasion of 506 might have succeeded. Rather than taking the turn to democracy, Athens at the end of the sixth century could have been ruled by a stable elite coalition. It might have devolved into a cycle of civil conflict. But, as it turned out, Athens democratized and flourished.

5.4 Democratic rationality in practice. The Athenian *politeia*, 403-322

The victory in the Persian Wars (490, 480-478 BCE) was a result of Athenian coordination in the face of two invasions, Athens' providential choice to build a major navy, and Spartan leadership on land. The victory was followed by Sparta's decision not to join in an alliance to contain Persia. Sparta's decision inaugurated a fifty-year era in which Athens became the dominant state in the eastern Mediterranean. The logic of Athenian imperialism, and its relationship to Athens' democracy will be the subject of Chapter 6. In this section we are concerned with the rationality of the democratic *politeia*.

In a famous chapter of his history of the Peloponnesian War (2.65), Thucydides assessed the leadership of the Athenian statesman, Pericles, and attributed the successful policies undertaken by the Athenian state in the years preceding the war to him. Thucydides focuses on Pericles' firm grasp of the ends that the state ought to pursue, based on a shared preference for security, wealth, and power over their alternatives. Moreover, like Themistocles before him, Pericles possessed the key attribute of foresight (*pronoia*). This is not, for Thucydides, a mystical oracular power to foresee the future, but rather it is a capacity to make sound judgments based on a careful assessment of relevant facts about the world. Foresight enabled certain leaders to promote effective policies that maximized the expected advantage (in terms of security, welfare, and power) of the Athenian state.

Finally, Pericles had an accurate sense of the pluralistic desires and beliefs that were prevalent, at any given moment, among Athenian citizens. His rhetorical skill enabled him to achieve his own desired ends by manipulating those desires and beliefs and thereby uniting the Athenians behind a coherent set of policy aims. That is to say, Pericles had the kind of power, through speech, that Gorgias had promised

his students, and that Callicles sought to gain. The difference was that Pericles employed his rhetorical skills to further the interests of the Athenian state. His rhetoric enabled him to tamp down inappropriate popular enthusiasm (that is, depressing the tendency to impetuous collective action). And this meant he could limit the demos' tendency to seek desired outcomes that were unobtainable, or that entailed actions involving excessive risk. By the same token, his employment of rhetoric allowed him to counteract inappropriate risk aversion arising from excessive pessimism about the state's chances of achieving valued and available ends. In consideration of Pericles' deployment of political and rhetorical skills, Thucydides declared that, whereas in principle Athens was a democracy, in fact it was ruled by its leading man.²⁶

Thucydides went on to denigrate the would-be democratic leaders who followed Pericles. None of them, he says, was of outstanding talent. Therefore, they contended with one another for popularity and in the process turned over affairs to the demos. A strong reading of Thucydides' assessment of Pericles suggests that Athens was a rational, and thereby high-performing, state *only* when it was under the firm control of an exceptionally rational, and uniquely talented individual. This strong reading is, however, falsified by Thucydides' own historical narrative of years following Pericles' death in 429. While Thucydides highlights disputes among Athenian leaders, and the dire results of policy errors, it is clear from Thucydides account of the war that Athens failed to collapse into instrumental irrationality and policy incoherence immediately following the death of Pericles.²⁷

Moreover, Thucydides' own narrative also makes it clear that Pericles was not in any sense a king-like master who easily bent a pliant demos to his will. Pericles' signature defense policy of withdrawing the population behind the city walls, while using cavalry and strong-hold garrisons to limit the effects of enemy ravaging, appears to be the result of a bargain struck between competing interests within the citizen body – some willing to abandon the countryside entirely, others demanding that extra-mural resources be protected.²⁸ Finally, Thucydides leaves little doubt that it was Athens' policy in the age of Pericles that precipitated the great Peloponnesian War: The steep rise in Athenian wealth and power in the imperial era made the Spartans sufficiently fearful about their future standing that they came to see the war as necessary.

Thucydides makes it clear that, in his view, Pericles' optimistic assessment of Athens' chances of ultimate victory in that war ought to have been vindicated by the course of events, in light of the resources Athens had amassed in advance of the war. Yet it is also clear that Pericles failed to take into account the possibility (however remote it might have seemed at the time) of an outbreak of deadly disease consequent upon the entire population of Attica being crowded into the fortified urban complex. In the event, beginning in the second year of the war, the plague

killed roughly a quarter of the Athenians (including Pericles himself) in the space of a few years. Nor, evidently, did Pericles (or Thucydides himself), foresee the implications of the war breaking the frame of Athens-Sparta bipolarity when Persia entered the conflict.²⁹

After the catastrophic failure of an Athenian attempt to conquer Sicily (in contravention of Pericles' advice not to expand the empire before the war had been concluded on terms favorable to Athens), the democracy was briefly replaced with a narrow oligarchy. The oligarchy of "the 400" was in turn replaced by what Thucydides (8.97.2) describes as a "mixed regime," followed by a return to democracy (411-410). After Athens finally lost the war, the victorious Spartans imposed another oligarchy, but democracy was restored after a brief, sanguine civil war. The victorious democrats defied expectations by instituting an Amnesty instead of pursuing a vendetta against Athenians who had supported the oligarchy. From 403 to 322 BCE, Athens was once again a democratic state.³⁰

Although Athenian democracy was long associated with the "Periclean golden age" of the fifth-century empire, our best evidence, both literary and documentary, for Athenian democracy concerns the 80-year period following the Peloponnesian War and preceding the Macedonian takeover after the death of Alexander the Great. This period of Athenian constitutional history is the subject of the second part of the Aristotelian *Athenaiôn Politeia*, probably written in the 320s, an incomparable contemporary descriptive and analytic source. The evidence of the Aristotelian *Ath. Pol.* is augmented by a relatively full historiography, numerous speeches by Athenian political and legal orators, and an exceptionally rich dossier of documents on stone, largely the result of ongoing archaeological excavations in the Athenian agora. A long generation of intensive work by Greek historians on those materials, and on the archaeological remains of Athens' democratic infrastructure, has done much to further our understanding of the fourth-century democracy. The post-Peloponnesian War era is now widely regarded by historians, not as a period of decline, but as the mature form of the Athenian *politeia*.³¹

In the next three sections, I will sketch certain features of fourth-century Athenian democratic institutions. This is decidedly *not* a constitutional history, tracing the various institutional changes from the late sixth-century Cleisthenic origins, through the Periclean imperial era of the fifth century, and over the course of the first eight decades of the fourth century. Nor is it a complete exposition of the mature Athenian *politeia* and its functioning as a *sustêma*. Nor, finally, is it an attempt to demonstrate the reasons for fourth-century Athens' comparatively high level of state capacity and its military and economic performance. Those matters have been dealt with, in detail, in other recent work, my own and that of others.³² Rather, the goal will be to test the validity of Plato's portrait of democratic irrationality by examining the rationality (or lack thereof) of the mature democratic

state. I propose to approach the question of “state rationality” at three levels.

First, to what extent did the decision-making processes of the state map onto the approach taken by the hypothetical “unerring craftsman” in Glaucon’s restatement of the folk theory of instrumental rationality? How capable was the Athenian state – which means in practice, the Athenian demos as a collectivity – of forming ordered preferences over outcomes? Developing coherent beliefs about the state of the world at any given moment in time? Updating those beliefs over time? And ultimately serving its own self-identified interests? That is, if the Athenians were indeed capable of making a rational choice by calculating the most-favored available outcome, were they also capable, as a collectivity, of acting upon that decision? Here, we must allow for preferences to diverge from Glaucon’s “primitive preference triad” of sex, wealth, and power. I postulate that the relevant, alternative, state-level (that is common interest) top-ranked preference triad was – as suggested above – joint and several security, general welfare, and the avoidance of tyranny, understood as elite capture of the government.

Next, with reference to the bargaining solutions sketched in the previous chapter: To what extent did the democratic *politeia* facilitate productive bargains, and avoid costly bargaining failures, among Athenian groups and individuals, each pursuing their own pluralistic preferences? Those groups were defined in part by material interests (distributive shares) but also on identities and loyalties arising from regionalism, social status, religious belief, and other cleavages. Certain of those cleavages existed among the population of adult male citizens. Others arose among and between the broader set of persons subject to Athenian jurisdiction, including citizen women, resident foreigners, short-term visitors, and slaves. How clearly articulated and consistent over time were the preference-rankings of interest- and identity-groups? How well known were their backstop positions and their relative bargaining power? What lines of communication were open (or closed) to them? Were competing groups able to make credible threats and commitments that pushed toward the Pareto frontier of “full social value” within the stable constitutional framework?

Finally, to what extent were the rules – the formal institutions, social norms, and associated habits that constituted the *politeia* – incentive compatible? Did they give individuals good reasons to act in ways that were aligned with the top-ranked preferences of the state in (*ex hypothesi*) security, welfare, and non-tyranny? To what extent was cooperation by individual citizens and non-citizens willed and voluntary, rather than simply coerced? What reasons did individual citizens have to pay the relatively high costs, in the coin of their own time and attention, of collective self-government? Or to join in costly punishment of those who defected from cooperative norms? We will need to take diversity of preferences into account: Athenian individuals were certainly not limited to pursuing the collective interests

of the state or to the elements of Glaucon's primitive triad. Many clearly shared Plato's timocrat's high-ranking of individual honor and actively sought the esteem of their fellows. Many others, per the great myth of Plato's Protagoras, were motivated by a sense of justice, whether it was defined as helping friends and harming enemies or some other distributive or retributive norm.

To what extent did the rules leave room for, or actively promote, the kinds of socially valuable competition – political, economic, for public honors and private esteem – that might tend to increase or degrade the aggregate welfare of the *koinônia*? When did competition become destructive? Was it only, as Thucydides asserted when competitors were politicians and their goal was the approbation of the demos? Or was competition for wealth, honors, or other goods also potentially destructive of aggregate welfare or even of state security?

Insofar as the *politeia* of the democratic state was rational in the sense of having orderly preferences, coherent beliefs, and a capacity to act accordingly; insofar as it promoted productive bargains and limited the likelihood of costly bargaining failures among identity- and interest-groups; insofar as it provided incentives to individuals to align their public and private behavior with the goals of the community writ large, we may say that Plato's charge of democratic irrationality, as sketched above, has been refuted. That refutation, if it is achieved, might in turn go some way towards offering a response to contemporary criticisms of democracy as inherently irrational – either in terms of the impossibility of stable collective preference formation, or in terms of the incoherence or inadequacy of individual citizens' beliefs about the state of the world.

5.5 Legislation: Council and assembly.

Socrates of Plato's *Protagoras* takes the policy-making procedure of the Athenian assembly as exemplary of the practice of the "wise Athenians" in attending to experts in those technical areas in which they supposed true experts were readily identified. Likewise, in his famous account of the possibility of the practical "wisdom of the many," Aristotle (*Politics* 3.11) seems to have in mind the legislative procedures of a democratic state – plausibly, of the one he knew best from his long residence – Athens.³³ In Athens, and other democratic Greek poleis, the citizen assembly held decision authority. That authority was not unconstrained: In fourth-century Athens, policy decisions made by the assembly as *psêphismata* were legally required to confirm with the established constitutional *nomoi* and subject to judicial review. But it was the citizens themselves who made the constitutional rules and reviewed the legality of decrees of the assembly when they were challenged by a concerned citizen (below section 5.6). The fourth-century Athenian legislative process is, at this point, tolerably well understood, and offers a case study in institutional rationality.

Beginning with preferences, it is vital to keep in mind that the decision-making by the democratic assembly of a Greek polis frequently concerned matters that can be generally described as “high stakes.” The world of the Greek city-states was competitive, often violent, and unforgiving. While the world of the fourth-century city-states was prosperous by comparative pre-modern standards, ordinary Greeks lived closer to the level of subsistence than most people in modern “developed” countries. Tyranny – of an individual or a junta – was a persistent threat. Moreover, despite impressive advances in the management of state finances, the capacity of the state to borrow money or to run deficits was limited. Therefore, despite the diversity of group-level and individual preferences represented in the Athenian population, much Athenian legislation tended to concern one or more items in of the basic “security, welfare, non-tyranny” triad. Decisions on relatively low-stakes questions were made in the shadow of the persistent need to make good choices on high-stakes issues.³⁴

Matters of security (internal or external) and welfare debated in the assembly might concern all Athenians or some subset of the Athenian population. In the example cited by Socrates of the *Protagoras*, building warships, the background assumption would seem to have been that the state’s security required a certain number of ships to be built, within a specified timeframe, and within some cost constraint. The question the expert military architects might have been addressing would then have been: How many ships (of the requisite quality) could be built, how quickly, for what cost? The preference ordering of the majority, if not all, citizens might be supposed to be something like this: 1. High level of security at an affordable cost (minimal risk of insecurity). 2. Moderate level of security at an affordable cost (higher, but still acceptable risk of insecurity). 3. High level of security, but only at high risk of state bankruptcy. 4. Insecurity. How the demos could know that this was indeed the preference ordering of a majority of its members remains to be seen; we return to that question, below.

Assuming, for the moment, that the preferences of the assembly on the matter of ship building were adequately well ordered and that the right actions are carried out following the decision, what beliefs did the assembled citizens have about (inter alia) numbers and quality of ships, timeframe, and cost, relevant to making a decision that will enable them to attain their most-preferred available outcome? The passage in Plato’s *Protagoras* has already pointed towards the essential role of expertise in the decision process. Socrates has confidently asserted that the Athenians were capable of recognizing and attending to experts, and thus potentially to updating their beliefs, at least on technical matters, like ship-building.

The standard Athenian “enactment formula” for a legislative decree was, *edoxe tēi boulēi kai tōi demōi*: “it seemed right to that council and the assembly that....” The active verb is *edoxe*, from *dokeō*, “I believe.” Legislation was, therefore,

explicitly predicated on a claim about beliefs that were held by two collectivities: the council of 500 citizens, chosen by lottery for a one-year term, and the assembly, that is the 6000-8000 Athenians who attended the legislative meeting in question and voted on the final form of the enactment. The expert testimony by the naval architects (in the *Protagoras* passage) was relevant to forming coherent, presumably more or less reality-tracking, beliefs. Those incompetents who were not given the opportunity to speak on the matter were rejected by the collective action of the assemblymen (shouted down) because their opinions were regarded as irrelevant (or worse, antithetical) to the formation of the right set of beliefs on the matter at hand. Insofar as Plato (of the *Gorgias*) supposed that the Athenian democratic system succeeded in providing the polis with, *inter alia*, warships, the procedure seems to have met the basic requirements of instrumental rationality.

But how? The ability of thousands of ordinary people to decide on a complex matter like military procurement, even granted a high-stakes environment conducive to preference alignment and the presence within the community of relevant expertise, may appear mysterious. But, when we consider the institutional design of council and assembly, the procedural rules that governed decision-making at each step in the process, and the behavioral habits that had emerged with experience in working the constitutional machinery, the mystery is solved.

The Council of 500 (*boulê*), which met most days of the year in a purpose-built *bouleuterion*, was the product of the original, late sixth-century, Cleisthenic reforms. Its 500 members were chosen, in an annual lottery, based on demes, thirds, and tribes. Every Athenian citizen was an ancestral member of one of 139 demes (*dêmoi*: villages and urban neighborhoods) in Athens' home territory of Attica. Each deme was assigned a quota of councilmen (*bouleutai*), based on its citizen population. A deme, and thus its council delegation, was an administrative subunit of one of 30 regional "thirds" (*trittyes*). Each third, roughly 1/30 of Athens' total population, consisted of several demes in one of the three (coastal, inland and urban/suburban) primary regions of Athens' territory. Three thirds, one from each of the three regions, a "tribe" (*phulê*).

Each tribe therefore consisted of a roughly equal number of citizens, a tenth of the whole, drawn from different parts of Athenian territory. Each of the 10 tribes sent 50 members to the council each year. Tribes were also the basis for various forms of religious ritual and the land army. The system of artificial tribes required Athenians from different parts of Athens' extensive (by Greek standards) territory to cooperate in various domains (politics, religion, war). It facilitated the formation of sub-state identities that were oriented toward the state-level *koinônia*, and so served as a counterweight to regional or sub-regional loyalties. Given that a very high percentage of Athenian men over age 30 (the minimum age for council service) would have spent a year on the council (no more than two non-consecutive terms

were allowed), it is likely that the council, in any given year, was roughly representative of the social composition of the demos as a whole. Councilmen were paid for their service, so the poor were not excluded. The design of the council militated against the domination by any interest or identity group.³⁵

The council was responsible for carrying out a variety of administrative, fiscal, juridical, and diplomatic functions, in addition to the duties that are our primary concerns here: setting the agenda for meetings of the assembly and making policy recommendations. The council's work was structured around the ten 50-member tribe-teams. Each team held the "presidency" (as *prytaneis*) of the council for an equal (tenth of the year) period; a third of the *prytaneis* (16 or 17 men) were responsible for remaining on 24-hour duty (during which they were fed at state expense) in the purpose-built *prytanikon*. The Councilmen were provided with a permanent secretarial staff of literate and experienced public slaves. They had ready access to the next-door public archives, which included all of the currently valid laws (*nomoi*) and decrees (*psêphismata*).

The Greek term for public council (*boulê*) refers directly to a deliberative function (*bouleusis*). Although there is no preserved account of the council's deliberative process, we can readily imagine discussions among the subset of the *prytaneis* housed in the *prytanikon* (a round, one-room building), and among the members of the 50-man tribal teams. Given that a high percentage of all Athenians over age 30 served for a year on the council, and that virtually all Athenians would know former councilors as members of their immediate social network, an entering councilor would have begun his year's service with a good practical sense of how the institution functioned, what was expected of him, and what he might gain from his year's service. I have suggested, elsewhere, that individual councilors would have had private incentives (both material and honorific) to seek connections beyond their local-network deme-delegations, among other members of their tribal teams, and among the 450 other council members. Overall, the full council had a collective incentive to perform its duties well – both in light of the high stakes of polis-level decision-making and because the assembly would annually decide whether or not to grant the year's council special honors.³⁶

Some of the business of the full council was carried out through attending to and responding to speeches by council members, state officials, or domain experts summoned by the council: The council-building was designed as a small "Greek theater" style auditorium. A few surviving speeches were delivered before the full council, serving in its judicial function, and we know that that the council heard expert testimony relevant to its agenda-setting and advisory functions, for example from the elected generals (see below). Although we lack direct evidence of how council decisions were made, we must assume that the councilmen voted on proposals, probably ordinarily brought forward by the *prytaneis*, and that decisions

were made by a majority voting rule. Per Canvevaro's reconstruction of the voting process in the full assembly (below), we may imagine that the council worked towards consensus decisions in many, perhaps most cases.

In sum, the conditions under which the Athenian council of 500 made decisions were conducive to instrumental rationality, offering adequate opportunity for the pursuit of individual and sub-group self-interest within constraints that pushed in the direction of aligning private and public interests: Small- and mid-sized group deliberations; wide experience with the decision-making process; the provision of skilled secretaries; access to archives; testimony by experts; individual and group-level incentives for good performance; all against the background of high stakes conditions driving up costs of failure. It is plausible to suppose that these circumstances enabled the 500 councilors to model the choice process of a rational, well-informed individual.

Insofar as specific interests and identities were represented among a year-class of councilors, the deliberative context and the opportunities for building trust made credible commitment, and thus productive bargains, relatively more likely. While there was ample room for strategic behavior, intimate conditions and relatively small numbers lowered the cost of collective action: exposing egoistically self-interested behavior that could have reduced opportunities for cooperative outcomes, while increasing the social incentive to join in costly punishment of norm-violators. Finally, the term limit on service (with complete turnover after each year), while setting an end-point to whatever repeated games were played among the year's cohort of councilors, prevented the formation of a corporate identity with interests other than those of the *koinônia* at large.³⁷

In the fourth century, the citizen assembly met, usually in a purpose-built theater-like open-air space (the Pnyx) 40 times each year (four meetings in each 35/36-day prytany). Some meetings had certain fixed agenda items; every fourth meeting was designated "principal," (*kuria*) and (at least in theory) addressed topics of special salience. The agenda of the meeting was announced, in written public notices, in advance. Any citizen in good standing could attend any meeting. Citizens who attended (at least up to a quorum) were paid for their service; the rate of pay increased over the course of the fourth century. Meetings typically lasted half a day. Although the 6000-8000 citizens present at a given assembly were never perfectly descriptively representative of the entire body of ca. 30,000, there is little reason to suppose that assemblies were, over time, systematically biased for or against any significant sociological subset of the broader citizen population.³⁸

The meeting was presided over by a small group of "presiders" (*proedroi*) drawn by lot from the nine tribal teams of councilors whose tribe was not in prytany. The *proedroi* introduced (through a herald) each item on the agenda, and announced the council's recommendation (*probouleuma*), if any. At that point, the

floor was opened to “any of the Athenians with advice to give.” As Mogens Hansen has shown, given the large number of decisions that had to be made in the course of a year, in many cases the council’s recommendation was accepted by the assembly without dissent and the measure passed by consensus. But in other cases, debate ensued. Expert testimony was given and attended to. The council’s recommendation could be, and often was, amended or replaced by a motion from the floor.³⁹

Per the passage in Plato’s *Protagoras*, advice on technical matters from those regarded as uninformed was unlikely to be tolerated. In some cases, testimony was given as “point of information.” But in other cases, a speaker made a legislative recommendation in the form of a written text of a decree (or an amendment to a proposed decree) that was passed to the *proedroi* for consideration by the assembly. Certain citizens, recognized as “the usual speakers,” had developed reputations for having special expertise and useful sources of information on particular areas – e.g. foreign policy or finance. They were likely to be recognized by the *proedroi* and attended to (at least for a while) by the assemblymen. But the usual speakers held no formal office – they were ordinary citizens, not state magistrates – and there is ample evidence for measures being proposed by citizens outside the group of well-known “active politicians and recognized experts.”⁴⁰

In a recent, detailed, and convincing reconstruction of the assembly decision-making process, Mirko Canevaro (2018, forthcoming) has proposed that in the case of multiple floor proposals, the *proedroi* played a central role by deciding which proposal would be put to a final vote. Canevaro suggests that the process they employed was broadly deliberative, while also being highly sensitive to clearly expressed and widely-held opinions: The *proedroi* accepted written proposals for amendments from the floor, announced and allowed debate on those that they regarded as most viable, and then assessed the “sense of the meeting” on sequentially presented proposals. Their assessment was based on audience responses (audible, via “uproar”: *thorubos*, and visible signs of approval or dissent). They quickly rejected those proposals that found little audience support. Moreover, Canevaro suggests that the goal of the *proedroi*, and thus the collective aim of the assembly as an experienced body of citizens, was to employ the process of proposals, attending to and responding to speeches, and observable public responses, to work towards a measure that could gain very wide, perhaps even universal assent.

When the *proedroi* believed that a proposal had gained a high enough level of support, they put it to the vote. Most votes were by open show of hands and the result was announced by the *proedroi*, based on their estimate of the count. Only in special cases (and through a special procedure) was vote held by pebble-ballot and exactly counted. Canevaro points out that, where we do have evidence of actual counted votes, largely from Hellenistic-era democratic poleis, most votes are

reported as being either unanimous or nearly so. Clearly not every Athenian vote was consensual or even close to it. Thucydides (3.48.1) makes a point of the narrowness of majority by which the Athenian assembly chose to overturn a previous decision to execute the entire male population of Mytilene in 427 BCE (see chapter 6). But Canevaro makes a strong case for consensus or near-consensus voting as the norm in the fourth-century Athenian assembly and other democratic Greek citizen assemblies.⁴¹

Assuming, *ex hypothesi*, that Canevaro is correct about the procedure (whatever the actual frequency of close votes), was the Athenian deliberative, consensus-seeking approach to large-group decision-making conducive to rational and effective choice-making? In open “show of hands” voting of the Athenian type, there can be no question of sustaining full independence of individual voter judgment, a key factor in many Condorcet-type jury theorem results. The likelihood of cascades of opinion-leader or cue following (whether positive, in respect to correctness of judgment, or otherwise) was high.⁴² Opinion-leader and cue following in the assembly might well (and no doubt sometimes did) result in poor choices – i.e. those that failed to achieve the intended outcome for reasons that (in retrospect at least) ought to have been foreseeable by a prudent legislator. But the poor choice was not, by that token, an irrational one: If we assume reasonably well-aligned and orderly base-line preferences among most of those present, it may be perfectly rational for an individual to follow the lead of those he regards as better informed than himself on a given topic: If A and B agree on the high priority of security, say that ships must be built and that cost is a factor, and A is regarded as both trustworthy and expert on naval affairs, B may rationally follow A’s lead on which of several proposals is most efficacious, even if B is, as it turns out, mistaken about A’s character or level of expertise.⁴³

We need not, therefore, conclude that Athenian assemblies were typically irrational on the basis of, for example, Thucydides’ well-known account of the cascade of voter enthusiasm that led to the catastrophic (in retrospect) quasi-consensual (in that dissenters were frightened into silence) decision by the Athenian assembly to send a gigantic invasion fleet against Sicily in 415 BCE. Consensual decisions by a democratic assembly, may sometimes be, but are not necessarily, driven by strong but short-lived emotional states (in Thucydides’ account of 415: *erôs*) or by beliefs based on systematically biased information (Alcibiades’ claims about disorder in Sicilian poleis, Segesta’s success in tricking Athenian ambassadors concerning the resources that would be available to support the Athenian forces once they arrived in Sicily). Were raw emotion and misinformation the only inputs into Athenian assembly decisions, it is impossible to explain how democratic Athens could have risen to power in the Greek world, fought a long war, or recovered after that war.⁴⁴

Moreover, we need not suppose – following, for example, Thucydes’ even better-known claim (2.65.9) that, although the demos was master of state affairs in name, Pericles was the true ruler of Athens – that a demos becomes capable of acting rationally and effectively *only* when it accurately follows the lead of an exceptionally talented, rational, and charismatic leader. The Athenian assembly proved capable of making decisions that, on the whole, conduced to Athens’ security and welfare, both before and after the rise to prominence of Pericles. And by the same token, during the period of Pericles ascendancy the assembly made decisions that proved, in retrospect, both good and bad in respect to gaining those ends.⁴⁵

Nor, finally, need we accept the claim made by ancient and modern critics of participatory democracy – for example, by the “Old Oligarch,” *Politeia of the Athenians* (above) – that the demos (understood as the non-elite majority, rather than the whole of the citizen body, mass and elite conjoined) was rational *only* in the sense of acting consistently as an egoistically self-interested collective tyrant.⁴⁶ The potential for the procedure of the assembly to devolve into a kind of majority tyranny was, however, a genuine concern. Arguably, the realization of that tendency at certain moments in the later years of the Peloponnesian War contributed to Athens’ failure in that long conflict. The legal reforms of the last decade of the fifth century seem to have been aimed specifically at addressing precisely that manifest danger, and thus at restoring the foundational Solonian bargain between mass and elite, the bargain on which the Athenian democracy had been predicated from Cleisthenes onward.

5.6 Law and courts

The archaic Athenian system of law and legal judgment had been reformulated under Solon and was further modified in the middle decades of the fifth century. In the last decade of the fifth century, the system of law-making and the constitutional relationship between courts and assembly were revised once again. The stakes in this latest wave of reforms were especially high because they were undertaken in the context of civil war. In 411 and again in 404, the threat of violence between Athenian elites and masses, averted by the original Solonian bargain, had been realized in bloody fact. Immediately after the democratic restorations of 410, and 403 and in the years following, the potential for renewed violence remained high. As Edwin Carawan and Federica Carugati have emphasized, the legal reforms of the late fifth century, and therefore the the Athenian legal system of the fourth century, were predicated on a contractual solution, a revised constitutional bargain aimed at forestalling further conflict.⁴⁷ The reforms left intact the Solonian foundation, the Cleisthenic institutional framework, and the established criteria for citizenship. But the new bargain substantially enhanced the predictability of legislative outcomes and legal judgments on constitutional matters.

As Carugati has shown, while achieved without an arbitrator, the new order was seen by the Athenians as a renewal of the Solon's bargaining solution of 594 BCE, now reimagined as an ancestral commitment to legality.⁴⁸

In the decade following the democratic restoration of 410, for the first time since the original "laws of Solon" had been inscribed and made public, all currently valid Athenian laws were codified and archived. A fundamental rule of non-contradiction among the standing laws was established as a central principle of Athenian law. A clear hierarchical distinction was established between a legislative decree (*psêphisma*) and constitutional law (*nomos*). All decrees must now conform to the existing laws and every new law must either conform to the existing laws, or mandate the revocation of those it contradicted. The process of constitutional lawmaking, now by large panels of "lawmakers" (*nomothetai*), was distinguished from, and made substantially more cumbersome than, the ordinary process of making policy in a regular assembly.

Although there is disagreement over various procedural details, students of Athenian law have been able to reconstruct the main lines of the new system, based on the comprehensive account of courtroom procedure Aristotelian *Ath. Pol.* and a substantial body of preserved courtroom speeches and documents.⁴⁹ Moreover, despite an ongoing scholarly debate on the nature of the "rule of law" at Athens, there is an adequate level of scholarly consensus on the substantive jurisprudential issues of direct relevance to our question of system-level rationality.⁵⁰

Athenian disputes that would, in Anglo-American law, be considered civil, criminal, and constitutional cases, were tried in People's Courts (*dikastêria*). The ordinary procedure in most criminal cases (constitutional and civil cases were procedurally similar; murder trials were tried under a somewhat different procedure) was, in bare outline, as follows: A concerned citizen brought a charge of law-violation against an individual to the relevant magistrate. After receiving written testimony from both sides, the magistrate referred the matter to the People's court for judgment. Each case was heard by several hundred jurors (*dikastai*). Jurors were chosen in an elaborate lottery from the ca. 6000 citizens over age 30 who had taken the juror's oath and who made themselves available for duty on a given day. The *dikastai* served, collectively, as judge; the magistrate in charge was only responsible for ensuring that procedures were correctly followed. Prosecutor and defendant each gave a timed speech outlining their positions. Speeches were of identical length, measured by a water-clock; the clock was stopped for the reading of what the litigants claimed were the relevant sections of the lawcode and for reading out of written testimony (provided, under seal, by the magistrate, based on his preliminary investigation). Having heard both sides, the jurors voted, by secret ballot. The decision was by simple majority; the number of votes for prosecutor and defendant was publicly announced. If the defendant were

judged guilty, a sentencing phase followed. The entire trial process was completed in a day.

For our purposes, the constitutional reforms of the late fifth century and two categories of legal procedure concerning charges of constitutional violation are of special importance. First, is the procedure of *graphê paranomôn* (written charge of illegality in policy-making). In this procedure the prosecutor (potentially any citizen in good standing) claimed that a proposal had been made or a decree (*psêphisma*) had been passed in the assembly that was contrary to the established constitutional rules (*nomoi*). Next is the procedure of *graphê nomon mê epitêdeion theinai* (written charge that a law was unsuitably established). In this procedure the prosecutor charged that a constitutional rule (*nomos*) had been proposed or passed that was contrary to one or more of the established laws. In either case, the procedure enabled any concerned citizen to serve as public prosecutor, bringing a charge of illegality against another citizen, just as he would in a criminal case. The defendant was the author of the proposal, decree, or law. The prosecutor faced a penalty if he received fewer than one-fifth of the votes. In the case of a charge leveled against a proposed decree or law, the proposal was tabled until after the trial had been held. It was invalidated in the case of a guilty verdict. In the case of a decree or law that had been passed, a conviction in the trial resulted in the statute being voided.⁵¹

The new procedure had obvious implications for a decree proposer capable of working his way up and back down the game tree. By the late fifth century the Athenians had become deeply concerned about the potential of skilled and self-interested speakers to affect the process of public decision-making in ways that were disadvantageous to the interests of the demos. Clever orators, some of them trained by sophistic masters of rhetoricians like Gorgias and with egoistic motivations like those of Calicles, seemed quite capable of persuading the demos to take a course of action that it would not otherwise have taken. Persuasion of the sort celebrated by Gorgias in his *Defense of Helen*, and by Plato's Gorgias in the dialogue named for him, aimed at reordering the audience's preferences on some salient matter, or by bringing the listeners to believe that a preferred outcome was readily available, and thereby causing them to act accordingly. If those reordered desires and beliefs proved, in retrospect, foolish, in the sense that the risk was excessive and the collective expectation of desire fulfillment had been based on false premises, the likelihood of catastrophe was high.

In Plato's dialogue, Gorgias seeks to exculpate the trained orator from responsibility for harms suffered by listeners subjected to his persuasive treatment (*Gorgias* 457b). But Socrates does not let Gorgias and his students off so easily. His point is that unless the orator actually has genuine knowledge of what outcome is good for the treated "patient," he is in the position of a fake doctor peddling unwholesome snacks in the guise of healing medicine.⁵² For their part, the

Athenians who voted for the legal reforms sketched above had decided that public speakers must be held accountable for the reasonably predictable results of their persuasive speech.

The new legal procedures gave the demos a way to hold public speakers to account and to punish those who were regarded as having misused their powers of persuasion. The man whose name was attached to the law or decree was now held legally liable for its consistency with existing law and potentially for its unanticipated bad effects. Political rivals and opponents of the policy were, therefore, provided with a potent legal weapon. The rational potential proposer, looking down the game tree, would be hesitant to advocate an excessively risky policy, even if he were sure that he could stir up at least momentary popular enthusiasm for it. The new rules thereby reduced the demos' tendency to take risks in excess of what the Athenians, in their normal, "unexcited" psychological condition, would be willing to countenance. But what about rational risk-taking and the dangers associated with excessive risk aversion? Why was the legal weapon not over-used, resulting in the constraints on legislative initiators being such that no innovations were ever proposed? Why was fourth-century Athens not subject to path-dependent policy ossification à la Sparta?

Building on recent scholarship on Athenian law, Federica Carugati answers that question by revisiting the question of Athens' constitutional order in the late fifth and fourth centuries. Carugati argues persuasively that the reforms represent a new constitutional bargain, struck in the high-stakes context of the post-civil war era, between ordinary and elite Athenians. The masses agreed not to punish the elite for participation in the oligarchy through expropriation. The elite agreed to participate in the democracy, *inter alia* by paying expensive liturgies. The bargain resulted in a stable, self-enforcing constitutional order. At the heart of the new order was a rough consensus among Athenians on the fundamental value of legality, now understood in terms of legal coherence and consistency: non-contradiction among the existing laws and an expectation that all new legislation passed by the assembly, and any changes in the constitutional rules, would reflect what was reimagined as a deep, ancestral, Athenian commitment to legality.⁵³

Ancestral devotion to legality was seen as having been exemplified by the original laws of Solon and by the manifest judicious wisdom of the lawgiver himself. Abiding by the bargain came to be regarded by the Athenians as a contractual obligation, and it was enforced as such. Deviation from the contract was taken as not only a violation of a strongly held norm, but as a threat to social order. The threat was real insofar as it was coordination on legality as a core value of the democratic system that had allowed the Athenians to exit the civil war period without devolving into a downward gyre of sectarian violence. Here, in the promulgation of a legal doctrine and its associated behaviors, we see a practical instantiation of the process

of mutual teaching and learning that Socrates' Protagoras postulated as the origin of a self-enforcing social order predicated on the establishment of law, obedience to law, and reliable punishment of law-breakers (chapter 2).

Carugati's account of Athens' fourth-century constitutional order emphasizes its status as a self-enforcing agreement, rather than as the result of third-party intervention by the victorious Spartans after the Peloponnesian War.⁵⁴ She conceives of the new order as an equilibrium, in game-theoretic sense that no player had a better move in light of the moves available to others. As such, she shows why the Athenian constitutional order may be counted as rational. The new order enabled Athenians, as individuals, as interest groups, and as a community, to make, obey, and enforce decisions based on orderly preferences and coherent beliefs.⁵⁵ As Carugati demonstrates, it also allowed the Athenians, unlike the path-dependent Spartans, to respond to new challenges, through institutional innovations.⁵⁶

Innovations must be responsive to an opportunity or the demands of a new situation if they are to be effective. Yet, if an existing social order is to be self-enforcing, innovations must not undermine the reasons that people have to continue to pay the costs associated with the regime. The dynamic rationality of the Athenian *politeia* hung on the robustness of the balance between creative destruction of dispensable institutional arrangements and the underlying stability of basic commitments and the institutions that sustained them. Carugati argues that the constitutional balancing act was predicated on the existence of numerous veto points. Most obviously, as we have seen, every citizen held a potential veto, in the form of a right to legally challenge any new law or proposal made in the legislative assembly. And yet if innovations were to be responsive to new opportunities and threats, the veto must not be over-used. So, we come back to the question posed above: Why would a citizen who was in some ways disadvantaged by a new rule *not* choose to initiate a legal challenge, thereby at least delaying and potentially voiding the disfavored change? Carugati's answer is that such a challenge would be rejected (and the challenger in various ways punished) unless he could show that his challenge was based on a violation of a core principle of legality: inconsistency with established norms or in contradiction to established laws.

Employing a variant on the well known Median Voter Theorem, Carugati sets up a simple *graphê paranomôn* game, based on the following premises: In light of the consensus on legality, the "median Athenian juror" had relatively stable preferences over outcomes, and had normative expectations similar to those of the median assemblyman. Policy innovators (those who might propose a new rule) were capable of roughly estimating those preferences. They were motivated both by concern for honor or reputation and for achieving their preferred policy outcomes. When the median juror's preferences over outcomes diverged from the outcomes expected from the status quo, a policy innovator could safely (*without serious*

danger to his reputation and *with* the chance of winning honors) propose a new policy, knowing that any legal challenge would have to be in the form of defending the status quo.

So long as the proposed reform (1) offered expected outcomes that were nearer (on an imaginary line, assuming a one-dimensional policy space) to the ideal point (most-preferred policy) of the median juror than were the outcomes expected from the status quo, and (2) so long as the policy was consistent with established norms, and (3) did not contradict the existing laws, it was not at risk of being overturned by a *graphê paranomôn*: if the policy were challenged in court, the challenge would fail. Assuming rational players in this game, and in light of the high costs of a failed prosecution, proposals should be carefully written to avoid legal inconsistency, should be offered only when there was a perceived gap between the status quo and the ideal point of the median juror, and should not stray too far from that ideal point.

So long as those conditions were met, innovations should be proposed whenever the existing rules were widely regarded as sub-optimal while legal challenges to popular innovations should be rare, and successful challenges even rarer. Carugati concludes: “The model yields two primary results. First, the *graphê paranomôn* pushed proposers of new legislation close to the median. Second, the *graphê paranomôn* also enabled a proposer to move away from the status quo. Taken together, these results suggest that the *graphê paranomôn* enabled innovation in policy making without jeopardizing the social order.”⁵⁷ In short, like Sparta, the rationality of the Athenian constitutional order depended on the willingness of each citizen to obey the laws and to participate in the enforcement of them. But, unlike Sparta, Athens was not subject to a strong form of path dependency and thus was able to respond to environmental challenges – if not always to answer the challenge in a definitive or fully satisfactory way.

5.7 Individuals and officials, initiative and execution

If a democratic state is to make rational choices in ways that are relevantly similar to an instrumentally rational individual, as imagined by the Greek folk theory, several conditions must be met: Public decision-making bodies (notably those considered above) must be capable of aggregating individual preferences and beliefs. Those bodies must be representative, in the sense of standing for or being taken as, the demos. Assuming that, per discussion above, those conditions are adequately met, there still must be the right relationship between collective choices and the actions of those individuals responsible for *initiating* the process leading to the decision, and then for *executing* the demos’ mandate.

With reference to their specific role in the process, the individuals in question must have a reputation for (at least) competent performance and loyalty to

the regime. The competence criterion requires that they be adequately expert in their role, or have ready access to the relevant kinds of expertise, such that they were able to carry out their duties in a reasonably competent way. The loyalty criterion requires that the public behavior of the individuals in question be adequately well aligned with the background values of the demos, as expressed in its laws and norms. They must not be thought to be treasonous or corrupt – and must expect to be punished if they are discovered to be so. In the case of those with executive responsibility, loyalty requires that officials act in accordance with the decisions of public bodies. They must fulfill the specific demands for action that the public decision imposes on them.

The test of the co-presence of competence and loyalty at the level of individual initiative and follow-through is whether there is a meaningful and more or less predictable causal relationship leading from initiative to decision, and from decision to execution. Of course, given that decisions are made in the face of uncertainty, the desired outcome (say, victory in war, increased volume of trade in the market) may not actually be achieved. But the collective decision-makers must be confident that the conditions mandated by their decision (say, a certain number of warships built by a certain date, the enforcement of new market regulations) will be fulfilled. An ideal-type thoughtful and well-informed individual citizen, reflecting on the process *ex post*, ought to be able to say, “The deliberative process surfaced an option capable of gaining our approval (through winning a majority or consensus vote). The public choice made by the vote accorded with our (majority or consensus) preferences in light of our beliefs about the relevant state of the world at the time. Subsequent actions by executive officials were in accord with that choice.”

At each step, we must expect some slippage. Given the existence of many minds, and diverse interests, preferences, and beliefs, it would be absurd to suppose that the democratic state-level process of moving from initiative to decision, and from decision to action could be as straight-forward as a single rational individual forming the intention to do something and then doing it. Even the simplest example of joint action – as demonstrated by Michael Bratman’s (2014) discussion of two persons painting a house – is far more complex than an action carried out by a rational individual. The size and complexity of the Athenian governmental machinery meant that, even assuming the highest possible levels of competence and loyalty from every individual involved, there would inevitably be slippage across the causal chain, a loss of efficiency and accuracy between the input of individual preferences and beliefs and the output of public actions. But if the slippage were so great that there was no discernible (to, say, our hypothetical ideal Athenian observer) causal relationship between public choices and outcomes, it would be absurd to claim that the democratic state manifested even minimal rationality in the instrumental sense of the folk theory. Moreover, if the process were to be captured

by those individuals with responsibility for initiative and execution, such that the demos became a mere bystander in the process of government, it would be false to claim that the system was democratic.

In fourth-century Athens, a substantial number of individuals had responsibility, formal or informal, for initiative and execution. Both the legislative and judicial process depended on “he [the citizen in good standing] who is willing” (*ho boulomenos*) to initiate the action – to propose a policy or to bring a charge of illegality resulting in a legal trial. In the legislative process, the name of the initiator was attached to the final form of the decree of the law – through, the formula, “so and so proposed.” All valid laws and decrees were archived, at least some were inscribed on marble stelai and publicly displayed. The individual listed as the proposer gained whatever public praise, honors, and positive reputation was subsequently associated with the measure. He also took on formal legal responsibility for the measure, and, as we have seen, would be the defendant in a trial if it were challenged in the courts.

Some of the known proposers of surviving (on stone) and reported (in literary sources) fifth- and fourth-century Athenian decrees and laws were famous politicians: They were men who were politically prominent, whether or not they held public office in a given year. They were widely recognized as expert in some area of policy. They regularly made speeches before public bodies offering their advice. They engaged in high profile litigation. Yet other recorded proposers are known to scholarship only for having proposed a single decree. These men appear *not* to have figured among the set of “regular public speakers” that Athenians referred to as “the speakers” (*hoi rhētores*) or “the politicians” (*hoi politeuomenoi*). Moreover, as Claire Taylor has demonstrated, when compared with the fifth century BCE, in the fourth century there was a considerably weaker correlation between citizens known to be active in initiating a public action and those known to be wealthy. Taylor has also demonstrated a similar decoupling of known political activity with being known to be a member of an urban deme (Taylor 2008). Insofar as there is a discernible trend from the fifth to the fourth century, it appears to be in the direction of *weakening* the association of privilege based on wealth, residence, and fame with the likelihood of being an initiator or executor of Athenian public policy.

Given the absence in Athens of an office of state prosecutor, most legal cases arising from charges of violation of criminal or unconstitutional law were initiated by *ho boulomenos*: a concerned citizen in good standing. Some very high-profile trials, including those that gave rise to the best-known speeches in the surviving corpus of orations by the “ten Athenian orators” (those whose works were most read and recopied), were delivered by prominent politicians, as either prosecutors or defendants. Such men were invariably members of the Athenian elites of wealth and education (Ober 1989). Carugati (2019) has, however, shown that, in light of the

high number of trials held in Athens in a given year, many litigants, including prosecutors and defendants in trials arising from constitutional challenges (per above), must have been relatively obscure ordinary citizens. In sum, it is clear that many Athenian citizens, elite and non-elite, chose to take the role of legally responsible initiator of a legislative or judicial process, leading to a salient decision by a public decision-making body.

How could the demos trust that those initiating legislation or legal challenges were adequately competent and loyal? Of course, not every speaker *was* competent and loyal. But, per above, if *most* were not it becomes impossible to explain the level of performance that Athens demonstrably achieved. The answer to the “justified trust” question may be sought in a variety of formal and informal mechanisms. First, as we have seen, Plato’s Socrates (*Protagoras*) was quite willing to admit that, on technical matters at least, the Athenians were quite capable of recognizing experts in various domains. He notes that they refused to waste time attending to those who were not regarded as adequately expert. This suggests that reputations for expertise could be built and tested over time, and that networks of knowledge and justified trust among citizens were adequate to the task of identifying the competent and culling out the incompetent – at least on various technical matters.⁵⁸ Next, at least for legislative initiatives, the competition among would-be proposers of legislation could be fierce. Given that proposers were seeking rewards in the relatively scarce coin of public honors and widespread social esteem, proposers had good reason to work at building and defending their reputations, and equally good reason to seek to expose incompetent rivals.⁵⁹

Likewise, loyalty to the background values of the demos was established by reputations that were built up over time and tested in public contests: The preserved speeches of Athenian public orators are characterized by frequent attempts of the speaker, especially in the lawcourts, to demonstrate his own long record of highly transparent prosocial public behavior. The lives of litigants are self-advertised as being open to the inspection of all Athenian citizens. Public speakers who failed to conform to background social norms (when, for example, there was evidence of cowardice in battle, mistreating parents, squandering one’s patrimony) would be attacked by the rivals. They might potentially be charged of wrongdoing through the legal procedure of the “scrutiny of public speakers” (*dokimasia rhêtorôn*). If he were convicted of having addressed a public audience, after having violated the relevant norms, the citizen lost the right to address public assemblies in the future. Any hint of disloyalty to the democratic regime, whether motivated by corruption or treason, left a public speaker open to legal attack by his rivals. Conviction could, and did, end public careers (Ober 1989).

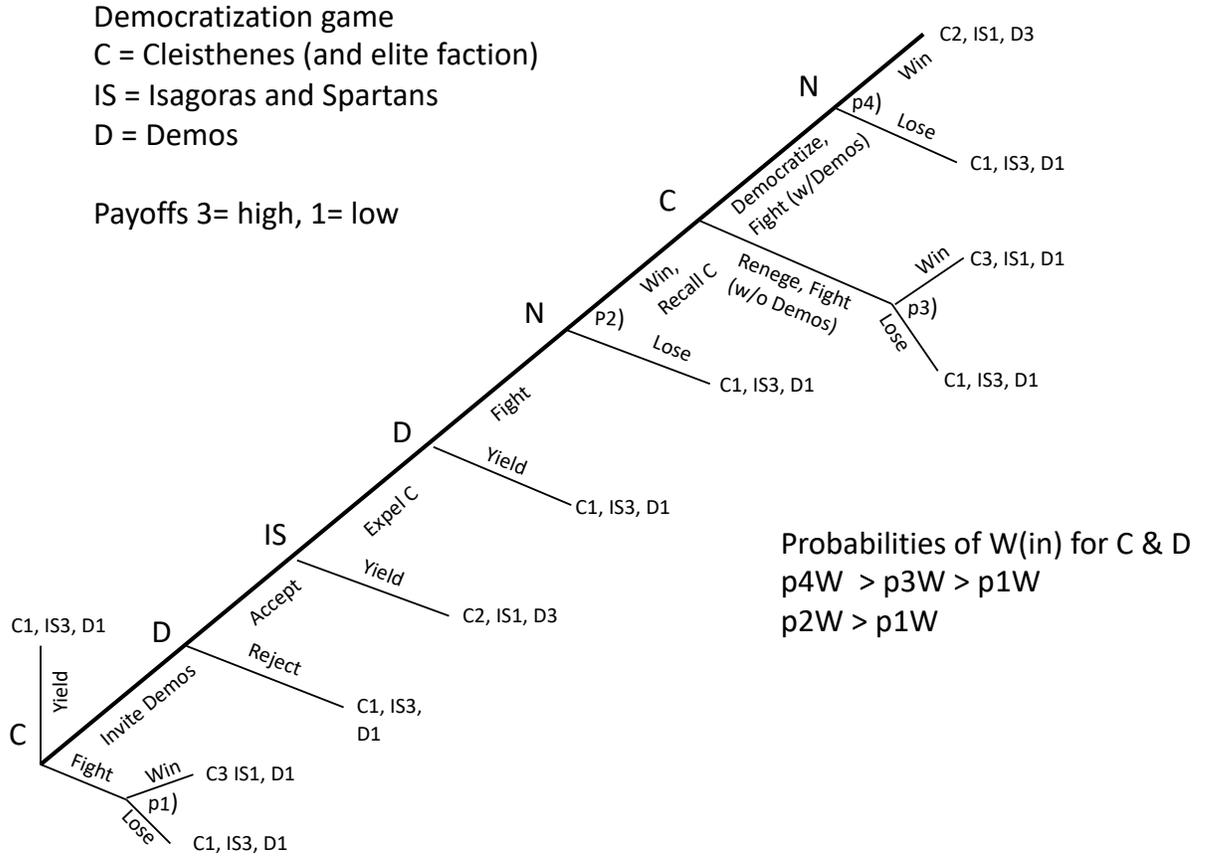
Executive responsibility for policy implementation was widely distributed. Any given Athenian citizen had a reasonably high chance of serving for a year as a

responsible official of the Athenian government. Even the famously “quietist” Socrates served for a year as a councilor – albeit late in life (in 406 BCE, when he was 63) and when Athens was suffering the demographic squeeze of the latter phases of the Peloponnesian War. In addition to the 500 councilors chosen annually by lot, in a given year of the fourth century, some 700 other officials, served annually, either by being elected or (more commonly) chosen in a lottery. Their duties ranged from military leadership (the ten generals), to the oversight of state finance, to the various legal and ritual roles of the nine archons, to punishment of offenders (the Eleven), to the wide range of administrative duties assumed by the many boards (typically composed of ten citizens) responsible for all manner of public business.⁶⁰ Moreover, each year a certain number of wealthy citizens were assigned (or volunteered for) public liturgies: funding (and organizing) a chorus or taking responsibility for equipping and manning a warship.⁶¹

The *politeia* of the Athenians lacked an established Weberian bureaucracy. But it provided resources and incentives (in the form of rewards and punishments) that appear well designed to ensure an adequate median level of competence and loyalty across the annual cohort of public officials. Offices requiring high levels of expertise (generals and civil engineers, later financial officials) were elective and could be iterated. Insofar as the demos was an adequate judge of reputations (per above), the Athenians could expect that those serving in elective offices were at least minimally competent. Like lotteried officials (below), all elected officials were subject to an initial scrutiny (*dokimasia*) and a year-end audit (*euthuna*).

*[CHAPTER REMAINS INCOMPLETE THE REST IS JUST NOTES]*⁶²

Figure 5.1. Athens Democratization Game.



Notes. Chapter 5. Cleisthenes [vestigial, most are only placeholders]

¹ THIS SECTION WILL BE PRECEDED BY AND INTRODUCTION. THESE ARE JUST NOTES

Introduction notes: WRT Cycle Figures: stability, change, adaptive cycles. Sparta = stable cycle. But stability proves fatal for Sparta's long term place in hierarchy of states.: From victory against Athens in the long PelWar to defeat by Thebes at Leuctra followed by the loss of Messenia and the devolution to a minor Peloponnesian power. Both success and failure explicable in terms of rational choices of Sparta's rulers. Costs of Path dependency, in demographic decline of Spartiates and extreme inequality, obvious by time Aristotle writes the Politics in third quarter of fourth. Plato and Aristotle concerned that alternative is recurrent stasis – per Arcenas: change cycle. Athens a third way: adaptive cycle. Like Sparta, dominant power in the fifth century, at head of Aegean empire of hundreds of states and millions of people, catastrophic military failure in Sicily, partial recovery, and final surrender after loss of last great navy, siege, surrender. But surprisingly quick recovery – returned to ranks of major Greek powers within a decade after 404 and by the time Aristotle writes the Politics, major building projects and state income comparable to fifth century imperial height. And yet, Athenian history long taken as essentially done by end of the PelWar, and dogged by persistent claims of irrationality. Or, if rational, then only sporadically, under the rule of wise Pericles or in the degenerate sense of a self-defeating majoritarian tyranny. Arginousai. Socrates trial. Need to signal the problem of chronology – this chapter jumps from Plato writing in early 4th century, a dialogue with a dramatic date of the late fifth century, back to Cleisthenes in late sixth century and forward again to the fourth century. Looking forward, chapter 6 will focus on the fifth century (mostly) on the rationality of imperial relations and severe limits to rational calculation. Transition at end of this chapter on rationality of the fourth century state in part a response to errors in the Pelwar imperial period, and a chastened recognition that rationality is limited.]

² The virtues in Callipolis

³ The common interest of each and all in Callipolis.

⁴ Correction of the erring philosopher

⁵ Tyrant as a slave of slaves.

⁶ Democracy ranking Plato, *Statesman* and Aristotle *Pol.*

⁷ Supermarket of values: Inverted oligarchy and democracy in sequence of regimes?
CD Reeve et al.

- ⁸ Note that in book 1, Socrates sets out the superiority of hierarchy
rationality/goodness of ends and means > rationality of ends alone > rationality
of means.
- ⁹ Equation of freedom and equality Plato, Aristotle, Athenian democrats.
- ¹⁰ οὐκοῦν, ἦν δ' ἐγώ, καὶ διαζῆ τὸ καθ' ἡμέραν οὕτω χαριζόμενος τῇ προσπιπτούσῃ ἐπιθυμίᾳ, τοτὲ μὲν μεθύων καὶ καταυλούμενος, αὔθις δὲ ὑδροποτῶν καὶ κατισχναινόμενος, τοτὲ δ' αὖ γυμναζόμενος, ἔστιν δ' ὅτε ἀργῶν καὶ πάντων ἀμελῶν, τοτὲ δ' ὡς ἐν φιλοσοφίᾳ διατρίβων. πολλάκις δὲ πολιτεύεται, καὶ ἀναπηδῶν ὅτι ἂν τύχη λέγει τε καὶ πράττει: κἄν ποτέ τινας πολεμικοὺς ζηλώσῃ, ταύτῃ φέρεται, ἢ χρηματιστικούς, ἐπὶ τοῦτ' αὖ. καὶ οὔτε τις τάξις οὔτε ἀνάγκη ἔπεστιν αὐτοῦ τῷ βίῳ, ἀλλ' ἡδύν τε δὴ καὶ ἐλευθέριον καὶ μακάριον καλῶν τὸν βίον τοῦτον χρῆται αὐτῷ διὰ παντός.
- ¹¹ Cf Ober 2008 on the sorting process in fact.
- ¹² Discussion of Schumpeter's "Classical Theory": Ober 2017.
- ¹³ See however, Mackie 2003; Goodin and Spiekerman 2018: 33 with literature cited.
- ¹⁴ Epistemic critics: Below note xx.
- ¹⁵ Tong on the long history of democratic epistemic envy.
- ¹⁶ Old Oligarch: Ober 1998 chapter 1, with literature cited.
- ¹⁷ ἐγὼ γὰρ Ἀθηναίους, ὥσπερ καὶ οἱ ἄλλοι Ἕλληνας, φημι σοφοὺς εἶναι. ὁρῶ οὖν, ὅταν συλλεγῶμεν εἰς τὴν ἐκκλησίαν, ἐπειδὴν μὲν περὶ οἰκοδομίας τι δέη πράξαι τὴν πόλιν, τοὺς οἰκοδόμους μεταπεμπομένους συμβούλους περὶ τῶν οἰκοδομημάτων, ὅταν δὲ περὶ ναυπηγίας, τοὺς ναυπηγούς, καὶ τᾶλλα πάντα οὕτως, ὅσα ἡγούνται μαθητὰ τε καὶ διδασκὰ εἶναι· ἐὰν δὲ τις ἄλλος ἐπιχειρῆ αὐτοῖς συμβουλεύειν, ὃν ἐκεῖνοι μὴ οἴονται δημιουργὸν εἶναι, κἄν πάνυ καλὸς ἦ καὶ πλούσιος καὶ τῶν γενναίων, οὐδὲν τι μᾶλλον ἀποδέχονται, ἀλλὰ καταγελοῦσι καὶ θορυβοῦσιν, ἕως ἂν ἢ αὐτὸς ἀποστῆ ὁ ἐπιχειρῶν λέγειν καταθορυβηθείς, ἢ οἱ τοξόται αὐτὸν ἀφελκύσωσιν ἢ ἐξάρωνται κελευόντων τῶν πρυτάνεων. περὶ μὲν οὖν ὧν οἴονται ἐν τέχνῃ εἶναι, οὕτω διαπράττονται (Loeb).
- ¹⁸ Epistocratic arguments: Caplan 2007; Brennan 2016. Neo-Rousseauian argument: Cammack 2013a, 2013b, 2019.
- ¹⁹ Debate on origins of democracy: Raaflaub, Wallace, and Ober 2007; Ober on Ath revolution. And alternatives. Primary sources.
- ²⁰ *Prosetairizetai*: Greek.
- ²¹ The possible councils
- ²² Spartan invasion of 506
- ²³ Dating of the origins of the term *demokratia*: Hansen 1986; Lambert 2019 . Its original meaning: Ober 2017 chapter 2.
- ²⁴ Democratization game is based on work in progress, with Barry Weingast.

- ²⁵ The counter-hypotheses of Cleisthenes' visionary altruism and mere contingency and post-Solonian path dependency are not falsifiable; they are, I believe, considerably less plausible.
- ²⁶ Thucydides on Pericles.
- ²⁷ Thuc and democratic advantage: Ober et al.
- ²⁸ Pericles the politician and deal-maker Ober on strategy; Connor et al.
- ²⁹ Thucydides on the causes of the War. Kagan on Periclean policy and Spartan response. Bipolarity and its limits: Lebow and Strauss, Connor et al.
- ³⁰ Late-fifth/fourth century constitutional changes: Carugati forthcoming with literature cited.
- ³¹ Fourth-century history: some highlights.
- ³² Constitutional history: xx; exposition of mature democracy: Hansen 1999; explanation for Athenian performance: Ober 2008.
- ³³ Aristotle wisdom of the many literature: Ober 2013 with literature cited. Add now: xx.
- ³⁴ Much also concerned the state religion, which was not readily separated from considerations of security and welfare.
- ³⁵ Tribal organization of Attica.
- ³⁶ Athenian boule: role and responsibilities, deliberation.
- ³⁷ The boule models a rational individual. Strategic incentives, trust building.
- ³⁸ Assembly schedule and demographics.
- ³⁹ Hansen on the large number of votes without dissent.
- ⁴⁰ Usual speakers and non-expert speakers.
- ⁴¹ Canevaro reconstruction: discussion.
- ⁴² See, for discussion, Goodin and Spiekermann, chapter 4.
- ⁴³ Rational cue following.
- ⁴⁴ Thucydides on Sicilian Debate: Ober 1998: xx with literature cited, and xx.
- ⁴⁵ Such a thought-leader destroys whatever wisdom of the many may arise from democratic process: cf. Goodin and Spiekermann
- ⁴⁶ Collective tyrant: xx.
- ⁴⁷ See especially Carawan.
- ⁴⁸ Athens' fourth-century Rule of Law: Forsdyke 2018. Commitment to legality: Carugati, see below.

- ⁴⁹ Canavero 2017 offers a new interpretation of the nomothesia process, and discusses earlier interpretations of the process. For the canonical version: Hansen 1999.
- ⁵⁰ Forsdyke 2018 with literature review.
- ⁵¹ The legal procedures in question: Hansen 1999, xx.
- ⁵² Plato, *Gorgias*: Socrates criticism of rhetoric as fake medicine.
- ⁵³ Carugati 2019, drawing on, inter alia, Carawan, Lanni, Shear, Harris, Hansen.
- ⁵⁴ This is a key distinction between Carugati's interpretation of the new constitutional order and that of Carawan and some other scholars.
- ⁵⁵ It is an important part of Carugati's argument that the bargain extended beyond the citizen body, to the various non-citizens whose lives were, one way or another, entangled with the lives of citizens. See further Taylor xx.
- ⁵⁶ Athenian innovations: Ober, D'Angour.
- ⁵⁷ Carugati 2019: 3.3.e.
- ⁵⁸ Ober 2008 on knowledge networks
- ⁵⁹ Ober 1989 on competition among rhetores.
- ⁶⁰ Officials: Hansen, Lane forthcoming
- ⁶¹ Liturgies: Domingo Gygax 2016.

⁶² NOTES FOR COMPETITION OF CHAPTER

Incentives to serve:

Pay and perks

Chance to exercise authority/power

Reputation effects and norms

High office and liturgies: honors

Competence:

Domain specificity

Collegiality

Networks of knowledge

public slaves & secretaries

Loyalty:

Dokimasia and euthynai

Collegiality & reputation

Loyalty and competence of officials. Collegiality, Official audits, , etc.

Already seen that there was believed to be expertise, but were experts loyal in sense of giving true account of what they know and employing skills in ways that were called for? And were lotteried and elected officials expert enough or have adequate access to expertise.

Sources of expertise – citizens and public slaves.

Incentives for disclosure.

Disincentives to corruption: transparency, collegiality, accountability.

Initiative (proposers of decrees, name in hat, etc): economy of honor and civic duty. The high bar of minimum expectations, and the rewards for getting over the bar.

Officials, many, mostly lotteried.

Enforcement – nil but low violence (Thuc on no arms, various on low violence of Athens overall).

Expertise, without elite capture – rhetores, strategoi, finance, etc. Hoi politeoumenoi.

Public slaves.

Boards of magistrates – mutual monitoring, transparency, accountability, aggregate capacity.

Claire Taylor work on election (elite) vs lottery, and decline in urban and wealthy percentage of politically active from fifth to fourth century.

Lane

Pay and the contest for honors – productive competition.

Elites paying taxes, charis and honors

Rational trust and pushback to the sucker's payoff.

The democratic state deliberates and speaks

Epilogue: Hellenistic poleis and the survival of rational democracy.